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KAZAKHSTAN: Compulsory re-registration if restrictions become law

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Amending Law imposing new restrictions on freedom of religion or belief is now with Prime Minister. If adopted, it will require re-registration of almost all religious communities, and impose new restrictions on and punishments for religious education, sharing beliefs, censorship of literature and (for state officials) participating in worship.

Kazakhstan's draft Amending Law proposing many wide-ranging changes to the 2011 Religion Law, Administrative Code and many other laws is now with the Prime Minister for approval before being sent to parliament.

A senior official of the Religion and Civil Society Ministry's Religious Affairs Committee told Forum 18 she expects Prime Minister Bakytzhan Sagintayev to approve the draft Law "soon" and send it to the lower house of Parliament, the Majilis.

The Religious Affairs Committee official refused to explain why the Amending Law does not remove restrictions in the existing Law which violate Kazakhstan's international human rights obligations and why it adds further restrictions (see below).

The Religion and Civil Society Ministry, which prepared the draft Amending Law, completed work on it on 17 November. Government agencies have already given their approval to the draft Law, including the Justice Ministry, Interior Ministry and National Security Committee (NSC) secret police, Aliya Abeldinova, deputy chair of the Religious Affairs Committee, told Forum 18 from the capital Astana on 29 November.

The final text, unlike earlier drafts, will require all registered non-Muslim and non-Russian Orthodox religious organisations to bring their statutes into line with the new provisions and to re-register with the Justice Ministry. Local Russian Orthodox communities will also be required to re-register. The draft gives no timescale for compulsory re-registration. The possible situation of Catholic communities remains unclear (see below).

The re-registration requirement is "very bad", one legal specialist told Forum 18 from Kazakhstan.

New restrictions in the Amending Law likely to be adopted by Parliament include: where religious education is allowed to take place and who by, with new punishments for "offenders"; new restrictions and punishments for those seeking religious education abroad; new punishments for disturbing a religious community's "internal order" (such as by saying the word "Amen" in mosques); even more restrictions on sharing beliefs, with a new specific ban on spreading the beliefs of an unregistered religious organisation; a new definition of the term "clergy" which could reduce the number of individuals allowed to share their faith, as well as disbar Jehovah's Witness young men from exemption from compulsory military service; require religious literature which does not pass the compulsory state censorship to be seized; punishments for weddings outside registered places of worship; a ban on state officials participating in religious events; and a ban on and punishments for holding religious weddings away from state-registered places of worship (except on grounds of sickness of one of the parties) (see below).

Compulsory re-registration for almost all organisations

The government allows only one Muslim organisation in the entire country to gain state registration: the state-backed Muslim Board. This will not be required to re-register if the Amending Law is adopted as it has the status of a nationwide religious organisation.

The only other religious community with nationwide status that has gone through the registration process – the Metropolitan Region of the Russian Orthodox Church – will also be exempt from the re-registration requirement.

The possible situation of Catholic communities remains unclear. Catholic communities were the only ones exempted from the last re-registration process after the 2011 Religion Law came into force. This was because of an Agreement between the Holy See and Kazakhstan, which gives the Catholic Church the right to establish entities, maintain places of worship, send clergy and other personnel and establish church schools and charitable agencies (see F18News 22 November 2012)

http://www.forum18.org/archive.php?article_id=1769).

At the end of the (so far unspecified) re-registration deadline, regional administrations are to go to court to liquidate regional religious organisations that no longer meet the requirements of the Law, as well as local religious organisations that have failed to bring their statutes into line with the new provisions and have failed to gain re-registration.

"Consultation", but no change

The Religion and Civil Society Ministry briefly posted the final text in Kazakh and Russian on its website but soon removed it. The Ministry took part in a conference on the draft Amending Law at a hotel in Astana on 22 November, but did not change the draft as a result of participants' comments. The Ministry presented the draft Amending Law to foreign diplomats on 24 November.

The Religion and Civil Society Ministry first made public their proposed draft Amending Law on 14 August 2017 (see F18News 18 August 2017 http://www.forum18.org/archive.php?article_id=2308). A further draft was made public on 2 October (see F18News 10 October 2017 http://www.forum18.org/archive.php?article_id=2324).

On 29 November, Forum 18 began to ask Abeldinova, deputy chair of the Religious Affairs Committee, why her Ministry had taken no account of international recommendations to amend existing Laws, why provisions in the existing Religion Law which violate international human rights norms have not been removed, and why new provisions violating international human rights norms are in the Amending Law. She immediately responded that all questions must be put in writing and then put the phone down.

Earlier January 2017 Amending Law

The latest draft Amending Law follows a previous "extremism and terrorism" Amending Law, prepared by the NSC secret police, changing five Codes and 20 individual laws including the 2011 Religion Law. This came into force in January 2017 and imposed new restrictions on foreign religious travel and more explicit provisions banning and punishing the production or distribution of literature about religion. It also restricts the number of copies of publications about religion an individual is allowed to import "for personal use" without being subject to state censorship. Only one copy of any individual publication can now be imported without undergoing censorship. It ignored recommendations from an October 2016 Organisation for Security and Co-operation in Europe (OSCE) Preliminary Opinion calling for restrictions on the exercise of freedom of religion or belief – particularly over censorship of literature about religion and foreign travel for religious purposes – to be removed from the Amending Law and from existing laws (see F18News 5 January 2017 http://www.forum18.org/archive.php?article_id=2243).

Three Codes and 9 Laws to be amended

The proposed new restrictions and punishments are part of a wide-ranging draft Amending Law "Introducing changes and Additions to Laws on Questions of Religious Activity and Religious Associations". The draft Amending Law proposes changes to three Codes and nine Laws, including the 2011 Religion Law (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939) and the Code of Administrative Offences.

The draft Amending Law would remove none of the existing restrictions on the exercise of freedom of religion or belief which have been repeatedly criticised by international organisations, human rights defenders in Kazakhstan and abroad, and by many other local people (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

This failure to remove the existing restrictions on freedom of religion and belief is directly contrary to the recommendations of the United Nations (UN) Human Rights Committee, which in its July 2016 Concluding Observations (CCPR/C/KAZ/CO/2) called on Kazakhstan to "guarantee the effective exercise of freedom of religion and belief and freedom to manifest a religion or belief in practice. It should consider bringing article 22 of its Constitution into line with the Covenant [the International Covenant on Civil and Political Rights - ICCPR] and revise all relevant laws and practices with a view to removing all restrictions that go beyond the narrowly construed restrictions permitted under article 18 of the Covenant" (see http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKAZ%2fCO%2f2). Yet Kazakhstan has ignored this and similar recommendations (see F18News 22 July 2016 http://www.forum18.org/archive.php?article_id=2201).

The Amending Law is set to reach Parliament as laws increasing state control over communications and over lawyers are already in Parliament, the Kazakhstan International Bureau for Human Rights and Rule of Law note in a joint report with the International Partnership for Human Rights (see <http://iphronline.org/kazakhstan-problematic-draft-laws-politically-motivated-imprisonments.html>).

Once the government has approved a draft Law, it can be swiftly adopted in parliament and signed by the president. On 5 September 2011 a new Religion Law, and an Amending Law changing nine other laws and legal provisions including the Administrative Code were introduced into Parliament. Both were adopted very quickly, despite strong criticism from national and international human rights defenders. They were signed into law by President Nursultan Nazarbayev on 11 October 2011 – the same day that Kazakhstan

applied for full membership of the Council of Europe's Commission for Democracy through Law, or Venice Commission (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

No OSCE or Venice Commission legal reviews sought

The Kazakh authorities sought no legal reviews of the Amending Law, either from the OSCE or the Council of Europe's Venice Commission (see F18News 10 October 2017 http://www.forum18.org/archive.php?article_id=2324).

When the 2011 Religion Law was signed into law the OSCE Office for Democratic Institutions and Human Rights (ODIHR) expressed its "disappointment", as "the legislation appears to unnecessarily restrict the freedom of religion or belief and is poised to limit the exercise of this freedom in Kazakhstan". The ODIHR reiterated "the continued relevance of our 2009 Opinion on the previous draft legislation. ODIHR continues to stand ready to provide advice and assistance on bringing Kazakhstan's freedom of religion legislation fully in line with international standards and OSCE commitments."

The 2009 OSCE Opinion found that "many serious issues remain with respect to the Proposed Religion Law's compliance with international human rights standards, including in particular OSCE commitments" (see F18News 4 February 2009 http://www.forum18.org/Archive.php?article_id=1249).

An October 2016 OSCE Preliminary Opinion Legal Review on the January 2017 Amending Law, which called for restrictions on the exercise of freedom of religion or belief to be removed, was ignored by the government (see F18News 5 January 2017 http://www.forum18.org/archive.php?article_id=2243).

Ignoring international human rights obligations

A new Article 3, Part 3 of the Religion Law states that "Manifesting the freedom to profess religion or belief is subject only to limitations prescribed by law and necessary to protect the constitutional order, public order, the rights and freedoms of the individual, and the health or morals of the population".

Despite (as noted above) ignoring UN Human Rights Committee recommendations on Kazakhstan's laws and state actions, the Comparative Table claims the new Religion Law article has been drafted in accordance with General Comment 22 of the UN Human Rights Committee on Article 18 ("Freedom of thought, conscience and religion") paragraph 3 of the International Covenant on Civil and Political Rights (ICCPR). ICCPR Article 18 (3) specifies the only grounds on which manifestations of the freedom of thought, conscience and religion may be limited.

But the Religion Law changes propose that Kazakhstan even more flagrantly break its binding international human rights law obligations to protect freedom of religion and belief and other human rights. In support of this, the drafters of the changes cite similar legal provisions violating human rights in Uzbekistan, Tajikistan, Turkmenistan, Azerbaijan and elsewhere (see below).

The proposed Religion Law changes also include criteria (such as protecting the constitutional order) which are not legitimate reasons for restricting the manifestation of freedom of religion or belief. It ignores the same General Comment No. 22 paragraph 3 that ICCPR Article 18 "is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner" (see http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en).

The changes would once again grant the police the right to prepare records of an offence under some parts of Administrative Code Article 490 ("Violation of the Religion Law"). Only religious affairs officials have previously been empowered to prepare such records. The Comparative Table providing commentary claims that this has made it difficult to bring such prosecutions because religious affairs officials at a local level are absent.

The final draft for the first time introduces a possible punishment under the Administrative Code of a warning for first "offences", alongside the existing fines and three-month bans on a religious organisation's activity.

However, Article 490, Part 1 would still violate Kazakhstan's international human rights commitments by punishing individuals or communities who "conduct religious rites", charitable activity, import, publish or distribute religious literature or other items, or build or re-designate places of worship without prior state permission or teach religion outside the narrowly-defined legal restrictions.

The ban on exercising freedom of religion and belief without state permission violates international law, as outlined in the OSCE/Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (see <http://www.osce.org/odihr/139046>). Kazakhstan is both an OSCE participating State and a Venice Commission member state.

The authorities remain especially concerned about children's participation in meetings for worship. The draft now with the prime minister requires one parent, close adult relative or guardian to be present at a religious event with a child under 16, while a child would not be allowed to be present if one parent objected (see below).

Despite the removal from the final draft of various proposed provisions that would have violated Kazakhstan's international human rights commitments, the draft changes to a wide range of laws continue to include, among other restrictions: more restrictions on and punishments for religious teaching without state permission; more restrictions on sharing beliefs; and apparently increased but vaguely defined confiscation of religious literature which does not pass the compulsory state censorship (see below).

The ban on exercising human rights without state permission violates international law, as outlined in the OSCE/Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (see <http://www.osce.org/odihr/139046>). Kazakhstan is both an OSCE participating State and a Venice Commission member state.

Further punishments for religious education and teaching

A new Article 3, Part 6 of the Religion Law effectively bans religious teaching unless it takes place within registered places of worship or registered religious education establishments "in accordance with their statutes", or with the permission of the Regional authorities. The Comparative Table cites similar bans in Uzbekistan, Tajikistan, Turkmenistan and Kyrgyzstan.

It remains unclear if the authorities will punish registered religious communities which conduct religious education in their registered place of worship if the organisation's statute fails to include specific reference to religious education. One legal specialist told Forum 18 that the reference to a religious organisation's statute might allow officials to punish religious organisations that have failed to make explicit reference to religious education of their members in their statutes.

The final text of the Amending Law adds a new provision in Article 3, Part 6 of the Religion Law requiring registered religious educational establishments to "carry out their activity openly, and inform the public about their academic, scholarly research and financial activity".

A new Article 490, Part 1, Point 5 would punish those who violate the Religion Law's restrictions on religious teaching with, for individuals, a warning or a fine of 50 MFIs. Registered religious organisations which violate this provision would face a warning or a fine of 200 MFIs, or a ban on activity for three months. Fines for a second offence within one year would be 200 MFIs on individuals, 300 MFIs on officials and 500 MFIs on religious organisations, with a ban on their activity.

A fine of 100 MFIs (currently 226,900 Tenge – 5,625 Norwegian Kroner, 575 Euros or 680 US Dollars) represents about two months' average wage for those in work.

The Comparative Table claims this is necessary as unspecified groups "actively spread [undefined] destructive ideologies" under the guise of foreign language teaching.

To support its advocacy of Kazakhstan even more flagrantly breaking its binding international human rights law obligation to protect freedom of religion and belief and other human rights, the Comparative Table cites Uzbekistan's Administrative Code Article 241 ("Teaching religious beliefs without specialised religious education and without permission from the central organ of a [registered] religious organisation, as well as teaching religious beliefs privately"). The Comparative Table in support of further restricting freedom of religion and belief also points to the punishment of an Uzbek imam in Namangan Region, Akhmadjon Eshmatov, in April for allegedly using language teaching as a cover for teaching about Islam. In Uzbekistan, even official imams have complained to Forum 18 that they cannot teach Islam to children (see Forum 18's Uzbekistan religious freedom survey http://www.forum18.org/archive.php?article_id=2314).

The Comparative Table similarly cites Tajikistan's Administrative Code Article 474-3 ("Carrying out of educational and preaching activity by religious communities in institutions of pre-school, secondary school, primary professional, secondary professional and higher professional education, as well as in residential buildings or homes of citizens"). After Tajikistan introduced it, the UN Human Rights Committee criticised the state's restrictions on religious education and other "severe restrictions on freedom of religion" - in its August 2013 Concluding Observations on Tajikistan (CCPR/C/TJK/CO/2) (see Forum 18's Tajikistan religious freedom survey http://www.forum18.org/archive.php?article_id=2138).

A new Article 3, Part 20 of Kazakhstan's Religion Law would restrict applying for religious education abroad to those who have already gained higher religious education in Kazakhstan. This restriction would not apply to those who undertake foreign religious education under an international agreement, or to members of registered religious organisations that do not have higher religious education facilities within Kazakhstan.

A new Administrative Code Article 490, Part 9 would punish "violations of legal requirements for Kazakh citizens to receive religious education in foreign states according to the established procedure" with a fine of 50 MFIs. Fines on individuals for a

second offence within one year would be 200 MFIs, for officials 300 MFIs and for organisations 500 MFIs and a ban on their activity.

In support of Kazakhstan further violating its binding international human rights obligations, the Comparative Table also cites similar legal provisions violating human rights in Turkmenistan (see Forum 18's Turkmenistan religious freedom survey http://www.forum18.org/archive.php?article_id=2244), Azerbaijan (see Forum 18's Azerbaijan religious freedom survey http://www.forum18.org/archive.php?article_id=2081), and other human rights violating states.

Disturbing a religious community's "internal order"

A new Administrative Code Article 490, Part 10 would punish "violations of legal requirements for observance of the internal order in places of worship and the premises of religious organisations". Punishments would be a warning or a fine: for Individuals of 50 MFIs, and religious organisations 100 MFIs.

This appears to be targeted at Muslims who follow rituals and practices which are not in line with those espoused by the state-backed Muslim Board. Although this is nowhere enshrined in law, the state has given the Hanafi Sunni Board a monopoly on all Muslim activity. No Muslim communities which are either outside the state-controlled Muslim Board or non-Sunni Hanafi Muslim are allowed to exist (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

The Ahmadi Muslim community is banned and all its mosques were forcibly closed and they have been banned from meeting even in their homes (see F18News 24 April 2012 http://www.forum18.org/Archive.php?article_id=1692). It most recently applied for state registration in 2015. The Religious Affairs Committee rejected the application in July 2016. Its "expert analysis" claimed the group was not Islamic and should therefore remove the word "Muslim" from its name. This followed similar earlier negative state "expert analyses" (see F18News 23 November 2012 http://www.forum18.org/archive.php?article_id=1769).

The October 2016 OSCE Preliminary Opinion Legal Review on the January 2017 Amending Law, pointed out in relation to such "expert analyses" that "it is generally questionable whether a state body is able to or should be involved in assessing any material with religious content". It added that "the rights to freedom of religion or belief, and to freedom of expression exclude any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs, including religious literature or any other materials containing so-called 'religious content', are legitimate" (see F18News 5 January 2017 http://www.forum18.org/archive.php?article_id=2243).

The Muslim Board's Council of Scholars approved new Regulations for the Internal Order of Mosques in November 2016. This includes a ban on worshippers praying with the word "Amen" aloud. Numerous Muslims have been fined for this under Administrative Code Article 490, Part 2. This punishes: "Impeding lawful religious activity as well as violation of the civil rights of physical persons on grounds of their religious views or insulting their feelings or profanation of items, buildings and places revered by followers of any religion, unless there are signs of criminally punishable actions" (see F18News 28 March 2017 http://www.forum18.org/archive.php?article_id=2267).

The draft does not ban the government from disturbing a religious community's "internal order", for example by a three-month ban on two Protestant churches and the Jehovah's Witnesses Almaty Administrative Centre from any activities, including meeting for worship (see F18News 6 August 2017 http://forum18.org/archive.php?article_id=2313).

Even more restrictions on sharing beliefs

Article 3, Part 8 of the proposed amended Religion Law defines what the state claims is individuals' rights to freedom of religion or belief. An amendment maintains the 2011 Religion Law's already high restrictions on conducting "missionary activity", under which all discussion of faith by people without state permission, or not using state-approved texts, or outside state-approved locations, is banned (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

The proposed Article 3, Part 8 then narrows further what was left of an individual's explicit right to "spread" religious beliefs without state permission.

Article 3, Part 14 of the proposed amended Religion Law already bans the activity of unregistered religious communities. An addition would also explicitly ban the sharing with other people of an unregistered religious community's beliefs.

The Comparative Table complains that individuals facing administrative punishment for "missionary activity" have cited in their defence the already restricted right to share beliefs as set out in the current 2011 Religion Law (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

State "clergy" definition to be used to restrict sharing beliefs and conscientious objection?

Some religious communities remain concerned that the state's definition in the Religion Law that "clergy" are the ones to conduct preaching could restrict preaching and similar such activities by those not recognised by the state as "clergy", and that "clergy" require nomination by the leaders of a state-registered religious body.

Article 1, Part 5 of the proposed amended Religion Law defines "clergy" more closely as an individual appointed by a registered religious organisation to conduct "spiritual and preaching service". Gaining such a designation requires an individual to be appointed "on the basis of an order from the leader of a [registered] religious organisation".

Some fear that this restriction on religious communities' choice of their own leader could be used to close down those which do not have a hierarchical structure, as well as to reduce the number of people allowed to exercise leadership roles in a community's worship.

The new definition appears to be aimed at reducing the number of individuals who share beliefs without personal state registration as a "missionary" (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939). It also appears targeted at Jehovah's Witnesses – who are already frequently fined for sharing their faith – as officials highlight their refusal to perform military service.

People who share their beliefs can also be jailed as prisoners of conscience. Jehovah's Witness prisoner of conscience, pensioner and cancer-sufferer Teymur Akhmedov was jailed in Astana on 2 May for five years and banned for a further three years from conducting "ideological/preaching activity" (see F18News 3 May 2017 http://www.forum18.org/archive.php?article_id=2277). Prisoner of conscience Akhmedov was, as in other cases involving Muslim and Protestant prisoners of conscience, set up for prosecution by the NSC using informers it recruited. These informers invited those prosecuted to meetings the NSC recorded in which they shared their beliefs (see F18News 2 February 2017 http://www.forum18.org/archive.php?article_id=2252).

The Comparative Table complains that clergy can currently conduct "missionary activity" while "solely having in hand a certificate from a religious association recognising them as clergy, which [for reasons the Table does not outline] contradicts the concept of 'missionary activity'."

"Introducing such required elements," the Comparative Table adds, "would exclude the illegal use of such status (for example in refusing military service)."

The UN Human Rights Committee in its July 2016 Concluding Observations (CCPR/C/KAZ/CO/2) stated that Kazakhstan "should ensure the legal recognition of conscientious objection to military service, and provide for alternative service of a civilian nature for conscientious objectors" (see http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKAZ%2fCO%2f2). Yet Kazakhstan has ignored this and similar recommendations (see F18News 22 July 2016 http://www.forum18.org/archive.php?article_id=2201).

Whether the authorities aim to require Jehovah's Witnesses to conduct military service – their pacifist beliefs do not allow them to have any connection with the military – remains unclear. Although the cases were subsequently dropped, six Jehovah's Witnesses are known to have been under criminal investigation in 2017 for refusing compulsory military service despite having certificates from the Jehovah's Witness Administrative Centre confirming that they are "religious ministers" (see F18News 17 November 2017 http://www.forum18.org/archive.php?article_id=2333).

More censorship

A new Article 6, Part 5 of the Religion Law would specify that religious literature which is submitted to the Religious Affairs Committee for the compulsory state religious censorship but which "has received a negative religious expert conclusion" is subject to "removal from circulation". The Comparative Table notes that at present the fate of such unapproved literature is not defined.

There is under the 2011 Religion Law strict censorship of all religious books including the Bible and Koran, and objects such as Russian Orthodox icons - including strict limits on where they can be bought or given away (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

The October 2016 OSCE Preliminary Opinion Legal Review on the January 2017 Amending Law described the censorship as "a system of authorization which appears to be an excessive, disproportionate and unnecessary limitation to the right to acquire, possess, use, produce, import and disseminate religious publications and materials, which is an integral component of the right to freedom of religion or belief" (see F18News 5 January 2017 http://www.forum18.org/archive.php?article_id=2243).

Children's freedom of religion and belief

A proposed amendment to Article 35 of the 2002 Law on the Rights of the Child requires one parent, close adult relative or guardian to accompany children below the age of 16 in attending worship services and other religious events, and for another parent or

guardian not to object to their attendance. These requirements would not apply to those studying in religious education establishments.

The Comparative Table says this is to bring the Law on the Rights of the Child into line with provisions in Article 3, Part 16 of the 2011 Religion Law (Article 3, Part 19 in the proposed amended version). This requires leaders of religious organisations "to take steps to prevent the attraction and/or participation by underage children in the activity of a religious association if one of the child's parents or other of its legal guardians objects". The 2011 Religion Law is unclear both how religious leaders will know if parents disagree over whether their child can accompany one of them to a religious meeting, or whether leaders may be liable if a community under their jurisdiction does not take measures to ensure that every child who attends has the approval of both parents (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

The proposed Amending Law adds to the proposed Religion Law Article 3, Part 19, a requirement for leaders of religious organisations to ensure that for children under the age of 16 to participate in religious events, one parent, other adult close relative or guardian is present with a child. It also requires them to check that another parent or guardian has not objected.

Religious leaders who fail to prevent children under 16 from attending activities of their registered religious organisation without being accompanied by at least one parent, adult close relative or guardian, as well as who ignore an objection from another parent or guardian, face a warning or a fine of 50 MFIs under Administrative Code Article 490, Part 8. The religious community would be banned from functioning for three months, a punishment that does not exist in the current Administrative Code.

This provision violates the right in international human rights law of children to freedom of religion and belief, as well as the of parents to ensure the religious and moral education of their children (see the UN Special Rapporteur on Freedom of Religion and Belief's compilation on International standards on freedom of religion or belief <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Standards.aspx>). It also violates the right of everyone to give and receive religious education, as outlined in the OSCE/Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (see <http://www.osce.org/odihr/139046>). Kazakhstan is both an OSCE participating State and a Venice Commission member state.

Leaders already punished over children's attendance

A growing number of leaders of religious organisations have faced punishment under the current Administrative Code Article 490, Part 7 (see F18News 21 July 2014 http://www.forum18.org/archive.php?article_id=1979). This punishes leaders of registered religious organisations who fail to abide by the 2011 Religion Law's existing requirement "to take measures not to allow the involvement and/or participation of under age children in the activity of the religious association when one of the parents or their other legal representatives objects" (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

Jehovah's Witness and Seventh-day Adventist leaders are known to have been fined under Administrative Code Article 490, Part 7 in 2017 because children were present at meetings for worship. However, on 18 October a Judge in Astana dismissed a similar case against Adventist Pastor Oleg Bondarenko due to "the absence of an administrative violation in his actions" (see F18News 23 November 2017 http://www.forum18.org/archive.php?article_id=2334).

Clothing bans and punishment

A new Article 21, Part 2 of the 2010 Prevention of Violations Law would ban wearing in public places clothes that obscure the face, except when required for official duties, medical purposes or sporting or cultural events.

A new Administrative Code Article 434-2 would punish those who wear clothes in public places that do not leave the face visible with a warning or a fine of 50 MFIs. The fine would be doubled for a second "offence" within a year.

A new Article 3, Part 21 of the Religion Law would ban individuals from "using, wearing or distributing in public places outward attributes or items of clothing demonstrating an adherence to [undefined] destructive religious movements". Local authorities, police or the NSC secret police would be authorised to determine what items fall under the provisions of this ban.

A new Article 490, Part 12 of the Administrative Code would punish violations of this ban with a warning or a fine: for individuals of 50 MFIs and for organisations of 100 MFIs. Fines would be increased for second "offences" within a year.

It remains unclear if the authorities will use this provision to punish Muslims who wear clothing the authorities regard as being signs of possible "extremism", such as hijabs (headscarves) for women, and short trousers or South Asian clothing for men.

More severe measures to follow administrative punishment

An addition to Article 24 of the 2010 Prevention of Violations Law would allow "preventative measures" to be initiated against an

individual for "having committed an administrative violation in the area of religious activity". "Preventative measures" range from a "preventative conversation" to deprivation of parental rights, being placed on a "preventative register" or "preventative restriction of freedom of movement".

An addition to Article 6 of the 2014 Law on Internal Affairs Agencies would similarly allow the ordinary police to issue written warnings, which would have to be carried out, to individuals who have "committed an administrative violation in the area of religious activity". Those who have been given such written warnings are to be added to the list of those subject to fingerprinting, and having photos, video and sound recordings taken and biological and other samples taken.

The Comparative Table claims that this is necessary because such individuals, who have been prosecuted for exercising their freedom of religion and belief without state permission, are a "risk group" of getting involved in "terrorism".

"Extremism" and "terrorism"

State rhetoric routinely mentions the exercise of freedom of religion or belief alongside "extremism" and "terrorism" as an excuse for restricting this and other freedoms (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939). The draft Amending Law continues this pattern.

The Comparative Table makes specific reference to the State Programme to Counter Religious Extremism and Terrorism for 2017-2020, which attacks the exercise of freedom of religion and belief and other human rights (see F18News 5 January 2017 http://www.forum18.org/archive.php?article_id=2243).

A new Article 4, Part 14 of the Religion Law places the duty on the Religious Affairs Committee of determining "signs showing adherence to destructive religious movements, including external attributes and items of clothing".

An addition to Article 5 of the 2005 Law on State Grants would provide for state grants to organisations offering "measures to prevent religious extremism and terrorism". This would include grants to centres to help "those who have fallen under the influence of destructive and extremist religious movements", as well as those conducting "preventative informational work among the population".

The government already funds so-called "anti-sect" centres which often criticise the exercise of freedom of religion and belief and participate in prosecutions of people exercising this freedom (see F18News 8 February 2016 http://www.forum18.org/archive.php?article_id=2147). These centres have also been thought by local people to be used "to prepare the ground for restrictive laws against freedom of religion or belief" (see F18News 6 May 2011 http://www.forum18.org/archive.php?article_id=1568).

The October 2016 OSCE Preliminary Opinion Legal Review on the January 2017 Amending Law called on Kazakhstan to "at a minimum, to amend and more strictly circumscribe the definition of "extremism" and "extremist activities" to ensure that only acts connected to violence or other criminal acts are criminalized" (see http://legislationline.org/download/action/download/id/6423/file/296_TERR-KAZ_6Oct2016_en.pdf). The UN Human Rights Committee's July 2016 Concluding Observations (CCPR/C/KAZ/CO/2) on Kazakhstan were similarly highly critical of, among other things, Kazakhstan's "broad formulation of the concepts of "extremism", "inciting social or class hatred" and "religious hatred or enmity"" and called for laws to be brought "into full compliance" with its international human rights obligations (see F18News 22 July 2016 http://forum18.org/archive.php?article_id=2201).

Greater official control

Proposed changes to the 2001 Local Government Law would introduce requirements for administrations on a District level and their leaders to ensure state control of the activity of "religious organisations, missionaries and religious educational establishments" in their area.

Amendments to Article 31 would introduce requirements for District or small town administrations to "study and analyse the religious situation" in their area. Amendments to Article 35 would introduce requirements for Akims (administration heads) similarly to "study and analyse the religious situation" in their area, as well as to "study and analyse the activity of religious associations, missionaries, and religious educational establishments functioning in the area".

At present, each Regional Akimat (administration) has a Religious Affairs Department, which has the power to initiate punishments for violations of the strict state controls on religion. Internal Policy Departments in Regional and District Akimats also often interfere in the activity of religious organisations.

The changes – if adopted – would increase the formal requirements for District level officials to conduct surveillance on and interfere in local residents' exercise of the right to freedom of religion or belief. The Comparative Table claims that the current absence of control over exercise of freedom of religion or belief at a local level "creates certain difficulties in the timely collection of

necessary information", especially given the remoteness of some locations.

The attempt to impose intrusive state control on the exercise by individuals and communities of freedom of religion and belief violates international human rights law, as outlined in the OSCE/Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (see <http://www.osce.org/odihr/139046>). Kazakhstan is both an OSCE participating State and a Venice Commission member state.

No freedom of religion and belief for officials?

A proposed addition to Article 13, Part 6 of the 2011 Religion Law – and a parallel addition to Article 13 of the 2015 State Service Law - would ban state officials from being "initiators in the creation of, as well as participants (members) of religious associations". The Comparative Table claims that this – and an addition banning officials from pressuring people to participate in a religious community or favouring a particular religious community in their official duties – are necessary to ensure the state remains secular.

It remains unclear what would happen if a state official attends a meeting for worship of a registered religious community after the Amending Law has entered into force. A legal specialist pointed out to Forum 18 that no legal definition of "member" of a registered religious organisation exists. The specialist also pointed out that different religious organisations organise themselves differently and some do not have formal "members".

An initial draft of the Code of Judges' Ethics – which sets out rules for judges' conduct inside and outside the courtroom – would have banned them from exercising freedom of religion or belief in their free time. However, when the Code was finally adopted in November 2016 the restrictions had been removed (see F18News 16 December 2016 http://www.forum18.org/archive.php?article_id=2240).

Punishment for weddings outside registered places of worship

An addition to Article 2 of the Marriage Code in the final text of the Amending Law would ban the conducting of ceremonies of a religious marriage or the ending of a religious marriage away from registered places of worship. The only exception would be in cases of medical emergency, where such ceremonies could take place in homes or medical facilities and in the presence of both parties and a cleric of a registered religious organisation.

The final text adds a corresponding new Article to the Administrative Code, Article 491-1. This would punish those who violate these restrictions with a fine on individuals of 50 MFIs, and on organisations of 200 MFIs.

The Comparative Table notes what it claims as a high number of marriages of teenagers, particularly girls, often in religious ceremonies. However, it remains unclear why the draft Amending Law does not address this, while instead targeting those who conduct weddings in unapproved locations.

Some earlier provisions dropped, but no existing restrictions removed

The final draft removed some of the provisions of earlier drafts. A requirement that clergy have "higher religious education" has been dropped, as has a requirement that both parents give permission and be present when children attend religious events. A provision requiring the Religious Affairs Committee to set out the procedure for pilgrimages has been dropped. Provisions imposing extra local restrictions on building new places of worship have been dropped.

Also dropped was the proposed doubling of the fines on individuals and increasing them for communities under Article 490, Part 1 of the Administrative Code. A proposal that would also have allowed communities to be banned permanently even for a first "offence" under this Article has similarly been dropped. (END)

Reports on freedom of thought, conscience and belief in Kazakhstan can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=29>.

For more background, see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1939.

For a personal commentary from 2005 on how attacking religious freedom damages national security in Kazakhstan, see F18News http://www.forum18.org/Archive.php?article_id=564.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

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