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REPORT

BELOW FREEDOM OF RELIGION
OR BELIEF STANDARDS:
State Policy in Kazakhstan, arbitrary
protection in the Kyrgyz Republic



NORWEGIAN HELSINKI COMMITTEE

The Norwegian Helsinki Committee

Established in 1977

The Norwegian Helsinki Committee (NHC) is a non-governmental organisation that works to promote respect for human rights, nationally and internationally. Its work is based on the conviction that documentation and active promotion of human rights by civil society is needed for states to secure human rights, at home and in other countries.

NHC bases its work on international human rights instruments adopted by the United Nations, the Council of Europe, the Organisation of Security and Cooperation in Europe (OSCE), including the 1975 Helsinki Final Act.

The main areas of focus for the NHC are the countries of Europe, North America and Central Asia. The NHC works irrespective of ideology or political system in these countries and maintains political neutrality.

How we work

Human rights monitoring and reporting

Through monitoring and reporting on problematic human rights situations in specific countries, the NHC sheds light on violations of human rights. The NHC places particular emphasis on civil and political rights, including the fundamental freedoms of expression, belief, association and assembly. On-site research and close co-operation with key civil society actors are our main working methods. The NHC has expertise in election observation and has sent numerous observer missions to elections over the last two decades.

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Through education and information about democracy and human rights, international law and multicultural understanding, we work to increase the focus on human rights violations. Our aim is to influence both public opinion and governments in human rights matters.

International processes

As with our educational work, the NHC seeks to influence governments and international organisations through participation in international processes, meetings and conferences to make human rights a priority.

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The Forum 18 News Service drafted this report in cooperation with the Norwegian Helsinki Committee. It is one of the outcomes of a project on strengthening freedom of religion or belief in Kazakhstan and Kyrgyzstan through dialogue and reporting. The Stefanus Alliance and the Oslo Centre for Peace and Human Rights are the partners of other project activities.

We are deeply grateful to all those who have shared information with us.

We thank The Royal Norwegian Foreign Ministry for funding the project.

A Preface

This report builds on and updates a report issued in 2010 entitled “Broken Promises: Freedom of Religion or Belief issues in Kazakhstan and Kyrgyzstan.”¹ The report comprises:

- An introduction to the common trends and consequences of the policies of the two states regarding freedom of religion or belief;
- Recommendations to the states and to international stakeholders;
- A description of the current state of freedom of religion or belief in Kazakhstan, including an analysis of the new law on religion and relevant parts of the new Criminal Code and the new Administrative Code;
- A description of the current state of freedom of religion or belief in Kyrgyzstan, including an analysis of the new state concept on religion as far as it is known to us;
- A rendering of the main components of freedom of religion or belief in international human rights law;
- A presentation of the most important OSCE human dimension commitments in the field of freedom of religion or belief, from 1975 to the end of 2013.

We have visited Kyrgyzstan and Kazakhstan on several occasions and met with authorities, religious communities, civil society activists, and academics. We conducted a large number of interviews in person or by phone. We respect that some of the interviewees prefer to stay anonymous.

We are grateful to the representatives of the religious groups who shared their concerns with us, and also to the authorities of the Kyrgyz Republic² that have been eager counterparts in dialogue meetings. This report, however, does not include information and viewpoints presented in the dialogue meetings.³ A draft of the report was shared with Kyrgyz authorities to enable them to comment.

We hope the report could serve as a resource for the Kyrgyz Republic’s continued process to align its policies with international human rights standards. We also hope that

1 The 2010 report is available in Russian and English here: <http://nhc.no/no/publikasjoner/rapporter/Broken+Promises%3A+Freedom+of+religion+or+belief+issues+in+Kazakhstan+and+Kyrgyzstan.9UFRv123.ip>s

2 “The Kyrgyz Republic” is now the formal name of the country, whereas “Kyrgyzstan” is still used frequently.

3 The Oslo Center for Peace and Human Rights has a partnership with the Norwegian Helsinki Committee on dialogues with authorities in Kyrgyzstan, but is not a co-author to this report.

Kazakhstani authorities will reconsider current policies and legislation that are in clear breach of international standards.

We would like to thank Galina Kolodzinskaya of the Interfaith Council and Dmitry Kabak of the Open Viewpoint NGO in Kyrgyzstan for particular fruitful cooperation. Their work to include freedom of religion or belief as an integral part of the human rights discourse in Kyrgyzstan is exemplary.

B Introduction

Central Asia borders Russia and China, with Afghanistan not too far off south. The inhabitants of the two northernmost republics Kazakhstan and Kyrgyzstan have adhered to a range of religions and beliefs throughout history. Buddhist visitors from China and the conquest of Arabic Islam influenced traditional nature religions like Tengrianism, and Christian belief is said to have been spread among Asian courts in the Greater Mongol Empire in the 13th century. Russian Orthodox churches were built in settlements following Tsarist Russian conquest half a millennium later. Sufism, a branch of Islam which is struggling in modern-day Kazakhstan, was the faith of the much-praised scholar Khoja Ahmed Yasawi who rests in a famous mausoleum raised by Tamerlane in Turkestan, Western Kazakhstan. Under the yoke of the Soviet Union, however, atheism was the rule.



Turkestan town dates 1500 years back

There have not been many active defenders of freedom of religion or belief for all within Kazakhstan and Kyrgyzstan. Sometimes discussions in these countries build on misunderstandings that this freedom is only about religious clothing, education or rituals in society, or that it is automatically in conflict with the rights of minority groups within. There is also a tendency to take the focus away from what legislation and the authorities are obliged to guarantee after international law. There has also been a trend - for example in some Organisation for Security and Cooperation in Europe (OSCE) discourse - to split

consideration of this freedom into three by beliefs. As this report demonstrates, these misunderstandings rest on a lack of understanding both of what freedom of religion or belief is and what the situation of this right is within Kazakhstan and Kyrgyzstan. Fortunately, an increasing number of mainstream human rights organisations in the region and internationally have started to work on this freedom based on a clear understanding of international standards.

Although the freedom of religion or belief is an individual choice, it also includes the right to manifest your belief together with others. However, in the relatively young nations of Kazakhstan and Kyrgyzstan, this notion is fundamentally challenged by a strict causality between nationality, ethnicity and faith, in clear violation of the individual's right to choose his or her own religion. This is one of the consequences of modern nation building and is actively cultivated by the authorities of the two countries from school textbooks on to media coverage, which underlines the traditional religion of the Kazakhs, Kyrgyz or Russians.

This emphasis on nationality, religion and tradition fits well with a growing trend in the Russian Federation and Russian language media. It juxtaposes tradition, family, and religious values to rights of LGBTI people, gender equality and individual rights that according to the propaganda have already led to moral collapse in Europe. Such manipulation of terminology is one of the most damaging challenges to human rights discourse today, as legitimate discussions on the weighting of rights are distorted by cultural relativity theories and dilution of human rights standards agreed upon decades ago.⁴

The freedom to manifest one's belief together with fellow believers is further complicated by violations of other fundamental rights; restrictions on media and lacking public debate; prohibition on public assemblies; discrimination of minorities; authoritarian rule; cumbersome procedures for the creation of associations; corruption, nepotism and social insecurity to mention some. More often, the acceptance of human rights violations in society is also facilitated by the changed climate following the so-called war on terrorism.

The experience of Ireland and the UK in Northern Ireland is that strong institutionalised protection of the rule of law and human rights - also for those suspected of terrorist acts - is an essential part of dealing with terrorism. But more recently in some established democracies and authoritarian states, the fight on terrorism is used to legitimise restrictions on an increasing number of freedoms as illustrated above, including freedom of religion or belief. In Kazakhstan, this is not only manifested in the cumbersome registration process of religious groups. It is also used to legitimise censorship of religious texts in search of so-called radicalism and extremism, denial of registration to certain religious groups, impunity for violations carried out by law enforcement and other authorities, and acceptance for

4 See f.ex. NHC Policy Paper No 5-2014: http://nhc.no/no/nyheter/Russia%E2%80%99s+traditional+values+initiative+result+in+abuse+at+domestic+level.b7C_wlnKY2.ips

an attitude in society that is hostile to certain groups and believers, in particular devout Muslims and so-called non-traditional, charismatic Christian groups.

Both Kazakhstan and the Kyrgyz Republic are members of the Shanghai Cooperation Organisation (SCO), founded in 2001 with the aim to enhance security and cooperation in its member states, in particular on the fight against terrorism. The cooperation between Kazakhstan, Kyrgyzstan and the other states of the China- and Russia led organisation is a particular concern in this field due to the lack of transparency in its documents. Another concern is the principle of mutual recognition that obliges each of the member states to include any act of terrorism, separatism or extremism from another state into its own legal framework even if national legislation does not have such a provision. Finally, the lack of a common or precise definition of terrorism may result in abuse.⁵

The authorities of Kazakhstan and the Kyrgyz Republic use the discourse on the threat of terrorism from within as well as from Afghanistan to counter international criticism. Interestingly, the international community increasingly seems to accept the excuses, perhaps due to a sense of responsibility for the development in Afghanistan and the spill over effects. However, as outlined in this report, we argue that the absence of social security, accompanied by poverty, unemployment and extensive nepotism and corruption is the more likely cause to lead dissatisfied youth in Kazakhstan and Kyrgyzstan into radical organisations. By using the same derogatory terminology and restrictive approach towards all religious groups, the authorities run the risk of alienating also the moderate religious groups, which could contribute positively to society and alleviate the government's burdens by providing care to vulnerable groups.

Kazakhstan's President Nazarbayev has had two recent reforms at his disposal to align the situation to the international standards and obligations. However, the October 2011 revision of the Law on Religion is not only more restrictive than its predecessor; it is also counter to its own stated intentions, international conventions and the Kazakhstani constitution. On 3 July 2014, President Nazarbayev signed into effect a reform package of criminal and administrative codes that infringe civic rights further. In addition, all laws suffer from vague terminology, which creates additional obstacles for the believers who try to abide by them as well as for the few independent media and civil society activists who focus on freedom of religion or belief issues. Finally, the renewed practice of forced confinement to psychiatric institutions has not been seen in use since Soviet times and serves to warn others about the potential consequences for manifestation and defence of human rights in Kazakhstan.

In Kyrgyzstan, members of religious minority groups struggle with the restrictive law on religion of 2009. Its terminology is vague and it lacks guidelines. The law includes

5 See f.ex. FIDH and partners 2012 report: "SCO: A vehicle for human rights violations": http://www.fidh.org/IMG/pdf/sco_report.pdf

cumbersome registration processes that result in bans of already registered groups, as well as restrictions on the import, use and distribution of religious literature. Local authorities implement the law arbitrarily, and in some cases, they have to give way to angry mobs, fearing for their own safety. There are physical interventions by Muslim groups against the burial of non-Muslims accompanied by police inaction. Police inaction is also known to happen in the case of mob attacks on the property of religious groups.

The law is one of the legacies of ousted President Bakiev, and the authorities of the Kyrgyz Republic have repeatedly stated their intent to put it in line with international standards. In early 2014, President Atambayev initiated a reform of the national strategy for sustainable development and the Concept on State Policy in the Religious Sphere 2014-20. Hopes for improvement rose in the initial process as it included participation of non-state actors and so-called dialogue meetings in the districts of Kyrgyzstan. However, it soon became evident that the changes made are not only positive, and the problem of arbitrary implementation on local level persists.

In conclusion, the 2011 Law on Religion, the 2014 Criminal Code package amendments and state-cultivated media and society perceptions of traditional and non-traditional religions illustrate that the state policy of inter-religious harmony in Kazakhstan comes at a high price for religious believers and their defenders. In Kyrgyzstan, the expectations that the reform of the state policy would include a progressive reform of former President Bakiev's repressive Law on Religion have so far not resulted in concrete improvements on the ground. There is still a range of concerns for religious minorities and converts in the country.

The current report outlines these challenges and presents recommendations for solving them.

C Recommendations

To the authorities of Kazakhstan:

Revise the 2011 Law on Religion, the 2014 Criminal Implementation Code and other related laws in order to ensure they are in compliance with Kazakhstan's international obligations and national legislation, namely to end:

- mandatory registration of religious groups,
- censorship of content and limitations on distribution of religious material,
- restrictions on foreign religious workers,
- severe punishments for religious activities that are protected by human rights law,
- discrimination of leaders of religious and other civil society groups.

Halt the practice of:

- unfair trials,
- surveillance and raids on religious groups,
- threats to signatories of documents submitted for registration of a religious group,
- deportation of foreign citizens or exit bans of nationals for religious activities that are protected by human rights law,
- enforced psychiatric confinement for religious activities that are protected by human rights law,
- impunity for officials who violate the rule of law.

To the authorities of the Kyrgyz Republic:

Ensure that legislation is in compliance with international documents that the Kyrgyz Republic is signatory to and prevent provisions that contradict national legislation, namely:

- Make the obligation to register a religious group voluntary, and ease and clarify the requirements for reporting,
- Halt the censorship of religious texts and material,
- Halt the ban on proselytism, and ease and clarify the working conditions for missionaries,
- Ensure that burial can take place in the way the deceased and relatives wish in all regions of the country,
- Eliminate impunity for officials on all levels who abuse the law and their position at the expense of peaceful religious believers.

Involve civil society actors and believers in a genuine dialogue in the proposed state-faith council, ensure that necessary information is available to the participants, and that discussion is carried out in both the official and the state languages.

To the international community:

Address freedom of religion or belief from a human rights-based perspective as an individual and collective human right for all, not from a perspective that splits consideration of this freedom based on beliefs;

Underline the importance of respecting privacy, rule of law and human rights, including freedom of religion or belief, in protecting the population from terrorism;

Halt the threat of the "traditional" values, beliefs and communities approach to established human rights universality, state responsibilities and terminology, and return to the intrinsic principle of human dignity for all.

D Freedom of religion issues in Kazakhstan

Despite the October-November 2014 UN Human Rights Council Universal Periodic Review (UPR) of Kazakhstan there are continuing violations of freedom of religion or belief in the country. Also violated are intrinsically linked rights such as the freedoms of expression, assembly, and speech. This report concentrates on the most important freedom of religion and belief violations documented from when the latest Religion Law came into force, in October 2011, until August 2014.⁶

Serious violations Forum 18 and the NHC have documented include:

- making the exercise of human rights conditional upon state permission;
- systemically increasing the range of possible “offences” people can be punished for if they exercise freedom of religion or belief and related human rights;
- officials routinely violating the rule of law with impunity;
- closing down independent mosques, and continuing to seek to close other smaller religious communities;
- censorship of religious literature and objects, including severe limitations on the numbers of premises where such literature and objects can be distributed;
- the misuse of psychiatry against people the authorities dislike;
- exit bans and jailing imposed on those convicted of exercising freedom of religion or belief without state permission;
- and co-operation with other states which seriously violate human rights.

Kazakhstan’s basic approach is to make the exercise of human rights conditional upon state permission, as a means of state control of society, flagrantly breaking its international human rights obligations. In the area of freedom of religion and belief this is seen in, among other things, compulsory registration of religious or belief groups and the banning of all unregistered religious activity. This has been reiterated in the new Criminal and Administrative Codes, which will come into force on 1 January 2015 (see below).

The government has been open about its intent to use the 2011 Religion Law (see below) to reduce the number of religious communities. The then Head of the state Agency of Religious Affairs (ARA), Kairat Lama Sharif, at a 3 February 2012 meeting of ARA officials described a 13 per cent fall in the number of registered religious communities as a “positive dynamic” after 579 small religious groups (with fewer than 50 adult citizen members) were stripped of registration. Since then the government has repeatedly made similar claims. Immediately after the re-registration deadline in October 2012, he proudly

⁶ For the information outlined here and current information on freedom of thought, conscience and belief in Kazakhstan, see Forum 18 reports accessible via <<http://www.forum18.org/Archive.php?query=&religion=all&country=29>>

stated that the number of religious groups had been reduced by 32 per cent from 4,551 on 1 January 2011 to 3,088 on 25 October 2012. As recently as April 2014 Kazakhstani diplomats repeated the figures Lama Sharif gave.

On 6 August 2014, the ARA was abolished by presidential decree in a government reorganisation. Its duties were subsumed into a new Culture and Sport Ministry, headed by the previous Culture Minister Arystanbek Mukhamediuly. The ARA was created in May 2011 to replace the then-Culture Ministry's Committee of Religious Affairs.

Fear within Kazakhstan of expressing views the government dislikes has increased in recent years. As a result, some religious communities decided not to participate in the UN Human Rights Council Universal Periodic Review, and decided not to meet UN Special Rapporteur on Freedom of Religion or Belief Professor Heiner Bielefeldt on his 25 March-4 April 2014 visit.

Context

Kazakhstan is geographically the largest country in Central Asia, and has the second largest population with nearly 18 million people. Roughly half the population are ethnic Kazakhs (regarded as being of Muslim background) and the rest are made up of ethnic Uzbeks (also regarded as being of Muslim background), and Russians and Ukrainians (regarded as being of Russian Orthodox or other Christian background). There are also smaller communities of Koreans, Germans and Poles. Kazakhstan's economy has been the strongest in the region, buoyed by its oil and gas reserves, attracting migrants from its poorer neighbours.

Nursultan Nazarbayev has ruled Kazakhstan since 1989 when it was part of the Soviet Union. Elections have been repeatedly criticised as neither free nor fair by Organisation for Security and Co-operation in Europe (OSCE) election observers. In the last 2011 presidential election, Nazarbayev claimed to have gained over 95 per cent of votes. His Nur Otan political party has long provided the overwhelming majority of deputies in the Majilis (lower chamber) of Parliament.

Kazakhstan is a member of the Council of Europe's Commission for Democracy through Law, or Venice Commission. However, this membership – like its 2010 Chairing of the OSCE – has not led to implementation of the country's human rights obligations. Indeed, it applied for full membership of the Venice Commission the same day (11 October 2011) President Nazarbayev signed two laws violating international human rights commitments. These were a new Religion Law and an Amending Law amending nine other laws and legal provisions (see below).



Khoja Ahmed Yasawi Mausoleum built by Tamerlane in the 14th century

Human rights defender Nazgul Yergalieva of the Legal Policy Research Centre summarised it well at the time, warning that strict regulation and limitation of fundamental rights, such as freedom of religion, by governments has already proved to be a dangerous path, leading to social tension and resentment.

State concept of inter-religious tolerance in practice

The government attempts to publicise its alleged “religious tolerance”, for example in “Congresses of leaders of world and traditional religions”. Revealingly, an employee of the ARA (which played until 2014 a key role in running Congresses) described the May 2012 meeting as being “for foreigners”. The preparations for a new meeting in 2015 are already initiated.

One participant in a Congress planning process described these – in a confidential conversation – as prepared “in Soviet style top-down fashion”. A secular guest from a well-known international organisation, invited by the Kazakh government, described – in a confidential conversation – his surprise that President Nazarbayev attended most of the Congress. He also described his “horrified amazement” when witnessing religious leaders present – including prominent foreign religious leaders – ignoring fundamental human rights violations within Kazakhstan, as well as the indissoluble links between tolerance and human rights.

Article 4 of Kazakhstan’s Constitution states: “International treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a law.” Article 2, Part 2 of the Religion Law states that in cases where an international agreement signed by Kazakhstan exists, this overrides other provisions of the Religion Law. If this and the Constitution’s Article 4 were implemented most of the Religion Law and other laws would be abolished, including demands for compulsory prior state permission to exercise human rights.

Those subjected to violations of their internationally recognised human rights frequently complain that trials are conducted unfairly, law seemingly being used to provide officials with excuses to engage in oppression. Officials do not appear to see law as imposing restraints on their actions. Indeed, the interlocking nature of violations of freedom of religion or belief and inseparably linked human rights appear designed to impose total state control on all of society.

Even if officials admit they acted unlawfully – as Adil Togayev, Director of Almaty Regional Land Inspectorate did in May 2012 in relation to a fine imposed on the wife of the pastor of a forcibly closed Methodist Church – there is no guarantee of redress. Officials have refused to admit that similar fines and bans - for example bans on Ahmadi Muslims meeting - are also illegal. There are no signs that disciplinary or other action will be taken against officials who break domestic laws or international human rights law.

Officials routinely deny human rights violations, President Nazarbayev claiming on 17 April 2013 to visiting Finnish President Sauli Niinistö that "Kazakhstan is an example to the world of equal rights and freedoms for all citizens" and that "religious freedom is fully secured". Similarly, both Rustam Kypshakbayev and Alibek Sabdinov of the office of the Ombudsperson for Human Rights’ Expert Department refuse that imprisonments of people exercising their freedom of religion or belief are violations of international human rights commitments or counter to national legislation. They refer to the independent courts of Kazakhstan and say the Ombudsperson’s Office deal with individual complaints by observing and making recommendations on concrete questions.

The Ombudsperson's Office does not fully comply with the Paris Principles on the independence of such national human rights bodies from government, according to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Steadily increasing restrictions and violations

The authorities have long been increasing their "legal" instruments of repression. In 2005 laws affecting "extremism" and "national security" were tightened, despite strong criticism from Kazakhstani human rights defenders and OSCE legal opinions. These amendments also changed the then Religion Law, with new or increased penalties for "unauthorised" or "illegal" exercise of freedom of religion or belief – such as meeting for worship without state permission – under the Code of Administrative Offences.

In 2008-9 another restrictive package was introduced. The "Law on Amendments and Additions to Several Legislative Acts on Questions of Freedom of Conscience and Religious Associations" would have amended numerous articles of the then current Religion Law, the Administrative Code and several other laws. After strong criticism from local and international human rights defenders this package was dropped in March 2009. Local and international activists understand that the main reason for this was that then Foreign Minister Marat Tazhin – who was understood to be strongly in favour of it – feared bad publicity while Kazakhstan was OSCE Chairperson-in-Office in 2010. The activists feared that the provisions of the 2008-9 draft Law would be re-introduced after the end of 2010. These predictions were confirmed when the September 2009 "National Human Rights Action Plan" revealed the authorities' intent to introduce in the third quarter of 2011 a Law "on the introduction of amendments and additions to legislation on the guarantee of freedom of thought, conscience and religion".

These laws were foreshadowed by the March 2011 restart of raids on and punishments for meeting for worship without state permission, and April 2011 calls by President Nazarbayev and other officials for greater controls on unspecified religious communities, which they describe as "sects". The calls came as smaller religious communities came under greater pressure including police and National Security Committee (KNB) secret police raids. Prominent in these measures were state-funded so-called anti-sect centres, which members of many religious communities found encouraged public hostility through statements in the state-controlled national and local mass media. Communities targeted included Hare Krishna devotees, Jehovah's Witnesses, and Protestants, described as "destructive religious movements". Also Ahmadi Muslims in the southern city of Shymkent had their community closed by the authorities. It was suggested that the "anti-sect" campaign was, as in 2008-9, intended to prepare the ground for restrictive laws against freedom of religion or belief.

Officials of the ARA, the Muslim Board, and regional government officials also in August 2011 – during Ramadan - re-started demands that independent legally registered mosques join the government-supported Muslim Board, although the National Security Law banned state interference in religious communities. One Imam faced telephone demands “almost every day several times” that his mosque give up its independence. Another Imam was threatened that independent mosques would not be re-registered after – not if - a new Religion Law was adopted.

Along with this, ARA officials, the state-backed Muslim Board, “anti-sect” personnel, and local administrations held public meetings in August and September 2011 praising so-called “traditional religions” and attacking so-called “non-traditional religions”. The ruling Nur Otan political party also held similar meetings. Former state religious affairs officials, who wished to remain unnamed for fear of state reprisals, said that religious communities should not be divided into categories such as “traditional” and “non-traditional”. One commented that “the word ‘non-traditional’ gives the public a negative image”. An Ahmadi Muslim and Protestants, who wished to remain unnamed for fear of state reprisals, suspected that the campaign was to prepare the public for a discriminatory new Law.

Officially-promoted intolerance of “non-traditional” beliefs did not include attacks on a compulsory school subject promoted by President Nazarbayev’s wife Sara and using her textbook “Philosophy of Love”, introduced nationally in the 2010-11 academic year. Nazarbayeva was quoted by the Education Ministry website as stating that the course “helps people to find themselves”. Officials claim that this “new discipline” is “directed to spiritual and moral development of a man, self-perfection and harmonious development of people”. In November 2011 some Baptist parents in Akmola Region were threatened that if they refused to send their children to the classes they would be fined. But Baptists noted that attitudes varied from place to place. In some places schools appear indifferent if children do not attend.

Meeting the “National Human Rights Action Plan” timetable, President Nazarbayev told Parliament on 1 September 2011 that two laws were to be adopted “in the current session”. He complained of unregistered religious communities which the state does not control, insisting: “We must bring order to our house.” The laws were a new Religion Law, and an Amending Law changing nine other laws and legal provisions including the Administrative Code. Both laws were passed in September and President Nazarbayev signing them into law on 11 October, at unprecedented speed.

Both before and after their extremely fast adoption both laws faced strong criticism. Some opposition came from those who objected to the new Religion Law’s ban on religious activity in state buildings, and failure to specify that Muslim women can wear the hijab [headscarf] in state institutions. It was the ban on praying in state institutions which drew almost the only opposition during the parliamentary process, particularly from lower house deputy Bekbolat Tleukhan, who called in vain in the Majilis on 21 September for

that provision to be removed. Ninel Fokina of the Almaty Helsinki Committee was of the opinion that the issue of prayer rooms in state-owned buildings was deliberately included to distract attention from the fundamental violations of religious freedom in the new laws. After the laws' passage through the Senate, the upper house's press service claimed approval was unanimous – but according to sources in Astana, two deputies voted against.

In contrast with 2008-9, many in Kazakhstan in 2011 were fearful of expressing their opposition to the laws in public. Fear of expressing views critical of the state has increased since 2011. We are “very much followed by the KNB secret police” a member of one religious community – who wished to remain anonymous for fear of state reprisals - commented on this in early 2014. On two occasions in 2011, police officers happened to appear at the door of the NHC office in Almaty during meetings with religious groups. They were claiming to carry out preparation work for the upcoming winter sport Asiad and requested to see the basement for terrorism prevention.

The authorities often associate the victims of freedom of religion or belief violations with words with negative overtones. The 2011 laws restricting freedom of religion or belief were defended by officials as being needed as counter-terrorism measures.

In another example, January 2013 raids on Baptists refusing to seek state permission to exercise freedom of religion or belief were led or instigated by police Departments for the Struggle against Extremism, Separatism and Terrorism. North Kazakhstan Regional Police described the raids as “operational/prophylactic activity to counter manifestations of religious extremism and terrorism”.

Media attacks on allegedly “non-traditional” beliefs and the use of state-funded “anti-sect” centres in attacks on people exercising freedom of religion or belief continue. This undermines social acceptance of Kazakhstan's diversity of ethnic groups and beliefs and falls into a similar pattern originating from Kazakhstan's close ally in the Eurasian Union and Shanghai Cooperation Organisation, Russia.

Development of more repressive laws

The “legal” mechanisms used to justify official violations of freedom of religion or belief have been added to since the Religion and Amending Laws were signed into law in October 2011. In July 2014 a new Criminal Code, Code of Administrative Offences, and Criminal Implementation Code were signed into law. Almost all provisions of the three Codes come into force from 1 January 2015 (see below).

A total of 119 local human rights groups, individuals and international human rights groups signed a joint statement condemning the proposed new Codes as “considerably restricting and harming human rights”. The statement, posted on the website of the Kazakhstan

International Bureau for Human Rights and the Rule of Law on 22 April 2014, noted that “the reasoned proposals from civil society were ignored”.

“In complete contradiction with the Constitution and the norms of the International Covenant on Civil and Political Rights, Kazakhstan’s laws unequivocally make the profession by an individual of a religion dependent on having several dozen, hundreds or even thousands of fellow-believers,” the joint statement complains. “The draft Criminal Code harshens punishment for violating this undemocratic provision.”

In a last-ditch appeal from 172 groups and individuals, published on the same website on 19 June 2014, human rights defenders called for the new Administrative Code to be rejected. They pointed out that the Administrative Code Article punishing “violation of the law on public associations” allows groups to be officially suspended or banned from meeting even for technical violations “or for any legal activity not specified in their statute”. “This legal provision arouses particular concern in relation to religious communities,” they warn.

The human rights defenders also noted that other Administrative Code punishments for those exercising their right to freedom of religion or belief “violate the principle of justice”. They add that they also violate Article 22 of Kazakhstan’s Constitution, which declares, “Everyone has the right to freedom of conscience.” Article 39 of the Constitution specifies, “In no circumstances can the rights and freedoms specified in Article 22 be subjected to restrictions.”

Current main “legal” justifications for repression

The current August 2014 main “legal” justifications of state violations of freedom of religion or belief are the Religion Law and the Administrative Code. Their main relevant provisions are outlined below.

The Religion Law

Compulsory re-registration

All religious communities were required under Article 24 to apply for re-registration – state permission to exercise freedom of religion or belief – by 24 October 2012. Failure to be re-registered led to many communities being forcibly closed (see below).

Complex registration system

Article 12 identifies four kinds of registration: national, regional, local and unregistered. All activity by those categorised as unregistered is banned. Local and regional organisations are only allowed to conduct activity in the geographic area they are registered in.

The three categories of registered religious organisations are allowed to teach their faith to their own members. However, only regional and national registered religious organisations are allowed, under Article 13, Part 3, to train clergy in institutions established – with state permission – by religious organisations. Under Article 13, Part 3, they are allowed to establish “professional educational programmes to prepare clergy”. It remains unclear whether religious education not involving training of clergy will be allowed.

Geographic area and training of clergy appear to be the main differences between the three permitted types of religious organisations. Regional and national organisations must register with the Justice Ministry in the capital Astana. The system may have been designed to ensure that only the Muslim Board and the Russian Orthodox Church are able to gain top-level, national registration.



The Russian Orthodox Ascension Cathedral in Almaty

Unregistered activity banned. Article 3, Part 11 bans all unregistered exercise of freedom of religion or belief. Communities which are unable to register, or which – like independent mosques and congregations of the Baptist Council of Churches – do not wish to seek state registration face punishment for any exercise of freedom of religion or belief.

Local organisations. Under Article 12, Part 2, local religious organisations need at least 50 adult citizen members within one region of the country or main town, and must register with the local Justice Department.

Regional organisations. Under Article 12, Part 3, regional religious organisations need 500 adult citizens belonging to at least two different registered local religious organisations (each with at least 250 adult citizens) located in two different regions or main towns. The regional organisation is only allowed to function in the areas where its local member organisations are based.

National organisations. Under Article 12, Part 4, national religious organisations need at least 5,000 adult citizens from all regions of the country, the capital and all major towns (with at least 300 members in each of those territories). It also needs branches all over the country.

Article 15, Parts 5 and 6 require a national religious organisation to gain local registration of all its branches and provide the Justice Ministry with proof of this within one year, if it wishes to retain its registered status.

Article 15, Part 4 requires applications to register a regional religious organisation to present a full list of the founders of local religious organisations whose members are founding the regional organisation.

What is needed for registration?

Registering a religious organisation requires a statute adopted at a meeting attended in person by all the adult citizen founders, according to Article 13, Part 1. Founders can attend only “at their own request”, but it is unclear who determines this. A religious organisation must have “a united faith; the carrying out of religious rites, ceremonies and preaching; religious education of its followers; and spiritual orientation of its activity”.

Many of the terms used in both the laws – such as “a united faith” – are unclear and undefined. This leaves open the possibility of arbitrary official definitions and actions against groups which officials dislike.

Article 14 requires religious organisations to include the religious faith in the name and bans the name from using terms already used by another registered community.

Under Article 15, all the founders of a religious community must present their full details to the registering body, which is empowered to check them. This seems designed to intimidate potential founders of religious communities the government dislikes.

Article 16, Part 3 requires each organisation's statute to explain "the fundamental religious ideas, forms of activity of the religious association, particularities of its attitude to marriage and the family, education and health of the participants (members) of the given religious association and other people, and attitude to the realisation of the constitutional rights and obligations of its participants (members) and officials". It remains unclear how extensive this information has to be, why checking beliefs (not permitted in this context by international law) is required, and how state officials determine whether any of these explanations are adequate or not.

Article 15, Part 3, requires that copies of publications "revealing the emergence of and bases of the faith and containing information on the religious activity linked to it" are presented with registration applications.

Article 16 requires each organisation's statute to specify the geographic territory it operates in.

Basis for state refusal to register a group

Article 17, Part 1 states: "State registration of religious associations and state registration of their structural subdivisions (branches and representative offices) shall be refused in accordance with the laws of the Republic of Kazakhstan when the information contained in the charter and other documents is false, and/or if the created body is not recognised as a religious association on the basis of [state] religious examination."

Part 2 states that "Appeals against denials of registration may be made in court."

Suspension, closure, and restructuring of groups

Article 18, Part 1 states: "Reorganisation of religious communities may be carried out in accordance with the laws of the Republic of Kazakhstan by way of merger, union, division, transformation, and separation by the decision of the body authorised by the constituent documents of a religious association, or by court order. A religious association can only be transferred to another religious organisation or a private institution. Organisations formed as a result of the reorganisation of religious associations may be registered as religious organisations if they comply with the requirements of this Law."

Part 2 states: "Suspension of operations and disbandment of a religious association shall be carried out in accordance with the laws of the Republic of Kazakhstan."

Implementation of the registration process – described by many religious communities as “complex”, “burdensome”, “arbitrary”, “unnecessary” and “expensive” - is dealt with in a separate section below.

Censorship

The Religion Law claims everyone has the right to acquire and use “religious literature, other informational materials of religious content, and objects of religious significance at their own discretion”. However, distribution is permitted, according to Article 9, Part 2, only in registered places of worship, approved religious education institutions and “special stationary premises determined by local executive authorities” (Akimats).

Article 5, Part 7 requires Akimats to name local “special stationary premises” (bookshops) they have inspected and approved to sell religious literature and other materials such as icons. Other bookshops and similar places are banned from selling religious literature and other materials.

Article 9, Part 3 requires that all imports of “informational materials of religious content” – apart from unspecified small quantities for personal use – be done only by registered religious organisations with prior approval from the ARA, which has to conduct an “expert analysis” of each title.

Article 9, Part 4 requires each work to have the “full name” of the registered religious organisation which produces or distributes it, apparently preventing individuals or other organisations producing such material.

ARA “expert analyses” are required for all imported “religious literature” or “other informational materials of religious content”, and for any religious literature (imported or not) acquired by any library. The exact terms of this requirement are unclear. “Objects of religious significance” can include Koran stands, crosses, crucifixes, icons and religious clothing.

All “spiritual (religious) educational programmes” are also, under Article 6, Part 2, subject to an “expert analysis”.

“Religious studies experts”, as well as “when necessary” state officials, conduct such “expert analyses” on behalf of the ARA.

Censorship, including the strict controls on who can sell religious books and materials where, is also dealt with in a separate section below.

Restrictions on where meetings happen

Article 7, Part 2 states that: “Worship services, religious rites, ceremonies, and/or meetings may be freely carried out in religious buildings and their assigned territory, in places of worship, offices and premises of religious associations, in cemeteries and in crematoriums, and inside homes and dining halls if needed on condition that they respect the rights and interests of nearby residents. In other cases religious activities are carried out in accordance with the laws of the Republic of Kazakhstan.”

Officials impose arbitrary interpretations of this and other legal provisions. In June 2013 Zarina Burova was fined an amount equivalent to two months’ average salary for sending text messages to her friends inviting them to a Jehovah’s Witness meeting. The case followed surveillance by the police Department for the Struggle against Extremism, Separatism and Terrorism and the KNB secret police. Nurali Kayrenbayev of Atyrau Religious Affairs Department claimed in August 2013 that Burova was fined because “all religious activity outside the building of a registered community is banned”, citing Article 7, Part 2, even if the sending of text messages is not covered by this Article.

Restrictions on new places of worship

Any new place of worship requires, under Article 5, Part 8, the approval of the local administration. This includes whether and where a religious community can build, and whether a religious community can gain official change of usage for a building it wants to turn into a place of worship.

Restrictions on children’s freedom of religion or belief

Article 3, Part 16 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”.

It remains unclear how religious leaders will know if parents disagree over whether their child can accompany one of them to a religious meeting. It also remains unclear 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.

Article 375 of the Administrative Code was amended in 2011 to introduce punishment for failing to prevent someone bringing a child to a religious meeting against the wishes of one of its parents. This facilitates state pressure against children or young people, parents - even separated or divorced parents - and guardians involved in a religious community state officials dislike. It allows pressure against anyone involved in such communities.

Similarly changed in 2011 was Article 19 of the Law on the Rights of the Child. This now includes: “The carrying out of services, religious rituals, ceremonies and/or meetings, as well as actions directed at spreading a faith, in children’s holiday, sport, creative or other

leisure organisations, camps or sanatoria is not allowed.” It remains unclear whether this bans religious organisations from running children’s summer camps.

Restrictions on sharing beliefs

Article 1, Part 5 of the Religion Law defines “spreading a faith” as “missionary activity” and indicates that it is done “in the name of a religious organisation registered in the Republic of Kazakhstan”, whether by a local citizen or a foreigner. Article 8, Part 1 states that all individuals engaged in this must be registered. This state permission must be renewed annually.

Only registered religious organisations can appoint “missionaries”, who must act in the name of the organisation. All religious literature they use to share their beliefs must be presented when applying for missionary registration.

What constitutes “spreading a faith” or “missionary activity” is undefined. This could – to take one example – potentially make any conversation about religious matters by unregistered people an offence.

Restrictions on foreigners

All founders of religious communities must be citizens of Kazakhstan. This in particular affects the many long-term residents of Kazakhstan after the break-up of the Soviet Union who became foreign citizens.

In late 2013 fines and deportations were imposed on two legally resident foreign citizens simply for exercising the right to freedom of religion or belief. Polish cardiologist Robert Panczykowski had preached at a Jehovah’s Witness meeting, while Kyrgyz citizen Shamurat Toktoraliyev discussed his faith in a private flat. Russian Imam Shamil Alyautdinov was blocked from presenting his books in Kazakhstan because the only legally registered Islamic organisation – the Muslim Board – refuses to invite him. Without personal registration as a “missionary”, any public appearance would be illegal.

On 1 May 2014 also Yuriy Toporov, a lawyer with the Jehovah’s Witnesses’ headquarter, left Kazakhstan with his Kazakhstani wife after 11 years in the country. Being of the understanding that he was speaking to fellow Jehovah’s Witnesses at their regular place of worship in Almaty, he was later arrested and sentenced for “illegal missionary activity” as two of the people present turned out not to be Jehovah’s Witnesses and complained.

Leaders of all religious organisations named by foreign religious organisations (such as Russian Orthodox or Catholic bishops) need the approval of the ARA, regardless of whether the appointed leader is a Kazakhstani citizen or not. Article 19, Part 1 bans such foreign-named leaders from acting without ARA approval.

For foreign citizens to work as “missionaries” in Kazakhstan, they need (like local citizens) to have an invitation from a registered religious community in the country and need personal registration as a missionary. Under Article 8, Part 4, they also need a certificate proving that the religious organisation they represent is registered in their country of origin. It remains unclear what happens if a “missionary” is from a country where religious organisations are not subject to state registration.

Those seeking to conduct “missionary work” – whether local citizens or foreigners – are denied permission under Article 8, Part 5 if such work “constitutes a threat to the constitutional order, social order, the rights and freedoms of the individual, or the health and morals of the population”.

The Licensing Law was amended in 2011 to add a requirement in Article 27, Part 15 that religious organisations, which send people abroad for study in religious educational institutions, also require a state licence.

This restricts Article 11 of the Religion Law’s apparent blanket permission for state-registered religious organisations to send students abroad for study. Organisations which do not have state registration can neither exist nor do they have permission to send students abroad.

Prisons and other state institutions

International law defends the right of prisoners to freedom of religion or belief, and the International Covenant on Civil and Political Rights (ICCPR), ratified by Kazakhstan in 2006, states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person” (Article 10, Paragraph 1). This specifically includes those held in prisons, detention camps or correctional institutions (General Comment 21 on ICCPR Article 10).

Among other relevant United Nations standards is the 1955 Standard Minimum Rules for the Treatment of Prisoners, which state: “Access to a qualified representative of any religion shall not be refused to any prisoner” (Rule 41, Part 3). The Standard Minimum Rules also stipulate that: “So far as practicable, every prisoner shall be allowed to satisfy the needs of his/her religious life by attending the services provided in the institution and having in his/her possession the books of religious observance and instruction of his/her denomination” (Rule 42).

In Kazakhstan religious pastoral care is to a limited extent allowed for people in institutions – including hospitals, prisons, or old people’s homes. But the Religion Law’s Article 7, Part 3 bans prayer rooms in state institutions. Even before the Law came into force, the state rapidly closed existing mosques, churches and prayer rooms in prisons and state social

care institutions, such as those for people with physical disabilities and mental health problems.

Also, under Religion Law Article 7, Part 4 only clergy of state-registered religious communities can be invited to provide such care and conduct religious rituals. It also states that “the carrying out of religious rites, ceremonies and/or meetings must not obstruct the activity of the given organisations or violate the rights and legal interests of other individuals”.

Some prisoners have stated that they have been placed in solitary confinement, on the instructions of the KNB secret police, for praying Muslim prayers.

New Criminal Implementation Code from 1 January 2015

From 1 January 2015 a new Criminal Implementation Code, which covers how people convicted of breaking the Criminal Code are to be treated while under punishment, will largely come into force. This extends to prisons the restrictions on freedom of religion or belief imposed throughout the rest of the country. The Code allows much scope for arbitrary official interpretation allowing prisoners’ exercise of their right to freedom of religion or belief to be restricted.

Article 13 of the Criminal Implementation Code covers “the rights to freedom of conscience and religion of those sentenced”. It states that participation in religious rites is voluntary, adding that in carrying out religious rites, “the internal regulations of the institution are to be observed”.

Prohibition on freedom of religion or belief without state permission. Article 13 also states that at the request of prisoners or their relatives, “in cases of ritual necessity” clergy from a registered religious organisation can be invited to visit the prisoner. No definition of “ritual necessity” is given. All exercise of freedom of religion or belief without state permission is banned in Kazakhstan and Article 13 extends this prohibition on non-state-registered activity to prisons. Under Article 8, registered religious organisations are among groups able to assist in monitoring prisons, rehabilitating prisoners and proposing improvements to the prison system.

Article 32 states that clergy, journalists and others need “special permission from the administration of these institutions or higher bodies” to visit places of detention.

The prison administration, Article 13 states, “secures the conditions for carrying out religious rituals”, as well as guaranteeing the security of clergy. Article 16 specifies that the state body in charge of the prison system draws up “an instruction for creating conditions for the carrying out of religious rites by those sentenced to deprivation of freedom”.

Places of worship banned. In a departure from the vague wording used when the Code outlines what might be permitted, the Code uses clear language in a prohibition. Article 13 Part 6 categorically states: “The construction of places of worship (buildings) on the territory of institutions or organs implementing punishments is banned”. Although this is not explicitly stated, it would appear that the designation of specific rooms for prayer is also banned.

Censorship extended to cover prisoners’ literature. Article 104, which covers the “rights and responsibilities of those sentenced”, notes that prisoners have the right to read “religious literature which has received a positive conclusion of a religious studies expert analysis”. Such “expert analyses” are a central part of Kazakhstan’s strict censorship regime covering the whole country.

Article 110 specifies that prisoners may have literature, but bans them from having literature of certain types, including “extremist” literature and literature promoting “social, racial, ethnic, religious, class or tribal superiority”.

“Extremism” is frequently used by state officials to justify violations of freedom of religion or belief. Similarly, state officials have refused to make public what they consider to be “extremist” in banned religious books and what books are banned.

Compulsory re-registration process

Kazakhstan used the Religion Law’s re-registration process to close many religious communities, including mosques, after the deadline of 24 October 2012. Communities complained of arbitrary and flawed decisions, as well as pressure exerted by local authorities on people to withdraw their signatures from founding documents.

Members of many religious communities in Kazakhstan complained of what they variously describe as the “complex”, “burdensome”, “arbitrary”, “unnecessary” and “expensive” compulsory re-registration process. But few religious community leaders – even those whose communities were unable to apply for re-registration because of the new requirements – were prepared to discuss the re-registration process, for fear of state reprisals against their communities.

In a letter seen by Forum 18, Akmola Region’s senior state religious affairs official wrote to District officials on 7 February 2012 that “the activity of small religious groups in the territory of Kazakhstan is now banned since there is no such form of religious association of citizens”. Regional ARA officials warned such groups that they must stop any activity. Imams of independent mosques and Grace, Baptist and Seventh-day Adventist leaders have been summoned to be stripped of registration and warned not to meet. Of course, this pressure on the existence of communities has affected people’s willingness to exercise their freedom of religion or belief in association with others, and express fear when

gathering for worship. Many communities complained that the ARA and local Justice Departments kept asking them to change their charters on arbitrary grounds. Jehovah's Witnesses were told to write in more detail in their statutes what their doctrine is, in particular on army service and blood transfusions.

Once applications were lodged, Justice Departments and Regional ARA branches checked the full details of each founder of many organisations. In one case the street number of one founder was given incorrectly, requiring a correction and the whole application to be resubmitted. In some cases, individual founders were questioned about their religious affiliation and why they had signed a registration application. "Many of our founders were summoned by Regional ARA offices," informed Jehovah's Witnesses. "Although no pressure was put on them to remove their names, they were asked: why do you belong to this particular faith?"

This happened throughout Kazakhstan in 2012. For example, Almaty Regional officials telephoned or visited 14 of the 61 founders who signed the re-registration application of Grace Protestant Church in Karaturyk in the Region's Yenbekshikazakh District. Officials warned the signatories about the dangers of the "sectarian" Grace Church, and demanded that they revoke their signatures on the application. "The authorities especially chose to target those founders who are of Kazakh and Uygur ethnicity", the Church's Pastor Zhursyn Koshkinov and some of the signatories said.

In another case, a religious leader who asked not to be identified informed that by relentless examination of people on the list of founders, the authorities had been able to remove enough to bring the number down to 49, making the community ineligible to apply. The community had to resubmit the application, and they made sure they had more than 70 founders on the list the second time.

Some smaller communities have been forced to "voluntarily" close, such as a Methodist Church which was threatened with a fine state officials admitted was unlawful (see above). Larissa Kim, the wife of the Church's Pastor, was fined for using her private home – the Church's registered legal address - for meetings for religious worship. The Church was then forced to pay for an announcement in newspapers that the Church had decided to liquidate itself. "We do not want more punishment from the authorities," said Pastor Valery Kim in May 2012. The authorities then forced the Church to pay for another announcement of its closure, this time in an official journal for legal announcements.

Some religious communities have from the Religion Law up to 2014 noted steep falls in the number of registered communities. In one case almost 66 per cent of pre-2011 registered communities were forced to close or were merged with others. A variety of threats were used by officials to achieve this. An independent mosque was threatened with demolition with a bulldozer if it did not join the state-backed Muslim Board. Imam Kinayat Ismailov of the Tautan Molla Mosque in the small town of Prishakhtinsk in the central Karaganda

[Qaraghandy] Region said in May 2012 that ARA regional Head Tlekbayev “visited our Mosque to inspect our activity and the property along with officials from the District Administration. He told me that he will close down our Mosque, and even demolish the Mosque building with a bulldozer.”

Kazakhstan has used bulldozers before to violate freedom of religion or belief, when the country with no warning used bulldozers to destroy Hare Krishna devotees’ homes in November 2006.

Catholic international agreement

Apart from the Muslim Board (see below), the only other religious community to be re-registered without apparent problems was the Catholic Church. An Agreement on Mutual Relations between the Holy See and Kazakhstan was signed on 24 September 1998 and hastily ratified in September 2012. The Agreement gives the Church the right to establish entities, maintain places of worship, send clergy and other personnel to the country, and establish church schools and charitable agencies “in conformity with the legislation of Kazakhstan”.

Justifying differential treatment of the Catholic Church, the Justice Ministry pointed to Article 2, Part 2 of the Religion Law, which states that where an international agreement signed by Kazakhstan exists, this overrides other provisions of the Religion Law. The Ministry did not explain why Kazakhstan is not also implementing the International Covenant on Civil and Political Rights (ICCPR), which would if implemented abolish most of the Religion Law.

Independent mosques forcibly closed

Even before the Religion Law was adopted, officials were (as noted above) insisting in 2010 that mosques catering for non-Kazakh ethnic groups could not exist. Officials were also insisting before the Religion Law was adopted that all mosques independent of the state-backed Muslim Board must be closed. There is no “legal” basis for such demands.

The Justice Ministry – backed by the ARA – has denied all re-registration applications by non-Muslim Board Muslim communities. Under its 2012 Statute, the Muslim Board is registered as one legal entity with all mosques in the country as its branches. The Muslim Board is the only religious community given such a state-backed monopoly.

Under the Statute, all mosques must have their Imams appointed by the Muslim Board, and these Imams must only read out sermons at Friday prayers which have been provided to them by the Board. All mosques must also give the Board 30 per cent of their income. Independent mosques strongly objected to these state-backed restrictions.

The state also subjects Muslim communities to language restrictions which do not apply to other faiths. Mosques must use Kazakh rather than other languages such as Russian, Tatar, Chechen, or Azeri for sermons. Unlike communities of other faiths (e.g. Russian Orthodox, Armenian Apostolic, or Jewish) mosques cannot have an ethnic affiliation in their name.



The complex honouring famous Sufi scholar Khoja Ahmed Yasawi is a popular place of pilgrimage

No independent mosques or Shia Muslim communities have been given state permission to exist. The Muslim Board’s spokesperson said in November 2012 that all Islamic communities “must be Hanafi Sunni Muslim”. “We don’t have other sorts of Muslims here”, he added. Another central ARA official claimed in January 2013 that “there is no pressure on the mosques”.

State censorship has stopped the production and distribution of all Islamic literature that is neither Hanafi Muslim literature nor Muslim Board approved (see below).

State officials, along with Muslim Board officials, used a variety of tactics to force independent mosques to join the Board or close. For example, the Din-Muhammad Tatar-Bashkir Mosque in Petropavl in North Kazakhstan Region is mainly attended by ethnic Tatars and Bashkirs. It was built in 1852 and has been open since then, apart from when it was closed during Soviet-era repression of freedom of religion or belief.

The mosque community lodged a re-registration application before the Religion Law's October 2012 deadline, receiving no official response. Since then, the Mosque community and its Imam have faced heavy state pressure. For example, on the night of 20 December 2012 the ARA telephoned the Imam and some elderly members of the community for a 09.00 meeting with the Head of North Kazakhstan Region's administration Serik Bilyalov. He threatened them that if they did not join the Muslim Board the community would be liquidated and the mosque would be taken over by the local authorities who would use it for some public non-religious purpose.

Members of the Din-Muhammad Mosque community continued to gather for prayers in their 19th century mosque, even after a 12 September 2013 court decision rejected an appeal against compulsory liquidation ordered on 20 February 2013. The appeal court ordered officials to complete the liquidation quickly. Naturally, attendance at prayers dropped from hundreds to tens because of fear of the authorities.

On 4 February 2014, three officials of a court-appointed Liquidation Commission to dissolve the community arrived at the Mosque in Petropavl to prepare an inventory of all its possessions. Marat Zhamaliyev, deputy head of the regional Finance Department informed that the mosque was to be handed over to another religious organisation without naming which. He insisted that the juridical community had been liquidated by a court and therefore did not exist, despite some religious activities still taking place there. The Din-Muhammad Mosque is thought to be the last remaining publicly-accessible mosque independent of the state-backed Muslim Board.

All Ahmadi Muslim mosques throughout Kazakhstan were closed in April 2012. The Ahmadis applied for re-registration for just one of their communities, in Almaty. On 19 November 2012 the community received a response from the regional Justice Department that "the statute did not qualify under the expert opinion". A positive ARA "expert analysis" is required for a community to be permitted to exist. Ahmadi Muslims are now legally banned.

In the summer of 2013 the Ahmadiya community started a legal process to protest the liquidation of their organisation with the Ministry of Justice, but as they understood the result would be negative and create an unwanted precedence, they withdrew the complaint. In spring 2014 they initiated a process to update all documents in correspondence with the requirements. In the meantime, they cannot meet and share their belief.

Still closing communities

As well as targeting independent mosques, state pressure is still being used with the apparent aim of closing other religious communities down. For example, members of New Life Protestant Church in Arkalyk [Arqalyq], in the northern Kostanai [Qostanai]

Region, have faced state interrogations and threats, particularly targeting state employees. On 2 December 2013 two church members were summoned to the Akimat (local district administration). One works for the prison service, the other for a state educational institution. All 52 signatories to the Church's successful 2012 re-registration application seem to have been later summoned to Daryn Zhapabayev, one of Arkalyk's Deputy Prosecutors, or Arkalyk's Deputy Akim, Yeslambek Mametekov.

"Our church members were questioned as to why they joined the church, why they attend and why they signed the re-registration application," Pastor Aleksi Fedoskin complained. "They were pressured to sign pre-prepared statements that they had not understood what they were signing." During at least two of the interrogations at the Prosecutor's Office, church members' superiors from their workplace were also present. The Pastor fears that if the number goes below the required 50 for applications, the authorities may begin moves to strip the congregation of state registration. Without such registration, any activity the congregation undertakes would be illegal.

KNB secret police surveillance

On 8 December 2013, a KNB secret police officer attended New Life Church's Sunday service, using a hidden camera to film those present. "I saw him using a hidden camera, so I approached him after the service and asked who he was," Pastor Fedoskin said. "However, he would not identify himself. Church members afterwards told me he was from the KNB and his surname is Alimbayev. It's a small town and everyone knows everyone else."

All religious communities are thought to be under surveillance by the ordinary police and KNB secret police. Many communities are reluctant to discuss this - including KNB attempts to recruit informers - for fear of state reprisals.

Censorship

As noted above, censorship is imposed by the state along with – for Islamic literature – the Muslim Board. Its spokesperson Ongar Omirbek informed that "only Islamic literature from the Sunni Hanafi school can be distributed, as all other Muslim schools - including Ahmadis - are banned". Shia Muslims across Kazakhstan, who asked not to be named for fear of state reprisals, confirm that Shia literature cannot be found on sale.

The Religion Law gives a broad definition of what religious literature and objects are, and imposes censorship on them in both bookshops and libraries. There is confusion among officials about what is censored, what is involved and what if anything is exempt. Galym Shoykin of the ARA insisted in November 2013 that unless a book or object is banned by a court, it is legal. But legal books or objects cannot be distributed without ARA censorship. Shoykin described it as defence of the country's interests rather than censorship, but could not identify any legal basis for these actions.

One Astana shop owner, Pyotr Volkov, sought clarification from the ARA of what constitutes “religious literature”, and so is subject to censorship. He made the enquiry after books were seized from his shop during a police raid in May 2013 and he was fined in September 2013. Marat Azilkhanov, a then Deputy Chair of the ARA, responded that “religious literature” is “printed and electronic publications containing religious content designated for the satisfaction of religious and other socially significant needs of the population deriving from religious postulates”. Azilkhanov added: “To this category belongs production of a theological, theological/canonical, ritual/mystic and social/theological orientation.” No legal basis for this definition appears to exist.



Religious artefacts for sale in Öskemen

Azilkhanov was named on 4 November 2013 as the new ARA head, a post he held until the ARA’s abolition in August 2014. The ARA’s functions are now maintained by a Committee for Religious Affairs of the Ministry of Culture and Sport, and headed by Galym Shoykin.

Local authorities and “law enforcement” agencies enforce censorship – including severe limitations on the numbers of bookshops allowed to sell any kind of religious material – across Kazakhstan with raids and fines. Even some shops with permission to sell religious books such as Korans and Bibles have opted out of doing so, to avoid trouble from the

authorities. Courts frequently fine commercial booksellers and individuals for distributing religious literature outside approved venues (state-registered places of worship and state-licensed shops). Forum 18 knows of 11 named commercial booksellers and traders given administrative fines in 2013 (one was fined twice) for selling religious books without a licence.

Allegedly, “extremist” works are also banned, but because court hearings to rule whether materials are “extremist” take place unannounced and because no published list of banned books appears to exist, people in Kazakhstan remain unaware of what has and has not been banned. The unannounced nature of court hearings also makes it impossible for such bans to be challenged.

Censorship also includes religious objects. Twelve icons and three Bibles were seized from a commercial bookseller in Oral (Uralsk) in West Kazakhstan Region in October 2013. The bookseller narrowly avoided administrative prosecution. It remains unclear what happened to the icons and books. Defending the seizure, ARA spokesperson Saktagan Sadvokasov stated that “the Kazakh state must defend our citizens from harmful materials”. Apparently, even icons seem to have a potential to be harmful and should be checked by designated experts.

In May 2013, four books confiscated from a bookseller in East Kazakhstan Region – including two with prayers to Russian Orthodox saints Serafim of Sarov and Sergius of Radonezh – were ordered destroyed when the bookseller was fined. If it was carried out, this would have been the first known time that a court-ordered religious book destruction was carried out in Kazakhstan.

Yerlan Kalmakov of Kostanai Regional Internal Policy Department, explained the necessity to ask the authorities for permission to distribute books thus: “Imagine what could happen if we allow just anybody to distribute religious materials”. He added that “unregistered religious organisations, which are illegal in Kazakhstan will use this and attract people to their ranks. They will thus continue their illegal existence”.

Smear attempts?

There have also been apparent attempts to smear or blackmail members of some religious communities. In March 2013, Pastor Yevgeni Medvedev and others from New Life Pentecostal Church in Stepnogorsk – all men – arranged a visit to the local sauna. Before their arrival, a man who claimed to be from an unnamed “law-enforcement agency” visited the sauna to persuade the sauna staff to allow in two young women when the church members were alone in the sauna. Sauna staff stated that the “law-enforcement agency” man said that the “most important thing was to let the girls in and that they should be able to take off all their clothes. And after that, two police officers will arrive.”

Pastor Medvedev informed that two young women were indeed on the street outside when the church members arrived, but the sauna staff did not let them in. The women telephoned someone and passed the phone through the window to the sauna staff, but the staff continued to prevent them from entering. Confronted, both the ordinary police and the KNB secret police denied that they had any involvement.

Petropavl's Din-Muhammad Tatar-Bashkir Mosque has also experienced a possible provocation. "Some long-bearded young men with a radical appearance also recently came to the mosque and walked amid the praying community members during the prayer and filmed everything," one community member said in September 2013. "They disturbed the people and told them that they are not praying correctly." The community member added that "it is difficult to say whether the young men came by their own will or were instigated to make a provocation in the mosque".

Misuse of psychiatry

Two freedom of religion or belief cases involve apparent misuse of psychiatry against atheist writer Aleksandr Kharlamov and retired Presbyterian pastor Bakhytzhan Kashkumbayev. Both were held against their will for over a month in a psychiatric hospital, and no evidence was ever produced that they needed psychiatric medical help. This misuse also appears to have occurred in the case of human rights defender Zinaida Mukhortova, in which freedom of religion or belief is not involved.

Atheist writer Kharlamov was freed from prison on 4 September 2013 after nearly six months' pre-trial detention, having been arrested on 14 March. During that time he was held for a month in a psychiatric hospital. While in the psychiatric hospital, Kharlamov was not allowed to wear glasses, stopping him from reading, or even have a toothbrush - allegedly on safety grounds.

One doctor told Kharlamov that he had been sent to the psychiatric hospital "because you are an inconvenient person for the authorities". The police investigator responsible for the case, Captain Alikhat Turakpayev of Ridder Police, could not produce any medically-relevant evidence for why he ordered two previous psychiatric examinations of Kharlamov.

Despite the state's criminal charge and "expert examination" of Kharlamov's writings, Turakpayev admitted in April 2013 that "no-one suffered from what he [Kharlamov] wrote on religion". Kharlamov must remain in his home town of Ridder and "should behave properly in public". Police have not returned computers they seized from him during a house search in February 2013, the month before his arrest.

A criminal case was brought against Pastor Kashkumbayev, who led Astana's Grace Church until his retirement in October 2011. Kashkumbayev was, while in pre-trial detention from May 2013, held for over a month in a psychiatric hospital. The state

claimed he had harmed the health of church member Lyazzat Almenova, and charges were formally brought in February 2012. Almenova repeatedly insisted that Kashkumbayev had not harmed her and that he was “totally innocent”.

Masked police searched the Church on 3 October 2012 and seized computers, valuables and religious books they insisted were “extremist”. Police requested church members to give blood specimens to see if the Church uses “hallucinogenic” substances for Communion – local media carried the same allegations. The alleged “hallucinogens” were a commonly drunk local red tea used as a non-alcoholic communion wine. Church members noted that police displayed a curious lack of interest in the allegations they were supposedly investigating.

The defence strongly contested the legality of the trial and the state’s claims. The trial finally opened on 22 January 2014, and on 17 February 2014 Kashkumbayev was convicted of harming Almenova’s health. He was ordered to pay the representative of his alleged victim large moral damages of 2 Million Tenge (65,800 Norwegian Kroner, 7,900 Euros or 10,800 US Dollars).

Still facing criminal charges. As of August 2014, Kharlamov and Kashkumbayev are still facing investigations on criminal charges, but officials have not informed of any time frames or decisions.

Kharlamov is being investigated for allegedly breaking Criminal Code Article 164 Part 1. This unclear and wide-ranging Article criminalises: “Deliberate actions aimed at the incitement of social, national, clan, racial, or religious enmity or antagonism, or at offence to the national honour and dignity, or religious feelings of citizens, as well as propaganda of exclusiveness, superiority, or inferiority of citizens based on their attitude towards religion, or their genetic or racial belonging, if these acts are committed publicly or with the use of the mass information media.” No definitions are offered for the concepts criminalised by the Article. Punishments are a fine or imprisonment of up to seven years.

Kashkumbayev is being investigated for allegedly breaking four Criminal Code articles:

- Article 103, Part 2, Point a, which punishes “Intentional inflicting of serious harm to health” in relation to “two or more persons”. Punishment is between four and eight years’ imprisonment;
- Article 164, Part 2 which punishes the same acts Kharlamov is accused of when committed “by a group of people or more than once, or when accompanied by violence or the threat of its use, or by a person using their official position or by a leader”. Punishments range from a fine to imprisonment of up to seven years;
- Article 233-1, Part 2, which punishes “propaganda of terrorism or extremism or public calls to conduct acts of terrorism or extremism” when conducted using one’s official position. Punishment is imprisonment of between five and ten years; and

- Article 337, Part 1, which punishes “creation or leadership of religious or social organisations whose activity involves violence against citizens or the causing of other harm to their health, or the incitement of citizens to refuse to carry out their civil obligations or to carry out other illegal activities, as well as the creation or leadership of parties on a religious basis or political parties and professional unions financed from sources banned by the laws of Kazakhstan”. Punishments range from a fine to imprisonment of up to six years.

Other criminal investigations

Like Kashkumbayev’s Grace Church, other Protestant churches have also been subjected to investigations on criminal charges, including “harming health” or possession of “extremist” books. However, prosecutors normally refuse to divulge the specific allegations made or how the investigations are proceeding. Such criminal investigations can continue for years.

Prosecutions alleging that the Religion Law has been broken need to invoke an article of the Administrative Code (Articles 374-1 and 375) or in rare cases the Criminal Code. Administrative Code Article 636 (“Issuing a charge for an administrative offence”) gives regional administrations the right to prepare cases to be sent to court for violations of Article 374-1 (“Leading, participating in, or financing an unregistered, halted, or banned religious community or social organisation”) and Article 375. Police also have the right to prepare Article 374-1 cases.

Administrative Code Article 375

Amid the 2011 legal amendments, Article 375 (“Violating the Religion Law”) was expanded to considerably increase Religion Law “offences” subject to punishment. However, as with the Religion Law, many of the “offences” are not precisely defined, leaving much room for arbitrary official actions.

“Offences” punished in Part 1 are breaking the Religion Law by violating the procedures for: holding religious rites, ceremonies, or meetings for worship; conducting charitable activity; importing, publishing or distributing religious literature and other materials; or building places of worship or changing a building’s usage.

Penalties for breaking Part 1 of Article 375 are fines of 50 Monthly Financial Indicators (MFIs) for physical persons, 100 MFIs for leaders of religious associations, and 200 MFIs for legal persons (groups with state registration) with suspension of their activity for three months.

The MFI is set annually, and since 1 January 2014 has been 1,852 Tenge (60 Norwegian Kroner, 7 Euros, or 10 US Dollars). 50 MFIs are equivalent to about one month’s average salary.

“Missionary activities” scope expanded and punishments increased. Article 375, Part 3 punishes: “The carrying out of missionary activity by citizens of the Republic of Kazakhstan, foreigners and persons without citizenship without registration (re-registration), as well as the use by missionaries of religious literature, informational materials of religious content or objects of religious significance without a positive assessment of a religious studies expert analysis”.

The fine for this “offence” is for citizens 100 MFIs. The punishment for foreigners and stateless persons is 100 MFIs with deportation.

As usual in such laws, the definition of “offences” is unclear, allowing room for officials to expand the range of activities they can bring prosecutions for. Two Muslim brothers, Rafael and Kamil Bayshev, were fined 100 MFIs, or about two months’ average salary, after inviting two passers-by outside the Central Mosque in Oral (Uralsk) in West Kazakhstan Region to attend night prayers in June 2012.

In an August 2013 case, the presence of several guests at a religious meeting of a state-registered Jehovah’s Witness community was enough to cause four fines of 100 MFIs for illegal “missionary activity”.

Other “offences” and punishments. Other “offences” and punishments in Article 375 include leading a religious organisation at the nomination of a foreign religious organisation without state approval.

Violations of Article 375 mostly lead to fines, but could lead to bans of up to three months or even a permanent ban on a religious community. Foreigners who conduct violations are subject to “administrative deportation”. This is also confirmed in Article 730 governing deportations.

Article 375, Part 9 punishes offences under most other Parts of Article 375 committed again within a year with fines of 200 MFIs.

Many fines

Articles 375 (“Violating the Religion Law”) and 374-1 (“Leading, participating in, or financing an unregistered, halted, or banned religious community or social organisation”) have long been heavily used to fine individuals and communities exercising their right to freedom of religion or belief.

Over 150 people in 2013 are known to have been fined under these Articles, normally for meeting for worship or sharing their beliefs without state permission. Over 40 people are known to have been fined in the first 10 weeks of 2014 alone.

Most known cases have involved Baptists, Jehovah's Witnesses and some Muslims. Such fines normally accompany raids on meetings by police and other officials, with all the participants being questioned and some being fined. Fines range between the equivalent of one or two months' average wages, depending on whether or not the authorities identify the person concerned as having played a leading role in the "offence".

Exit bans

People who refuse to pay fines imposed under Articles 374-1 and 375 – which as those fined frequently note break Kazakhstan's Constitution and international human rights obligations – are automatically placed on Justice Ministry lists banning travel outside the country. Human rights defender Yevgeni Zhovtis, of the Kazakhstan International Bureau for Human Rights and the Rule of Law, noted that this "double punishment" is not governed by any law. He pointed out that "officials of the Justice Ministry's Committee for the Execution of Court Judgments simply take the decision and individuals don't have the proper opportunity to challenge this in court".

Jail

A number of people have been given short jail terms for refusal to pay fines imposed under Article 375. The jailings are imposed under Administrative Code Article 524 ("Failure to carry out court decisions"). Until January 2014 it carried a punishment on individuals of up to 10 MFIs, or up to 10 days' administrative arrest.

On 15 January 2014 Article 524 was changed to increase the fines for individuals from a maximum of 10 MFIs to between 10 and 20 MFIs for individuals and between 20 and 30 MFIs for people acting in an official capacity. The other possible punishment for individuals, short term-imprisonment – previously "up to ten days" – was changed to "between five and ten days".

Six such cases are known to have taken place in 2013. Four of the six were Council of Churches Baptists and two were Muslims. Four received small fines, but one received a 3-day jail term and the last a one-day jail term.

Between January and July 2014 12 such jailings of between one and 10 days – mainly against Baptists – are known to have taken place. For example, shoe-repairer Vyacheslav Cherkasov and plumber Zhasulan Alzhanov were each sentenced to 48-hour prison terms at evening court hearings in Akmola Region on 9 January 2014. "We haven't lodged appeals," Cherkasov said after his release. "There's no point." The Muslim jailed for five days in early summer did not pay fines for publishing and distributing religious literature which has not undergone the compulsory state censorship. Like the other short-term prisoners of conscience, the Muslim (who wished to remain unnamed for fear of state reprisals) decided not to appeal.

New Criminal and Administrative Codes from 1 January 2015

Against the protests of local human rights defenders (see above), a new Criminal Code and Code of Administrative Offences will come into force from 1 January 2015.

New Criminal Code

Two Articles of the new Criminal Code continue existing provisions which could be used to punish individuals for exercising the right to freedom of religion or belief. Both are slightly amended versions of Articles already in the current Criminal Code.

Article 404. The new Article 404 is entitled “Creation, leadership or participation in the activity of illegal social or other associations”. This replicates exactly the crimes of the current Criminal Code Article 337, though with several increased penalties.

Part 1 of this Article will punish: “Creation or leadership of religious or social organisations whose activity involves violence against citizens or the causing of other harm to their health, or the incitement of citizens to refuse to carry out their civil obligations or to carry out other illegal activities, as well as the creation or leadership of parties on a religious basis or political parties and professional unions financed from sources banned by the laws of Kazakhstan”.

The existing Criminal Code Article 337 was used in the trial of retired Pastor Kashkumbayev. Both he and atheist writer Aleksandr Kharlamov are still being investigated on criminal charges (see above).

Punishments for violating Part 1 of the new Article 404 will be a fine of up to 6,000 Monthly Financial Indicators (MFIs), or corrective labour “up to the same level”, or up to six years’ restrictions on freedom or imprisonment, with restrictions on holding specific posts or conducting certain unspecified activity for up to six years.

Part 2 of this Article will punish: “Creating social associations proclaiming or carrying out racial, national, clan, social, class or religious intolerance or exclusivity, calling for the violent overthrow of the constitutional order, subversion of state security, or infringing the state’s territorial integrity, as well as leadership of such associations”. This would be punished by imprisonment of between three and seven years, with restrictions on holding specific posts or conducting certain unspecified activity for up to three years.

Part 3 of this Article punishes “active participation” in Part 1 or 2 offences. This would lead to almost the same punishments as Part 1, though without any possible ban on conducting certain unspecified activity.

The new Code, like the Code it replaces, does not define clearly much of what is criminalised, including concepts such as “religious intolerance or exclusivity” and

actions such as “proclaiming”. This allows much scope for arbitrary official actions and prosecutions.

Article 405. The new Article 405 of the Criminal Code is entitled “Organising or participating in the activity of a social or religious association or other organisation after a court decision banning their activity or their liquidation in connection with extremism or terrorism they have carried out”.

Part 1 of the new Article punishes organising the activity of social or religious groups which have been banned for conducting extremist or terrorist activity with a fine or up to six years’ imprisonment. Part 2 of this Article punishes those who participate in such banned extremist groups with a fine or up to two years’ imprisonment.

This Article replicates almost exactly the crimes of the current Criminal Code Article 337-1, though with several increased penalties.

“Extremism” is frequently used by state officials to justify violations of freedom of religion or belief. Similarly, state officials have refused to make public what they consider to be “extremist” in banned religious books and what books are banned.

New Administrative Code

The main articles in the current Administrative Code used to prosecute people exercising their freedom of religion or belief have been Articles 374-1 (“Leading, participating in, or financing an unregistered, halted, or banned religious community or social organisation”) and 375 (“Violating the Religion Law”). Article 375 was greatly expanded in 2011 at the same time that a restrictive new Religion Law was passed through Parliament. All these laws and the state’s implementation of them break Kazakhstan’s international human rights law obligations.

The new Administrative Code’s Articles 489 and 490 mainly replicate the old Code’s Articles 374-1 and 375. Other parts of the new Code – like the old Code - also affect freedom of religion or belief. Article 804, for example, allows the ARA to both accuse people or organisations of violating a law and prepare cases for prosecution. In effect, it restricts the work not only for the religious groups, but also for the civil society actors that are prepared to defend their rights as fundamental human rights in Kazakhstan.

Public Associations

Article 489, like the old Article 374-1, mainly deals with public associations. But its Parts 9, 10 and 11 deal with religious groups, and replicate the relevant parts of the old Article 374-1.

Part 9 punishes “leading an unregistered, halted, or banned religious community or social organisation” with a fine of 100 monthly Financial Indicators (MFIs).

The MFI is set annually, and since 1 January 2014 has been 1,852 Tenge (60 Norwegian Kroner, 7 Euros, or 10 US Dollars). 50 MFIs are equivalent to about one month’s average salary.

Part 10 punishes “participating in an unregistered, halted, or banned religious community or social organisation” with a fine of 50 times the MFI.

Part 11 punishes “financing an unregistered, halted, or banned religious community or social organisation” with a fine of 200 times the MFI.

Violation of the Religion Law

Article 490 (“Violation of the Religion Law”) mainly replicates the old Article 375, but adds a new offence of “spreading the teachings of a religious group which is not registered in Kazakhstan”. The Article states:

“- Part 1. Violating the requirements of the Religion Law for:

1. conducting religious rites, ceremonies and/or meetings;
2. carrying out charitable activity;
3. import, production, publication and/or distribution of religious literature and other religious materials, and items for religious use;
4. construction of religious buildings, and changing the profile (functional purpose) of a building into a religious building;

shall result in a fine on physical persons of 50 times the MFI;

and on legal persons [communities with state permission to exist] of 200 times the MFI with suspension of their activity for a term of three months.

- Part 2. 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,

shall result in a fine on physical persons of 50 times the MFI;

and on legal persons of 200 times the MFI.

- Part 3. Carrying out missionary activity without state registration (or re-registration), as well as the use by missionaries of religious literature, information materials with religious content or religious items without a positive assessment from a religious studies expert analysis, and spreading the teachings of a religious group which is not registered in Kazakhstan,

shall result in a fine on Kazakh citizens of 100 times the MFI;

and on foreigners and stateless persons of 100 times the MFI with administrative deportation from Kazakhstan.

- Part 4. A religious association carrying out activity which is not defined in its charter,

shall result in a fine of 300 times the MFI with suspension of activity for three months.

- Part 5. Engagement by a religious association in political activity as well as participation in the activity of political parties and/or rendering them financial assistance, interference in the activity of state agencies, or the assumption by members of religious associations of the functions of state agencies or officials,

shall result in a fine of 300 times the MFI with suspension of activity for three months.

- Part 6. Creation of organisational structures of religious organisations in state agencies, organisations and entities, as well as in organisations carrying out health care and education,

shall result in a fine on officials of 100 times the MFI;

and on legal persons of 200 times the MFI.

- Part 7. Leadership of a religious association by a person assigned by a foreign religious centre without the consent of the authorised state religious agency,

as well as the leader of a religious association not taking 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,

shall result in a fine of 50 times the MFI with administrative deportation from Kazakhstan.

- Part 8. Actions or lack of actions resulting in repeated breaking of Parts 1, 2, 3, 4, 5 and 7 of this Article, repeated within one year of an administrative penalty being imposed,

shall carry a fine on physical persons of 200 times the MFI;

on officials of 300 times the MFI;

and on legal persons of 500 times the MFI with banning of their activity.”

Part 7 – unlike the relevant part of the old Article 375 – imposes fines on and deportation of anyone breaking that part of Article 490. This could theoretically lead to a court ordering the deportation from Kazakhstan of a Kazakhstani citizen. However, according to Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law, it is more likely to be a sign of carelessness on the part of the officials working on the text, and deportation will only be imposed if the concerned person is a foreigner or a stateless person.

As is usual with Kazakhstani law (including the new Criminal Code) many of the Administrative Code’s “offences” are not precisely defined leaving much room for arbitrary official actions. Article 490 Part 7, like the old Article 375, facilitates state pressure against children or young people, parents - even separated or divorced parents - and guardians involved in a religious community state officials dislike. It also allows pressure against anyone involved in such communities.

Co-operation with other states violating human rights

In March 2013 – and against a written 28 February request by the UN Committee against Torture - Khayrullo Tursunov was extradited back to his native Uzbekistan. In early June he was sentenced to 12 years in jail for alleged “extremist” religious activity. Relatives outside Uzbekistan complained that the case had been “fabricated” to punish him for his religious activity. In a very similar case, the UN Committee against Torture is also investigating the fate of 29 Muslims illegally extradited by Kazakhstan in 2011 back to Uzbekistan.

“Over-fulfilment”

Kazakhstan tries to make exercising human rights conditional upon state permission. It systematically violates intertwined fundamental rights - such as the freedoms of religion or belief, of expression and of assembly - it has solemn international obligations to respect and defend. There is a culture of impunity for such violations among officials. Increasing repression, combined with the prospect of further “legal” harshening of laws in 2014, make it likely that the government will continue violating the freedom of religion or belief and intertwined human rights of its citizens and others legally resident in the country.

Religious groups have pointed out that although no formal amendments to the 2011 law have been made since it was signed into effect, they have experienced that the implementation of the law has changed over the last two years. In certain regions of the country a Soviet-style “over-fulfilment” of its components is taking place on local and regional level, where local authorities are eager to restrict the activities of religious groups, using the vague terminology for what it is worth.

E Freedom of religion issues in the Kyrgyz Republic

Ahead of the UN Human Rights Council January-February 2015 Universal Periodic Review (UPR) of Kyrgyzstan, the country has not fully implemented its obligations to implement freedom of religion or belief for all. Despite hopes within the country inspired by the 2010 fall of then-President Kurmanbek Bakiev, the state continues to limit this fundamental freedom and other human rights in both law and practice.⁷

A cause of concern for Kyrgyz religious communities, national and international human rights defenders such as Open Viewpoint⁸ in the capital Bishkek and the Norwegian Helsinki Committee⁹ remains the Bakiev-era Religion Law and its continued implementation – especially that Law’s banning of the exercise of freedom of religion or belief without state permission. Long-standing state promises – dating back to the Bakiev-era – that the Law would be changed to partially meet international human rights standards have yet to be implemented. The authorities are working on a national strategy for sustainable development and a draft Concept on State Policy in the Religious Sphere 2014-20. Local and international human rights defenders see these as opportunities to improve the Religion Law in line with international standards.

As well as these government initiatives, parliamentarians in the Zhogorku Kenesh (Parliament) invited the Norwegian Helsinki Committee and the Oslo Centre for Peace and Human Rights¹⁰ to hold a February 2014 workshop discussing how to ensure that national legislation is in line with international human rights. Afterwards, Lene Wetteland, Central Asia Advisor of the Norwegian Helsinki Committee, noted that there was an understanding that current legislation on religion is not in full compliance with human rights. Around 20 parliamentarians and expert advisors from the Zhogorku Kenesh discussed topics including freedom of religion or belief, freedom of speech and freedom of association. Wetteland noted that there were constructive debates on issues such as bringing legislation into line with international human rights, and cooperation between civil society and the authorities. Many representatives of the authorities and lawmakers of the Kyrgyz Republic seem to have good intentions, but so far, their intent has not resulted in sufficient improvement on the ground.

7 For the information outlined here and current information on freedom of thought, conscience and belief in Kyrgyzstan, see Forum 18 reports accessible via <<http://www.forum18.org/Archive.php?query=&religion=all&country=30>>

8 See Open Viewpoint’s work in Kyrgyzstan on freedom of religion or belief and other human rights at <<http://prava.kloop.kg/>>

9 See the Norwegian Helsinki Committee’s work on Kyrgyzstan at <http://nhc.no/no/land_og_regioner/asia/kirgisistan/>

10 See the Oslo Centre for Peace and Human Rights’ work on freedom of religion or belief at <<http://www.oslocenter.no/en/projects/freedom-of-religion/>>

Context

Kyrgyzstan is geographically the fourth largest of the five Central Asia countries, and has the fourth largest population with over 5 and a half million people. Almost 70 per cent of the population are ethnic Kyrgyz (regarded as being of Muslim background), the next largest group being the over 10 per cent who are ethnic Uzbeks (often seen as the most devout Muslims). The rest of the population are ethnic Slavs (mainly Russians and Ukrainians, many of Russian Orthodox or other Christian background) and other ethnicities such as Dungans and Uighurs.

When Bakiev took power in 2005, both registered and unregistered religious communities were able to function freely, despite a 1996 Decree by then-President Askar Akaev requiring religious communities to register. Problems that occurred from time to time – for example pressure against schoolgirls wearing hijabs - were ascribed to the attitudes of local officials. The exceptions to this were the banning of the Falun Gong movement under Chinese pressure in February 2005, and social pressure – including violent attacks - against non-Muslims manifesting their beliefs in southern Kyrgyzstan. But the Bakiev regime's implementation of a Religion Law, which entered into force in January 2009, put major obstacles in the way of exercising freedom of religion or belief (see below).

After Bakiev was forced out of office, violent clashes took place in the south of the country in June 2010 between ethnic Uzbeks and ethnic Kyrgyz. There were many reported incidents of law enforcement agencies acting against ethnic Uzbeks, and ethnic tensions still exist.¹¹ Rosa Otunbayeva replaced Bakiev as President and Kanybek Imanaliyev, Head of her government's Press Service, expressed in April 2010 that: "We want to establish freedom of speech and freedom of religion. We will reform the Constitution, the laws as necessary and the Religion Law."

At the same time, Protestant, Catholic, Baha'i, Hare Krishna, and Jehovah's Witness communities and human rights defenders called for the Religion Law to be abolished or radically changed. No-one from the state-backed Muslim Board (also known as the Muftiate, which controls the public expression of Islam) was willing to talk. Tamilla Zeynalova of the Baha'is expressed the modest wish that the new government restore the religious freedoms at least to the level before President Bakiev.

No significant change to the Religion Law was made by Otunbayeva's government, and she was herself replaced as President in December 2011 by Almazbek Atambayev. This has so far been the only time a Central Asian President has peacefully handed over power.

11 For a detailed account of these events, see NHC and Memorial's "Chronicle of Violence" available in English and Russian at: http://nhc.no/no/nyheter/A+Chronicle+of+Violence%3A+Report+details+June+2010+events+in+Kyrgyzstan.b7C_wlbKXP.ips

Developing a new State Policy

In February 2014 President Atambayev described as a “mistake” the constitutionally-enshrined “distancing state bodies from regulating processes in the religious sphere”. He claimed that in allowing freedom of conscience, “the authorities have allowed the religious sphere to take its own course”. “All these omissions, we now feel acutely,” he claimed, particularly among the Muslim population.

Participants in the 3 February Defence Council meeting included the then-acting head of the state-backed Muslim Board Maksat Haji Toktomushev, the new head of the State Commission for Religious Affairs (SCRA) Orozbek Moldaliyev, as well as officials from the National Security Committee (NSC) secret police, law enforcement agencies, the Presidential Administration, the single chamber Parliament (the Zhogorku Kenesh), and other government ministers and officials. Participants insisted that the Constitution’s separation of religion and the state is to prevent religious communities interfering in the state, while the state has the “full right” to interfere in religious communities’ activity.

Following the closed meeting, a presidential Decree prepares the way for increased state control over the Muslim Board (see below) and work on a draft Concept on State Policy in the Religious Sphere 2014-20. Although designated working groups are addressing their assigned tasks also with the formal participation of non-government actors, a lack of transparency results in limited news on finalising and publishing the Concept. The Decree also announces the preparation of legal changes, including to the Religion Law, the Code of Administrative Offences and other laws “taking into account the changed religious situation and approaches to its regulation”. Potentially the most significant changes are to the Religion Law, which are being led by a Working Group established in February 2014 to prepare all these changes (see below).

Increased control of Islam

The Defence Council gave specific “recommendations” to the Muslim Board “with the aim of strengthening the trust of Muslims of the country in the ruling body of the Islamic religion”. It was told to amend its Statute to increase transparency over income by increasing the independence of the Council of Ulems (religious scholars) and the Audit Committee, as well as increasing the regular reporting by the Chief Mufti.

The Board was also told “to bring order to the system of electing Imams and the Mufti, the conducting of attestation of Imams and mosques and other forms of qualifications and exams for clergy with the participation of representatives of state bodies, and the creation of a system of material encouragement of its results, as well as the appointment of Imams of mosques and Imam-hatibs after appropriate checks by law-enforcement agencies of whether they are members of extremist and destructive organisations”. It was also to conduct “canonical work” to unmask “extremist doctrines among fundamentalist movements”.



Kara-Khanid mausoleums and minaret in Uzgen, southern Kyrgyzstan

The Muslim Board was told to revert to the procedure in its pre-2009 Statute under which “the appointment of leaders of religious organisations is agreed with local authorities with the aim of preventing the taking up of appointments as Imams of mosques and regional Imam-hatibs by persons holding extremist views”. The Board was told to choose the Mufti, Imams, regional Imams, religious judges and members of the Council of Ulems “only from among adherents of the Hanafi school traditional for Kyrgyzstan’s Muslims”.

Despite the proposed heavy state controls over various aspects of the Muslim Board, its press secretary Asan Saipov expressed no concerns in February 2014. He assured there was no pressure from the state involved in the postponement of the new Mufti election from 8 February to 4 March, nor will there be any cases where the officials will reject candidates appointed by the Muslim Board, they just need to know who the Imams are and where they were educated.

“The President wants normalised Hanafi Islam,” Saipov explained. “Our government doesn’t seek to control us, it just wants order and to prevent the activity of terrorist groups. We want the state to bring order. We want government support.” The same confidence was expressed in April by the Quadi of Osh Region Niazaly Aripov, who welcomed Bishkek’s decree to strengthen statehood and develop traditional religions.

Many ordinary believers, however, do not share this desire for order and prevention. An outspoken lawyer in Osh, expressed in April 2014 that he was aware of 11 Muslims who were sentenced to long prison sentences for carrying a CD with so-called extremist religious material. He underlined that they were sentenced for carrying the very same CD, not a copy of it, and saw this as a strong indication that the CD had been planted. He was not aware of any use of torture in these cases, but was concerned with the negative effects of staying in prison. In fact, many return from prisons radicalised, in particular in the south of the country.

Government to harshen Religion Law?

The government informed the United Nations Human Rights Committee on 17 January 2014 that it is preparing to revise the Religion Law. It said that a particular focus would be on the numbers of founders – 200 - needed for religious communities to apply for registration, or state permission to exist. Article 8, Part 2 of the Religion Law bans the unregistered exercise of freedom of religion or belief. It also states that individuals face punishment if they exercise this human right without state permission in association with others.

The 2009 Religion Law required already-registered groups to re-register with the predecessor of the SCRA by 1 January 2010, but SCRA officials contradicted themselves over whether re-registration was necessary. There is also a lack of clarity over how religious communities can gain re-registration. This situation has prevented communities from exercising their full rights, including establishing local communities or inviting foreign religious workers. The uncertainty makes it very difficult for religious communities to abide by the law – and Kyrgyzstan’s international human rights obligations make it impermissible for the authorities to demand that groups of people be registered in order to exercise their freedom of religion or belief together.

Registration is very difficult to obtain, and requires 200 adult citizen permanent residents who are willing to openly identify themselves to local keneshes (local councils). Even if religious communities have this number of members, many people are afraid to openly identify themselves as members to the authorities, an understandable concern in a country that emerged from the Soviet Union’s grip not too long ago.

No information has been made public on what changes are currently planned, or if they will be made available for public discussion before being submitted to the Zhogorku Kenesh. Information on what progress the Working Group has made in preparing legal changes is not easily accessible even to members of the working groups, as not all members are invited to all meetings. However, draft versions of the amendments to the Religion Law and the State Concept were circulated informally in August 2014.

Working Group member Gulnaz Isayeva, an Inspector in the Legal Department of the SCRA, confirmed on 31 March that the Working Group is at present considering amendments only to the Religion Law, not to other laws. However, Isayeva would not say whether a draft had been prepared and whether any deadline has been given to complete the initial drafting. However, new SCRA Head Moldaliyev – in office since 17 January 2014 - told journalists after the Defence Council meeting that legal changes would focus in particular on state registration of religious organisations. “There are religious organisations which are unregistered. All this must be put right,” local news agency Akipress quoted him as declaring.

Moldaliyev is part of the Working Group preparing the changes, which is headed by the Secretary of the Defence Council Major-General Beishenbai Junusov. Moldaliyev of the SCRA and a Deputy Prime Minister were named in the Presidential Decree as Deputy Chairs. Other members include Mira Karybaeva, Head of the Presidential Administration’s Ethnic, Religious Policy, and Cooperation with Civil Society Department, as well as six deputy ministers and the deputy head of the National Security Committee (NSC) secret police.

SCRA Head Moldaliyev also complained about what he saw as the influx of “pseudo-Christian, pseudo-Orthodox religious ideas” after the country’s independence – without explaining what exactly he meant. He expressed backing for the Hanafi school of Islam and the Russian Orthodox Church.



Russian Orthodox Church in Osh

Kyrgyz religious believers fear that the proposed changes may make registration more difficult, with a possibly increased number of required founders. They also fear that this will be used to strip many religious communities of their state registration and thus their right to exist legally. “It’s just a matter of time before groups like Protestants and Jehovah’s Witnesses are stripped of registration,” one religious believer said. The believer is supported by a Kyrgyz commentator – who also asked not to be identified – who pointed out that many of the proposals emerging contradict the Constitution.

From what is known of the August 2014 version of the State Concept on Religion, it is positive that there is no mention of the word “sect”; that there is an acknowledgement that the current legislation is not ideal and needs clarifications, in particular on registration and so-called “religious expertise” issues; and the similar acknowledgement of conflicts surrounding burials of non-Muslims. The proposed creation of an Inter-Agency Coordinating Council and a State-Religious Community Council could strengthen dialogue between the authorities and religious groups. The work should follow the principles of transparency, openness and fairness as outlined.

However, there is a concern with the repeated reference to patriotism, the traditional role of Sunni Islam and Orthodox Christianity, the importance of strengthening the traditional family institution, and the prevention of harming the religious feelings of the believers. Further, the concept fails to acknowledge the necessity of educating youth in critical thinking, enabling them to question unrealistic promises, and the important role of a social safety net to keep young people out of radical movements. Unfortunately, the draft law on religion also available in August 2014 shows no sign of abolishing mandatory registration, censorship or the ban on proselytism.

Fear of expressing views the government dislikes

Fear of publicly expressing views the government may dislike is found among many religious communities. Religious communities also express their reluctance to publicly associate with coalitions of associations and advocacy groups publicly expressing views the government may dislike – even though the religious communities may agree with those views. In consequence, whereas the authorities might be under the impression that the religious groups have no complaints, and that advocacy groups are merely trying to justify their existence, the lack of publicly expressed concerns in fact confirm this fear.

The fear is fuelled by incidents such as recent raids on some religious communities and warnings from the NSC secret police that they should reduce their distribution of literature. For example, the Russian Orthodox cathedral in Bishkek was raided by from the NSC secret police, Interior Ministry, Sanitary Epidemiological Inspectorate as well as the Financial Police during a meeting for worship on 4 March. The SCRA has also continued to threaten a Russian Orthodox catechist with deportation, and has banned Russian Orthodox Bishop Feodosy who led the Church in Kyrgyzstan until 25 July (see below). The Cathedral raid appears to have been part of a series of raids and inspections on religious communities between January and April.

“The authorities are using these inspections to try to bring religious affairs under greater control,” a Russian Orthodox Church member said. “Alleged violations by religious communities may also serve as a foundation to adopt new laws to bring the relationship between the religious communities and the state to the position the government desires.”

Nearly 700 mosques nationwide were identified as carrying out “illegal” activity because they are unregistered. However, according to the Quadi of Osh region in April, the mosques were only temporary illegal as they merely forgot to register before the building was finalised rather than the other way around. Despite their complaints that registration is expensive and difficult, the Muftiate assists them in the process, for example through facilitating a lower price for various required documents. It was all under control and he knew them all, he assured.



Small mosques are put up on foreign funding all over Kyrgyzstan

The NSC secret police has also recently been particularly interested in Protestants who have visited Ukraine, and has questioned some about whether they have had contacts with political activists and their views of recent events.

Current situation

President Atambayev's government has so far made one set of changes to the Religion Law – to tighten censorship in December 2012 (see below). The government has attempted but failed to change the Law on other occasions. On 30 October 2012 draft amendments to the Religion Law, prepared by the SCRA, reached the Zhogorku Kenesh. These changes would have banned sending students for foreign religious education without state permission, required religious communities to have 200 founders in one locality, and ban all foreigners exercising freedom of religion or belief without a state license.

The next day the draft was assigned to the parliamentary Education, Science, Culture and Sport Committee, which was behind the censorship changes. The Committee is chaired by Kanybek Osmonaliev, former Chair of the State Agency for Religious Affairs (the SCRA's predecessor) under the Bakiev regime. As of August 2014 there has been no information on any action the Committee may have taken.

With the exception of introducing tightened censorship into the Religion Law (see below), Kyrgyzstan under President Atambayev has a record of preparing legal changes that would further restrict freedom of religion or belief – but which then fail to be adopted. For example, on 20 June 2013 the NSC secret police published for “public discussion” amendments which would have increased penalties in the Code of Administrative Offences for sharing one's beliefs with others, participating or leading unregistered

exercise of freedom of religion or belief. The amendments received the backing of the SCRA and other state bodies.

On 24 September the government approved them and sent them to the Zhogorku Kenesh. State officials – from both the NSC and the SCRA – vigorously defended the proposed new punishments and rejected the widespread concerns expressed by local religious communities. However, the Zhogorku Kenesh did not even consider the proposed amendments, which were blocked by its Human Rights Committee.

Earlier government attempts to change the Administrative Code to introduce new punishments and “offences” for exercising freedom of religion or belief were abandoned by the Justice Ministry in April 2013. Those amendments had also been prepared by the NSC secret police.

Registration implementation

After the Religion Law came into force in 2009, many religious communities remained unsure if their previous registration remained valid. Many have failed to gain registration, including all non-Muslim and non-Russian Orthodox communities. The Law has been described by human rights defenders Valentina Gritsenko of Justice, a human rights group in Jalal-Abad, and Dmitri Kabak of Open Viewpoint in Bishkek as “against the Constitution and discriminatory”.

Many communities who have decided to register have found it very difficult to do so. A major obstacle is Article 10.2 of the Religion Law. This demands that those wishing to found a religious organisation – which Article 8.3 demands should have at least 200 adult permanent resident citizens as founders – must among other documents: “present notarised lists of citizens endorsed by the local keneshes [councils] as founders, who are the initiators of establishment of the religious organisation or mission, and who are responsible before the Law within the frame of the organisation’s charter”. All 200 founders must provide their full name, date of birth, citizenship, place of residence, with their passport number, date of issue and issuing authority.

Many keneshes have claimed that they cannot notarize lists of founders because the SCRA has still not issued Regulations to implement the Law. But this has not stopped some keneshes from notarising the founders’ lists of state-backed Muslim organisations, and Russian Orthodox churches. In line with the confusion around the re-registration process, many religious groups have requested guidelines from SCRA and other authorities. However, the authorities have indicated that Regulations to implement the Religion Law are not necessary and will not be issued. Contradictory signals by the authorities’ of their intentions contributes to the uncertainty and insecurity experienced by religious communities.

The Law imposes unclear reasons why activity can be banned, registration may be refused or the activity of an organisation suspended. These include organisations engaging in activity which are thought to be “religious fanaticism and extremism, actions directed to opposition and aggravation of relations, rousing of religious hatred between different religious organisations”; engaging in “coercion to family fragmentation leading to family disruption”; “endangering state security”; encouraging “persecution”; and “refusal to provide medical support to persons whose life or health are in danger.” The unclear formulations and reasons given break Kyrgyzstan’s international human rights commitments; under the International Covenant on Civil and Political Rights (ICCPR) for example, “national security” is not a permissible reason to limit freedom of religion or belief.

Some communities think they may have been targeted by the authorities after applying to register. Jehovah’s Witnesses think criminal charges lodged against a mother and daughter in Osh in March 2013, and their being given two months’ house arrest, were aimed at punishing the community for lodging a fresh registration application. The two women were accused of allegedly conjuring live snakes from eggs and then swindling two old women of their life savings, charges which they and their fellow believers strongly deny. During multiple raids police and NSC secret police officers warned meeting participants that meetings were illegal as local communities had no state registration. According to Jehovah’s Witnesses these warnings were repeated in two written 1 April warnings from the SCRA, and are absurd considering their many attempts to obtain registration. After exhausting all legal avenues in Kyrgyzstan, Jehovah’s Witnesses have lodged two complaints to the United Nations Human Rights Committee over registration denials in four locations.

Members of the Baha’i and other religious communities have voiced concerns that many people are afraid to identify themselves to the authorities as founders. Others including Hare Krishna devotees, Jehovah’s Witnesses and Catholics have pointed out that many smaller communities do not have 200 members, and so have no possibility of legally existing. As noted above, there have also been contradictory statements from the authorities over whether groups registered before the Religion Law entered into force needed to re-register, and also over how groups can register.

Some communities have faced deliberate obstruction from the SCRA and local keneshes. In a 2 April 2009 decision, Bishkek Kenesh rejected the registration documents of nine named religious communities, including Protestants, Jehovah’s Witnesses, Jews and Catholics. At the same time it called for the Religion Law to be amended to abolish the requirement for keneshes to give approval for lists of founders. In a separate decision the same day, the Bishkek Kenesh approved the list of signatures for re-registration of the Russian Orthodox Bishkek and Kyrgyz Diocese.

In November 2011 the SCRA announced that permission to exist without applying for registration had been given to 122 mosques, 23 Muslim religious education institutions, and three Russian Orthodox organisations. It is unclear why these exceptions were made. The SCRA also claimed at the time that 2,200 religious organisations and associations are officially registered, including 77 Islamic organisations, 1,764 mosques, 62 madrassahs (Islamic religious schools), and 140 Christian communities, including Baptist, Catholic, Pentecostal and Russian Orthodox churches.

In late 2013, the SCRA published on its website lists of both Muslim and non-Muslim registered organisations. The published lists reveal that only 11 Muslim communities and 2 non-Muslim communities (both Russian Orthodox parishes) have been able to gain registration since the entry into force of the Religion Law in 2009.

Ahmadi Muslims banned

One religious community – the Ahmadi Muslim community – had its registration stripped from it. Because of the re-registration denial, the Ahmadi community has not been able to meet for worship since July 2011, when the SCRA refused to grant re-registration to the Ahmadi Muslims in Bishkek and three other locations. Attempts to challenge re-registration denials in court have failed.

The SCRA's registration denials followed the NSS secret police having told the SCRA that Ahmadi Muslims are a "dangerous movement and against traditional Islam".

The General Prosecutor's Office sought in 2012 to have the community included on a list of banned organisations as "extremist". Justifying this, Zhanibek Botoyev of the SCRA said in July 2012 that Ahmadi Muslims have worked for a decade in Kyrgyzstan with no problem, but now had complained to the President and higher authorities about the Muslim Board, "which oversees millions of Kyrgyzstan's Muslims". "We classify this as inter-religious enmity," he stated. "We have the opinions from various religious experts and Muftis that the Community is not even Muslim. They need to decide who they are, whether or not they are Muslim." Needless to say, it should not be the task of the state registration body to delve into theological discussions.

The Court established that the General Prosecutor's Office did not establish any facts of extremism in the activity of Ahmadi Muslim Community, and applied to the Court in violation of legal procedures. The lawyer Aysel Matiyeva who defended the Ahmadi Community during the initial attempt to ban them, was in July 2013 concerned that the Community may be accused of unregistered activity as they were not re-registered by the State. A community member who asked not to be identified was afraid to lose the registration they still had with the Justice Ministry if they were to meet for worship or any religious activity, thus making everything they did illegal.

The Ahmadiis' 2014 appeal to the Supreme Court came after Judge Zhyrgalbek Nurunbetov of Bishkek's Inter-District Court on 30 January 2013 and Judge Antonina Rybalkina of Bishkek City Court on 15 May rejected the Community's appeal against the SCRA's 2011 refusal of registration. On 10 July 2014 the Supreme Court rejected an appeal against two lower courts' support of the SCRA's refusal to give state registration to the Ahmadi Muslim community. Asel Bayastanova, the Ahmadiis' defence lawyer, explained that this means Ahmadi Muslims cannot act like Ahmadi Muslims and organise meetings for worship or any other activity together. An Ahmadi Muslim, who asked to remain unnamed for fear of state reprisals, agreed, pointing out that "this is equal to banning us ... If we are found by the NSS secret police, the ordinary police, or any other state agency to be carrying out 'illegal' religious activity, we will be given harsh punishments - maybe even imprisonment."

The Ahmadiis' lawyer in the appeal Asel Bayastanova attempted to demonstrate to the Supreme Court that both the City and Inter-District Courts violated legal procedures by not questioning the 'religious experts' the SCRA used. She stated that these "experts" made "nonsensical and false claims in their opinions, branding a peaceful community as a dangerous sect". She also questioned the content of the SCRA's judgement and noted that the authorities have not been able to identify any "dangerous" or "extremist" actions by Ahmadiis. However, Bayastanova said that the Supreme Court "ignored our arguments, said nothing new during the hearing, accepted the previous court decisions as lawful, and rejected our appeal".

The SCRA's lawyer, Zhanibek Botoyev, explained that "we are not going to send them to prisons". He also stated that "they can individually pray or read their books in their homes but they must not worship together. Otherwise they will be punished."

UN Human Rights Committee criticism

The United Nations (UN) Human Rights Committee commented on 25 March 2014, in Concluding Observations (CCPR/C/KGZ/CO/2) to its consideration of Kyrgyzstan's record under the ICCPR, on both the current Religion Law and the plans to amend it. It noted that "the Committee is concerned about the restrictions incompatible with provisions of the Covenant [ICCPR] contained in the current law, including with respect to missionary activities, registration procedure and dissemination of religious literature".

The Committee stressed that planned amendments to the Religion Law should "remove all restrictions incompatible with article 18 of the Covenant, by providing for a transparent, open and fair registration process of religious organizations and eliminating distinctions among religions that may lead to discrimination".

Conscientious objection

The right to refuse to perform military service is part of everyone's right to freedom of thought, conscience and religion guaranteed in Article 18 of the ICCPR, which Kyrgyzstan acceded to in 1994. No Central Asian state apart from Kyrgyzstan allows any form of conscientious objection. Yet conscientious objection to military service is restricted to young men who are "members of registered religious organisations whose beliefs do not allow the use of weapons or service in the Armed Forces", according to the Law on Military Obligations.

Article 32 of the current Law on General Obligations of Citizens, on Military and Alternative Service imposes a financial penalty (described as "alternative service") on young men who do not perform the one-year military service between the ages of 18 and 27 without a valid exemption (such as family or medical circumstances or membership of a registered religious community which opposes military service).

Proposed amendments to the Law with the Zhogorku Kenesh maintain this restriction, which was sharply criticised on 20 March by human rights defender Dmitry Kabak of Open Viewpoint. The NGO pointed out that objections to military service "are not always connected with a religious belief". It also noted that the limitation to members of "registered religious organisations" could cause problems as decisions to opt not to serve in the armed forces "are not connected to state registration [of religious organisations]". Not to mention that pacifism also is a political stand not necessarily linked to any religious belief.

The UN Human Rights Committee in its 25 March Concluding Observations repeated its earlier concerns over Kyrgyzstan's "limiting conscientious objection to military service only to members of registered religious organizations whose teaching prohibits the use of arms and stipulating a shorter period of military and alternative service for persons with higher education".

On 24 July 2000, the then UN Human Rights Committee's Concluding Observations on Kyrgyzstan stated that it "takes note that conscientious objection to military service is allowed only to members of a registered religious organization whose teachings prohibit the use of arms". But the Committee stated that: "Conscientious objection should be provided for in law, in a manner that is consistent with articles 18 and 26 ["Equality before the law"] of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers" (CCPR/CO/69/KGZ).

In its 2014 concluding observations the Human Rights Committee noted Kyrgyzstan's intentions to amend the Law on General Obligations of Citizens, on Military and Alternative Service. It again insisted that Kyrgyzstan "should ensure" that any amendments "provide for conscientious objections in a manner consistent with articles 18 and 26 of

the Covenant [ICCPR], bearing in mind that article 18 also protects freedom of conscience of non-believers, and stipulating periods of military and alternative service on a non-discriminatory basis”.

Deputy Defence Minister Zamir Suerkulov on 1 April 2014 defended restricting the right to conscientious objection to members of registered pacifist religious organisations, stating that non-religious conscientious objectors or members of unregistered religious communities will indeed have to serve in the army if the proposed changes to the Law (see below) are adopted. He was unable to explain why conscientious objection is not allowed for everyone who cannot in conscience do compulsory military service.

Temir Kasymov, assistant to Deputy Mairamkul Tlenchiyeva who co-drafted proposed changes to the Law, on 25 February stated that Muslim or Russian Orthodox conscientious objectors, and atheists, would be able to opt out of military service. But asked what would happen if Muslim or Orthodox leaders were asked if their faiths allowed individuals to perform military service, Kasymov appeared unsure, saying that “there haven’t been cases when Muslims refused to serve”. Kasymov pointed out that the proposed amendments are still in draft form, and asked for help in framing them to meet concerns over who will be allowed to be a conscientious objector.

Proposed change

Article 32, Part 4 of the current Law imposes a financial penalty – called “alternative service” - on those who do not perform military service on grounds of membership of a registered pacifist religious organisation. The penalty is currently 18,000 Soms, which is equivalent to between one or two months’ average salary. This is specified as payable to the Defence Ministry via Military Conscription Offices, to be “used for support of and provisions for troops, for conducting training assemblies, upgrading educational facilities, and increasing social security for military personnel”. Article 32, Part 7 obliges those who have paid the financial penalty in place of military service to be included in the military reserves at the completion of the designated “alternative service” period.

Jehovah’s Witness young men have objected to both provisions, and have been convicted under Criminal Code Article 351, Part 2 for “evading” the “alternative service”. Thirteen have been sentenced to pay the maximum fine of 20,000 Soms, or do the maximum penalty of 240 hours community service.

Proposed amendments to the Law would have transferred the recipient of the “alternative service” payment from the Defence Ministry to “the state body which handles social issues”. Although the draft amendments were assigned to the Defence Committee for consideration, the Speaker Asylbek Jeenbekov also sent them to the Education Committee.

The legal amendments were ordered in a November 2013 decision of the Supreme Court's Constitutional Chamber, which declared unconstitutional three provisions of the current Law on General Obligations of Citizens, on Military and Alternative Service, effectively annulling them: that the "alternative service" fee goes to the military; that conscientious objectors during this period are under military supervision; and that when completed individuals are assigned to the military reserve. It said these deficiencies of the Law needed to be remedied. Following this decision, the 13 Jehovah's Witness conscientious objectors had their criminal convictions and fines overturned.

On 26 March the Education Committee unanimously rejected the draft. It claimed that the draft "contradicts Kyrgyzstan's Constitution and that many religious movements of the like of the Jehovah's Witnesses could use this draft law to fill up their ranks". It claimed that adopting the draft would "lead to the destruction of Kyrgyzstan's security". The statement was signed by Committee Chair Kanybek Osmonaliev, a former head of the State Agency for Religious Affairs (the SCRA's predecessor) under the Bakiev regime.

Deputy Defence Minister Zamir Suerkulov insisted that the Defence Ministry supports the draft in principle and that certain difficulties in getting the draft through were to be expected though a hearing in the Defence Committee was to consider the draft next. Kasymov, assistant to Deputy Tlenchiyeva, downplayed the Education Committee's rejection and also expressed faith in the Defence Committee and the government which also is behind it. Kasymov noted that, if the Defence Committee rejects the draft, it cannot be considered by the full parliament for a further year. It is unclear at which stage the draft law is now.

Harassment

The UN Human Rights Committee on 25 March also condemned "reports of religious intolerance with respect to converts from the majority religion, including incidents of hate speech". It said Kyrgyzstan should publicly condemn "any act of religious intolerance and hatred" and "investigate all cases of violence based on religion, prosecute perpetrators and compensate victims".

Law-enforcement and other state agencies have repeatedly failed to stop violent attacks on people exercising freedom of religion or belief, or even appear sympathetic to such attacks. The authors are aware of violent attacks against members of smaller religious communities, but the victims of such attacks more often do not wish to discuss them for fear of further attacks.

A typical example of an attack took place in 2012 in the south-western Jalal-Abad Region. A Jehovah's Witness Kingdom Hall was first destroyed in 2010 by a mob who also attacked community members. "Despite our multiple complaints in 2010, the persons responsible for the criminal attacks were not charged, and failure to prosecute the persons

who carried out the mob violence in May 2010 is no doubt the main reason why the mobs felt they could attack our community again” lamented community representative Khamit Iskakov in June 2012. Complaints to the national Prosecutor-General in 2010 were no help, as the complaints were merely forwarded to the Jalal-Abad Prosecutor’s Office.

In early 2012 groups of young men began repeatedly throwing stones at community members rebuilding their Kingdom Hall. Jehovah’s Witnesses complained to Jalal-Abad law-enforcement authorities about this in mid-April, noting that community members had also received threats. But the authorities took no noticeable action. Between 13 and 16 May the violence intensified. “Large mobs gathered and inflicted heavy damage on the place of worship,” Iskakov recounted. On 18 May the mob burned down the Kingdom Hall – again.

Police have in the past raided Jehovah’s Witnesses and other communities in Jalal-Abad and other regions. The SCRA has also obstructed the registration of Jehovah’s Witness and other communities throughout Kyrgyzstan. Deputy Prosecutor-General Usmanova said in June she could not comment on attacks such as those on the Jehovah’s Witnesses since she did not know the details, despite a complaint the Jehovah’s Witnesses sent to the Prosecutor-General.

Jehovah’s Witnesses learned from the police that in late May they stopped four young men on suspicion of committing the arson, but released them the same day on receiving assurances that they will not leave the town. The police “seem unwilling to investigate the case”, and are letting supporters and relatives of the young men and other attackers “pressure us to withdraw our complaint,” Iskakov said. One example is the mob that gathered in front of the Toktogul Police Station on two occasions in June when he took some of the victims to testify, shouting that they should withdraw their complaint. Iskakov is concerned someone from the authorities may be informing the attackers as representatives of a local mosque, and a woman who works for the local municipality, whose home is next to the Kingdom Hall, were among the mob.

According to Iskakov, Deputy Chief of Toktogul Police, Ayilchi Myrzamamytov, invited the mob into the police station to settle the indifferences face-to-face on one of the occasions. Jyldyzbek Zairov, Deputy Prosecutor of Toktogul, was also present. None of the officials reacted when people from the crowd screamed that Jehovah’s Witnesses must withdraw their complaint, otherwise they will abduct their co-believers and also burn down their homes. The officials rather encouraged an agreement. The mob gave them one week to withdraw the complaint, but they did not do so. On the second occasion the mob made the same demands, but the Jehovah’s Witnesses talked to a person who presented himself as their lawyer, and so avoided having to face the mob this time.

Deputy Police Chief Myrzamamytov denied that the mob had entered the building, but had no answer as to why he and Deputy Prosecutor Zairov did not prevent the crowd

from threatening the Jehovah's Witnesses. Regarding proper investigation of the case Myrzamamytov referred to the Interior Ministry whereas Deputy Prosecutor Zairov referred to the police. Zairov informed that he had witnessed the meeting in the Police Station by chance, and said there had been no need to make any interventions as no one threatened the Jehovah's Witnesses; they "just asked them nicely to withdraw their complaint".

The same summer, the then-new Head of the SCRA Abdilatif Zhumabayev made a range of astonishing comments that illustrate the attitude of central representatives of the authorities. An interview by Forum 18 asked what law-enforcement agencies are doing to protect people's freedom of religion or belief, why they are reluctant to act against those who use violence against people peacefully exercising fundamental rights, and what the SCRA is doing about this. According to Zhumabaev, Jehovah's Witnesses are "peacefully existing in other regions but in Jalal-Abad they are destabilising the situation". His elaboration on this statement was that "local people do not want them in their region. For example, a year ago people of [the south-western] Batken Region stated that they do not want Jehovah's Witnesses in their region, so the authorities cancelled their registration for that region." Asked whether minorities cannot enjoy human rights in Kyrgyzstan, and whether in Jalal-Abad the mobs decide who should believe in what, Zhumabayev replied: "I do not give a damn about who believes in what, and we cannot always protect minority rights at the cost of the majority. We need to protect the rights of the majority."

Failure to ensure people may bury their dead in the way they would wish

The government is still continuing its long-standing failure to ensure that people may exercise their right to bury their dead with the religious ceremonies and in the cemeteries they would wish. Protestants, Baha'is, Jehovah's Witnesses and Hare Krishna devotees have all long warned that the authorities have not resolved this problem, which causes great distress to the families and friends of the dead. This lack of political will is reinforced by the Religion Law, which in a small but crucial sentence increased the difficulty of non-Muslims being buried according to their own wishes. Article 16, Part 3 states: "Recognition of regulations of use of confessional cemeteries and regulations of cemetery exactions shall be governed by regulations of local municipalities."

Local people and Muslim leaders, with the connivance of local authorities, have long obstructed or denied burials according to their own rites to deceased Protestants, Baha'is, Jehovah's Witnesses and Hare Krishna devotees – especially those of ethnic Kyrgyz or ethnic Uzbek background – in village graveyards which they insist are only for Muslims. The authorities appear to be content to allow local Imams to control who is buried in state-owned cemeteries not owned by religious communities. Police often back those obstructing these burials, in some cases actively participating in burial denials. The authorities' failure to ensure people may bury their dead in the way they would wish causes deep distress to the family and friends of the dead and their communities.



Village graveyard in Issyk-Kul region

Such cases continue, even close to Bishkek. The most recent publicly documentable failures by the authorities to ensure people may exercise their rights concern Protestants. In January 2014 in the villages of Oktyabr and Zherge-Tal, in Suzak District of the north-western Jalal-Abad Region, local Imams interfered in the conduct of funerals. In Oktyabr the Imam barred the burial of a Protestant woman in the village cemetery, and in Zherge-Tal the Imam stopped a Protestant pastor from participating in the funeral of his Muslim brother. In Kyrgyz culture it is extremely important that a brother take a central part in the funeral of a sibling.

Later in 2014, in another region of Kyrgyzstan which relatives do not wish to be named for fear of reprisals, the authorities failed to intervene when a local Imam refused for three days to allow the burial of a deceased Protestant woman in a village cemetery. The Imam permitted the burial to go ahead only after the woman's Protestant husband was forced to publicly renounce his Christian faith and declare that he is a Muslim, according to a family member and local Protestants who attended the funeral. At no point did the authorities attempt either to ensure that the family could exercise their rights to bury their dead, or to protect the distressed husband of the woman against being forced to change his faith to bury his wife.

Relatives and friends are frequently afraid to raise this problem, for fear of reprisals and mob violence aided by the lack of willingness by state officials to defend people's human rights. In a typical comment, complaining to local authorities about the violations was described as "useless" by Pastor Kapar Yusup uuly. He himself was stopped from participating in his brother's funeral in early 2014.

Both the April and August drafts of the Concept on State Policy in the Religious Sphere 2014-20 acknowledge that a problem with burials exists, but not that the authorities fail to ensure that citizens are protected from violence and coercion and allowed to exercise their rights on a basis of equality. The April draft Concept stated that “prophylactic work must be conducted with village Imams explaining to them that all citizens of Kyrgyzstan have the right to be buried properly and with respect”, that “village municipalities must learn how to cooperate with religious communities”, and that municipalities “will be asked to allocate land plots for the burial of local non-Muslims in case of demand”.

Whereas the chief expert of the Presidential Administration’s Ethnic and Religious Policy and Public Affairs Division, Kubanych Abakirov, who has been involved in preparing the Concept, admitted in June that “even these possible solutions in the Concept may not resolve all future burial problems”, head of the SCRA Moldaliyev claimed that the problem of burials was resolved. Problems are more likely in the situation when family members of a deceased non-Muslim person – regardless of the deceased’s wishes - insist that they be buried in the same cemetery with their Muslim relatives. Moldaliyev rejected that any violations take place in connection with burials despite the witness testimonies outlined to him, he claimed that: “We did not hear about these cases. No one complained to us.”

Galina Kolodzinskaya, an independent religious expert from Bishkek, points out that the specialists drafting the Concept did not include in its first Draft possible solutions for the burial problems non-Muslims face. “Even if the Concept finally includes such solutions, it will still be a document, not a law on the basis of which actions and measures are taken,” she said in May. She insists that solving this long-standing problem requires both political will “on the higher level”, as well as laws. “Until then the problem will not be solved, and similar violations will take place,” she warned. “At the moment I don’t see such political will on the higher level.”

Censorship increased under Religion Law

President Atambayev’s government has so far made one set of changes to the Religion Law. In December 2012 censorship changes to the Law increased state control over religious literature and other materials. A new Article 22, Part 9 states: “Control on the import, production, acquisition, transportation, transfer, storage and distribution of printed materials, film, photo, audio and video productions, as well as other materials containing ideas of religious extremism, separatism and fundamentalism is conducted by the plenipotentiary state organs for religious affairs, national security and internal affairs.”

An addition to Article 22, Part 3 states that registered religious organisations, at the request of national and local government agencies, “have the right to give an explanation of the presence of elements of religious extremism” in such printed and digital materials.

Both SCRA lawyer Kanybek Mamataliyev and Deputy Tursunbay Bakir uulu, one of the initiators of the Religion Law changes, were however unable to provide any specific examples of what these wide-ranging terms of “ideas of religious extremism, separatism and fundamentalism” might mean. They also failed to provide answers as to which type of literature this might be, and why – if there is a problem which can be defined - Kyrgyzstan is not using alternatives to censorship.

Prior existing censorship

The Religion Law did not prior to the 2012 changes impose prior compulsory censorship of all religious literature. But it already allowed state examination of any religious literature and requires state examination of all religious materials placed in a library. It also bans all distribution of religious literature, print, audio-video religious materials in public places, on the streets, parks, and distribution to homes, children’s institutions, schools and higher education institutions. Such distribution is permitted only within the confines of a religious organisation’s legally owned property, or in places allocated by local authorities. If religious literature is found to be “extremist”, the religious organisations the literature is associated with can also be declared “extremist” and banned.

Discriminatory state censorship is already applied against all religious communities, apart from the Muslim Board and the Russian Orthodox Church. A lawyer from one religious community, who did not wish to be named for fear of state reprisals, experienced in June 2012 that permission is required from the State Commission for Religious Affairs (SCRA) before Customs will release literature. The lawyer was not certain whether any legal basis exists for Customs and other state agencies to allow the SCRA to make this decision, and left the option open it may be just an agreement between the state organs to delay or block some communities’ literature and favour others.

Khamit Iskakov, a Jehovah’s Witness representative, described in June 2012 that Jehovah’s Witnesses have received shipments of literature from abroad without problems. But they had to obtain a signed and stamped letter from the SCRA allowing release of the shipments by Customs. “Each time we had to give samples of literature to the Commission for an ‘expert analysis’ – even if some of the books were the same as in previous shipments,” he lamented. “Some books were not released but returned to the sender.” Apparently, the books that were returned had quotations from the Koran to better explain some Jehovah’s Witness teachings to Kyrgyz people, and in some other books the SCRA officials did not like the pictures.

Aleksandr Shumilin, a Baptist pastor who chairs the Association of Evangelical Churches, explained in June 2012 that Baptists are not importing much literature at present. He added that Protestant Churches are not publishing much inside Kyrgyzstan. This is because printing firms and publishing companies often refuse to do work for Protestants because

they were told by officials not to print religious materials. He declined to give details of specific cases for fear of state reprisals.

“Chaotic, selective and arbitrary” implementation?

Political analyst Igor Kamenko of Egalitee expects that “implementation is likely to be chaotic, selective and arbitrary”, and that “no one will check Muslim Board or Russian Orthodox literature”. His predictions were that Protestant Christians and Muslims outside the framework of the state-backed Muslim Board who are already described as ‘non-traditional’ and regarded with suspicion by many, are most likely to face problems. Many religious communities, some of whom did not wish to be named for fear of state reprisals, informed in June that total censorship is already applied to all imported religious literature and materials.

Several religious leaders, who asked not to be identified, think the Religion Law amendments are unlikely to be targeted at them. However, they expressed concerns, given the arbitrary way many laws are often applied in Kyrgyzstan.

Kamenko of Egalitee pointed out that the 2009 Religion Law already grants the authorities extensive censorship powers, while religious literature can also be scrutinised under the 2005 Anti-Extremism Law. The amendments thus added the SCRA to the already included Interior Ministry and the NSC secret police, but as it is not a professional organisation the SCRA will not be able to do anything without help from the other two, he concluded.

How will censorship be implemented?

SCRA lawyer Mamataliyev insisted that “we [the SCRA] will only check a work if state organs ask for it”. He had no comment as to how non-SCRA officials can know whether to ask the SCRA to check if a work contains the undefined wide-ranging concepts “ideas of religious extremism, separatism and fundamentalism” unless the officials themselves check the work first.

Political analyst Kamenko of Egalitee stated that the government wants to control all religious books and materials, but thought that in practice that it will struggle to do so as it doesn’t have the resources to check all books. Use of the new powers will thus be selective. In addition, no standards have been set out for those who conduct “expert analyses”, nor how they should go about the analyses, so a SCRA analysis doesn’t need to justify its findings, he warned.

Since the censorship amendments were passed into the Religion Law, religious communities have not experienced new major problems with increased censorship.

Film censorship

The most high profile freedom of religion or belief censorship case has involved the film “I am gay and Muslim”. This was scheduled to be shown in September 2012 at the Bishkek Bir Duino (One World) human rights film festival. The film, by Dutch filmmaker Chris Belloni, follows the life of several gay Moroccans who discuss their reflections on their orientation and Islam.

After a protest about the film to the NSC from acting chief mufti Rakhmatullo Haji Egemberdiyev, the NSC’s Investigative Directorate wrote to the SCRA on 27 September asking it to conduct an “expert analysis” of the film. The NSC asked specifically if the film is “religious extremist”, whether it is associated with a “religious extremist organisation”, if it calls for Kyrgyzstan’s Constitution to be changed and whether it incites “ethnic, racial or religious hatred”.

That same day, SCRA “experts” Denis Pyshkin and Asylbek Mambetov viewed a 58-minute disc of the film provided by the NSC secret police, as well as two accompanying brochures, reached their conclusions and typed up the three page “analysis”. This states that the film “shows Islam in distorted and offensive tones and completely contradicts the canons of Islamic doctrine” and “it is clear that the aim of the film is to incite religious intolerance and provocative actions on the part of the Muslim population”. The analysis concluded that the film was therefore “extremist” under the terms of Article 1, Part 1 of the 2005 Anti-Extremism Law.

Later that day the NSC secret police confiscated the film before it could be shown, and four NSC officers led by Iskender Soodanbekov arrived with an official warning – seen by Forum 18 – to the organiser of the Bir Duino human rights film festival, Tolekan Ismailova. It warned her not to show the film, otherwise she would face possible prosecution under Criminal Code Article 299 (“Incitement of national, racial, or religious hatred”). General Prosecutor Aida Salyanova also telephoned Ismailova, warning her not to show the film as it insults the feelings of Muslims.

The next day Judge Almaz Kalybayev of Bishkek’s Pervomaisky District Court upheld a suit from the General Prosecutor’s Office banning the film throughout Kyrgyzstan as “extremist”. The General Prosecutor’s Office then ordered the State Communications Agency to take “urgent measures” to block access to the film on the internet from within Kyrgyzstan. Attempts to challenge the ban on the film have failed.

The Religion Law

The main provisions of the Bakiev-era Religion Law, which are not discussed above, are outlined below.

Ban on sharing beliefs, restrictions on religious literature

The Law states that all “actions directed to proselytising of the faithful from one denomination to another (proselytism), as well as any other illegal missionary work, are prohibited”. Typically, the Law does not define what constitutes “illegal missionary work”. As a joint Council of Europe Venice Commission / Organisation for Security and Co-operation in Europe (OSCE) Advisory Council on Freedom of Religion or Belief legal review – made public in October 2008 - noted, “numerous provisions of the Draft Law inappropriately restrict freedom of expression and rights to disseminate religious and other materials”.

Religious education and the religious activity of minors

All religious educational establishments – universities, institutes, madrassas, seminaries, Sunday schools and orphanages – must have state registration. These establishments can only be founded by registered organisations, and must - among numerous other requirements – have local authority permission to exist. All children are also banned from being active in religious organisations, and no religious organisations are permitted in any educational institute – apart from in religious education institutions. This prevents even secondary school and university students from organising religious groups in their place of education.

Hostility to international contacts

The Religion Law is hostile to religious communities with foreign contacts. If a community has “administrative centres located beyond Kyrgyzstan or having foreign citizens in its administrative body” it is classified as a “mission”. This must re-register every year and does not have legal status. It can be refused registration if it poses “a threat to the state and social security, the interethnic and ecumenical concord, health and morality of the population, or in other cases anticipated by legislation”. Similarly, foreign religious workers must register with the State Agency before they can engage in religious activities. This can be denied “if this may endanger public safety, social order, interethnic and ecumenical consensus, social health and morality.” The authorities have in several known cases compelled foreign missionaries to leave the country or have denied them permission to extend visas.

The SCRA banned Russian Orthodox Bishop Feodosy (who led the Church in Kyrgyzstan until 25 July) by refusing him registration as a missionary. Under the Religion Law, this prevents him from working as a religious worker in Kyrgyzstan. Bishop Feodosy had to leave Kyrgyzstan in early June as his missionary visa and permit expired on 10 June and was not extended. The Church received the official refusal letter on 14 July - more than a month after the Bishop left the country. “This is a ban on the Bishop”, Orthodox Church spokesperson Yuliya Farbshteyn said. The SCRA claimed that the Bishop was denied registration as he “threatens the public security of Kyrgyzstan and sows religious discord among the population”, something the orthodox believers totally deny. The SCRA

also said that registration was refused as the Interior Ministry's Anti-terrorism Department was investigating the Bishop, although this department has said it has nothing against the Church or the Bishop. On 25 July Feodosy was replaced by the Moscow Patriarchate as leader of the Church in Kyrgyzstan by Bishop Daniil (secular name Semyon Kuznetsov).

Under the ICCPR the only grounds on which a state may limit manifestations of freedom of religion or belief are if this is: "prescribed by law" and "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others". "National security" is not a permissible reason to limit the exercise of freedom of religion or belief.

The SCRA also warned Vakhtang Fyodorov, Catechist in Bishkek of the Russian Orthodox Church, that he is violating the Religion Law by carrying out missionary work without permission from SCRA and is still threatening him with deportation. To no avail he has been trying to explain to the SCRA that he is only teaching Church members within the Church and is not involved in converting anyone into Orthodoxy.

Like Bishop Feodosy, Fyodorov was also investigated by the Interior Ministry's Anti-terrorism Department, being summoned to see them in June after a written request from the SCRA to the Ministry deport him. The Ministry officials verified his residence permit in Kyrgyzstan. On their request he wrote a statement explaining he is not involved in missionary activity, and was told they would inform the SCRA that there are no grounds to deport him.

As Russian citizens, both Bishop Feodosy and Fyodorov may live in Kyrgyzstan without visas. Under Kyrgyzstan's international human rights obligations, everyone resident in a country has the right to freedom of religion or belief, including sharing his or her beliefs with others. However, the Religion Law contradicts this.

Use of property

The Law states that organisations can "own only buildings, constructions, ceremonial objects, objects of production, social, and charity functions, monetary funds, and other property necessary for provision of their activities." However, the Law does not define what is meant by "necessary" or who decides on necessity. Religious events outside a community's own premises can, under the Law, "be performed in the procedure stipulated by the legislation of Kyrgyz Republic." However, no such procedure is specified in the Religion Law.

There can also be other threats to religious communities' property. The State Property Fund is seeking to confiscate the building of the Protestant Church of Jesus Christ in Bishkek. On 24 January a court – following a suit brought by the Fund with the SCRA as an interested party - annulled a 1999 sales contract between the Church and the Fund for the former Culture House of the old Bishkek Machine-Building Plant, claiming the

sale violated the 1995 law that prohibits privatisation of the state's cultural property. The Church appealed against the decision and separately to have the whole case thrown out, and Bishkek City Court granted this on 18 April.

However, the State Property Fund is still seeking – this time through the Supreme Court - to confiscate the Church's building.

The case originated on 12 May 2009, during the Bakiev-era, when the General Prosecutor's Office sent a proposal to the Government's State Property Ministry to "remedy the breaches of the Law in the contract", but that no suit was brought to court. "Now no suits can be brought in court based on the Law because the three years' limitation period for bringing a suit after an alleged violation expired in May 2012", Church members pointed out. Lyudmila Usmanova, Deputy General Prosecutor, said she was unable to comment.

Hearings began in the Economic Court in November 2013 with two other hearings in December 2013, in which Church representatives and interested third parties to whom it rents rooms in the building participated. The Church boycotted the fourth and final hearing, held on 24 January 2014. "We and the third parties gave all the evidence for the defence but the Court ignored it totally," church members complained. "Then in our absence the Judge made the decision." Church members learned of the final 24 January hearing only two days earlier, when the Economic Court rejected their separate motion to have the whole case thrown out. Church members did not wish to be seen to endorse the case by attending the final hearing.

Church members, and members of other Protestant churches in Bishkek, suggested that the authorities' legal moves to seize the building may be motivated by their dislike of the Church's activity and its members spreading their faith, or by the possibility of selling the property – which is in a sought-after location in Bishkek. One construction company already has plans for the site. Aysulu Orozbekova of the State Property Fund had no response to these comments, and would also not identify property ownership the Fund is looking into affecting other religious communities. Such comments, and situations like that which faced the Church of Jesus Christ, add to the uncertainty which surrounds the question of religious communities' property.

Religious communities also face inspections by a range of state agencies, as has happened to mosques and churches in Bishkek since early 2014. Among those visited several times was Bishkek's Hope Baptist Church, most recently on 7 April. Officials inspected the documents of its building, and the Church's Pastor Eduard Pak has already been ordered by the Mayor's Office to vacate the land since they are only renting it.



Christian graveyard in Osh

Human rights standards

The Religion Law claims that: “If there exist other conditions defined within international agreements signed by the Kyrgyz Republic, different from those stated in the legislation of the Kyrgyz Republic related to freedom of religion and religious organisations, then the conditions of the international agreements shall prevail.” So many provisions of the Law contravene international human rights standards – as the Law’s drafters were well aware, not least following the joint Council of Europe Venice Commission / OSCE legal review – that it is difficult to accept that this claim was meant to have any force.

Post Bakiev, there is still a need to bring laws into line with the international human rights standards Kyrgyzstan has formally committed itself to implement. Currently, people exercising freedom of religion or belief too often experience official actions as arbitrary or an obstruction to the exercise of this freedom in line with international human rights standards. Official actions and legal proposals, which impose greater controls on and obstacles to the exercise of freedom of religion or belief, lead to suggestions that a strong motivation is the wish to control society.

This points to a need to ensure that not only laws but also official actions facilitate rather than obstruct the exercise of freedom of religion or belief and related human rights such as the freedoms of association and expression. For only in this way will Article 16 of the Constitution become a reality:

“Rights and freedoms are inalienable and belong to everyone from birth. Human rights and freedoms are the supreme value. They directly determine the intent and actions of the legislative, executive and local authorities. ... No one can be discriminated against on grounds of gender, race, language, disability, ethnicity, religion, age, political or other beliefs, education, origin, property or other status, and other circumstances.”

This Constitutional guarantee indicates a way that is right both in principle and in practice to ensure the security and flourishing of Kyrgyz society in line with international human rights standards. As the Bakiev-era and its legacy demonstrates, obstructing the exercise of human rights is both wrong in principle and has the effect of promoting intolerance and violent instability.

F What is Freedom of Religion or Belief?

Freedom of religion or belief is one of the oldest of the values now codified as fundamental human rights. Attempts to establish it in varying forms go back many centuries.¹² Throughout history, attempts to suppress freedom of religion or belief have been proved to be both wrong in principle and doomed to long-term failure.¹³ Freedom of religion or belief for all is an essential part of any society that is both at peace with itself internally, and which can also contribute to peaceful, just and stable international relations. Thus, the promotion of freedom of religion or belief for all is very much in the national interest of states and the interests of international organisations.

The definitions of the terms “religion” and “belief”, as of the related concepts “thought and conscience”, occupied much attention in the drafting of the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR).¹⁴ Definitions of these terms are still extensively discussed, reflecting the importance and complexity of the subject. National governments may not, however, unilaterally redefine for domestic (and usually restrictive) purposes the definitions used in international human rights standards. The term “freedom of religion or belief” is to be understood broadly, following Article 18 of both the UDHR¹⁵ and the ICCPR¹⁶. As the UN Human Rights Committee's *General Comment 22*¹⁷ on Article 18 of the ICCPR explains:

“1. The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.

12 Chapters 1 and 2 of *Religious Liberty and International Law in Europe*, Malcolm Evans (1997), describe various attempts from the 6th century BC to 1921.

13 A small sample of an extensive literature includes: *Persecution and Toleration in Protestant England, 1558–1689*, John Coffey (2000); *Dissident Identities in the Early Modern Low Countries*, Alistair Duke (2009); *God's Secret Agents: Queen Elizabeth's Forbidden Priests and the Hatching of the Gunpowder Plot*, Alice Hogge (2006); *Calvinism and Religious Toleration in the Dutch Golden Age*, R. Po-chia Hsia and Henk van Nierop (2002); *Divided by Faith: Religious Conflict and the Practice of Toleration in Early Modern Europe*, Benjamin Kaplan (2007); *Toleration and the Reformation*, Joseph Lecler (Two volumes, 1960); *The Lustre of Our Country: The American Experience of Religious Freedom*, John T. Noonan (1998); and *A state without stakes: Polish religious toleration in the sixteenth and seventeenth centuries*, Janusz Tazbir (1973).

14 M. Evans, *op. cit.*, chapters 7 and 8.

15 <<http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>>

16 <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>>

17 <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjYoiCfMKolRv2FVaVzRkMj-TnjRO%2bfud3cPvrcM9YR0iUh4lvOtm7YUcKE6R1aBpKmYastxgdf4vXLMsHe1LcOio8z%2f9pGJsac2JNOOTO4jAaVkcOo2vVbw65HVERDHA%3d%3d>>

2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”

For example, as “religion or belief” is to be construed broadly, conscientious objection to performing compulsory military service is understood as being part of the right to freedom of religion or belief.¹⁸ This has been reinforced by the European Court of Human Rights’ July 2011 judgment on the case of Jehovah’s Witness conscientious objector Vahan Bayatyan, a judgement with implications far beyond Council of Europe member states and the OSCE region.¹⁹

The right to freedom of religion or belief is an individual right of every person, not a right limited to groups of people joined together as religious communities – but it includes the right of people to join together in common activities. It is also not limited to those belonging to groups that a state recognises or registers in some form. As Article 18 of the UDHR puts it:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his [sic] religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his [sic] religion or belief in teaching, practice, worship and observance.

The UDHR and ICCPR, along with other UN texts such as *General Comment 22* and the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*²⁰ are available from the website of the UN Human Rights Committee.²¹ Legal issues relating to freedom of religion or belief in these and other international instruments are discussed in *Religious Liberty and International Law in Europe*, Malcolm Evans (Cambridge University Press, 1997).

1. Freedom of religion or belief intertwined with preventing and resolving conflict

Freedom of religion or belief is inextricably intertwined with the rule of law and other fundamental freedoms such as freedom of speech and association, freedom of the media,

18 See General Comment 22, paragraph 11.

19 <http://www.forum18.org/archive.php?article_id=1597>

20 <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>>

21 <<http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>>

freedom of expression and freedom of movement. Violating freedom of religion or belief always causes and encourages tensions, creating insecurity and conflict.

Uzbekistan, for example, imposes total control of the public face of the majority Muslim religious community, and engages in torture, arbitrary arrests, bans on meeting for worship, arbitrary jailing, police raids, the overt incitement of religious hatred of minorities on state-run mass media and other violations against members of both the majority community and minority religious communities of Baha'is, Christians, Jews, Jehovah's Witnesses and Hare Krishna devotees.²² This, along with widespread poverty, has fuelled the appeal of extremist and terrorist groups and increased the prospect of violent instability.

In international human rights law such as the ICCPR, freedom of religion or belief is seen as so central to "freedom, justice and peace in the world" – even in a "time of public emergency which threatens the life of the nation" – that "national security" is not a permissible reason to limit the freedom of religion or belief. Also, this freedom cannot be suspended by a state in any circumstances. More positively, a worldwide survey analysed in *The Price of Freedom Denied* by Brian Grim and Roger Finke²³ has shown that where freedom of religion or belief flourishes, democracy and development goals such as wider availability of health care and educational opportunities for women tend to benefit.

Discrimination and persecution on the grounds of religious or belief is extremely widespread across the world, affecting many disparate places and people. As Asma Jahangir, the former UN Special Rapporteur on Freedom of Religion or Belief, remarked on the occasion of the 25th anniversary of the 1981 UN *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*: "When I am asked which community is persecuted against most, I always reply 'human beings'".²⁴

Worldwide, ending discrimination and persecution on the grounds of religion or belief is an essential step in preventing and resolving many conflicts. To put it another way, upholding freedom of religion or belief defuses tensions, and strongly supports both national and international security, as well as social and economic development.

2. What is needed for people to be able to have freedom of religion or belief?

The right to freedom of religion or belief covers an extremely wide range of activity. The *forum internum* or inner freedom to have a religion or belief is absolute and may not be restricted in any way, for example by attempts to limit the right to change a religion or

22 Forum 18 religious freedom survey of Uzbekistan, August 2013 <http://www.forum18.org/archive.php?article_id=1862>

23 <<http://www.cambridge.org/gb/academic/subjects/sociology/sociology-religion/price-freedom-denied-religious-persecution-and-conflict-twenty-first-century>>

24 Informal public remark at 2006 Prague commemoration <<http://www.tolerance95.cz/1981declaration/index.php>>

belief. This also includes the right not to be forced to disclose one's religion or belief, for example on identity cards.

The right to externally manifest a religion or belief must be understood broadly. Article 18 of the UDHR and Article 18 (1) of the ICCPR using identical language to state that this covers "(...) freedom, either alone or in community with others and in public or private, to manifest his [sic] religion or belief in teaching, practice, worship and observance." Paragraph 4 of *General Comment 22* on the ICCPR states that this:

"(...) encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae, and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language, customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications."

General Comment 22 is not an exhaustive list, but an indication of some manifestations. Any list of permissible manifestations is likely to contain important omissions, or fail to fully describe a possible manifestation. For example, it is arguable that a possible manifestation by some people of their religion or belief was advocating for and drafting the Universal Declaration of Human Rights itself.

Freedom of religion or belief should be understood as being inseparably bound up with other fundamental rights and freedoms. All fundamental human rights are complimentary to each other, and with respect to their permissible limitations to balanced with each other; human rights are not in competition with each other. This has been demonstrated by the bitter experience of those who suffer violations of their freedom of religion or belief, who because of the interconnectedness of human rights also experience violations of their other fundamental human rights. Given the complimentary nature of human rights, no right may be used to destroy another right. As Article 30 of the UDHR states:

"Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

3. OSCE human dimension commitments and other related issues

All OSCE participating States are committed to implementing freedom of religion or belief. The human dimension commitments have repeatedly emphasised that commitments on freedom of religion or belief and other fundamental freedoms are based on human rights agreements such as the ICCPR and UDHR. As the Ministerial Declaration on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights (Helsinki 2008) [see *below*] put it:

On the occasion of the 60th anniversary of the adoption of the Universal Declaration, we recommit ourselves to act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights.

In the spirit of the Helsinki Final Act, we underline the principles guiding relations between participating States enshrined therein, in particular the respect for human rights and fundamental freedoms.

We stress that all human rights are universal.

We remain committed to respecting the inherent dignity of the human being, as recognized in the Universal Declaration and relevant OSCE documents to which we have agreed.

We declare that the rights contained in the Universal Declaration remain relevant.

We reaffirm to ensure the full implementation of the OSCE human dimension commitments. All OSCE commitments without exception apply equally to each participating State.

We reaffirm the inseparable connection between ensuring respect for human rights and maintaining peace, justice, well-being for peoples and stability, as recognized by the OSCE concept of common and comprehensive security.

OSCE commitments are not seen as alternatives to fulfilling commitments in international law, or as being in conflict with such commitments. Instead, the human dimension commitments compliment human rights standards such as the ICCPR. Even in states where the rule of law does not apply and freedom of religion or belief is not respected in practice, however much it may seemingly be respected on paper, this does not absolve states from their obligation to implement human rights commitments. In such states, attention should primarily be given to those official actions – including but not limited to the passage of laws – which breach international obligations.

Freedom of religion or belief is primarily an individual right, not a right of particular groups as such (eg. ethnic or religious groups, women, children, etc.). But one should also note that the freedom to associate with others in common activities is a vital part of that individual right. For issues that affect individuals within vulnerable groups, as well as individuals in association with others, it is important not to neglect the individual right to freedom of religion or belief.

For example, some states have state-favoured religious groups, sometimes described by officials as “traditional” while describing groups officials dislike are described as “non-traditional” - even though all religions or beliefs were at some point “non-traditional” on the territory covered by a particular state. State-favoured religious groups may be used by state officials – supported by the leaders of the community in question – to attempt to prove the alleged tolerance and respect for freedom of religion or belief of the state in question. In such states, focussing on the right to freedom of religion or belief of all individual persons – including those within groups vulnerable to state or societal hostility – will yield a more accurate picture of the state of freedom of religion or belief in the state in question. This approach also both acknowledges and defends the diversity of approaches and views commonly found within all groups of human beings.

Some states use a self-proclaimed “religious tolerance” or “dialogue” as a way of camouflaging their violations of freedom of religion or belief. Among OSCE participating States both Azerbaijan and Kazakhstan frequently do this. For example, Azerbaijan’s President Ilham Aliyev claimed that “there is a high level of ethnic and religious tolerance” and that “freedom of religion, freedom of conscience have been fully established in Azerbaijan”, while Sunni Muslims and Protestant Christians in Gyanja were banned from meeting, riot police being deployed against one congregation.²⁵ Such claims aim to empty language of meaning, and deny binding obligations to ensure and promote fundamental rights.

Freedom of religion or belief is sometimes seen as a freedom of separate groups – for example in the OSCE context separate categories of ‘Anti-Semitism’, ‘Muslims’, and ‘Christians and Members of Other Religions’. Naming particular kinds of intolerance and discrimination – for example against women – can indeed be helpful. But a three-way split of freedom of religion or belief fails to grasp violations’ reality and seriousness, as well as their interconnectedness with other human rights. This is especially so when violations - which would if carried out by non-state actors be hate crimes - are committed by participating States.

Splitting freedom of religion or belief three ways is rather like the kind of absurdity that would see election observation missions having three entirely isolated groups of observers:

25 <http://www.forum18.org/archive.php?article_id=1560>

for those who vote for governing parties; for those who vote for opposition parties; and for those who do not vote.

Phobia language, such as such as “Islamophobia” and “Christianophobia”, is also problematic. It emphasises feelings rather than actions, whether or not a human right has actually been violated. Phobia language can in this way provide a superficially plausible excuse for restricting freedom of religion or belief. It also sets up an impossible goal, as no-one can or should guarantee that feelings will not be hurt. It is therefore important to ensure that freedom of religion or belief itself, not phobias, remains the primary focus.

Both splitting violations three ways and phobia language encourage biased agendas obscuring the reality of situations they purport to describe. Such approaches also encourage negative stereotyping and discourage co-operative responses to violations. Against this, many followers of religious and philosophical beliefs – including Judaism, Islam, Christianity and beliefs such as atheism - insist that their beliefs require them to defend the dignity of all people with no exceptions.

Indeed, phobia language and splitting freedom of religion or belief issues three ways caricatures the reality that participating States, in the OSCE region the worst violators of human rights, normally target followers of any religion or belief which they see as outside state control – not just the followers of one religion or belief. In contrast to an approach of splitting, a holistic approach is encouraged by the UDHR, ICCPR and OSCE commitments such as the Helsinki Final Act. These firmly state that freedom of religion or belief is a right of all religious and non-religious persons, without exception, and insist that fundamental freedoms “derive from the inherent dignity of the human person” – all human persons.

The term “defamation of religion” has also been used by some. As Julian Rivers pointed out in the November 2007 issue of the journal *Religion and Human Rights*,²⁶ this quasi-legal phrase is also damaging. It does not identify what states are obliged to do under their human rights obligations – in this case protect the right to freedom of religion or belief – and has been used to suggest that disagreement about and criticism of religion or belief is unacceptable. As the right to disagree about and criticise religion or belief is part of the right to freedom of religion or belief, use of the phrase “defamation of religion” and similar terms should be resisted.

Numerous other issues are bound up with the manifestation of religion or belief – especially the attempt by some states to make the exercise of human rights dependent on state permission, as the European Union’s *Guidelines on the promotion and protection of freedom of religion or belief*²⁷ puts it.

26 <<http://booksandjournals.brillonline.com/content/journals/10.1163/187103107x252364>>

27 <[http://eeas.europa.eu/delegations/fiji/press_corner/all_news/news/2013/eu_guidelines_on_the_promotion_and_protection_of_freedom_of_religion_or_belief_\(june_24_2013_fac\).pdf](http://eeas.europa.eu/delegations/fiji/press_corner/all_news/news/2013/eu_guidelines_on_the_promotion_and_protection_of_freedom_of_religion_or_belief_(june_24_2013_fac).pdf)>

One important freedom of religion or belief issue in the OSCE region is legislation affecting the registration and legal status of religious organisations. The legal issues and binding obligations which should be implemented in relation to state registration and legal status are addressed in the OSCE/Venice Commission *Joint guidelines on the legal personality of religious or belief communities*²⁸. Some OSCE participating States – including Kazakhstan and Kyrgyzstan – have broken their commitments by passing laws making the exercise of freedom of religion or belief without state permission illegal. International law obliges states not to impose any requirement on a group of people to seek state permission to exercise freedom of religion or belief, or for them to seek to gain state registration.

More broadly, the OSCE *Guidelines for Review of Legislation Pertaining to Religion or Belief* set out generally applicable principles to follow when evaluating any legislation – not just legislation on legal personality - affecting freedom of religion or belief.²⁹

Another common issue is religion and public education, including education about religions and beliefs, which is considered in the OSCE *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*.³⁰ Looking at another issue which has attracted much debate, the Council of Europe has published a *Manual on the Wearing of Religious Symbols in Public Areas*³¹ in relation to international human rights.

4. Limitations on freedom of religion or belief

Unlike manifestations of freedom of religion or belief, which are to be construed broadly, limitations are to be construed narrowly. Article 18 (3) of the ICCPR states that: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”.

General Comment 22’s paragraph 8 reinforces this strict approach, stating that limitations:

“(…) must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18 [of the ICCPR]. The Committee observes that paragraph 3 of 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. The Committee observes that the concept of morals derives from many social,

28 <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)023-e)>

29 <<http://www.osce.org/odihr/13993>>

30 <<http://www.osce.org/odihr/29154>>

31 <http://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/Manuals_religious_symbols_eng.pdf>

philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. (...)"

It is worth noting that the limitation grounds expressed in English as "to protect public safety, order, health" are expressed in French as "la protection de la sécurité, de l'ordre et de la santé publique"³². The use of the key phrase "l'ordre public" within this makes it abundantly plain that the public safety and order limitations can only be proportionally and in a non-discriminatory way invoked by legally authorised public authority where there is an actually existing significant threat to public peace, such as a riot, and that it cannot be invoked for something merely thought to be a public nuisance.

Similar statements to that in the ICCPR are made by other instruments, such as the *European Convention for the Protection of Human Rights and Fundamental Freedoms*³³ and in the related jurisprudence of the European Court of Human Rights. For example in the case of *Barenkevich v. Russia (Application no. 10519/03)*³⁴, the European Court stated that the manifestation of freedom of religion or belief must be protected by the state, even if others violently oppose this.

"Democracy does not simply mean that the views of the majority must always prevail," the European Court noted in its July 2007 verdict. "The mere fact that the Evangelical Christian religion was practised by a minority of the town residents was not capable of justifying an interference with the rights of followers of that religion." The verdict goes on to state that "it would be incompatible with the underlying values of the Convention, if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were it so a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention."

Although the European Convention does not cover Central Asia, it is legally binding for 47 of the OSCE's 57 participating States making it an important influence on the politically binding human dimension commitments. This has been clearly recognised by both the *Guidelines for Review of Legislation Pertaining to Religion or Belief* and the *Joint guidelines on the legal personality of religious or belief communities* having been prepared and adopted by both the Venice Commission of the Council of Europe and the OSCE ODIHR. Both Kazakhstan and Kyrgyzstan are members of the Venice Commission and both states routinely violate their legally-binding international human rights obligations – including

32 <<http://www.ohchr.org/FR/ProfessionalInterest/Pages/CCPR.aspx>>

33 <<http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>>

34 <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81950>>

those outlined in both the joint Guidelines. Indeed, Kazakhstan applied to join the Venice Commission on 11 October 2011, the very same day the country's President signed into law two laws flagrantly violating its obligations to implement freedom of religion or belief.³⁵

Article 9 (2) of the European Convention states:

“Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

The narrowing of the field for limitations to those that must be “necessary in a democratic society” is important for the entire OSCE region, as all participating States have repeatedly recognised that, as the Ministerial Declaration on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights (Helsinki 2008) put it, “human rights are best respected in democratic societies”. Whilst the European Court of Human Rights has not closely defined what is meant by the concept of “democratic society”, it has seen that limitations must be judged on a case by case basis, taking into account factors such as the proportionality of the limitation in relation to the reason for it, and the nature of the public interest requiring the limitation and its need for protection.³⁶ It is also worth noting that “necessity” (as against eg. “desirable”) is a high threshold for a limitation.³⁷

The OSCE *Guidelines for Review of Legislation Pertaining to Religion or Belief* discuss other possible limitations, along with issues relating to them.³⁸

35 <http://www.forum18.org/archive.php?article_id=1628>

36 M. Evans, *op. cit.*, pp 320-322

37 Carolyn Evans, *The 'Islamic Scarf' in the European Court of Human Rights*, Melbourne Journal of International Law (2007) 7(1) <http://www.austlii.edu.au/au/journals/MelbJIL/2006/4.html#_Ref132397760>

38 <<http://www.osce.org/odihr/13993>>

G OSCE human dimension commitments

The Organisation for Security and Co-operation in Europe (OSCE) is a security organisation of 57 states from Central Asia, Europe and North America. It is based on the insight that genuine security is not just a military question but consists of three elements: the “human dimension” as it is described in the OSCE,³⁹ meaning human rights and democracy; politico-military factors; and economic and environmental factors. Freedom of religion or belief is a fundamental human dimension commitment, and falls within the mandate of the OSCE’s Warsaw-based Office for Democratic Institutions and Human Rights (ODIHR).⁴⁰

Commitments on freedom of religion or belief and other fundamental freedoms are explicitly seen as being based on human rights agreements such as the International Covenant on Civil and Political Rights (ICCPR). OSCE commitments are not seen as alternatives to fulfilling obligations in international law, or as being in conflict with such obligations. As the ODIHR has noted, “no government can claim they have to establish political or economic security before addressing human rights and democracy”.⁴¹

An outline of what freedom of religion or belief is, as defined by human rights agreements such as the ICCPR, is given at the end of this report. The ICCPR entered into force for Kazakhstan on 24 April 2006, and for Kyrgyzstan it entered into force on 7 January 1995. The importance of implementing these international legally-binding obligations has been repeatedly stressed in unanimously agreed human dimension commitments, such as the December 2013 Kyiv Ministerial Council Decision on freedom of thought, conscience, religion or belief.⁴²

Flowing directly from the OSCE concept of security, civil society organisations such as non-governmental human rights groups and religious communities participate in OSCE meetings and activities – such as the annual Human Dimension Implementation Meeting (HDIM) in Warsaw. The ability of civil society organisations to participate in the OSCE’s work is a unique feature among intergovernmental security organisations, as is the explicit structural link between respect for human rights and greater security. It is also the only regional security organisation to have agreed that pluralistic democracy based on the rule of law is the only system of government that can effectively guarantee human rights, and hence national and international security.

OSCE commitments are agreed unanimously among all participating States and are politically but not legally binding.⁴³ All participating States have publicly promised

39 <<http://www.osce.org/odihr/109087>>

40 <<http://www.osce.org/odihr/44455>>

41 <<http://web.archive.org/web/20060111122611/http://www.osce.org/odihr/13371.html>>

42 <<http://www.osce.org/mc/109339?download=true>>

43 <<http://web.archive.org/web/20070208122810/http://www.osce.org/odihr/13493.html>>

to implement these commitments, and they have also agreed that the implementation of commitments is a legitimate matter of concern for all participating States and civil society. As the ODIHR has noted, “OSCE states have stressed that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order”.⁴⁴

Asking for implementation of commitments is to ask for something that the government concerned has already agreed to do, as it has also agreed that its progress in implementation – or lack of implementation – may be publicly monitored and questioned. As has been repeatedly emphasised at OSCE meetings, a particular responsibility rests on the holder of the function of Chairperson-in-Office to set a good example in implementing commitments. Kazakhstan was 2010 Chairperson-in-Office but has repeatedly failed to implement its politically-binding OSCE commitments and legally-binding international human rights law obligations.

Some of the most important and relevant human dimension commitments in the field of freedom of religion or belief, up to the end of December 2013, are listed in the following appendix.

OSCE commitments on freedom of religion or belief

Final Act of the Conference on Security and Co-operation in Europe (Helsinki 1975)⁴⁵

(Questions Relating to Security in Europe: 1.(a) Declaration on Principles Guiding Relations between Participating States)

(...)

(VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief)

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his [sic] free and full development.

⁴⁴ <<http://web.archive.org/web/20070208122738/http://www.osce.org/odihr/13494.html>>

⁴⁵ <<http://www.osce.org/mc/39501?download=true>>

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his [sic] own conscience.

(...)

The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.

They will constantly respect these rights and freedoms in their mutual relations and will endeavour jointly and separately, including in co-operation with the United Nations, to promote universal and effective respect for them.

They confirm the right of the individual to know and act upon his [sic] rights and duties in this field.

In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound.

(...)

(Co-operation in Humanitarian and Other Fields)

[The participating States] confirm that religious faiths, institutions and organizations, practising within the constitutional framework of the participating States, and their representatives can, in the field of their activities, have contacts and meetings among themselves and exchange information.

Madrid 1983 (Questions Relating to Security in Europe: Principles)⁴⁶

The participating States (..) furthermore agree to take the action necessary to ensure the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his [sic] own conscience.

In this context, they will consult, whenever necessary, the religious faiths, institutions and organizations, which act within the constitutional framework of their respective countries.

46 <<http://www.osce.org/mc/40871?download=true>>

They will favourably consider applications by religious communities of believers practising or prepared to practise their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations.

Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (Vienna 1989)⁴⁷

Questions Relating to Security in Europe

The participating States express their determination

(..)

- to assume their responsibility fully to implement the commitments contained in the Final Act and other CSCE documents;

- to intensify their efforts to seek solutions to problems burdening their relations and to strengthen safeguards for international peace and security;

- to promote co-operation and dialogue among them, to ensure the effective exercise of human rights and fundamental freedoms and to facilitate contacts and communication between people;

(..)

Principles

(1) The participating States reaffirm their commitment to all ten principles of the Final Act's Declaration on Principles Guiding Relations between participating States and their determination to respect them and put them into practice. The participating States reaffirm that all these principles are of primary significance and, accordingly, will be equally and unreservedly applied, each of them being interpreted taking into account the others.

(2) They stress that respect for and full application of these principles as well as strict compliance with all CSCE commitments deriving from them are of great political importance and essential for building confidence and security as well as for the development of their friendly relations and of their co-operation in all fields.

(..)

47 <<http://www.osce.org/mc/40881?download=true>>

(11) [The participating States] confirm that they will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They also confirm the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and security necessary to ensure the development of friendly relations and co-operation among themselves, as among all States.

(13.7) [The participating States will] ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

(16) In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, inter alia,

(16.1) – take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

(16.2) – foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;

(16.3) – grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;

(16.4) – respect the right of these religious communities to

- establish and maintain freely accessible places of worship or assembly,
- organize themselves according to their own hierarchical and institutional structure,
- select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,
- solicit and receive voluntary financial and other contributions;

(16.5) – engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;

(16.6) – respect the right of everyone to give and receive religious education in the language of his [sic] choice, whether individually or in association with others;

(16.7) – in this context respect, inter alia, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;

(16.8) – allow the training of religious personnel in appropriate institutions;

(16.9) – respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief,

(16.10) – allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;

(16.11) – favourably consider the interest of religious communities to participate in public dialogue, including through the mass media.

(17) The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief.

(19) [The participating States] will protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities on their territory. They will respect the free exercise of rights by persons belonging to such minorities and ensure their full equality with others.

(21) The participating States will ensure that the exercise of the above-mentioned rights will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

Co-operation in humanitarian and other fields

The participating States,

Considering that co-operation in humanitarian and other fields is an essential factor for the development of their relations,

Agreeing that their co-operation in these fields should take place in full respect for the principles guiding relations between participating States as set forth in the Final Act as well as for the provisions in the Madrid Concluding Document and in the present Document pertaining to those principles,

Confirming that, in implementing the provisions concerning co-operation in humanitarian and other fields in the framework of their laws and regulations, they will ensure that those laws and regulations conform with their obligations under international law and are brought into harmony with their CSCE commitments,

Recognizing that the implementation of the relevant provisions of the Final Act and of the Madrid Concluding Document requires continuous and intensified efforts,

Have adopted and will implement the following:

Human Contacts

(20) [The participating States] will deal favourably with applications for travel abroad without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, age or other status. They will ensure that any refusal does not affect applications submitted by other persons.

(32) They will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, inter alia through travel, pilgrimages and participation in assemblies and other religious events. In this context and commensurate with such contacts and events, those concerned will be allowed to acquire, receive and carry with them religious publications and objects related to the practice of their religion or belief.

Co-operation and exchanges in the field of education

(63) [The participating States] will ensure access by all to the various types and levels of education without discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(68) [The participating States] will ensure that persons belonging to national minorities or regional cultures on their territories can give and receive instruction on their own culture,

including instruction through parental transmission of language, religion and cultural identity to their children.

Document of the Copenhagen Meeting of Representatives of the Participating States of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (Copenhagen 1990)⁴⁸

The participating States reaffirm that

(9.4) – everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one’s religion or belief and freedom to manifest one’s religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards;

(18) The participating States

(18.1) – note that the United Nations Commission on Human Rights has recognized the right of everyone to have conscientious objections to military service;

(18.2) – note recent measures taken by a number of participating States to permit exemption from compulsory military service on the basis of conscientious objections;

(18.3) – note the activities of several non-governmental organizations on the question of conscientious objections to compulsory military service;

(18.4) – agree to consider introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature;

(18.5) – will make available to the public information on this issue;

(18.6) – will keep under consideration, within the framework of the Conference on the Human Dimension, the relevant questions related to the exemption from compulsory military service, where it exists, of individuals on the basis of conscientious objections to armed service, and will exchange information on these questions.

(24) The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those

48 <<http://www.osce.org/odihr/elections/14304?download=true>>

which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured. Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

(25) The participating States confirm that any derogations from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation. They also reaffirm that

(25.1) – measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments;

(25.2) – the imposition of a state of public emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law;

(25.3) – measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation;

(25.4) – such measures will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority.

(30) The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities. They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.

(32) (...) Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right

(...)

(32.2) – to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

(32.3) – to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;

(...)

(32.4) – to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;

(...)

(32.6) – to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations. Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights. Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

(33) The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State. Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

(35) The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the

affairs relating to the protection and promotion of the identity of such minorities. The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

(36) The participating States recognize the particular importance of increasing constructive co-operation among themselves on questions relating to national minorities. Such co-operation seeks to promote mutual understanding and confidence, friendly and good-neighbourly relations, international peace, security and justice. Every participating State will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without distinction as to ethnic or national origin or religion, and will encourage the solution of problems through dialogue based on the principles of the rule of law.

(40) The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies). They declare their firm intention to intensify the efforts to combat these phenomena in all their forms and therefore will

(40.1) – take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism;

(40.2) – commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property;

(40.3) – take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote understanding and tolerance, particularly in the fields of education, culture and information;

(40.4) – endeavour to ensure that the objectives of education include special attention to the problem of racial prejudice and hatred and to the development of respect for different civilizations and cultures;

(40.5) – recognize the right of the individual to effective remedies and endeavour to recognize, in conformity with national legislation, the right of interested persons and groups to initiate and support complaints against acts of discrimination, including racist and xenophobic acts;

(40.6) – consider adhering, if they have not yet done so, to the international instruments which address the problem of discrimination and ensure full compliance with the obligations therein, including those relating to the submission of periodic reports;

(40.7) – consider, also, accepting those international mechanisms which allow States and individuals to bring communications relating to discrimination before international bodies.

Charter of Paris for a New Europe (Paris 1990)⁴⁹

We, the Heads of State or Government of the States participating in the Conference on Security and Co-operation in Europe, have assembled in Paris at a time of profound change and historic expectations. The era of confrontation and division of Europe has ended. We declare that henceforth our relations will be founded on respect and co-operation.

Europe is liberating itself from the legacy of the past. The courage of men and women, the strength of the will of the peoples and the power of the ideas of the Helsinki Final Act have opened a new era of democracy, peace and unity in Europe.

Ours is a time for fulfilling the hopes and expectations our peoples have cherished for decades : steadfast commitment to democracy based on human rights and fundamental freedoms; prosperity through economic liberty and social justice; and equal security for all our countries.

The Ten Principles of the Final Act will guide us towards this ambitious future, just as they have lighted our way towards better relations for the past fifteen years. Full implementation of all CSCE commitments must form the basis for the initiatives we are now taking to enable our nations to live in accordance with their aspirations.

Human Rights, Democracy and Rule of Law

We undertake to build, consolidate and strengthen democracy as the only system of government of our nations. In this endeavour, we will abide by the following:

Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first

49 <<http://www.osce.org/mc/39516?download=true>>

responsibility of government. Respect for them is an essential safeguard against an over-mighty State. Their observance and full exercise are the foundation of freedom, justice and peace.

Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.

Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law.

We affirm that, without discrimination,

- every individual has the right to freedom of thought, conscience and religion or belief,
- freedom of expression,
- freedom of association and peaceful assembly,
- freedom of movement;

no one will be:

- subject to arbitrary arrest or detention,
- subject to torture or other cruel, inhuman or degrading treatment or punishment; everyone also has the right :
- to know and act upon his [sic] rights,
- to participate in free and fair elections,
- to fair and public trial if charged with an offence,
- to own property alone or in association and to exercise individual enterprise,
- to enjoy his [sic] economic, social and cultural rights.

We affirm that the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law.

We will ensure that everyone will enjoy recourse to effective remedies, national or international, against any violation of his [sic] rights.

Full respect for these precepts is the bedrock on which we will seek to construct the new Europe.

Our States will co-operate and support each other with the aim of making democratic gains irreversible.

(...)

Human Dimension

We declare our respect for human rights and fundamental freedoms to be irrevocable. We will fully implement and build upon the provisions relating to the human dimension of the CSCE.

(...)

We express our determination to combat all forms of racial and ethnic hatred, antisemitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds.

Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Moscow 1991)⁵⁰

The participating States emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. They express their determination to fulfil all of their human dimension commitments and to resolve by peaceful means any related issue, individually and collectively, on the basis of mutual respect and co-operation. In this context they recognize that the active involvement of persons, groups, organizations and institutions is essential to ensure continuing progress in this direction

Budapest 1994⁵¹

(Decisions: VIII. The Human Dimension)

(27.) [The participating States] Reaffirming their commitment to ensure freedom of conscience and religion and to foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers, they expressed their concern about the exploitation of religion for aggressive nationalist ends.

50 <<http://www.osce.org/odihr/elections/14310?download=true>>

51 <<http://www.osce.org/mc/39554?download=true>>

(Decisions: IV. Code of Conduct on Politico-Military Aspects of Security)

(28.) The participating States will reflect in their laws or other relevant documents the rights and duties of armed forces personnel. They will consider introducing exemptions from or alternatives to military service.

(37.) The participating States will not use armed forces to limit the peaceful and lawful exercise of their human and civil rights by persons as individuals or as representatives of groups nor to deprive them of their national, religious, cultural, linguistic or ethnic identity

The Charter for European Security (Istanbul 1999)⁵²

At the dawn of the twenty-first century we, the Heads of State or Government of the OSCE participating States, declare our firm commitment to a free, democratic and more integrated OSCE area where participating States are at peace with each other, and individuals and communities live in freedom, prosperity and security.

(III Our Common Response) (The Human Dimension)

(19.) We reaffirm that respect for human rights and fundamental freedoms, democracy and the rule of law is at the core of the OSCE's comprehensive concept of security. We commit ourselves to counter such threats to security as violations of human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief and manifestations of intolerance, aggressive nationalism, racism, chauvinism, xenophobia and anti-Semitism.

OSCE Charter on Preventing and Combating Terrorism (Porto 2002)⁵³

The OSCE participating States, firmly committed to the joint fight against terrorism

(...)

(20) Are convinced of the need to address conditions that may foster and sustain terrorism, in particular by fully respecting democracy and the rule of law, by allowing all citizens to participate fully in political life, by preventing discrimination and encouraging intercultural and inter-religious dialogue in their societies, by engaging civil society in finding common political settlement for conflicts, by promoting human rights and tolerance and by combating poverty;

52 <<http://www.osce.org/mc/17502?download=true>>

53 <<http://www.osce.org/odhr/16609?download=true>>

(21) Acknowledge the positive role the media can play in promoting tolerance and understanding among religions, beliefs, cultures and peoples, as well as for raising awareness of the threat of terrorism;

(22) Commit themselves to combat hate speech and to take the necessary measures to prevent the abuse of the media and information technology for terrorist purposes, ensuring that such measures are consistent with domestic and international law and OSCE commitments;

(Decisions: Decision No. 6/02 on Tolerance and Non-discrimination)⁵⁴

The Ministerial Council,

Recalling the principles of human rights and the inherent dignity of the human being, freedom of thought, conscience, religion or belief that underpin the general provisions of the OSCE human dimension commitments,

(...)

Reiterating that democracy and protection of human rights and fundamental freedoms are essential safeguards of tolerance and non-discrimination and constitute important factors for stability, security, co-operation and peaceful development throughout the entire OSCE region, and that conversely tolerance and non-discrimination are important elements in the promotion of human rights,

Reaffirming the internationally recognized prohibition of discrimination, without adverse distinction of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national or social origin, property, birth or other status,

(4) Commits to take appropriate measures, in conformity with respective constitutional systems, at national, regional and local levels to promote tolerance and non-discrimination as well as to counter prejudices and misrepresentation, particularly in the field of education, culture and information;

(5) Condemns, in particular, discrimination on religious grounds and undertakes to endeavour to prevent and protect against attacks directed at any religious group, whether on persons or on places of worship or religious objects;

(8) Decides to take strong public positions against hate speech and other manifestations of aggressive nationalism, racism, chauvinism, xenophobia, anti-Semitism and violent extremism, as well as occurrences of discrimination based on religion or belief;

54 <<http://www.osce.org/mc/40521?download=true>>

(9) Calls on relevant authorities of participating States to investigate promptly and impartially acts of violence, especially where there are reasonable grounds to suspect that they were motivated by aggressive nationalism, racism, chauvinism, xenophobia, anti-Semitism and violent extremism, as well as attacks motivated by hatred against a particular religion or belief, and to prosecute those responsible in accordance with domestic law and consistent with relevant international standards of human rights;

Maastricht 2003⁵⁵

(Decisions: Decision No. 4/03 on Tolerance and Non-discrimination)

The Ministerial Council,

Recognizing that respect for human rights and fundamental freedoms, democracy and the rule of law are at the core of the OSCE's comprehensive concept of security,

(9) Affirms the importance of freedom of thought, conscience, religion or belief, and condemns all discrimination and violence, including against any religious group or individual believer. Commits to ensure and facilitate the freedom of the individual to profess and practice a religion or belief, alone or in community with others, where necessary through transparent and non-discriminatory laws, regulations, practices and policies. Encourages the participating States to seek the assistance of the ODIHR and its Panel of Experts on Freedom of Religion or Belief. Emphasizes the importance of a continued and strengthened interfaith and intercultural dialogue to promote greater tolerance, respect and mutual understanding;

Ministerial Declaration on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights (Helsinki 2008)⁵⁶

We, the members of the Ministerial Council of the OSCE, reaffirm our strong commitment to the Universal Declaration of Human Rights ("the Universal Declaration"), adopted by the United Nations General Assembly on 10 December 1948.

On the occasion of the 60th anniversary of the adoption of the Universal Declaration, we recommit ourselves to act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights.

In the spirit of the Helsinki Final Act, we underline the principles guiding relations between participating States enshrined therein, in particular the respect for human rights and fundamental freedoms.

We stress that all human rights are universal.

⁵⁵ <<http://www.osce.org/mc/40533?download=true>>

⁵⁶ <<http://www.osce.org/mc/35476?download=true>>

We remain committed to respecting the inherent dignity of the human being, as recognized in the Universal Declaration and relevant OSCE documents to which we have agreed.

We declare that the rights contained in the Universal Declaration remain relevant.

We reaffirm to ensure the full implementation of the OSCE human dimension commitments. All OSCE commitments without exception apply equally to each participating State.

We reaffirm the inseparable connection between ensuring respect for human rights and maintaining peace, justice, well-being for peoples and stability, as recognized by the OSCE concept of common and comprehensive security.

Taking into account the principles guiding relations between participating States enshrined in the Helsinki Final Act, we reaffirm that the commitments undertaken in the field of the OSCE human dimension are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned as stipulated in the 1991 Moscow document. *[See above]*

(...)

We remain committed to the rule of law and equal protection under the law for all, based on respect for human rights and effective, accessible and just legal systems.

We stress that everyone has the right to life, liberty and security of person; no one shall be held in slavery, and no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

We recognize that human rights are best respected in democratic societies, where decisions are taken with maximum transparency and broad participation. We support a pluralistic civil society and encourage partnerships between different stakeholders in the promotion and protection of human rights.

We reiterate that everyone has the right to freedom of thought, conscience, religion or belief; freedom of opinion and expression, freedom of peaceful assembly and association. The exercise of these rights may be subject to only such limitations as are provided by law and consistent with our obligations under international law and with our international commitments.

Ministerial Declaration on the Sixty-Fifth Anniversary of the End of the World War II (Athens 2009)⁵⁷

(...)

We have learned from history the danger of intolerance, discrimination, extremism and hatred on ethnic, racial and religious grounds. We are committed to combat these threats, including through the OSCE, and we reject any attempts to justify them.

(...)

The lessons of the [sic] World War II are still of relevance today, when we need to unite our efforts and resources to address threats and challenges to our common security and stability and to defend our common principles. New times have brought new threats and challenges, one of the most dangerous of which is terrorism. We will fight this and other threats to security together, inter alia, through the OSCE.

We are convinced that the peaceful resolution of all existing conflicts, the observance of the norms of international law, the aims and principles of the UN Charter, the fulfilment of commitments contained in the Helsinki Final Act and other agreed OSCE documents are the best way to pay tribute to those who struggled for peace, freedom, democracy and human dignity, to commemorate all victims of World War II, to overcome the past, and to save present and future generations from the scourge of war and violence.

Declaration by the OSCE Chairperson-in-Office at the High-Level Conference on Tolerance and Non-Discrimination (Astana 2010)⁵⁸

Based on consultations, I understand that OSCE participating States,

(..)

Reaffirming that respect for human rights and fundamental freedoms, democracy and the rule of law is important in creating a context for intercultural, inter-religious and inter-ethnic understanding, and is at the core of the OSCE comprehensive concept of security, and that tolerance and non-discrimination are important elements in the promotion of human rights and democratic values,

(..)

Having learnt from the past the dangers of intolerance, discrimination, extremism and hatred on ethnic, racial and religious grounds; reaffirming their determination to combat

57 <<http://www.osce.org/cio/40700?download=true>>

58 <<http://www.osce.org/cio/68972?download=true>>

these threats and acknowledge that they may sow the seeds of conflict and violence on a wider scale,

(..)

Taking note of the recommendations elaborated by the participants of the Civil Society Preparatory Meeting who acknowledged the value of inter-ethnic, inter-religious and inter-cultural dialogue and stressed the paramount importance of respecting and promoting fundamental rights in the pursuit of tolerant and non-discriminatory societies, which respect the rights of all.

Recognizing the instrumental role that political representatives can play in taking the lead in combating intolerance and discrimination and promoting mutual respect and understanding,

1. Call for implementation of the OSCE commitments with a view to devising and implementing effective policy measures aimed at preventing and responding to manifestations of racism, xenophobia, anti-Semitism, discrimination and intolerance, including against Christians, Muslims, members of other religions, Roma and Sinti, other ethnic and racial groups inter alia through legislation, law enforcement training, data collection and monitoring of hate crimes, education, media and constructive public discourse, the establishment of national institutions or specialized bodies, the development and implementation of national strategies and action plans in this field and the promotion of inter-ethnic and inter-cultural dialogue, including in its religious dimension;

2. Encourage to work with civil society in the prevention of hate crimes through, inter alia, community outreach, education, victim assistance and monitoring of hate groups;

3. Reiterate their concerns about the manifestations of intolerant and xenophobic political discourse, and call on political representatives, including parliamentarians, to continue to reject strongly and to condemn manifestations of racism, xenophobia, anti-Semitism, discrimination and intolerance, including against Christians, Muslims, members of other religions, Roma and Sinti, other ethnic and racial groups and on the basis of gender, as well as violent manifestations of extremism associated with religious intolerance, aggressive nationalism and neo-Nazism, while continuing to respect freedom of expression;

(..)

7. Commit to counter prejudice, discrimination, intolerance, and violence against Christians and members of other religions, including minority religions, which continue to be present in the OSCE region. Call to address the denial of rights, exclusion and marginalization of Christians and members of other religions in our societies;

8. Firmly reject the attempts to associate terrorism and extremism with Islam and Muslims and declare that international developments and political issues cannot justify any forms of intolerance and discrimination against Muslims in general. Call on full respect of international human rights standards, while fighting terrorism, and acknowledge that building trust, mutual understanding and respect among different communities and government authorities strengthens the efforts to counter extremism that may lead to violence. To this end, encourage to raise awareness of intolerance against Muslims and challenge anti-Muslim prejudice and stereotypes;

9. Acknowledge the relationship between intolerance and discrimination, including in its violent manifestations, and limitations of freedom of religion or belief and reaffirm their commitment to guarantee the right to freedom of thought, conscience, religion or belief, including the right of the individual to profess and practice a religion or a belief alone or in community with others. Reaffirm the right of individuals to practice the religion of their choice;

(..)

Astana Commemorative Declaration: Towards a Security Community (Astana 2010)⁵⁹

(1.) We, the Heads of State or Government of the 56 participating States of the OSCE (..) reaffirm the relevance of, and our commitment to, the principles on which this Organization is based. While we have made much progress, we also acknowledge that more must be done to ensure full respect for, and implementation of, these core principles and commitments that we have undertaken in the politico-military dimension, the economic and environmental dimension, and the human dimension, notably in the areas of human rights and fundamental freedoms.

(2.) We reaffirm our full adherence to the Charter of the United Nations and to all OSCE norms, principles and commitments, starting from the Helsinki Final Act, the Charter of Paris, the Charter for European Security and all other OSCE documents to which we have agreed, and our responsibility to implement them fully and in good faith. We reiterate our commitment to the concept, initiated in the Final Act, of comprehensive, co-operative, equal and indivisible security, which relates the maintenance of peace to the respect for human rights and fundamental freedoms, and links economic and environmental co-operation with peaceful inter-State relations.

(..)

(6.) The OSCE's comprehensive and co-operative approach to security, which addresses the human, economic and environmental, political and military dimensions of security

59 <<http://www.osce.org/cio/74985?download=true>>

as an integral whole, remains indispensable. Convinced that the inherent dignity of the individual is at the core of comprehensive security, we reiterate that human rights and fundamental freedoms are inalienable, and that their protection and promotion is our first responsibility. We reaffirm categorically and irrevocably that the commitments undertaken in the field of the human dimension are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. We value the important role played by civil society and free media in helping us to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law.

(7.) Serious threats and challenges remain. Mistrust and divergent security perceptions must be overcome. Our commitments in the politico-military, economic and environmental, and human dimensions need to be fully implemented. Respect for human rights, fundamental freedoms, democracy and the rule of law must be safeguarded and strengthened. Greater efforts must be made to promote freedom of religion or belief and to combat intolerance and discrimination. (..)

Decision No. 3/13 on Freedom of thought, conscience, religion or belief (Kyiv 2013).⁶⁰

The Ministerial Council,

Reaffirming past CSCE/OSCE decisions on the freedom of thought, conscience, religion or belief, in particular as recognized by the 1975 Helsinki Final Act, the 1983 Madrid Document, the 1989 Vienna Document, the 1990 Copenhagen Document, the 1994 Budapest Document and the 2003 Maastricht Document,

Recalling the international human rights provisions contained in the Universal Declaration of Human Rights and international obligations of States Parties to the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international human rights instruments relevant to the freedom of thought, conscience, religion or belief,

Committed to ensuring respect for and enjoyment of the freedom of thought, conscience, religion or belief for all,

Emphasizing that every individual has the right to freedom of thought, conscience, religion or belief, which includes the freedom to have or to adopt a religion or belief of one's choice, as well as not to have or profess any religion, to change one's religion or belief, and the freedom to manifest one's religion or belief, either alone or in community with others, and in public or in private, through teaching, practice, worship and observance.

60 <<http://www.osce.org/mc/109339?download=true>>

The freedom to manifest one's religion or beliefs may be subject only to such restrictions as are prescribed by law and are consistent with international standards,

Reaffirming the commitments of participating States to respect, protect, and ensure the right of everyone to freedom of thought, conscience, religion or belief,

Emphasizing the link between security and full respect for the freedom of thought, conscience, religion or belief,

Deeply concerned by continuing acts of intolerance and violence against individuals and religious or belief communities on the basis of thought, conscience, religion or belief around the world,

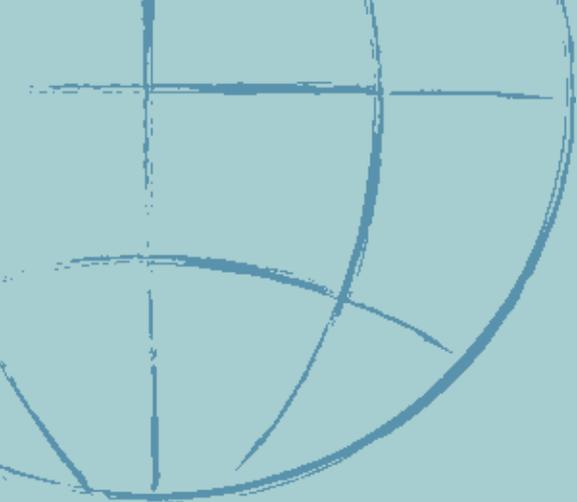
Emphasizing that freedom of thought, conscience, religion or belief and all other human rights and fundamental freedoms are interdependent, interrelated and mutually reinforcing,

Stressing the importance of fostering a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers,

Calls on participating States to:

- Fully implement OSCE commitments on the freedom of thought, conscience, religion or belief;
- Fully implement their commitments to ensure the right of all individuals to profess and practice religion or belief, either alone or in community with others, and in public or private, and to manifest their religion or belief through teaching, practice, worship and observance, including through transparent and non-discriminatory laws, regulations, practices and policies;
- Refrain from imposing restrictions inconsistent with OSCE commitments and international obligations on the practice of religion or belief by individuals and religious communities;
- Promote and facilitate open and transparent interfaith and interreligious dialogue and partnerships;
- Aim to prevent intolerance, violence and discrimination on the basis of religion or belief, including against Christians, Jews, Muslims and members of other religions, as well as against non-believers, condemn violence and discrimination on religious grounds and endeavour to prevent and protect against attacks directed at persons or groups based on thought, conscience, religion or belief;
- Encourage the inclusion of religious and belief communities, in a timely fashion, in public discussions of pertinent legislative initiatives;
- Promote dialogue between religious or belief communities and governmental bodies, including, where necessary, on issues related to the use of places of worship and religious property;

- Take effective measures to prevent and eliminate discrimination against individuals or religious or belief communities on the basis of religion or belief, including against non-believers, by public officials in the conduct of their public duties;
- Adopt policies to promote respect and protection for places of worship and religious sites, religious monuments, cemeteries and shrines against vandalism and destruction.



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