

13 October 2011

KAZAKHSTAN: President signs two laws restricting freedom of religion or belief

By Felix Corley, Forum 18 (<https://www.forum18.org>)

It was made public today (13 October) that Kazakhstan's President Nursultan Nazarbaev has signed two new laws imposing severe restrictions on freedom of religion or belief, Forum 18 News Service has learned. The two laws have attracted strong criticism from civil society organisations, human rights defenders and many religious communities in Kazakhstan, as well as from the Organisation for Security and Co-operation in Europe (OSCE), which the country chaired in 2010. Both new laws are expected to come into force on 24 October. OSCE Office for Democratic Institutions and Human Rights (ODIHR) spokesperson Jens Eschenbaecher told Forum 18 that the ODIHR was disappointed that the laws were signed into force. "The legislation appears to unnecessarily restrict the freedom of religion or belief and is poised to limit the exercise of this freedom in Kazakhstan", he told Forum 18. Nazgul Yergalieva of the Almaty-based Legal Policy Research Centre observed to Forum 18 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".

Kazakhstan's President Nursultan Nazarbaev has signed two new laws imposing severe restrictions on freedom of religion or belief, the presidential website noted today (13 October). The two laws – which have been adopted with what one observer called "unprecedented" speed - have attracted strong criticism from civil society organisations, human rights defenders and many religious communities in Kazakhstan, as well as from the Organisation for Security and Co-operation in Europe (OSCE), Forum 18 News Service notes. Both new laws are expected to be officially published in Kazakh and Russian tomorrow (14 October). They come into force ten days after their official publication. All registered religious organisations will now have to begin the burdensome task of holding meetings and gathering documentation to apply for compulsory re-registration – if they still meet the new, stricter criteria – for which no clear mechanisms have been established.

Nazgul Yergalieva, head of the Almaty-based Legal Policy Research Centre, regretted that President Nazarbaev signed what she calls the two "repressive" laws. She told Forum 18 from Almaty on 13 October that the aim of the laws is to control freedom of religion or belief "rather than guarantee its freedom". She observed 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".

"Continued relevance" of 2009 OSCE Legal Opinion

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) expressed its "disappointment" that President Nazarbaev signed the two laws. ODIHR Director Ambassador Janez Lenarcic on 29 September had earlier publicly criticised the laws (see below). Kazakhstan was OSCE Chair-in-Office in 2010.

"We already conveyed to the Kazakh authorities our opinion that the legislation appears to unnecessarily restrict the freedom of religion or belief and is poised to limit the exercise of this freedom in Kazakhstan," ODIHR spokesperson Jens Eschenbaecher told Forum 18 from Warsaw on 13 October. "We reiterate the continued relevance of our 2009 Opinion on the previous draft legislation. ODIHR continues to stand ready to provide advice and assistance on bringing Kazakhstan's freedom of religion legislation fully in line with international standards and OSCE commitments."

The 2009 OSCE Opinion found that "many serious issues remain with respect to the Proposed Religion Law's compliance with international human rights standards, including in particular OSCE commitments" (see F18News 4 February 2009 http://www.forum18.org/Archive.php?article_id=1249). The current repressive laws appear to have been in preparation since at least 2009 (see F18News 29 September 2011 http://www.forum18.org/Archive.php?article_id=1619).

Restrictions, bans, punishments

The first law - a new Religion Law formally entitled "The Law on Religious Activity and Religious Associations" - among other restrictions imposes a complex tiered registration system, bans unregistered religious activity, imposes compulsory religious censorship and requires both central and local government approval to build or open new places of worship. All religious

communities will be required to re-register or face liquidation through the courts (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

The second law - formally titled "The Law on introducing Amendments and Additions to several legal acts questions of Religious Activity and Religious Associations" – amends nine other laws and legal provisions. Most of the changes proposed in this Amending Law are minor and technical. However, changes to Article 375 of the Code of Administrative Offences and to the Law on the Rights of the Child could have a more far-reaching impact on freedom of religion or belief (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

The two laws were approved by the Lower House, the Majilis, on 21 September and by the Upper House, the Senate, on 29 September (see F18News 29 September 2011 http://www.forum18.org/Archive.php?article_id=1619). They were sent to President Nazarbaev for signature on 30 September, the parliamentary website noted.

The Majilis Press Service declined to tell Forum 18 whether any previous draft laws had passed through parliament's lower house - in which only the President's Nur Otan Party is represented - so quickly. Ninel Fokina of the Almaty Helsinki Committee told Forum 18 that: "They pretend there was public discussion, but everything is being done not to allow anyone time to react" (see F18News 21 September 2011 http://www.forum18.org/Archive.php?article_id=1615).

Parliamentary opposition, but fundamental violations unaddressed

Both before and after their adoption in September, 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 told Forum 18 that she thought 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 (see F18News 21 September 2011 http://www.forum18.org/Archive.php?article_id=1615).

After the laws' passage through the Senate, the upper house's press service claimed approval was unanimous – but Forum 18 was told by sources in Astana that two deputies voted against (see F18News 29 September 2011 http://www.forum18.org/Archive.php?article_id=1619).

Other opposition came from those who opposed the new laws on fundamental grounds, because of the incompatibility of restricting everyone's freedom of religion or belief with Kazakhstan's international human rights commitments. Forum 18 notes that many have been reluctant to express their opposition to the laws in public (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

"A dangerous path, leading to social tension and resentment"

However, various local human rights defender organisations have publicly expressed strong criticism of both laws. On 28 September, ahead of the Senate vote, the Association of Religious Organisations of Kazakhstan, a body mainly representing Protestant Churches, distributed its critique of the new laws to all Senators.

Yergalieva of the Legal Policy Research Centre told Forum 18 that the aim of the law was to control freedom of religion or belief "rather than guarantee its freedom". She observed 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". She regretted that the laws "were decided behind closed doors".

A similar understanding of security lies behind the OSCE commitments which Kazakhstan has formally promised to implement (see http://www.forum18.org/Archive.php?article_id=1351).

At a 5 October press conference in Almaty, the Almaty Helsinki Committee, the Norwegian Helsinki Committee, and experts from the region outlined their concerns to local journalists. Fokina of the Almaty Helsinki Committee noted that at least the authorities were now honest in outlining in law the restrictions they had long sought to impose. "The state acknowledges that it now legally establishes the norms for holding religious services," she noted ironically.

"Expert analyses"

Fokina added that re-registration of religious communities within a year will be impossible because the state does not have enough officials to conduct the "expert analyses" that the law now requires.

Professor Artur Artemyev, long a critic of the government's policy on freedom of religion or belief, told the press conference that the laws will do nothing to protect society from extremism, and are targeted less at extremism and terrorism than at registered religious

organisations. He questioned whether the state officials due to conduct "expert analyses" will be objective. Professor Artemyev made similar points about the lack of expertise of some state officials in relation to a controversial 2010 school textbook (see F18News 18 June 2010 http://www.forum18.org/Archive.php?article_id=1458).

Galina Golous of the Hare Krishna community feared that many of their local communities would face enforced closure as they do not have the required 50 adult founders. She also particularly criticised Article 6 of the new Religion Law and its requirement for an "expert analysis" of religious literature. She told the press conference that such analyses could drift on for years and be "an extra ban on freedom of speech and publishing of religious information".

"Not in line with Kazakhstan's international human rights commitments"

Zauresh Battalova, an opposition politician who was a member of the Senate from 1999-2005, is vigorous in her complaints. "The laws include norms not in line with Kazakhstan's international human rights commitments and violate the rights of the country's residents to freedom of religion," she told Forum 18 from Astana on 7 October.

Battalova pointed out that harsh laws on other aspects of civil society – such as political parties or public meetings – already exist, and the authorities wanted to impose similar controls on religious communities. "All legal changes make life harder for civil society," she told Forum 18. She fears that these new laws will force many religious communities underground.

She complained that opposition to these two laws had "not had the desired result". "The authorities ignored the protests." She said parliament was weak and simply "approves measures from the government and president". She felt that only international pressure would have an impact on the authorities.

"They frighten the people"

Battalova criticised the government's linkage of the laws with the fight against terrorism. "They frighten the people that too much freedom for religious organisations leads to terrorist attacks."

Officials have been running a campaign against alleged "extremist" and "non-traditional" movements along with the laws' adoption (see F18News 20 September 2011 http://www.forum18.org/Archive.php?article_id=1614). The Military Affairs Directorate of Almaty's Turksib District wrote to local religious communities, ordering them to "provide information on citizens on record as followers of non-traditional religions and radical religious views" (see F18News 29 September 2009 http://www.forum18.org/Archive.php?article_id=1619). When a similar package of laws was being put forward in 2008-9, a similar media campaign against people exercising freedom of religion or belief was conducted by the authorities (see F18News 5 February 2009 http://www.forum18.org/Archive.php?article_id=1250).

Although welcoming the Constitutional Council's rejection of similar harsh laws in 2002 and 2009, Battalova feared that it too might approve these laws if they are referred to it, as it "is not free to take its own decisions".

The Constitutional Council told Forum 18 on 7 October that "we don't exclude" that the President would send the new laws to it for review, but "unfortunately they have not arrived here". In February 2009 the Constitutional Council ruled that the previous proposed package of laws restricting freedom of religion or belief were unconstitutional (see F18News 12 February 2009 http://www.forum18.org/Archive.php?article_id=1255). However, in the event President Nazarbaev chose not to send these two laws to the Constitutional Council. The telephone at the Constitutional Council went unanswered on 13 October.

They "destroy freedom of conscience, a universal human right"

Bolatbek Bilyalov of the Astana-based Institute of Democracy and Human Rights said he was "very negative" towards these "harsh" laws. "Their attempts to regulate religious organisations destroy freedom of conscience, a universal human right," he told Forum 18 from Astana on 7 October.

He lamented that society had not understood what is in the new laws because of their speedy adoption, the lack of wide consultation and what he called the "PR campaign on the fight against extremism". He called on President Nazarbaev not to sign them. "Many religious organisations – not just Muslims – will suffer from these new laws."

Bilyalov complained that the laws provide for state interference in and obstruction of religious organisations' activity. He objected to compulsory state registration, as well as the required "state expert analyses" of publications, doctrines and objects. "In practice, only Hanafi Sunni Islam will be allowed," he told Forum 18. He particularly opposed the ban on praying in state institutions, warning that many prayer rooms will be closed down.

"Obvious problems"

Roman Podoprigrora, a law professor at the Caspian Public University in Almaty who has long studied the legal position of religious

communities, complained about both the speed of the laws' adoption in Parliament and the restrictions they will impose in a closely-argued article on 3 October (see http://www.zakon.kz/top_news/4451454-zakon-o-religioznoj-dejatnosti-odin.html).

He stressed that the speed of adoption "was not surprising": he thinks officials were "given the task of adopting it quickly without being drawn into long discussions, attracting the attention of local and foreign experts, provide an opportunity to express dissent with the law".

He lamented the failure to consider the laws "soberly" and that legal experts had not been involved to avoid what he described as the new Religion Law's "obvious problems over its future implementation".

Podoprigora identified numerous problems with the laws, including that they will do nothing to help fight extremism and terrorism. He also insisted they will do nothing towards their professed goal of "bringing order" to the activity of religious organisations. "Depriving many religious associations of legal status as a result of the new demands can hardly be described as bringing order – it looks more like liquidation." He pointed out that officials are now boasting that the number of religious communities will reduce, while only recently they were touting the growth in their number as an achievement. "If those who believe that bans and restrictions can seriously influence people's desire to profess their religion, they are sincerely or insincerely mistaken."

"Legal nonsense"

Professor Podoprigora dismissed arguments that Kazakhstan faces a rise on "dubious" or "pseudo-religious" organisations, and added that the growth in the number of religious communities seen in the 1990s appears to have stopped. He rejected suggestions that just because the current Religion Law dates from 1992 it needs amendment, pointing out that it has several times been significantly amended. He particularly dismissed government attempts to cite foreign examples to justify new restrictions, insisting that officials were "highly selective" and often distorted the facts.

There are many substantial legal problems with the laws, including that there is no mechanism outlined for the re-registration the law demands. The differential registration status offered to religious communities was questioned by Podoprigora, who questioned how some bodies might be able to retain legal status. He described comments by Agency of Religious Affairs (ARA) chief Kairat Lama Sharif that unregistered religious organisations will be "liquidated" as "legal nonsense", pointing out that "you cannot 'close' something that does not legally exist."

Podoprigora complained of the "powerful bureaucratic apparatus" that religious communities now face, of which they already have "very painful" experience. He fears that the tight restrictions could lead to corruption, given the vagueness of many of the terms.

'Why?' is a reoccurring question when looking at the law's demands, Podoprigora notes, for example the requirement for organisations and missionaries to provide printed materials about their doctrines and ideas. As a result "the registering bodies will have to prepare hundreds of cupboards to store thousands of Korans and Bibles", he suggests.

Podoprigora also questions the role of the new ARA, which he notes conducts "often unnecessary" work, such as preparing these new laws, as well as overburdening itself with tasks contained within these laws. He also notes that it should not be said that his criticism is negative, as in early 2011 he had prepared - at the request of ARA predecessor the Religious Affairs Committee – a constructive alternative proposal for a new Religion Law.

OSCE concern ignored

Ambassador Lenarcic, Director of the OSCE's ODIHR, commented that: "The new law appears to unnecessarily restrict the freedom of religion or belief and is poised to limit the exercise of this freedom in Kazakhstan," Lenarcic said in a statement on 29 September, the day the two laws passed through the Senate (see <http://www.osce.org/odihr/83191>).

Referring to the 2009 ODIHR Legal Opinion on an earlier version of the law with similar provisions (see F18News 4 February 2009 http://www.forum18.org/Archive.php?article_id=1249), Ambassador Lenarcic commented that: "It is disappointing to see that the law does not take into account the earlier comments by ODIHR and that it was passed without significant public consultation".

He noted that in its current form the new legislation would constitute a step back in Kazakhstan's compliance with OSCE commitments (see Forum 18's compilation of OSCE commitments on freedom of religion or belief at http://www.forum18.org/Archive.php?article_id=1351).

Ambassador Lenarcic expressed the hope that the law would be thoroughly reviewed in light of the country's international obligations before it is signed into force, and said ODIHR's Advisory Panel on Freedom of Religion or Belief stands ready to provide comments if requested. In the event, the Kazakh authorities ignored ODIHR's call.

Non-Muslim Board mosques "will be closed down"

The state-backed Muslim Board has welcomed many restrictive aspects of the new laws. Absattar Derbisali, head of the Muslim Board, welcomed restrictions, complaining that the 1992 Law "gave a spur to the sharp growth in the country of sects which are alien to us, with their unimpeded missionary activity". He recalled that he had spoken up in 2001 at a joint session of parliament to express the hope that the new Religion Law then being considered "would bring under control all the false religious associations and sects taking advantage and prospering". He had spoken out similarly in 2008 over the then proposed legal changes. He lamented that again measures approved in parliament were rejected by the Constitutional Council.

Ongar Omirbek, spokesperson for the Muslim Board, told Forum 18 on 7 October that the Board has no objection to the compulsory state censorship of religious literature or the requirement that all religious communities must register with the state. "Let the state do this."

He also welcomed what he called the government's commitment to the Muslim Board. "The state recognises that there must be only one centralised organisation which all Muslims should be under," he claimed. "This is to ensure control over the level of knowledge of imams. We have one nation, one religion and one mashab [Islamic school]. Only Hanafi Islam should exist in Kazakhstan."

Asked what will happen to mosques that do not want to come under the authority of the Muslim Board, such as Shia or Ahmadi Muslims, Omirbek responded: "They will be closed down." Asked why he believes several Muslim jurisdictions cannot coexist in Kazakhstan, as happens in neighbouring Russia, he responded: "Russia is a Christian country. It is not a model for us."

The Muslim Board has pushed for the Hanafi school of Islam to be given a monopoly over Islam (see F18News 28 July 2011 http://www.forum18.org/Archive.php?article_id=1599). State officials have already threatened registered independent mosques that they will not be re-registered – and so will be banned - if they do not join the Muslim Board (see F18News 16 September 2011 http://www.forum18.org/Archive.php?article_id=1613).

But, Derbisali of the Muslim Board strongly criticised Article 7 of the new Religion Law – which bans praying in state institutions. He made the remarks in a 30 September statement posted to the Board's website in Kazakh and Russian.

Derbisali of the Muslim Board stated categorically that "so as not to create artificial obstacles to the work and study of those professing Islam, we consider it necessary not to ban the functioning of prayer rooms". "Today, the majority of people in state bodies and higher and middle specialist educational establishments pray the namaz and abide by Muslim canons," he maintained. He insisted that praying five times a day is the "sacred duty of every Muslim" and such a ban would give devout Muslims an unacceptable dilemma of "religion or work".

"We presented to parliament our comments and proposals on this Article. To our great disappointment, they were not taken into account. The Spiritual Board of Muslims of Kazakhstan will continue to insist that this provision must be changed." He warned that failure to do so could provoke anti-government sentiment from angry Muslims.

Omirbek of the Muslim Board echoed Derbisali's comments. "We are only negative towards Article 7, Part 3," he insisted to Forum 18. "It doesn't suit Muslims." He maintained that when the Muslim Board made its views known, "officials accepted this with understanding". He claimed that for this reason President Nazarbaev would not sign the new Religion Law in its current form. However, he admitted that officials had given the Board no indication of whether the President would heed their call.

Tighter literature controls already

Officials in Aktobe Region began checking that no "banned" religious books were on sale in the region, Tengrinews reported on 14 September. It said officials visited book kiosks at local mosques, as well as bookshops and market stalls. Regional Justice Department officials refused to tell the news agency why such a wide campaign to check up on religious literature on sale had been launched. Officials indicated that this was a regular annual event.

Widely reported in the local media was the confiscation by border guards in Kostanai Region of what they said was "banned" religious literature. More than 200 Russian-language items were seized on 3 October from a conductor on the train from the Russian city of Orenburg to the Kazakh city of Astana. She was then detained.

Officials refused to tell the media what the confiscated religious literature was. An official of the Kostanai Regional Border Control Directorate – who refused to give his name – told Forum 18 on 4 October that the confiscated items had been sent for an "expert analysis" by unnamed state agencies. He said that "in the interests of our service" he too could not reveal what the literature was, or what had happened to the conductor. (END)

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

For more background, see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1352.

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

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

A printer-friendly map of Kazakhstan is available at <http://education.nationalgeographic.com/education/mapping/outline-map/?map=Kazakhstan>.

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