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KYRGYZSTAN: New restrictions in draft new Religion Law

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

The draft Religion Law prepared by the State Commission for Religious Affairs would – if adopted in current form – continue to ban worship meetings and religious education without state permission; make registering small religious communities more difficult or impossible; and might make it impossible to register communities that do not own their own buildings. It would continue to require 200 adults to found a community and apply for compulsory registration, but would require them to live in one Region. For the first time places of worship would need registration. An Amending Law would introduce new punishments. Manas Muratbekov of the SCRA's Legal Department who prepared both draft laws refused to discuss them.

A draft new Religion Law prepared by the State Commission for Religious Affairs (SCRA) would – if eventually adopted in its current form – make it more difficult to exercise freedom of religion or belief. Among new restrictions, registering small religious communities would be more difficult or impossible, and the draft might also make it impossible to register communities that do not own their own buildings.

The draft Law would continue to require 200 adults to found a religious community and apply for compulsory registration, but would now require them to live in one Region of the country. All 200 would be required to attend the founding meeting in person and have their full personal details recorded and notarised. "It is physically impossible to gather more than 200 people at one notary's office to certify the list of founders with a record of the passport details of these citizens, as well as the record of the founding meeting on one day," Bishkek lawyer Zhanara Askar kyzy insists. She also warned that such notarisation would be expensive (see below).

The draft Law would also continue the current ban on meetings for worship and religious education without state permission (see below).

Another of the provisions violating human rights is that, for the first time, the draft Law would require individuals or religious communities to gain registration from the SCRA for places of worship that they use, whether owned or rented (see below).

Compulsory state registration and the high membership threshold required to found a religious organisation are among the draft Law's provisions which violate legally-binding international human rights standards. These standards include the International Covenant on Civil and Political Rights (ICCPR), to which Kyrgyzstan acceded in 1994 (see below).

The SCRA prepared the draft text on 2 November, exactly a month after President Sadyr Japarov signed a Concept on State Policy in the Religious Sphere 2021-26. This called for laws "in the religious sphere" to be brought into line with "international human rights standards" (see below).

The SCRA claimed the draft would not bring "negative consequences", including in terms of human rights or corruption. Manas Muratbekov, head of the SCRA's Legal Department who prepared both draft laws, refused to discuss the texts' violation of human rights with Forum 18 (see below).

The Justice Ministry's website of draft laws open for public discussion published the draft text on 13 December, noting that any comments are to be submitted by 12 January 2022 (see below).

The SCRA has also prepared an Amending Law which would bring the Violations Code and other laws into line with the new Religion Law. This too is open for public consultation until 12 January 2022 (see below).

The draft Laws would have to be approved by Parliament, the Zhogorku Kenesh, and be signed by the President to become law.

No harm to human rights?

The SCRA's accompanying notes for both draft laws claim that their adoption would not bring "negative consequences", including in terms of human rights or corruption. The SCRA appears to expect these two Laws to be adopted in early 2022 (see below).

Manas Muratbekov, head of the SCRA's Legal Department who prepared both draft laws, refused to discuss the texts on 15 December. Forum 18 asked:

- why the proposed new Law would continue to ban exercising freedom of religion or belief without state permission;
- why 200 adults would still be required to apply to register a religious community and why they would all have to live in one Region;
- why religious communities would not be able to use a home address as the community's legal address;
- and whether officials will require all registered religious communities to re-register if the law is adopted.

Muratbekov told Forum 18 to send its questions in writing and put the phone down.

No other SCRA official was willing to discuss the draft laws either. A Deputy Director Gulnaz Isayeva referred all questions on 15 December to the press secretary. However, her phone went unanswered on 15 and 16 December.

Compulsory state registration and the high membership threshold required to found a religious organisation are among the draft Law's provisions which violate legally-binding international human rights standards. These standards include the International Covenant on Civil and Political Rights (ICCPR), to which Kyrgyzstan acceded in 1994.

The UN Human Rights Committee's 2014 Concluding Observations (CCPR/C/KGZ/CO/2 (<https://undocs.org/CCPR/C/KGZ/CO/2>)) on Kyrgyzstan's ICCPR record stressed that amendments to the 2008 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".

Draft new Religion Law part of "rushed" review of laws

The SCRA notes accompanying the publication of the draft new Religion Law and the draft Amending Law says they were prepared in response to a presidential Decree of 8 February 2021 ordering a review of "concepts, strategies, programmes and laws" by the end of 2021. A total of 356 laws were included in the review. Working Groups were established to revise laws in different areas.

The Working Group examination of the current Religion Law "revealed multiple contradictions and gaps, the elimination of which is more than half of the text of the Law", the accompanying note on the proposed draft Religion Law from SCRA Director Toigonbai Abdykarov declares. (Abdykarov has headed the SCRA since 3 June.)

Human rights groups in the country criticised what they saw as a "rushed" review of so many laws and in ways that violated human rights. They asked for the review to be allowed more time, 24.kg news website noted on 1 September.

The government "allocated far too short a time frame, causing hasty assessments, government interference in sensitive issues, and lack of consultation with those affected by these laws," Syinat Sultanalieva of Human Rights Watch noted on 17 November (<https://www.hrw.org/news/2021/11/17/kyrgyzstan-extend-time-massive-review-laws>).

Public comments by 12 January 2022

The SCRA prepared the draft text of the new Religion Law on 2 November, exactly a month after it was announced that President Sadyr Japarov had signed a Concept on State Policy in the Religious Sphere 2021-26. The Concept called for laws "in the religious sphere" to be brought into line with the Constitution and with "international human rights standards". At the same time, the Concept called for "a reduction in the number of [religious] associations illegally carrying out their activity".

The SCRA handed the draft text of the new Religion Law on 23 November to participants at a discussion in the capital Bishkek. The United Nations Development Programme's Bishkek office sponsored public discussions of the draft in Bishkek and in the seven other Regions of the country.

On 13 December, the Justice Ministry's website of draft laws open for public discussion finally published the SCRA's slightly modified draft text of the proposed new Religion Law in both Kyrgyz and Russian. It gives 12 January 2022 as the end of the consultation period and 19 January 2022 as the end of the "consideration" period.

The Justice Ministry website also published on 13 December the draft Amending Law in both Kyrgyz and Russian, which would amend a series of other laws that touch on religion. It similarly gives 12 January 2022 as the end of the consultation period and 19 January 2022 as the end of the "consideration" period.

On 14 December the Cabinet of Ministers website also published the draft texts. It said that any comments should be sent to the private email address of Manas Muratbekov, head of the SCRA's Legal Department.

The one-month period for public comments includes two public holidays – 3 January for New Year and 7 January for Russian Orthodox Christmas.

The Director of the SCRA, Toigonbai Abdykarov, is to be the Cabinet of Ministers' designated representative when the new Religion Law and the Amending Law are presented for adoption to Parliament, the Zhogorku Kenesh.

Repeated proposals to replace or revise Religion Law

The current Religion Law was adopted in December 2008 and came into force in January 2009. Registered religious communities were required to prepare new applications to re-register by 1 January 2010. However, the SCRA refused to register many communities (https://www.forum18.org/archive.php?article_id=2013) for the next five or six years, giving contradictory statements on whether such registration was necessary.

The Religion Law has been repeatedly amended since 2009. In 2012, amendments increased the state censorship of religious literature.

More recent amendments in December 2019 and May 2021 (https://www.forum18.org/archive.php?article_id=2703) have (at least in theory) removed the requirement for keneshes (local councils) to approve lists of founders before a community can apply to the SCRA for registration, before a community can apply to the SCRA to register a religious education establishment, or before a community can apply to register a foreigner it wants to invite to Kyrgyzstan to conduct religious work.

Since 2009, officials have repeatedly proposed replacing the Religion Law with a completely new text.

In 2017 a State Commission draft brought to Parliament (https://www.forum18.org/archive.php?article_id=2283) proposed among other restrictions that: all religious literature be subject to state censorship, sharing beliefs be banned, and 500 adult citizens in one location would be required to apply for state registration (and so permission to exist) of a religious community. Parliament passed the amendments in their first reading, but they were not presented to Parliament again.

Exercising freedom of religion or belief without permission still to be banned, punishable

Article 8, Part 2 of the current Religion Law bans the exercise of freedom of religion or belief without state registration.

Article 20, Part 1 of the December 2021 draft declares: "Carrying out religious activity in Kyrgyzstan without registration (or re-registration) with the state organ for religious affairs .. is not allowed, and brings responsibility under the Violations Code".

Manas Muratbekov, head of the SCRA's Legal Department who prepared the draft, refused to discuss this requirement with Forum 18.

The December 2021 draft Amending Law would add punishments in the Violations Code for unapproved exercise of freedom of religion or belief. Article 142, Part 8 would punish "Carrying out religious activity or using an object of religious designation or prayer premises without corresponding registration with the executive state body for religious affairs" with fines of 75 Financial Indicators (FIs) on individuals (about two weeks' average wage) and 230 FIs on organisations.

This widens the scope of activity punishable. Article 142, Part 4 of the Violations Code that came into force on 1 December 2021 (https://www.forum18.org/archive.php?article_id=2700) punishes "Carrying out religious activity" with the same fines, with no specific mention of using premises without state permission.

200 adult founders still required – and they must live in one Region

Article 8, Part 3 of the current Religion Law requires at least 200 adult citizens permanently living in the country to found a religious organisation and apply for state registration.

Under Article 11, Part 1 of the December 2021 draft, at least 200 "responsible citizens" (those 18 and over who have not been declared incapable by a court of deciding for themselves) permanently living in one Region of the country would be required to found a religious organisation and apply for state registration.

Manas Muratbekov, head of the SCRA's Legal Department who prepared the draft, refused to discuss this requirement with Forum 18.

Under Article 12, Part 3, all 200 founders would be required to be physically present and vote at the founding meeting. The

application would require all 200 founders to have their full names, dates of birth, citizenship, registered addresses and passport details listed and notarised.

In a suit brought by Jehovah's Witnesses against the constitutionality of the then registration requirements, on 4 September 2014 the Constitutional Chamber of the Supreme Court rejected their contention that a high threshold of 200 adults required to found a religious organisation violated the Constitution. "These demands cannot be regarded as a restriction on grounds of faith," it declared.

Zhanara Askar kyzy, a Protestant Christian and lawyer, also tried to challenge the requirement for religious organisations to have at least 200 adult citizen founders. She argued that this violated her rights and violated the Constitution. However, on 16 April 2015, the Constitutional Chamber of the Supreme Court refused to hear her suit, claiming that it had already considered the issue in 2014. On 23 June 2015, the Constitutional Chamber rejected Askar kyzy's appeal against the April 2015 decision.

In her comments on the 2021 draft new Religion Law, the lawyer Askar kyzy notes that an individual "does not need to be tied to a permanent place of residence" and questions how a potential founder's place of residence will be verified.

Askar kyzy also questions how all 200 founders could be present at one founding meeting, describing the requirement as amounting to a "direct ban" on registering a religious organisation.

"It is physically impossible to gather more than 200 people at one notary's office to certify the list of founders with a record of the passport details of these citizens, as well as the record of the founding meeting on one day," Askar kyzy insists. "Not one notary would take on such a case, and if one did agree then that would require an incredible amount of money for their services." She notes that founders of other legal entities can give their approval by proxy.

Consequences of refusal to register communities violates human rights

On 14 July 2021 - in a decision (CCPR/C/132/D/2659/2015

(https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f132%2fD%2f2659%2f2015&Lang=en) made public on 7 December 2021 - the UN Human Rights Committee found that registration denials of Jehovah's Witness communities in Kyrgyzstan (https://www.forum18.org/archive.php?article_id=2703) had violated their rights and ordered redress and compensation to be paid to the applicants.

The Committee also considered the Jehovah's Witnesses' complaint that 200 adults are needed to apply to found a religious community which, the Committee noted, "is allegedly designed to prevent small religious organizations from obtaining registration".

The UN Human Rights Committee stated that it notes that "by refusing to register the authors' religious organization, the State party denied their rights to jointly manifest their religious beliefs, including the right to conduct religious meetings and assemblies, to own or use property for religious purposes, to produce and import religious literature, to receive donations, to carry out charitable activity and to invite foreign citizens to participate in religious events".

The Committee considered that "these activities form part of the authors' right to manifest their beliefs", and noted that the current Religion Law (https://www.forum18.org/archive.php?article_id=2013) makes "'unregistered' religious activity .. a criminal offence".

"Considering the significant consequences of a refusal of registration, namely the impossibility to carry out religious activities," the Human Rights Committee concluded that "refusal to register the authors' religious organizations" is a limitation on freedom of religion or belief for which Kyrgyzstan has demonstrated no legally valid reason. "The Committee therefore concludes that the authors' rights under article 18 (1) of the Covenant [the International Covenant on Civil and Political Rights] have been violated."

A Joint Opinion of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) ([https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)002-e)) on Uzbekistan's then-draft Religion Law was published on 12 October 2020. That Religion Law, which came into force on 6 July 2021 (https://www.forum18.org/archive.php?article_id=2670), also requires 200 founders resident in a specific place. The Joint Opinion stated that: "any minimum threshold for registration, should be justified and take into account the needs of smaller religious and belief communities." Referring to public associations, the Joint Opinion stated that "it is generally recommended at the international level to not require more than two members as a minimum to establish an association." The Joint Opinion also stated that "It is recommended to .. simply require permanent residence .. and not in a specific district/city."

The OSCE / Council of Europe Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (<https://www.osce.org/files/f/documents/9/9/139046.pdf>) note that under international human rights law: "State permission may not be made a condition for the exercise of the freedom of religion or belief. The freedom of religion or belief, whether manifested alone or in community with others, in public or in private, cannot be made subject to prior registration or other similar procedures, since it belongs to human beings and communities as rights holders and does not depend on official authorization."

The Guidelines also note in relation to registration - which must in international law be voluntary - that "legislation should not make

obtaining legal personality contingent on a religious or belief community having an excessive minimum number of members".

Examples of a minimum requirement of two persons are given in the Guidelines, which note that "States .. should be aware of the fact that provisions requiring a high minimum number of members make the operational activities of newly established religious communities unnecessarily difficult."

Legal address requirements an obstacle to registration

Unlike in the current Religion Law, the December 2021 draft would specifically ban religious communities from using a home, for example the home of a leader of the community, as their legal address.

Article 23, Part 4 of the December 2021 draft has the effect of requiring a religious community to give its legal address as "the place where it permanently conducts religious activity". Part 5 declares: "Not allowed is the use of residential premises as the place where religious activity is permanently conducted, nor the giving of the address of residential premises as the address of the location of the religious organisation."

Manas Muratbekov, head of the SCRA's Legal Department who prepared the draft, refused to discuss this requirement with Forum 18.

Article 23, Part 5, Point 6 requires a religious community to provide "a certified copy of the conformity assessment report of the completed building, structure, or technical passport of the premises in accordance with the legislation on urban planning and architecture, in which the religious organisation is located".

Many Protestant Christian, Jehovah's Witness and other communities do not have their own place of worship and meet for worship regularly in rented premises. It is not clear if the renting organisations would be prepared to provide documentation of the buildings where the communities meet and, if so, whether the SCRA would accept them. The lawyer Askar kyzy argues that it would be impossible for communities that meet in rented premises to fulfil this requirement.

Askar kyzy also expresses concern about requiring the legal address to be the same as the meeting address. She points out that some religious communities do not have a custom of having a dedicated place of worship. Among them are Protestant communities who meet in rented venues.

"As in some cases premises are rented for several hours [a week]," Askar kyzy notes, "finding the religious organisation or its representatives in case of need at the address where they meet would not be possible." She argues that separating a religious community's legal address and meeting address would avoid such problems.

Informing local authorities, informing SCRA

Within five days of receiving registration from the SCRA, a religious organisation would have to inform the local authority, giving the address of the organisation and the leader's personal and contact details. Within five days of receiving confirmation of this from the local authority, the owner would have to notify the SCRA of this confirmation.

It remains unclear why, if the SCRA has registered a religious community and it believes that the local authorities need to know, it could not inform the local authorities itself.

No mandatory re-registration

The State Commission for Religious Affairs (SCRA) lists 3,385 religious organisations that currently have state registration.

After the adoption of the current Religion Law which came into force in January 2009, all registered religious communities were required to re-register. For many years, the SCRA failed to respond to re-registration applications from large numbers of communities, leaving them in a vulnerable position.

The December 2021 draft Religion Law includes no requirement for religious communities which currently have registration to re-register under any new terms. Article 50, Part 3 of the draft explicitly states that the new Law would not have retroactive force.

Manas Muratbekov, head of the SCRA's Legal Department who prepared the draft, refused to discuss with Forum 18 whether officials might require religious communities to re-register.

"Prayer premises" and "objects of religious designation" to require registration

The December 2021 draft Religion Law would for the first time require places of worship to have state registration with the SCRA before religious communities would be allowed to use them. The draft distinguishes between "prayer premises" and "objects of

religious designation", though it does not explain why.

Article 32, Part 1 defines "prayer premises" as "premises in a building or free-standing structure with public access and used exclusively for the purpose of carrying out prayers". It appears that "prayer premises" refers to Muslim prayer rooms (namazkhana).

Article 33, Part 1 defines "objects of religious designation" as "a building, construction, structure or complex of structures used for religious activities".

To register a place of worship, the individual or organisation that owns it or has a rental agreement to use it would have to lodge an application together with documentation confirming ownership or rental of the premises and documentation confirming that the building meets planning and building requirements.

Within five days of receiving registration for the premises from the SCRA, the owner would have to inform the local authority, giving the address of the premises and the owner's personal and contact details. Within five days of receiving confirmation of this from the local authority, the owner would have to notify the SCRA of this confirmation.

Opening prayer premises in blocks of flats, as well as in pre-school and educational establishments would be banned. Using any places of worship without state permission would be punishable under the Violations Code.

The proposed new Amending Law would add to the Violations Code Article 142, Part 8. This would punish "Carrying out religious activities, using an object of religious designation or prayer premises without appropriate registration with the authorised state body for religious affairs" with fines of 75 FIs on individuals (about two weeks' average wage) and 230 FIs on organisations.

Private religious education to be banned, punishable

The December 2021 draft Religion Law would allow religious communities to apply to register religious educational establishments, provided they have at least 200 adult founders who live in one Region of the country and who would all assemble for a founding meeting in person and would have their personal and passport details notarised.

Such religious educational establishments could be established "for the preparation of clergy and necessary religious personnel". It remains unclear why these are the only purposes for which a registered religious organisation might establish an educational establishment and whether individuals or groups of people which are not registered religious organisations could establish religious educational establishments.

Article 6, Part 4 of the draft Law declares: "Teaching religious disciplines on an individual basis outside a religious educational institution is prohibited."

The draft Amending Law would amend the Violations Code. Article 142, Part 1 of the Code that came into force on 1 December 2021 (https://www.forum18.org/archive.php?article_id=2700) punishes "Violation of the norms governing the procedure for the provision of religious education" with fines of 55 Financial Indicators (FIs) on individuals (about 10 days' average wage) and 170 FIs on organisations.

The Amending Law would replace this provision. The new Article 142, Part 4 would punish "Teaching religious disciplines on an individual basis outside a religious educational institution" with fines of 55 FIs on individuals (about 10 days' average wage) and 170 FIs on organisations.

Religious literature distribution to be less punishable

The December 2021 draft Religion Law would remove the ban on distributing religious publications in public places and going from door to door. It would retain the ban on distributing such literature in municipal institutions and would add a ban on such distribution in pre-school or general educational establishments.

Article 142, Part 3 of the Violations Code that came into force on 1 December 2021 (https://www.forum18.org/archive.php?article_id=2700) punishes "Distribution of literature, print, audio and video materials of religious nature in public places, as well as by going round homes, state or municipal institutions" with fines of 55 FIs on individuals and 170 FIs on organisations.

The draft Amending Law proposed by the SCRA would renumber that provision to Article 142, Part 6 and reword it: "Distribution of literature, print, audio and video materials of religious nature in state or municipal institutions, as well as in pre-school and general educational establishments." Fines would remain unchanged of 55 FIs on individuals (about 10 days' average wage) and 170 FIs on organisations. (END)

More reports on freedom of thought, conscience and belief in Kyrgyzstan (<https://www.forum18.org/Archive.php?country=30>)

For background information, see Forum 18's Kyrgyzstan religious freedom survey (https://www.forum18.org/archive.php?article_id=2013)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments (https://www.forum18.org/Archive.php?article_id=1351)

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