

**United Nations Human Rights Council
Universal Periodic Review**

Kazakhstan

Submission of The Becket Fund for Religious Liberty

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The Becket Fund is a nonpartisan, nonprofit, public interest law firm dedicated to protecting the free expression of people of all faiths.

United Nations Human Rights Council
Universal Periodic Review of Member-State Kazakhstan

The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of the rule of law and religious freedom law in Kazakhstan as a contribution to the Universal Period Review of UN member-state Kazakhstan.

1. Background

Kazakhstan was a part of the Soviet Union from 1920 until December 16, 1991, when it became the last Soviet republic to declare independence. Although Kazakhstan is a constitutional republic, the President, Nursultan Nazarbayev, has exercised sweeping control over Parliament and judiciary since he came to power in 1991.¹ A new Kazakh constitution was created in 1995 that expanded presidential power substantially and created a new bi-cameral parliament. The dominance of the executive branch was then secured in December 1995 elections, which captured a majority of seats of the legislature for supporters of the president.

Notwithstanding international criticism regarding political corruption, accusations of media repression, and the dubious legitimacy of political elections since President Nazarbayev came to power, Kazakhstan's bid to chair the Organization for Security and Co-operation in Europe in 2010 was accepted unanimously.² Still, local reports indicate that basic freedoms of expression, conscience, and assembly continue to be denied, leading to Freedom House's continued categorization of Kazakhstan as "not free" in its 2009 Report.³

The population of Kazakhstan is made up of approximately 16.4 million people, according to 2009 census data.⁴ Since the region was a frequent destination of Soviet resettlement campaigns, the present Kazakh population consists of a wide variety of ethnic and religious groups. While Sunni Muslim⁵ and Russian Orthodox members predominate, surveys have suggested that levels of religious adherence and organized religious worship are generally low.⁶ Kazakh government data reports that approximately two per cent of the population is Roman Catholic, there are 964 registered Protestant Christian organizations, and there are sizable groups of Jehovah's Witnesses, Seventh-day Adventists, Methodists, Mennonites and Mormons.⁷ Additionally, government statistics indicate that there are four Jewish synagogues, four registered Buddhist groups, eleven affiliates of Hare Krishna, and unspecified numbers of Baha'is, Christian Scientists, and the Unification Church.⁸

The Religious Issues Committee ("RIC") of the Ministry of Justice of Kazakhstan handles all religious affairs between religious groups and the Government, including consulting on registration of new religions and reviewing religious materials to monitor compliance with government registration requirements.

2. Legal Framework

2.1. Constitution

Kazakhstan's Constitution has been in effect since September 5, 1995. From the outset, the Constitution establishes the nation as a democratic and secular state, which upholds as "the highest value" the life, rights, and freedoms of individuals.⁹ The Constitution's Preamble emphasizes the government's dedication to the ideals of "freedom, equality and concord", and the language throughout the document provides clear reinforcement to this commitment.

Article 12.2 of the Constitution affirms that human rights and freedoms, including due process rights, are guaranteed to everyone, whether citizen or alien, "by virtue of birth".¹⁰ The origin of these rights is identified as "human dignity", which

¹ See Hudson Institute's Center for Religious Freedom, *Religious Freedom in the World* 232-35 (Paul Marshall ed. 2008)

² See U.S. Dep't of State, South and Central Asian Affairs, *Country Profile: Kazakhstan* (Dec. 2006), available at <http://lcweb2.loc.gov/frd/cs/profiles/Kazakhstan.pdf>.

³ See Freedom House, *Freedom in the World: 2009* (Jan. 12, 2009) available at <http://www.freedomhouse.org>. "A 'Not Free' country is one where basic political rights are absent, and basic civil liberties are widely and systematically denied." See *id.*

⁴ See *16 million 402 thousand 861 people registered in Kazakhstan*, *Kazakhstan Today*, Mar. 3, 2009, <http://www.kt.kz/index.php?lang=eng&uin=1133435211&chapter=1153480633>.

⁵ The Spiritual Association of Muslims of Kazakhstan ("SAMK") headed by the chief Mufti in Almaty, is the principal reviewing body for matters of Islamic theology and practice, and is responsible for the construction of mosques, and the selection and training of Muslim leaders. See *infra* note 6.

⁶ See U.S. Dep't of State, *International Religious Freedom Report 2008: Kazakhstan* [hereinafter "IRF Report 2008"], available at <http://www.state.gov/g/drl/rls/irf/2008/108501.htm>.

⁷ See *id.*

⁸ See *id.*

⁹ See Constitution of Kazakhstan art. 1(1), available at http://www.kazakhstan.orexca.com/kazakhstan_constitution.shtml (last visited Sept. 4, 2009).

¹⁰ See *id.* art. 12(2).

entails the Constitution's guarantee of the inviolable rights of all people "to private life, personal or family secrets, protection of honor and dignity". Moreover, assurance is given in Article 14.2 that these rights belong to all people and that no one may be subject to discrimination on the bases of "origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances".¹¹

Specifically with regard to religion, Article 19.1 guarantees that "[e]veryone shall have the right to determine and indicate or not to indicate his national, party and religious affiliation." Further on, in Article 22, "the right to freedom of conscience" is singled out, with the qualification that this right "must not entail or limit universal human and civil rights and responsibilities before the state." Additionally, Article 39 holds that certain rights, including the right to determine one's religious affiliation and the right to freedom of conscience can never be overridden by State interests.¹²

Despite constitutional guarantees of freedom of religion, there are at least two provisions in the Constitution that contain restrictions on the activities of religious groups. For example, Article 5 obstructs religious missionary activity by providing: "Activities of foreign religious associations on the territory of the Republic as well as appointment of heads of religious associations in the Republic by foreign religious centers shall be carried out in coordination with the respective state institutions of the Republic."¹³ Additionally, Article 5.4 prohibits the existence of political parties with religious affiliations.¹⁴

2.2. International Legal Obligations

On January 24, 2006, Kazakhstan acceded to the International Covenant on Civil and Political Rights, in which Article 18 guarantees the freedom of religion or belief and Article 27 guarantees that ethnic and religious minorities will not be denied the right "to enjoy their own culture" or "to profess and practice their own religion."¹⁵

Kazakhstan is a member of the Organization for Security and Co-operation in Europe ("OSCE") and will assume the chairmanship of the OSCE in January 2010. In this capacity, Kazakhstan has committed "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" and "to counter such threats to security as violations of ... the freedom of thought, conscience, religion or belief..."¹⁶

2.3. 2008 Draft Religion Law

Since 1992, the Kazakh Parliament has drafted various iterations of a "Law on Freedom of Religion and Religious Association" that involve the registration of religious groups, restrictions on the activities of missionaries; and attempts by the government to prevent individuals from practicing non-traditional religions or joining minority sects of traditional religions.¹⁷

In 2008, a new religion law circulated through Parliament that, if enacted, could result in serious infringements on religious freedom. This draft law, "On introducing changes and additions to certain legislative acts on issues of freedom of religion and religious associations," ("Draft Religion Law") would amend several provisions of the "Code of Administrative Offenses" dealing with religions and religious associations.¹⁸ The Draft Religion Law reached full Parliament in June 2008 and was adopted by Parliament in November 2008.

¹¹ See *id.* art. 14(2).

¹² See *id.* art. 39(3).

¹³ See *id.* art. 5(5).

¹⁴ See *id.* art. 5(4) ("Activities of political parties and trade unions of other states, religious parties as well as financing political parties and trade unions by foreign legal entities and citizens, foreign states and international organizations shall not be permitted in the Republic.")

¹⁵ See ICCPR art. 18, paras. 1, 3; art. 27. Additionally, as a member of the United Nations, Kazakhstan has agreed to the principles expressed in the Universal Declaration of Human Rights, which also protects the fundamental right to freedom of religion or belief, including the rights to choose one's own faith. See Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

¹⁶ Organization for Security and Co-operation in Europe ("OSCE"), *Charter for European Security* ¶ 19 (Nov. 1999), available at www.osce.org/item/4051.html.

¹⁷ See *Religious Freedom in the World*, *supra* note 1. Some proposals to amend the Laws on Religion were rejected in 2002, because Kazakhstan's Constitutional Council determined that the terms infringed on constitutional religious freedoms. However, some of these restrictions surfaced in new packaging in February 2005 as part of President Nazarbayev's legislation "On Combating Extremism". This campaign to heighten "national security" included laws prohibiting the activity of unregistered religious communities and required registration for any "missionary activities" intended to "spread[] the faith". See *id.*

¹⁸ See generally Human Rights Watch, *Kazakhstan: An Atmosphere of Quiet Repression* 6 (Dec. 1, 2008), available at <http://www.hrw.org/en/reports/2008/12/01/atmosphere-quiet-repression-0> [hereinafter "Human Rights Watch, Kazakhstan"]

During this time, the amendments drew wide international and local criticism from groups that objected to the Government's tightened control of freedom of conscience and speech. For example, in January 2009, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) Advisory Council on Freedom of Religion or Belief in January 2009 issued comments on the Draft Religion Law, noting that the November 2008 text was more protective of conscience rights than the May 2008 version of the draft.¹⁹ Still, the Advisory Council reported that "significant problems remained" and that many of the provisions were "systematically over restrictive."²⁰

The amendments to the Religion Laws would create a two-tier system for official recognition of religious communities, categorizing them as either religious "groups", which lack status as a legal person and therefore have very limited rights, and religious "associations", which must have at least fifty (increased from ten) registered adherents in order to register in a particular locality. This system would greatly restrict the rights of religious communities and congregations of fewer than fifty members in a particular district. These smaller religious "groups" would be banned from meeting in public places or renting buildings "that are widely accessible" for religious worship.

The Draft Religion Law would also prevent any religious activity undertaken outside of a locality where a particular religious association is registered, because it would be considered unlawful "missionary activity". Additional discrimination against minority or "non-traditional" groups is found in the Draft Religion Law's provision that would exclude religious associations from registering as a national association and obtaining the associated benefits, if the association had not operated in at least five provinces of the country without violating the law.

Finally, the Draft Religion Law would prohibit distribution of religious materials in state buildings and agencies, healthcare facilities, and on public transport, and would outlaw house-to-house proselytism. This policy of limiting religious expression to narrow times and places designated by the local government would be tantamount to converting the right to freedom of religion to a limited privilege granted at the State's discretion. Penalties for the violation of any religion-related law would also be more stringent under the Draft Religion Law. With these amendments, lawbreakers could be subject to penalties including: fines of up to 50 times the minimum monthly salary, prohibitions from proselytizing, or incarceration.

In January 2009, President Nazarbayev referred the legislation to the Constitutional Council of Kazakhstan to review for compliance with the Constitution. After the Constitutional Council ruled that the legislation was incompatible with the Constitution in February 2009, the President announced he would not challenge the Council's ruling.

2.4. Current Status of Religion Laws

To respond to international critics of the Draft Religion Law, a representative from the Kazakh Government claimed at a United Nations Meeting in Geneva in March 2009 that "The new legislation [was] aimed not at restricting but at better organizing religious activity in the country in an orderly manner for the benefit of the people of Kazakhstan belonging to the [sic] numerous religious and ethnic groups." However, in the same statement the representative added, "[T]he law should be considered and discussed again in Parliament... Kazakhstan strongly believes that the amendments will help better protect the religious rights of its citizens and remains open for further discussions and suggestions."²¹ To date, there has been no official action to resurrect the provisions of the Draft Religion Law, and the problematic amendments have been set aside for the time being as a result of international pressure, but the Government appears to intend to revisit the matter.

Whether or not the amendments to the Religion Laws are reintroduced in Parliament, there are several provisions of the current religion laws that pose threats to religious freedom. Under the Current Administrative Code two Articles punish peaceful religious activity. These are: (1) Article 374-1, which punishes "leading, participating in or financing an unregistered religious community or social organization"; and (2) Article 375, which punishes "violating the law on religion", including by leaders who reject state registration, by communities whose activity "contradicts their aims and tasks" or which is not listed in their state-approved statutes, and by individuals who conduct "missionary activity" without a special license from the state.²²

The implications of these provisions on free exercise are alarmingly broad. For example, under these statutes, religious organizations that undertake religious education must be granted approval of their teaching materials by the Ministry of Education. In addition, no group may provide supplemental education outside of the public school system without

¹⁹ See OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, Comments on the Law on Amendments and Additions to some Legislative Acts of the Republic of Kazakhstan on Issues of Religious Freedom and Religious Organizations, Warsaw, January 2009, at 4.

²⁰ See *id.* at 14.

²¹ Kazakhstan, Human Rights Council, 10th Session, Right of Reply at United Nations in Geneva (Mar. 2009).

²² See Felix Corley, Kazakhstan: "The Administrative Code Shouldn't Penalize the Core Practice of a Faith" Forum 18 News Service (Aug. 31, 2009), available at <http://www.forum18.org> (last visited Sept. 4, 2009).

permission by the government and registration as a recognized religious association.²³ Such regulations impose severe limitations on parental rights to educate their children in their family's faith and customs.

In addition to violating the Kazakh commitments under international human rights treaties, including their obligations as a member of the OSCE, policies of government interference with religious practice are counter-productive for achieving the Government's stated objectives of increasing national and regional security. While requiring registration of religious groups does not constitute an automatic transgression of freedom of religion, when the requirements are not justly imposed or when they are designed to discriminate, they implicate the government in suppressing free exchange of ideas. When ideas about religion and the transcendent cannot be exchanged openly in the public square, the type of religious extremism that leads to the security threats the Government fears are more likely to spread underground. An environment of open dialogue and public debate, on the other hand, tends to encourage solidarity, mutual respect, and non-violent coexistence in a multi-ethnic, pluralist society, such as Kazakhstan.

3. **Implementation**

While the Kazakh Government should be commended for rejecting the more strident amendments to the Draft Religion Laws, the Director of the Kazakhstan International Bureau for Human Rights and Rule of Law, Yevgeny Zhovtis, reported to the Helsinki Commission in May 2009 that the "main ideas" of the Draft Religion Law were being implemented, regardless.

Mr. Zhovtis detailed numerous abuses of religious freedoms in his address to the Commission, stating in summary: "Members of the national security bodies, law enforcement bodies, practiced raids in relation to gatherings of small religious communities, including those held in private houses, and many foreign missionaries are being evicted out of the country on the basis of arbitrary [sic] interpreted and antidemocratic procedures...."²⁵

Despite vocal and constitutional assurances of its dedication to religious freedom, the Kazakh Government and law enforcement agents have cracked down on registration and monitoring of minority religious groups under purported anti-terrorism policies during the last several years.²⁶ The groups that have been targeted most frequently for harassment by local law enforcement include Jehovah's Witnesses, Hare Krishna followers, or Muslims unconnected to the mainline Kazakh branch of Islam.

According to local representatives of religious rights groups and human rights activists, the government-controlled media has been targeting "sects" and "non-traditional" religious groups with smear campaigns in the news starting in the winter of 2007, just before the new Draft Religion Law first appeared.²⁷ This campaign against minority religions has included official Government statements recommending that the people of Kazakhstan avoid involvement in "non-traditional" religions. For example, President Nazarbayev issued a decree in 2006 on "Patriotic Education" that included advice that non-traditional religions are dangerous to individuals and to State security.²⁸ The President also declared in a public address that "religion is separate from the state, but it does not mean that Kazakhstan should become a dumping ground for various religious movements."²⁹ This attitude has also been exhibited among law enforcement officials. For example, the Office of the Prosecutor General was quoted in an April 2008 newspaper article stating that "currently Kazakhstan has 1,870 religious organizations whose activities are a threat to national security and stability."

Despite various reports of the failures of local governments to register religious groups and interference with the assembly and worship of such groups as the Jehovah's Witnesses, Baptists, Hare Krishna followers, human rights organizations have reported that the situation had improved significantly by the first half of 2009.³⁰

²³ See U.S. Commission on International Religious Freedom, Annual Report: 2009 224-28 (May 2009).

²⁴ Testimony before the Commission on Security and Cooperation in Europe ("The Helsinki Commission"), Approaching the OSCE Chairmanship: Kazakhstan 2010, Address by Yevgeny Zhovtis, Director of Kazakhstan International Bureau for Human Rights and Rule of Law (May 12, 2009), available at http://www.csce.gov/index.cfm?FuseAction=ContentRecords.ViewDetail&ContentRecord_id=449&ContentType=H,B&ContentRecordType=H&CFID=18849146&CFTOKEN=53 (last visited Sept. 7, 2009).

²⁵ See id. Detailed accounts of harassment of religious individuals and communities can be found in the address to the Helsinki Commission. See also Human Rights Watch: Kazakhstan, supra note 18; Freedom in the World: 2009, supra note 3; Religious Freedom in the World, supra note 1.

²⁶ See generally Freedom in the World—2008, supra note 3.

²⁷ See generally Human Rights Watch: Kazakhstan, supra note 18, at 18-19.

²⁸ See Decree no. 228 of the President of Kazakhstan Establishing a State Program for Patriotic Education of Citizens of the Republic of Kazakhstan for 2006-2008, Oct. 10, 2006, http://www.ayalyalaksana.kz/ru/infobaza/prog_patriot.shtml, cited in Human Rights Watch: Kazakhstan, supra note 18, at 9.

²⁹ See "Kazakhstan cannot tolerate illegal activities of religious movements," Kazinform, Jan. 17, 2008, <http://www.inform.kz/showarticle3.php?lang=rus&id=196600>, cited in Human Rights Watch: Kazakhstan, supra note 18, at 9. More reports of public statements by the Executive can be found at Human Rights Watch: Kazakhstan, supra note 18.

³⁰ See, e.g., Human Rights Watch, Human Rights in Kazakhstan: Seven Months before the OSCE Chairmanship (May 20, 2009), available at <http://www.hrw.org/en/news/2009/05/19/human-rights-kazakhstan-seven-months-osce-chairmanship>.

4. Recommendations

During the Universal Periodic Review, the UN Human Rights Council should take care to consider religious freedom in its evaluation of Kazakhstan. We respectfully recommend that the UNHRC not only base its evaluation of Kazakhstan on constitutional assurances of religious freedom and its decision to reject the Draft Religion Law in March 2009, but also on the use of legal doctrines to oppress minority and “non-traditional” religious groups.

The Kazakhstan government should endeavor to protect all citizens from discrimination, irrespective of their religious affiliation or the size or ubiquity of their religious community. The Government should be commended for its efforts to combat terrorism, human trafficking, drug smuggling, and organized crime, to improve the stability of Central Asian society.³¹ However, the Government should be encouraged to pursue these legitimate anti-terrorism policies without implicating the State in the task of distinguishing between “acceptable” and “unacceptable” religious beliefs.

Kazakhstan should be commended for honoring the judgment of the Constitutional Council in February 2009 that the amendments to the religion laws were unconstitutional, and should be encouraged to consult with the OSCE if it decides to revisit this legislation. As part of its selection as the OSCE chairman, Kazakhstan made concrete commitments to enact legislation to conform with OSCE standards, specifically in the areas of registration of political parties, the electoral process, and media activity.³² The UNHRC should see that Kazakhstan follows through with these commitments, as well its commitments to religious freedom. This is especially critical given the geographic, economic and political leadership role it holds in Central Asia and its potential to be “an anchor of stability in the region”.³³

³¹ See, e.g., Center for Strategic & International Studies and Institute for New Democracies, U.S.-Kazakhstan OSCE Task Force Policy Brief: Kazakhstan’s Strategic Significance 3 (Apr. 2, 2009) [hereinafter “CSIS-IND Policy Brief”], available at <http://csis.org/publication/policy-brief-volume-1-kazakhstan-strategic-significance> (last visited Sept. 7, 2009).

³² See id. at 6.

³³ See Testimony before the Commission on Security and Cooperation in Europe (“The Helsinki Commission”), Approaching the OSCE Chairmanship: Kazakhstan 2010, Address by U.S. Ambassador George A. Krol, Deputy Assistant Director for South and Central Asian Affairs (May 12, 2009) available at http://www.csce.gov/index.cfm?FuseAction=ContentRecords.ViewDetail&ContentRecord_id=449&ContentType=H,B&ContentRecordType=H&CFID=18849146&CFTOKEN=53 (last visited Sept. 7, 2009).