

Forum 18 submission to the UN Human Rights Committee on freedom of thought, conscience and religion in Kazakhstan – May 2016

Freedom of thought, conscience and religion is, along with intrinsically linked freedoms such as those of expression, assembly, and speech, seriously restricted in Kazakhstan¹. These restrictions on human rights are an intentional systemic policy by President Nursultan Nazarbaev's government². Space does not permit a detailed analysis of all freedom of thought, conscience and belief restrictions and their implementation, so this eight-page briefing describes some but not all of the more notable human rights violations which Forum 18 has documented.

Forum 18 <http://www.forum18.org> provides original, impartial monitoring and analysis of violations of the freedom of thought, conscience and belief of all people - whatever their belief or non-belief. We monitor and analyse Central Asia including Kazakhstan³, the South Caucasus, Russia, Belarus and Crimea, and also publish analyses on Turkey.

- Making the exercise of human rights dependent on state permission

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 binding international human rights obligations. This is seen in, among other things⁴:

- making the exercise of human rights conditional upon state permission;
- systematically 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;
- and exit bans and jailings imposed on those refusing to pay fines for exercising freedom of religion or belief without state permission.

¹ <http://www.nhc.no/en/countries/asia/kazakhstan/>

² http://www.nhc.no/en/news/Cunning+democracy.b7C_wljK1k.ips

³ <http://www.forum18.org/archive.php?country=29>

⁴ http://www.forum18.org/archive.php?article_id=1939

The main current “legal” backing for violating freedom of thought, conscience and belief are the 2011 Religion Law⁵, with the 2015 Criminal⁶ and Administrative⁷ Codes. These were described to Forum 18 by Yevgeni Zhovtis, of the Kazakhstan International Bureau for Human Rights and the Rule of Law, as being "a baton, to use as a threat against those the state does not like"⁸.

As the *Organisation for Security and Co-operation in Europe (OSCE)/Council of Europe Venice Commission Joint Guidelines on the Legal Personality of Religion or Belief Communities*⁹ note, under international 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.” Or as the *UN Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt* stated in 2012, it is a “non-negotiable right of all human beings that the State has to respect”.

- Restrictions on the largest religious community

Using laws which break the country’s international obligations as justification, the regime has nationwide forcibly closed all Ahmadi Muslim communities, banning their meetings for worship. Only one Islamic organisation – the Muslim Board – is permitted by the state to exist, and the state insists that all mosques must be controlled by the Board. The only school of Islam permitted to exist is Hanafi Sunni Islam, effectively banning Shia as well as Ahmadi and other Islamic communities. Mosques outside the Muslim Board are being denied re-registration – and so permission to exist – if they will not join the Muslim Board. Objections independent and ethnic minority mosques had to joining the Board are that the Board takes one third of their income and chooses who will be imam. These restrictions implement threats made by state officials to independent mosques in 2010, long before the 2011 laws were rushed through parliament¹⁰.

The last remaining independent mosque has been the Tatar-Bashkir Mosque in Petropavl, whose community has been repeatedly denied legal status. The regional Justice Department has refused to tell the community or Forum 18 what exactly is wrong with their applications. An official of the Religious Affairs Department stated that the authorities have not stopped the Community using the Mosque as "we do not want to stir up the Tatars and Bashkirs". But a community member stated that "we all know that sooner or later we will be forced out of the building". Muslims think that the June 2015 death from a heart attack of the community's Imam, Rafael Ryazapov, was caused by heavy state pressure on the mosque and its members¹¹.

State pressure against the mosque community continues. On the first day of Ramadan (and 11 days after Imam Ryazapov's death), Mosque community members could not meet for night prayers as the authorities cut off the electricity supply. Without informing the community, in November 2015 North Kazakhstan Region authorities offered for tender the mosque building. The only eligible bidder was the state-backed Muslim Board, to which the community does not belong and the community only found out about the auction by accident. At the last moment the auction was cancelled. Kaziza Mukhamediyeva of the Regional Finance Department, which put the building up for auction, insisted that “it’s not the property of that community”, claiming to Forum 18 that “their praying there is illegal.”¹²

⁵ http://www.forum18.org/archive.php?article_id=1939

⁶ http://www.forum18.org/archive.php?article_id=1976

⁷ http://www.forum18.org/archive.php?article_id=1979

⁸ http://www.forum18.org/archive.php?article_id=1979

⁹ <http://www.osce.org/odihr/139046?download=true>

¹⁰ http://www.forum18.org/archive.php?article_id=1939

¹¹ http://www.forum18.org/archive.php?article_id=2082

¹² http://www.forum18.org/archive.php?article_id=2115

Although the decision to rent out the Din-Muhammad Mosque against the community's wishes was abandoned as fewer than two bidders came forward, the mosque community's independence remained under threat¹³.

- Restrictions on smaller religious communities

Smaller religious communities are also targeted, including one Baptist network which insists (rightly) that under international law they do not need state permission to meet and exist, and other groups such as Jehovah's Witnesses. The targeting normally takes the form of meetings being raided by police and other officials, the participants being questioned, and some being fined. If those fined refuse to pay the fine, as its imposition breaks Kazakhstan's international legal obligations, they are normally placed on a list banned them from leaving the country. The exit ban is described by Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law as a "double punishment", which officials have denied¹⁴.

The "legal" justification often used for such fines under the Administrative Code is meeting for worship without state permission, or sharing their beliefs with others without state permission. 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". A typical example is Viktor Kandyba, who leads a Baptist church in Semei in East Kazakhstan which meets without applying for state permission. In 2013 he was fined for this "offence". In May 2014 he served a 10-day prison term for refusal to pay the fine. Prosecutor's Office official Bolzhan Botbayev, who brought both cases to court, struggled to explain why Kandyba can gather friends to drink vodka or watch football on television but not to meet for worship. "The law says they must have registration before they are allowed to meet", he insisted¹⁵.

As noted below in the case of prisoner of conscience Seventh-day Adventist Yklas Kabduakasov (jailed in a labour camp for two years in December 2015¹⁶), sharing beliefs without state permission, which does not take place using state-approved materials, which takes place outside state-approved geographic locations, and which is done by individuals who do not have the written approval of state-registered belief communities, is also illegal and punished¹⁷. For example, between April 2013 and early April 2016, Jehovah's Witnesses submitted 48 appeals to the *UN Human Rights Committee* as punishments for sharing faith violate the International Covenant on Civil and Political Rights (ICCPR). The 48 appeals relate to 45 individuals who suffered fines and, in some cases, deportation¹⁸.

¹³ http://www.forum18.org/archive.php?article_id=2119

¹⁴ http://www.forum18.org/archive.php?article_id=1845

¹⁵ http://www.forum18.org/archive.php?article_id=1963

¹⁶ http://www.forum18.org/archive.php?article_id=2136

¹⁷ http://www.forum18.org/archive.php?article_id=1939

¹⁸ http://www.forum18.org/archive.php?article_id=2177

Permission for communities to exist is gained via compulsory state registration, in a procedure which breaks the country's international human rights obligations and which many religious communities have variously described as "complex", "burdensome", "arbitrary", "unnecessary" and "expensive". Few were prepared to give their names, for fear of state reprisals. One community denied re-registration was the Kostanai congregation of the Russian Orthodox Church Abroad. "ARA officials told us that as we don't have a place of worship there to meet in we couldn't apply for re-registration," Fr Gennadi Subbotin told Forum 18. Not having a place of worship has not prevented others from gaining re-registration. Government spokesperson Svetlana Penkova told Forum 18 that those failing to gain re-registration "can still meet until they have been liquidated through the courts". In an apparently co-ordinated move, Russian Orthodox, Armenian Apostolic, Won Buddhist, Catholic, Baptist and Pentecostal leaders wrote to President Nazarbaev praising him for ensuring what they claim is "religious tolerance" in Kazakhstan. All their communities have been re-registered¹⁹.

Even applying for or receiving state registration does not stop officials trying to stop people exercising their fundamental human rights. Examples include the Full Gospel Church in Atyrau, which faced the Anti-Terrorism Police with the Justice Department bullying people identifying themselves as founders on registration applications, and trying to stop the Church meeting for worship without state permission; and the registered Hare Krishna community in Kostanai, which has been raided by police and its leader fined, and has appealed to the *UN Human Rights Committee* to be able to exercise freedom of thought, conscience and belief without fear of punishment²⁰. Documentation was completed in May 2015 and a Committee decision is awaited.

- Censorship

Censorship is also part of Kazakhstan's mechanism of repression. For example, Eldar Sundetkaliyev was in April 2015 convicted and fined 99,100 Tenge (about 490 Euros, or roughly one month's average wages) for offering for sale tablet computers for children loaded with a programme teaching them how to pray the namaz (Muslim prayer). State-backed Muslim Board spokesperson Ongar Omirbek told Forum 18 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, told Forum 18 that Shia literature cannot be found on sale²¹.

Local authorities and "law enforcement" agencies have been enforcing censorship – including severe limitations on the numbers of bookshops allowed to sell any kind of religious material – across Kazakhstan with raids and fines. Even shops with permission to sell religious books such as Korans and Bibles have told Forum 18 that they do not want to do so, to avoid trouble from the authorities. Yerlan Kalmakov of Kostanai Regional Internal Policy Department, asked why people must ask for permission from the authorities, replied: "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"²².

¹⁹ http://www.forum18.org/archive.php?article_id=1768

²⁰ http://www.forum18.org/archive.php?article_id=2025

²¹ http://www.forum18.org/archive.php?article_id=1939

²² http://www.forum18.org/archive.php?article_id=1939

In December 2014 the General Prosecutor's Office published a list of religious and other texts deemed "extremist" by various courts and whose production, import or distribution is banned. A growing number of religious publications and web pages by Muslim, Protestant and Jehovah's Witness authors have been banned by courts as "extremist". Such court decisions have often not been publicised and have therefore been impossible to challenge. It remains unclear whether challenging such decisions is possible – or if the list includes all works which have been banned as "extremist"²³. There are also separate banned book lists apparently maintained by regional authorities, but official confusion exists over whether such books are banned or not. Such lists include Muslim, Ahmadi Muslim, Christian, Hare Krishna and Jehovah's Witness texts²⁴.

Courts often order confiscated "extremist" books to be destroyed. An Astana court bailiff - who has witnessed the destruction of religious books - explained that "they are normally disposed off at a general rubbish dump outside the city"²⁵. Such confiscations also affect religious objects such as Russian Orthodox icons. Government spokesperson Saktagan Sadvokasov, defending the confiscation of 12 icons and three Bibles from a commercial bookseller in Oral (Uralsk) in West Kazakhstan Region in October 2013, stated: "The Kazakh state must defend our citizens from harmful materials". Asked whether he has known icons which are harmful, he responded: "We have experts to check icons"²⁶.

- Growing numbers of prisoners of conscience for exercising freedom of religion and belief

Numbers of prisoners of conscience jailed for exercising freedom of thought, conscience and belief are growing since December 2014, primarily alleged adherents of Muslim missionary movement Tabligh Jamaat. Independent non-Tabligh Jamaat and non-Muslim observers of the movement in Kazakhstan have told Forum 18 that they are convinced that its activities in the country are entirely peaceful and aimed at encouraging greater religious observance among Muslims. Even the KNB secret police have admitted that Tabligh Jamaat literature does not have "extremist, terrorist, or any other calls against Kazakhstan's laws". However, the KNB claimed that "all their activity could be characterised as subversive in the ideological sphere, forming in the population anti-social or anti-civil positions"²⁷. A court banned the movement in 2013, even though an earlier KNB-initiated study found that there was no reason to ban the movement²⁸.

The authorities have repeatedly refused to explain what if any wrongdoing alleged Tabligh Jamaat adherents have committed, or what exactly their alleged "extremist activity" is. Two more Sunni Muslims accused of Tabligh Jamaat membership were jailed in mid-March 2016, bringing to 30 the number of Sunni Muslims convicted for this "crime" since December 2014, 18 of whom were jailed. One court verdict states as an accusation that the movement displayed "intolerance" towards Shia Islam – even though the government has banned Shia Muslims from exercising freedom of thought, conscience and belief²⁹.

²³ http://www.forum18.org/archive.php?article_id=2056

²⁴ http://www.forum18.org/archive.php?article_id=2158

²⁵ http://www.forum18.org/archive.php?article_id=2130

²⁶ http://www.forum18.org/archive.php?article_id=1913

²⁷ http://www.forum18.org/archive.php?article_id=2023

²⁸ http://www.forum18.org/archive.php?article_id=2170

²⁹ http://www.forum18.org/archive.php?article_id=2170

Among Kazakhstan's prisoners of conscience jailed for exercising freedom of thought, conscience and belief is Saken Tulbayev, a Muslim sentenced in July 2015 to 4 years 8 months jail in a labour camp and a ban on exercising freedom of thought, conscience and belief from his release due in December 2019 until December 2022. Tulbayev was jailed despite his family and others pointing to evidence planted by police and false witnesses. The ban on "activity directed at meeting the religious needs of believers" appears, a Kazakh legal expert told Forum 18, to include praying alone or with others, reading the Koran or other religious literature, attending a mosque, or going on pilgrimages³⁰.

Another prisoner of conscience is Seventh-day Adventist Yklas Kabduakasov, arrested by police in August 2015 after a search of his Astana home and confiscation of religious books. Also searched the same day was the Adventist church where he worships. On 15 August a court ordered he be held in two-month pre-trial detention by the KNB secret police. The KNB claim he was spreading "religious discord" when discussing his faith with and offering Christian books to others. The KNB had monitored him for a year before they arrested him, and appear to have rented the flat to which four students invited him for religious discussions as well as organised the secret filming of the meetings with at least two hidden cameras, and prepared the prosecution case. On 29 December – in a move almost certainly timed to avoid publicity – he was jailed for two years in a labour camp³¹.

Denials of the Koran and other Islamic literature, as well as the forcible shaving off of beards, appears to be a standard punishment imposed by the authorities on male Muslims jailed for exercising their freedom of religion or belief. This is contrary to the *UN Standard Minimum Rules for the Treatment of Prisoners* (as adopted unanimously by the General Assembly in revised form on 17 December 2015 and known as the Mandela Rules, A/C.3/70/L.3)³².

- Misuse of psychiatry

Two freedom of thought, conscience and belief cases have involved the apparent misuse of psychiatry. (*This misuse has happened in the case of human rights defender Zinaida Mukhortova, a case in which the freedom of religion and belief is not one of the rights engaged.*) Atheist writer and anti-corruption campaigner Aleksandr Kharlamov and Presbyterian pastor Bakhytzhan Kashkumbayev have both been arrested and appear still to face criminal charges. Kharlamov was in pre-trial detention from 14 March to 4 September 2013 for "inciting religious hatred", and although sane was subjected to repeated forcible psychiatric examinations. He was told by a doctor in the psychiatric hospital (where he was forcibly held for a month) that he was detained because he is "an inconvenient person for the authorities". Kharlamov was also not allowed to wear glasses, stopping him from reading, or even have a toothbrush - allegedly on safety grounds.

Pastor Kashkumbayev was arrested on criminal charges of "harming health" on 17 May 2013 and detained until his trial ended on 17 February 2014 – including one month in a psychiatric hospital. This is even though the only person whose health the state claims was harmed told Forum 18 that Kashkumbayev is "totally innocent and has not harmed my health at all". She herself was subjected to forcible psychiatric treatment by the state.

State officials have repeatedly refused to explain what, if any, medical grounds existed for repeated psychiatric examinations of Kharlamov and Kashkumbayev. Both appear still to face investigations on criminal charges³³.

³⁰ http://www.forum18.org/archive.php?article_id=2078

³¹ http://www.forum18.org/archive.php?article_id=2136

³² http://www.forum18.org/archive.php?article_id=2156

³³ http://www.forum18.org/archive.php?article_id=1939

- Bullying children

Work by religious communities with children and young people is also targeted. For example, about 20 police, Prosecutor's Office and Education Department officials raided a Christian children's summer camp near Almaty in July 2015. Officials frightened the children and "behaved like they were detaining some criminals", Pastor Sergei Li of Kapshagai Baptist Church told Forum 18. Police questioned children without their parents, as well as others, from morning until late in the evening. Lieutenant Colonel Bayken Shalkarov, Deputy Head of Kapshagai Police, claimed to Forum 18 that "the Church taught children religion in violation of the Law". He refused to say why police questioned frightened young children without their parents for many hours. He said police are preparing administrative prosecutions, but refused to say for what "offence". Asem Suttibayeva of Kapshagai Education Department told Forum 18 that law-enforcement agencies required educational psychologists from her Department to participate in the raid. Asked why Almaty TV channel and its subsidiary Almaty News attacked the Baptist Church without a right of reply and to the distress of members, Deputy Chief Editor Tatyana Lisitskaya responded: "The authorities gave us the materials for broadcast."³⁴

- Co-operation with other human rights offenders

Kazakhstan also co-operates with other serious human rights violators. In March 2013 – and against a written 28 February request by the *UN Committee Against Torture* – Kazakhstan extradited Khayrullo Tursunov 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 Kazakhstan illegally extradited back to Uzbekistan in 2011. Kazakhstan has also deported people for engaging in alleged "illegal missionary activity"³⁵.

- Denials, intimidation, impunity

Kazakh officials routinely deny human rights violations. President Nazarbaev for example claimed in 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"³⁶. At a lower level, referring to short-term jailings of people for refusing to seek state permission to exercise their freedom of thought, conscience and belief, Rustam Kypshakbayev of the government Ombudsperson's Office for Human Rights told Forum 18 in May 2014 that "I can't agree that these imprisonments are a violation of human rights"³⁷.

The government seeks to suppress criticism of or information about its record of violating freedom of thought, conscience and belief and related rights. Forum 18 was told in early 2014 that fear of the consequences of criticising the government caused some religious communities not to participate in the UN Human Rights Council Universal Periodic Review, and not to meet the *UN Special Rapporteur on freedom of thought, conscience and belief* on his March–April 2014 visit³⁸. Similarly, in January 2015 the *UN Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association* noted, after witnessing state intimidation of people wanting to meet him on a country visit, "a general unwillingness to properly protect human rights in the country, and of a sense of impunity by some officials"³⁹.

³⁴ http://www.forum18.org/archive.php?article_id=2089

³⁵ http://www.forum18.org/archive.php?article_id=1939

³⁶ http://www.forum18.org/archive.php?article_id=1827

³⁷ http://www.forum18.org/archive.php?article_id=1963

³⁸ http://www.forum18.org/archive.php?article_id=1939

³⁹ http://www.forum18.org/archive.php?article_id=2043

Officials place great emphasis on a claimed “religious tolerance” and “religious dialogue”, for example the so-called “Congress of Leaders of World and Traditional Religions”. These meetings totally ignore the host government’s human rights record, including its increasing violations of freedom of thought, conscience and belief, and were described to Forum 18 by a state official as being “for foreigners”⁴⁰. They are part of an apparent regime attempt to empty the language of human rights, tolerance and dialogue of any connection with respect for the exercise of fundamental human rights. Claims of the regime’s alleged “tolerance” are contradicted by the authorities often associating the victims of their freedom of thought, conscience and belief violations with negative concepts, for example as noted above the use of “Anti-Terrorism Police” to bully people applying to have their religious community gain legal status, or raids on groups of people peacefully exercising the freedom of thought, conscience and belief by police Departments for the Struggle against Extremism, Separatism and Terrorism.

Indeed, the regime's commitment to dialogue with and tolerance for the people it rules is also shown by its other human rights violations, including its claim to have won almost 98 per cent⁴¹ of the vote in the April 2015 “election”⁴². Media attacks on allegedly "non-traditional" beliefs and the use of state-funded "anti-sect" centres in attacks on people exercising the freedom of thought, conscience and belief continue. This undermines social acceptance of Kazakhstan's diversity of ethnic groups and beliefs. For example Protestants in the country have been concerned about the impact of widespread hostile media coverage of police raids on 25 March 2016 on Good Friday (a particularly sacred date for Christians) worship meetings held by one church, New Life. Police and officers of other security agencies raided 11 church premises and church leaders’ homes after the opening of a criminal case of alleged large-scale fraud opened against it in May 2015 – but the Church knew nothing of the case until the March 2016 raids. Church members strongly deny the official claims, noting that the Church has long been targeted by the state⁴³.

Kazakhstan tries to make the exercise of human rights conditional upon state permission. It systematically violates intertwined fundamental rights - such as the freedoms of thought, conscience and 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. Amid increasing repression, this makes it likely that the regime will continue violating the freedom of thought, conscience and belief and intertwined human rights of those within its power. (END)

⁴⁰ http://www.forum18.org/archive.php?article_id=1708

⁴¹ http://www.nhc.no/no/nyheter/Unlevel+playing+field%2C+result+as+expected.b7C_wlrKZ7.ips

⁴² <http://www.osce.org/odihr/elections/kazakhstan/153566?download=true>

⁴³ http://www.forum18.org/archive.php?article_id=2163