

Kazakhstan

NGO Concerns Related to Article 18 – Freedom of Religion

With Recommendations

**Submitted to the UN Human Rights Committee
In Connection with the Consideration of the
Second Periodic Report of Kazakhstan**

**By Participants of the
International Religious Freedom Roundtable
Washington, D.C.
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SECTION 1: INTRODUCTION & PURPOSE OF THIS SUBMISSION

In June 2012, 30 non-governmental organization (NGO) participants of the International Religious Freedom (IRF) Roundtable self-selected into a coalition of the willing to engage in joint multi-faith advocacy actions to address rising restrictions on religion in Kazakhstan.

The IRF Roundtable is an informal group of individuals from NGOs who gather regularly to discuss IRF issues on a non-attribution basis in Washington, D.C. It is a safe space where participants gather, speak freely in sharing ideas and information, and propose joint advocacy actions to address specific IRF issues and problems. It is a truly multi-faith group of participants, representing a high degree of diversity. Participants agree on very little theologically, but they all agree on the importance of religious freedom. And they all share common interests and goals with the Kazakh government—stability, security, peace and prosperity in Kazakhstan and Central Asia.

Since May 2013, several participants have engaged in a multi-faith dialogue with the Kazakh government regarding religious freedom in Kazakhstan, and also interacted with the United Nations (UN) Special Rapporteur for Freedom of Religion or Belief. Participants of the IRF Roundtable engaged in this dialogue due to concerns stemming from international criticism of Kazakhstan's 2011 Law on Religious Activity and Religious Associations (the Religion Law). Certain provisions of the Religion Law raise significant concerns as they limit the rights of individuals to practice their religion; are inconsistent with Kazakhstan's Constitution, which guarantees freedom of religion; are inconsistent with UN and other international human rights instruments that Kazakhstan has committed to; and contravene the religious freedom principles enumerated in the Preamble to the Religion Law.

In fact, restrictions on religion have been rising markedly as a result of the passage and implementation of the Religion Law and related amendments to the Criminal and Administrative Codes. There has been a steady stream of distressing reports that religious organizations have been de-registered and closed, religious literature has been censored, and religious activity has been penalized with police raids, short-term detentions, longer-term imprisonment, fines, and other penalties.

The purpose of this submission is to summarize to date the IRF Roundtable engagement with the Kazakh government and interactions with the UN Special Rapporteur regarding religious freedom in Kazakhstan in light of the deteriorating situation, hopeful that a meaningful dialogue might be renewed—one that does not demonize the government or civil society.

Roundtable participants believe this dialogue can be helpful in maintaining stability and peace in Kazakhstan while bringing the Religion Law and related articles of the Criminal and Administrative Codes closer to compliance with UN international standards articulated in the International Covenant on Civil and Political Rights (ICCPR).

SECTION 2: INTERNATIONAL CONCERNS

The Religion Law has been a focus of international human rights criticism of Kazakhstan since its implementation. An early analysis by the Institute on Religion and Public Policy found that the law fell short of UN and other international standards.¹

With the implementation of the Religion Law, the U.S. Commission on International Religious Freedom (USCIRF) elevated Kazakhstan to its list of “Tier 2” countries for the first time since it began reporting on Kazakhstan in 2008. A “Tier 2” country is one which USCIRF finds to be on the “threshold” of “Country of Particular Concern” status, meaning that violations engaged in or tolerated by the government are “particularly severe” and that violations meet at least one of the three elements of USCIRF’s “systematic, ongoing, egregious” standard.

USCIRF made it clear in its 2013 Annual Report that religious freedom conditions in Kazakhstan have “steadily deteriorated due to a growing array of repressive laws and policies.”² The report said, “Although the Kazakh government promotes religious tolerance at the international level, its restrictive 2011 religion law bans unregistered religious activity and has been enforced through police raids, detentions, and major fines. The law’s onerous registration requirements have led to a sharp drop in the number of registered religious groups, both Muslim and Protestant.”

The U.S. State Department’s 2014 International Religious Freedom Report stated that, “Religious groups the government considered ‘traditional’ reported general acceptance and tolerance by the government; however, ‘nontraditional’ religious groups continued to experience heightened scrutiny and prosecution.”³ Groups unable to register under the religion law ceased their attempts to register as religious organizations. The only Muslim groups allowed to register were those affiliated with the Sunni Hanafi Spiritual Administration of Muslims (SAMK). New codes passed during the year, and going into effect January 1, 2015, include additional and more severe penalties for unauthorized religious activity.”

SECTION 3: IRF ROUNDTABLE DELEGATION TRIP TO KAZAKHSTAN

On December 1, 2013, as part of the multi-faith dialogue, an IRF Roundtable delegation traveled to Kazakhstan at the invitation of the Kazakh Ambassador to the U.S. to increase their understanding of this important issue. The delegation met with government officials and representatives of religious communities and human rights groups.

Meeting with Government Officials

In their meeting with Kazakh officials from the Ministry of Foreign Affairs, the Agency for Religious Affairs and the General Prosecutor’s Office in Astana, members of the IRF Roundtable delegation sympathized with Kazakhstan’s difficult geopolitical environment, and the fact it has to be vigilant in order to prevent extremism, violence and terrorism. At the same time, they made the point that

¹ The Institute on Religion and Public Policy, [“Legislative Analysis of Draft Religion Law: Fundamental Right to Religious Freedom in Jeopardy.”](#) 20 September 2011.

² The U.S. Commission on International Religious Freedom, [“2013 Annual Report.”](#)

³ U.S. Department of State, [“International Religious Freedom Report for 2014.”](#)

Kazakhstan must fully consider and understand the impact of the Religion Law on national security. The need to counter violent extremism is pressing, but government interference in religious practice could be a dangerous and counterproductive response.

The Roundtable delegation noted that religion creates a national security problem in some contexts, and that if this is the case, then religion must be part of the solution. Several present cited some empirical research showing a correlation between repression of religious groups and increased religious extremism. Religious groups can contribute greatly to social cohesion and stability, but this requires a safe space where dialogue can take place and scholarship can be produced.

Delegation members also noted the detrimental effect the law has had on Kazakhstan's international image. One brought up the case of Pastor Bakhytzhat Kashkumbayev, an evangelical pastor who underwent forced "Soviet-style psychological examinations" and harsh interrogation during his detention and imprisonment on charges of harming the health of a church member, as an example of how the Religion Law continues to be a liability for Kazakhstan. Another focused on the problems with mandatory registration of religious communities.

Kazakh officials asserted that the Religion Law did not violate the Kazakh Constitution or international law, and stated their belief that the requirement to comply with the law is uniform. They said, however, that the law is not written in stone, and that it could be revised to reflect the changes that have taken place in Kazakh society over the past few years. Officials informed the Roundtable delegation that they would be establishing a working group to review the Religion Law.

Meetings with Representatives of Religious Communities and Human Rights Groups

Those with whom the Roundtable delegation met universally expressed deep frustration with the Religion Law. The four biggest issues raised in the meetings were registration requirements, restrictions on missionary activity, restrictions on religious literature, and property and building architecture. The registration requirements of the law discriminate against smaller religious communities.

Those who spoke to the Roundtable delegation were concerned with the procedures used to pass the Religion Law, saying that it was not given the same consideration as the draft religion laws of 2002 and 2009, which the Constitutional Council rendered landmark decisions against. Instead, it was passed quickly with little scrutiny and no input from the Council. They mentioned dozens of cases of what they consider unjust enforcement actions and prosecutions under the law.

There was great concern that the government is not doing enough to protect, or is actively seeking to disadvantage, certain non-traditional faiths. These religious groups, according to many of whom the Roundtable delegation met, have been stigmatized in the media. The degree of negative public opinion against them is consequently very high, and their suffering under the law is little-noticed. They also said the Kazakh courts often use inadequately trained experts.

Trip Report

In its trip report to Kazakh officials, the delegation reiterated the fact that Roundtable participants have been concerned with the possible impact of the Religion Law on social cohesion and security in Kazakhstan. It quoted a 2010 report on freedom of religion or belief in Kazakhstan and Kyrgyzstan, the Norwegian Helsinki Committee laid out several reasons why stringent policies towards religious groups may increase radicalization:

- ❖ radical Islam emerges where Orthodox Islam is weak and freedom of conscience is restricted by the government;
- ❖ lack of opportunity for legal dissent leads Muslims to express their dissatisfaction through radical Islam;
- ❖ lack of trust in government encourages public perceptions of extremists as victims, rather than criminals;
- ❖ suppression of individual liberties by the government enhances the popularity of extremism.⁴

Though the above points summarize research conducted in Kyrgyzstan, these principles are sufficiently broad that they could easily apply in Kazakhstan. Reflecting on the situation in both countries, the report concludes that “violating freedom of religion or belief always causes and encourages tensions, creating insecurity and conflict.”⁵

Such conclusions are increasingly bolstered by empirical research. An exhaustive 2011 study by academics from Harvard, Notre Dame and Georgetown found “that religious communities are most likely to support democracy, peace and freedom for other faiths, and least likely to take up the gun or form dictatorships, when governments allow them freedom to worship, practice and express their faiths freely and when religious communities in turn renounce their claims to permanent offices or positions of policy-making authority.”⁶ Dr. Brian Grim, a noted expert on society and religion who did extensive work in Kazakhstan in the 1990s, has found a strong correlation between government restrictions on religion and religiously-motivated violence.⁷

SECTION 4: UN SPECIAL RAPPORTEUR VISIT TO KAZAKHSTAN

Meanwhile, participants of the IRF Roundtable sent two multi-faith letters and had multiple in-person conversations with the UN Special Rapporteur on Freedom of Religion or Belief regarding the situation, urging him to visit the country and report his findings.

⁴ Norwegian Helsinki Committee, [“Broken Promises: Freedom of Religion or Belief Issues in Kazakhstan and Kyrgyzstan.”](#) June 2010, p. 18.

⁵ Ibid, 48.

⁶ Monica Duffy Toft, Daniel Philpott and Timothy Samuel Shah, “God’s Century: Resurgent Religion and Global Politics.” (New York: Norton, 2011), p. 18.

⁷ Brian Grim, “The Price of Freedom Denied: Religious Persecution and Conflict in the Twenty-First Century.” (New York: Cambridge University Press, 2011).

From March 25 to April 4, 2014, the Special Rapporteur undertook a visit to Kazakhstan. IRF Roundtable participants believe the following passages are the most relevant to the UN Human Rights Committee's current review of Article 18.

The brief summary of the formal report on his mission to Kazakhstan stated:⁸

While acknowledging a general appreciation of religious diversity in the country, he noticed adverse attitudes towards some non-traditional religious communities. The State monitors religious activities strictly, with a view to preventing extremism and to combating "sects" deemed destructive to people's well-being. Many of the measures adopted for this purpose are not in line with international standards of freedom of religion or belief. Moreover, the mandatory registration of religious communities, in conjunction with tightly knit stipulations, largely hampers free religious practice, which takes place in an atmosphere of legal insecurity.

Further, the Special Rapporteur's conclusions include:

66. ...the 2011 Law on Religious Activity and Religious Associations shows restrictive features that are not in line with international standards of freedom of religion or belief. The most obvious problem concerns the mandatory status of official registration. Failure to obtain this status means that a religious community is deemed "illegal", which has far-reaching negative repercussions on the enjoyment of freedom of religion or belief. Moreover, even those communities which are registered suffer to some extent from legal insecurity, inter alia due to the official confinement of permitted religious activities to certain predefined issues and territorial boundaries. In general, the 2011 Law is based on the assumption that the exercise of core aspects of freedom of religion depends on specific acts of Government approval — thereby turning the relationship between freedom and limitations, as generally understood in the framework of human rights, upside down.

67. While Kazakhstan has broadly embraced religious pluralism, members of non-traditional small religious communities, frequently branded as "sects", continue to experience suspicion, mistrust and discrimination in society. Moreover, some provisions of the Criminal Code and of the Code on Administrative Offences — both the existing and the new Codes — which are aimed at combating religious hatred or religious extremism — are defined only vaguely, thus creating a climate of legal insecurity, which is further exacerbated by shortcomings in the handling of criminal procedures, long pretrial detention and related problems. Similar problems are associated with the 2005 Law on Countering Extremism.

Finally, the Special Rapporteur's recommendations include:

(a) ...The Special Rapporteur recommends that the Government consider amending the relevant provisions of the Constitution to bring them into line with article 18 of the International Covenant on Civil and Political Rights...

⁸ Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Mission to Kazakhstan. 23 December 2014.

(b) The Government should bring its constitutional provisions pertinent to freedom of religion or belief fully into line with article 18 of the Covenant and other relevant international human rights standards.

...

(d) Above all, the Special Rapporteur would like to recommend far-reaching reforms of the 2011 Law on Religious Activity and Religious Associations based on an understanding that registration should be in the service of freedom of religion or belief which, due to its status as a universal human right, inheres in all human beings, prior to — and independent of — any specific acts of administrative approval. The most important consequence would be that registration should be an offer, not a mandatory requirement, for religious community practice. Non-registered communities must be able to operate free from discrimination and free from fear of intimidation.

SECTION 5: KAZAKH OFFICIALS HAVE NO PLANS TO REFORM THE RELIGION LAW

Participants of the IRF Roundtable have been part of two subsequent discussions with Kazakh officials. After hearing the continuing concerns of Roundtable participants, Kazakh officials made it clear that, in the near future, there will be no changes to the Religion Law.

They said they spent two weeks with the UN Special Rapporteur, they heard our concerns, and they have a working group to review the Religion Law. They have a whole paper on how to improve the law and they can go to parliament tomorrow with it. But they will not do this. Not now.

Their main concern is the situation in the world around them—the increasing violence and its connection to religion; the violence that is being done, particularly in Syria and Iraq, under the auspices of religion. They do not want this type of violence to come to Kazakhstan.

In Kazakhstan, they said there are certain individuals who take extreme views. They said terrorist groups exist and the threat to order comes under the cover of religion. So they consider prevention to be most important—prevention of the use of religion for extremist purposes.

They acknowledged that there is the opinion that they create too much pressure and violate the rights of small religions, and that there are certain questions about the Religion Law. But they said it is the law today. They like the approach they are taking. They believe it is working and delivering peace.

SECTION 6: THE SITUATION CONTINUES TO DETERIORATE

In its 2016 Annual Report, USCIRF found that, “Although the government of Kazakhstan promotes religious freedom for ‘traditional’ religious groups at the international level, domestic religious freedom conditions further deteriorated in 2015.”⁹ It stated that, according to reports, “Kazakh officials continued to obstruct activities of unregistered religious groups, such as a Protestant

⁹ The U.S. Commission on International Religious Freedom. [“2016 Annual Report.”](#)

church in Atyrau, and of certain registered communities including the registered Hare Krishna group in Kostanai.” As an example of restrictions and increasingly harsh penalties, “a court in Astana sentenced Seventh-day Adventist Yklas Kabduakasov to two years in a labor camp, increasing the penalty from the seven years of house arrest a lower court had imposed. According to Forum 18 News Service, the 54-year old father of eight was convicted of ‘incitement to religious violence’ for discussing his faith.” Further, USCIRF reported that, “Criminal charges of extremism are regularly brought against various individuals for peaceful religious activity.”

Mr. Kabduakasov was convicted under Article 174 of the Criminal Code. According to the verdict itself, he was found “guilty of deliberate actions aimed at inciting religious discord, insulting the religious feelings of citizens, promoting exclusivity and the superiority of citizens on the basis of their religious affiliation, with the use of literature and other media advocating religious hatred.”

Further, Forum 18 News Service continues to report on restrictions on religion in Kazakhstan. For instance, the most recent report said that, “Another Sunni Muslim accused of membership of the Tablighi Jamaat movement, Murat Takaumov, was given a nine-month prison term in Kazakhstan's capital Astana on 2 June. This brings to 31 the number of Muslims handed criminal sentences for their alleged involvement with the Muslim missionary movement since December 2014. Of these, 19 were given prison terms. The latest sentence comes as five more alleged Tablighi Jamaat members in Oskemen (Ust-Kamenogorsk) are under criminal investigation on the same charges of ‘extremism’.”

Finally, just last week, a series of shootings in western Kazakhstan left two dozen dead. Kazakh President Nursultan Nazarbayev called the incident a “terrorist attack” carried out by “followers of the non-traditional religious movement Salafism.”

SECTION 7: RECOMMENDATIONS

The situation in Kazakhstan is complex and is influenced by social, economic, political and religious factors. Therefore, a simplistic narrative that demonizes the government and the Religion Law will not work. However, there are ways Kazakhstan can work to improve the Religion Law, as well as its security situation in general, and begin to rehabilitate its image in the West. To this end, Roundtable participants respectfully offer the following recommendations:

1. The working group should perform an open and honest review of the 2011 Religion Law to include relevant articles of the Criminal and Administrative Codes and other legislation that directly or indirectly affects religion—for instance, Article 174 of the Criminal Code.
 - ❖ Use the 23 December 2014 Mission to Kazakhstan Report of the Special Rapporteur on Freedom of Religion or Belief as the basis for its review.
 - ❖ Its recommendations should be inclusive of the recommendations of the UN Special Rapporteur on Freedom of Religion or Belief, as detailed in this 23 December 2014 Report.

- ❖ Consider making this working group inclusive and open to the world's best practices by inviting inputs from civil society, religious leaders of all faiths, and international experts.
 - ❖ To facilitate these inputs, consider establishing a formal mechanism by which government and grassroots leaders can engage in a meaningful dialogue on the law.
2. As a means to the final point in #1 above, allow for civil society, religious leaders of all faiths, secular leaders, and independent experts in Kazakhstan to establish an inclusive, civil society-organized safe space for ongoing dialogue to discuss these interconnected issues.
 - ❖ Government representatives can be invited by civil society to participate in this ongoing dialogue.
 3. Support academic studies on the impact of government religion policy on society.
 - ❖ Because so little data exists detailing the impact of government policies on religious groups in Kazakhstan, studies and empirical evidence are needed to discern if the Religion Law is contributing to the growth of radicalism.
 - ❖ Rely on an extensive global network of scholars who can conduct such research.
 - ❖ Consider using this research as a baseline to inform policymaking.
 4. Continue the engagement with participants of the IRF Roundtable on religious issues.
 - ❖ Western organizations and Kazakh government officials need continued dialogue to find common points and increase understanding and consensus on all sides.
 5. Expand the Congress of Leaders of World and Traditional Religions to include leaders of any faith group that wishes to participate; and to include female leaders of faith groups.
 6. Based on all of the above, implement the recommendations of the working group and consider developing a strategy for religious engagement.
 - ❖ This strategy can take into account the growth trends in the social role of religion and its institutions, their deepening cooperation with the institutions of the state, and the need to improve the Kazakh model of state-confessional relations.
 - ❖ The strategy can focus efforts on key policy objectives, promote best practices, and spur greater interagency coordination.
 - ❖ The strategy can serve as a guide for government officials on engaging faith leaders, especially those that are making significant contributions to the prevention and mitigation of conflict, countering violent extremism, and sustainable development and humanitarian efforts.