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KAZAKHSTAN

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report outlines how the enjoyment of human rights, particularly freedom of religion and expression, continues to be contingent on state permission under the pretext of strengthening religious tolerance and dialogue.

(a) Freedom of Religion or Belief

Background

3. Kazakhstan has a population of over 19 million. According to the 2021 national census, 69 percent of the population identified as Muslim, with the majority belonging to the Hanafi School of Sunni Islam. 17 percent identified as Christians, most of whom were Russian Orthodox, 3 percent as belonging to other or no religious groups. 11 percent chose not to respond.¹
4. In 2022, Kazakhstan hosted the Seventh Congress of Leaders of the World and Traditional Religions in its capital, Astana, resulting in a declaration promoting religious pluralism and tolerance and condemning interreligious violence.² It “strongly urge[d] national governments and authorized international organizations to provide comprehensive assistance to all religious groups and ethnic communities that have been subjected to infringement of rights [...]”.³
5. During the third Universal Periodic Review (UPR) cycle in 2019, Kazakhstan received two recommendations on revising its domestic laws on religious registration. Both of them, however, were noted.⁴ Kazakhstan also received recommendations on promoting interfaith harmony and freedom of religion, which were largely accepted.⁵ Regrettably, over the reporting period, the situation of freedom of religion or belief and expression in Kazakhstan has not improved, as evidenced by the increasing number of related incidents as well as restrictive amendments to the Law on Religious Activities and Associations.

Legal Framework

6. Article 14 of the Constitution of the Republic of Kazakhstan establishes that “no one shall be discriminated against on the grounds of [...] attitude to religion, convictions

¹ UNECE ‘2021 Population Census Results’ (2021) <<https://unece.org/sites/default/files/2023-09/WS6BauzhanENG.pdf>>.

² Religions Congress ‘2022 Declaration of VII Congress of the Leaders of World and Religions’ (2022) <<https://religions-congress.org/en/page/deklaraciya-uchastnikov-VII>>.

³ Ibid, para 6.

⁴ UNHRC ‘Report of the Working Group on the Universal Periodic Review: Kazakhstan’ (20 December 2019) UN Doc A/HRC/43/10, 139.122, .123.

⁵ Ibid, 139.90-.97, .100-.107, .121, .230-.232.

[...].”⁶ Furthermore, the Constitution articulates the right of everyone “to choose and to declare or not to declare his or her nationality, political party and religious affiliation.”⁷

7. Article 20 of the Constitution also formally guarantees freedom of expression and creativity and expressly prohibits censorship. It also states that “everyone shall have the right to freely receive and disseminate information by any means not prohibited by law.”⁸
8. Furthermore, Article 22 of the Constitution guarantees the freedom of conscience, with the stipulation that “the right to freedom of conscience shall not be subject to or limited by any universal human and civil right or duty to the State”.⁹
9. However, the Constitution limits some of the rights elaborated above by prohibiting the establishment and activity of public associations that are aimed at “incitement to social, racial, national, religious, class or tribal enmity”.¹⁰ Similarly, Article 39 declares as unconstitutional “any acts capable of violating inter-ethnic or inter-religious harmony”.¹¹
10. The Penal Code of Kazakhstan criminalizes “actions aimed at inciting [...] religious discord” as well as “insulting religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion [...]”.¹² Related acts are punishable by a fine or by imprisonment for two to seven years, with harsher penalties for repeated offenses, religious leaders, or in connection with foreign funding to a religious association.¹³

Amendments to Religion Law

11. Kazakhstan regulates religious practice through its law on “Religious Activities and Religious Associations” (hereinafter: Religion Law).¹⁴
12. Multiple national and international advocacy groups have called on Kazakhstan to better guarantee freedom of religion or belief by revising the Religion Law. On 29 December 2021, President Kassym-Jomart Tokayev approved a series of amendments to the Religion Law, which came into effect on 9 January 2022. However, these amendments failed to introduce meaningful reform and, in some ways, further restricted freedom of religion or belief, preserving many of the Law’s restrictive provisions.
13. For example, the provision on authorizing religious events outside of religious structures for example was replaced by a so-called “notification system” in name

⁶ Constitution of the Republic of Kazakhstan, 1995, art. 14 <<https://www.akorda.kz/en/constitution-of-the-republic-of-kazakhstan-50912>>.

⁷ Ibid, art. 19.

⁸ Ibid, art. 20.

⁹ Ibid, art. 22.

¹⁰ Ibid, art. 5(3).

¹¹ Ibid, art. 39.

¹² Penal Code of the Republic of Kazakhstan (2014) art. 174(1) <<https://adilet.zan.kz/eng/docs/K1400000226>>.

¹³ Ibid.

¹⁴ Law of the Republic of Kazakhstan on Religious Activities and Associations, 2011 <<https://adilet.zan.kz/eng/docs/Z1100000483>>.

only.¹⁵ Changes to Article 7 of the Law make it more difficult for state-registered religious communities to hold events away from state-registered places of worship actually more difficult: The new Article 7-1 requires these religious communities to (1) seek permission from local administrations at least ten working days in advance and (2) provide precise and exhaustive details about the event, some of which may be difficult to provide in advance.¹⁶ The required details include the date, start and end time, transportation arrangements, fire and medical precautions, use of loudspeakers, and the number of people per vehicle.¹⁷ While the amendments describe the requirement for advance permission from local administrations as a mere "notification," they impose a severe burden on the exercise of human rights.¹⁸

14. Article 12(3) of the Religion Law was also amended to nominally address membership thresholds for registration at the regional level. Previously, a religious group seeking regional registration needed 500 total members, with at least 250 members in each region. Although the amendment removed the requirement for a certain number of members from a specific region, the general threshold remains at 500 people.
15. Other restrictive provisions of the Religion Law have remained unchanged. Article 3(5) continues to prohibit "insulting religious feelings", without further defining this highly vague and subjective concept. The activities of non-registered religious associations also remain prohibited.¹⁹
16. The Religion Law provides that everyone has the right to acquire and use "religious literature, other informational materials of religious content, and objects of religious significance at their own discretion".²⁰ However, a government-run "theological expert examination" mechanism is mandated with the responsibility of monitoring the development, review and approval of religious materials before their distribution.²¹ It should be noted that the 2021 amendments widened the scope of religious material, defining "informational material of religious content" as "printed, electronic and other information of religious character on any device, including textual links".²² An exception is made for materials intended for personal use in one copy of each item.²³ Their distribution is only permitted in religious buildings, spiritual educational organizations, and premises specifically designated by local executive bodies.²⁴ The production, issuance, and distribution of religious literature and other informational materials of religious content are only allowed after a positive "theological examination".²⁵

¹⁵ Ibid, art. 7-1.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Forum 18 'KAZAKHSTAN: New religious meeting restrictions now in Senate' (11 October 2021)

<https://www.forum18.org/archive.php?article_id=2691>.

¹⁹ Law of the Republic of Kazakhstan on Religious Activities and Associations (2011), art. 3(5)

<<https://adilet.zan.kz/eng/docs/Z110000483>>.

²⁰ Ibid, art. 9(1); Central Asian Bureau for Analytical Reporting 'Thousands of Religious Materials Get Evaluated in Kazakhstan' (18 October 2023) <<https://cabar.asia/en/thousands-of-religious-materials-get-evaluated-in-kazakhstan>>.

²¹ Ibid, art. 6.

²² Ibid, art. 1(4).

²³ Ibid, art. 6.

²⁴ Ibid, art. 9.

²⁵ Ibid.

17. Missionary activity remains highly restricted and controlled by the theological expert examination mechanism. In particular, it requires registration, including the submission of religious literature, informational materials, and objects intended for missionary activity to the examination body. This body is tasked with reviewing the submitted documents and deciding whether the missionary activity poses a “threat to the constitutional order, public order, human rights and freedoms, public health and morals”.²⁶

Cases

18. In 2023, 203 known administrative prosecutions were initiated relating to the exercise of freedom of religion or belief, including the holding of religious meetings, the propagation of religious beliefs, and the distribution of religious materials, both online and offline. This marks a significant increase compared to previous years (144 cases in 2022, 130 in 2021, and 134 in 2020).²⁷

19. Despite the UN Working Group on Arbitrary Detention’s 2021 call for the release of eight individuals jailed in 2019 for participating in a WhatsApp discussion about Islam, five of them remained imprisoned.²⁸

20. The use of "expert analyses" of religious texts by government bodies has resulted in a de facto prohibition on the operation of some religious communities. For example, claims that reading Jehovah's Witness texts harms mental health led to Jehovah's Witness communities in March and April 2021 being ordered to pay over three years' average wages to plaintiffs. A Justice Ministry "expert analysis" was used to make these claims, which succeeded despite 63% of the "analysis" being plagiarized and an academic analysis finding it "cannot be accepted as comprehensive, complete, scientifically based, or in accordance with the normative demands presented to the specialists for investigation".²⁹

21. Furthermore, international religious freedom watchdogs reported that from January to June 2023, 10 individuals and organizations had been prosecuted for merely “maintaining and using places to pray without state permission”.³⁰

Guidance on “Destructive Religious Ideas”

22. In 2022, the government of Kazakhstan updated its guidance on “How to protect oneself against the influence of destructive religious ideas” with the stated aim of tackling “religious extremism and terrorism”. It vaguely defines a “destructive religious movement or organization” as “destructive religious or pseudo-religious (imitating a

²⁶ Ibid, art. 8.

²⁷ Forum 18 ‘KAZAKHSTAN: List of 203 known 2023 administrative prosecutions (5 April 2024) <https://www.forum18.org/archive.php?article_id=2901>.

²⁸ Opinions adopted by the Working Group on Arbitrary Detention at its 91st session, A/HRC/WGAD/2021/33, (6-10 September 2021) <<https://digitallibrary.un.org/record/3969786?ln=en&v=pdf>>; Forum 18 ‘KAZAKHSTAN: Still jailed despite 2021 UN “immediate” release call’ (26 September 2023)

<https://www.forum18.org/archive.php?article_id=2861>.

²⁹ Forum 18 ‘KAZAKHSTAN: 134 administrative prosecutions in 2020’ (2 February 2021)

<https://www.forum18.org/archive.php?article_id=2634>.

³⁰ Forum 18 ‘KAZAKHSTAN: Fined, as “he had no basis for conducting a religious event” (5 July 2023)

<https://www.forum18.org/archive.php?article_id=2844>.

religious) organisation seeking to establish complete (total) control over the consciousness and will of its followers”.³¹

23. The guidance instructs the public to be alert for signs such as “you will find what you have been looking for until now in their group,” “the very first meeting with them reveals a completely new worldview for you,” and “they know exactly what you need.” It states that a destructive religious group might “distance itself from the rest of the world by clearly regulating interpersonal relationships, as well as clothing, food, and a special language” or “fill all your time with tasks...”. Signs of a recruiter include having “answers to all the questions” or being “the friendliest person you have ever met, who encompasses with love and care.” Additionally, it claims that a consequence of “getting involved in destructive religious movements” is that the person “does not understand that he/she has become a puppet and is controlled by someone...,” aiming to deviate from true religious values.³²
24. The guidance fails to provide objective criteria for determining what constitutes religious extremism. Rather, the list of highly subjective “signs” is more reflective of a warning against certain religious ways, ideas, and communities. As such, it unlawfully interferes with the freedom to have or to adopt a religion or belief of one’s choice, and the freedom, either individually or in community with others and in public or private, to manifest one’s religion or belief in worship, observance, practice and teaching.

Freedom of Religion or Belief and Freedom of Expression under International Law

25. Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which Kazakhstan ratified without reservations in 2006, guarantees the right to freedom of thought, conscience, and religion for everyone. This includes “freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”.³³
26. Furthermore, Article 26 of the ICCPR imposes an obligation upon States to “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination”, including on the basis of religion.³⁴ Article 27 of the ICCPR further guarantees that “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group... to profess and practise their own religion”.³⁵
27. While Article 18(3) does permit certain narrow limitations on religious freedom, international law is clear that the exercise of this fundamental human right can be limited only for the sake of public safety, order, health, or morals or the fundamental rights and freedoms of others.³⁶ Kazakhstan’s numerous regulative laws and

³¹ EGov Kazakhstan Public Services and Online Information ‘How to protect oneself against the influence of destructive religious ideas’ (8 December 2022) <https://egov.kz/cms/en/articles/destructive-ideas_1>.

³² Ibid.

³³ International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 18.

³⁴ Ibid, Art. 26.

³⁵ Ibid, Art. 27.

³⁶ Ibid, Art. 18(3).

restrictions clearly exceed these criteria by placing almost all aspects of religious practice under the control of the state in blatant violation of freedom of religion.

28. Kazakhstan's laws also violate the right to freedom of expression outlined in article 19 of the ICCPR.³⁷ Limitations on the exercise of this right are permitted only where necessary "for the respect of the rights and reputations of others" or "for the protection of national security, public order or public health or morals".³⁸ Article 20(2) of the ICCPR calls on States to prohibit "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence".³⁹
29. General Comment No. 34 of the Human Rights Committee makes it clear that restrictions on the right to freedom of expression "should not go beyond what is permitted in paragraph 3 [of Article 19] or required under article 20", and that relevant laws "must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not".⁴⁰
30. The criminalization of insults to religious feelings, as well as the overbroad prohibition of "incitement to hatred", do not meet this threshold. Moreover, the prohibitions on "extremist" activities are ambiguous and broadly defined, giving immense power to the government to restrict legitimate expression in unjustified ways. These measures also have an inevitable chilling effect on free expression, especially on religious matters.

(b) Recommendations

31. In light of the aforementioned, ADF International suggests the following recommendation be made to Kazakhstan:
 - a. Amend the law on Religious Activities and Religious Associations to remove the prohibition on unregistered religious activities and any undue restrictions on religious education and the production, import or distribution of religious materials;
 - b. Remove burdensome and oppressive registration requirements and rescind intrusive governmental practices, including monitoring, which infringe upon the right to freedom of religion or belief;
 - c. Remove criminal prohibitions on the operation of religion or belief communities on an unregistered basis;
 - d. Repeal all criminal and other legal provisions that unduly restrict freedom of religion and expression;

³⁷ Ibid, Art. 19.

³⁸ Ibid, Art. 19(3)(a).

³⁹ Ibid, Art. 20(2).

⁴⁰ UN Human Rights Committee, General Comment No. 34 (2011) CCPR/C/GC/34/Rev.1/Art. 19, 49.

- e. Release all prisoners of conscience incarcerated or arbitrarily detained on account of their faith, and ensure the right to a fair and public hearing for all without discrimination;