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# Challenges to Freedom of Religion in Post-Soviet Central Asian States

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**Religious Freedom Initiative  
Mission Eurasia**

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Challenges to Freedom of Religion in Post-Soviet Central  
Asian States  
Analytical Report

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## Foreword

This year the global community marks 25 years since the disintegration of the USSR, which gave 15 Soviet socialist republics the freedom to determine their own political, economic, and religious identities. This includes the five former Soviet republics in the pre-dominantly Muslim region known as Central Asia, which share geographical borders and the same Soviet political and economic system that propagated atheism for more than 70 years.

When the USSR collapsed, the religious groups most actively involved in outreach in Central Asia—evangelicals—were given the unprecedented opportunity to grow by reaching across ethnic boundaries with Christian values. However, this region's deep historical Muslim roots joined with the vestiges of Soviet authoritarianism to establish strict control over the religious sphere and prevent the establishment of new democracies. It is interesting to note that the leaders of most Central Asian countries today are the same leaders who were in power in these countries during the Soviet era.

Governments of the countries in Central Asia understand the threat that all religions, including radical Islam, pose to their power. For this reason, they have enacted legislation that strictly controls every aspect of religious life. Christianity, especially the evangelical church, has suffered the most, both because of its rejection by the predominantly Muslim culture and its outward focus on society. During the last several years, Protestants have experienced significant repression because they apparently represent a threat either to Islam and Islamic cultures, or to the authoritarian states.

During the past five years, all five Central Asian countries (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan) have been listed on the World Watch List, identifying them as the world's most repressive countries in terms of religious freedom.

During this time, Christian leaders in Central Asia, especially Protestant pastors, have been intimidated, fined, and arrested. Protestant educational institutions and the publication of Christian literature are strictly controlled. New requirements for the registration of churches have been adopted, forcing many evangelical churches to close. The type and level of religious restrictions vary from country to country, but the overall trends in all of these countries are similar.

The issue of religious freedom is deeply integrated into Mission Eurasia's missiological strategies in working with the national church. Because of our extensive network and vast ministry experience in this area, we are presenting this analytic report on *Challenges to Freedom of Religion in Post-Soviet Central Asian States*. The purpose of this report is to create more awareness and attract more expert political attention and resources from the global community in order to help those who have been deprived of the basic freedom to believe, and to offer possible solutions to this problem.

I am very proud of my colleagues, Evgeny Grechko and Vitaliy Proshak, and am so grateful to them for spending countless hours compiling and processing information from these Central Asian countries for this report. We prayerfully hope that, as a result, the global community will be encouraged to support those in Central Asia who strive for the freedom to believe.

Sergey Rakhuba  
President  
Mission Eurasia

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## Executive Summary

Freedom of religion is a fundamental human right that cuts across all aspects of participation in social, political and cultural life. Trends in the multiculturalization and globalization of contemporary society leave almost no room for governmental neglect of the religious aspect of citizens' lives. Focusing on the Central Asian context, this report highlights the main challenges and problems concerning religious freedom in the five post-Soviet Central Asian states of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.<sup>1</sup> The object of this report is to introduce Mission Eurasia's "Religious Freedom Initiatives," whose purpose is threefold: (1) to **raise awareness** among national and international leaders, policy and decision-makers, and community representatives about continued violations of human right to freedom to religion, expression, association and education, and about unequal treatment of religious minorities in Central Asian states, (2) to **advocate** for the rights of oppressed and persecuted religious minorities in Central Asian states and (3) to **provide training** on national and international mechanisms of justice and protection of human rights to freedom of religion, expression, association and education.

Each of the following sections gives a brief background on the situation in the social, political and religious spheres, providing an overview of the demographics and legislation on religion. It also describes main cases concerning the violation of rights to religious freedom within the context of a specific country. Main types of violation are mentioned in order to identify patterns of discrimination and to work on their elimination. The report concludes with a set of recommendations on approaching the situation within the context of religious rights in Central Asia and improving the protection of fundamental human rights in the region.

Common challenges to freedom of religion in the post-Soviet, Central Asian states include the following:

- Strict state inspection and control over the activities of religious organizations by means of a complex system of obligations, regulations, and state-sanctioned requirements concerning the accountability of religious organizations.
- State legislative policy on the marginalization of religious minorities as a result of contra-positioning of "traditional" and "non-traditional" religious movements.
- A lack of religious tolerance on the part of the population and decision-makers, especially in regards to mono-ethnic communities.
- An inaccurate representation of the image and activity of religious minorities in the media.
- Discriminatory legislation regarding religious minorities, i.e. preferences bestowed upon "traditional" religious groups and limitations bestowed on "non-traditional" religious groups. This includes regulations limiting freedom of religious choice and access to religious education, as well as the position and role of missionaries and the rights of

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<sup>1</sup> From this point on Central Asian states will be mentioned in alphabetical order.

children to participate in religious activities. Also included in this legislation are regulations prohibiting the activity of unregistered religious communities and the complex, subjective and non-transparent registration system for minority religious organizations.

- The ongoing process of increasing judicial restrictions and limitations within religious and legislative contexts. (This includes the introduction of new and/or amending already existing legislation to provide legal ground for punishing religious activity by unregistered religious groups or communities; the complication of the system for registering religious associations and organizations; the introduction of vague definitions of “extremism” and controversial notions of “sect,” “proselytism,” “spiritual security,” etc.)
- State imposed censorship of religious literature and limitations on its storage and distribution.
- Onerous descriptions of converts. Religious converts, that is, Asians converting to a religion other than Islam, are often referred to by law-makers and journalists in a negative manner. This includes the lack or partial absence of legal foundations and protective mechanisms for combating physical and psychological pressure on people who have converted to another religion, such as deprivation of support from family and relatives, denial of burial in the family cemetery, or "hate speech" etc.
- Limited access of citizens to national and international mechanisms of justice, and protection of citizens' rights to religious freedom.

Recommendations addressing a wide range of individuals and organizations interested in improving religious freedom in post-Soviet, Central Asian states are presented in the conclusion of this report. **Mission Eurasia** invites national and international governmental institutions, decision and policy-makers, financial donors, human rights activists, community leaders, etc. to effective partnership in **Religious Freedom Initiatives**. We call upon them to:

- Take urgent measures against the increasing limitation of individual human rights and freedoms, especially as relating to religious expression, association, and education;
- Exclude from judicial legislation and public discourse the division of religions according to “traditional” and “nontraditional” notions;
- Strictly adhere to the principle of respect toward the right of religious communities to autonomy in religious affairs and in their relations to the state;
- Implement judicial reform of religious and related legislation to eliminate discriminatory provisions against minority religious organizations, groups, communities etc.;
- To exclude unnecessary complications from the registration process for minority religious organizations;
- Create an effective system for the protection of believers rights;
- Stop the persecution and marginalization of religious converts;
- Abolish the practice of censorship of religious literature;
- Create opportunities for the development of inter-religious/cultural education, training and socialization of clergy and the educational upbringing of citizens, including children's rights to education.

- Discontinue the practice of unequal treatment, discrimination, harassment and unnecessary restrictions on the activities of minority religious groups and missionaries – both national and international.
- Abandon the practice of “hate speech” against minority religious groups in the media.
- Create opportunities for social partnership and dialogue between state and religious organizations, and between religious organizations themselves.

The normative legal foundation of this review is based upon global and regional judicial documents that define human rights and freedoms. This includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention for the Protection of Human Rights and Fundamental Freedoms, and the Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms. The information presented in this report is based upon empirical field and in-house research, and the analytical study of materials provided by various human rights and religious organizations; upon primary and secondary sources, publications and legal texts, and on information posted on official websites by the government, institutions and non-governmental/ not-profit organizations.

The report aims to address a wide range of individuals and organizations interested in improving the situation with freedom to religion, expression, association and (to the religious dimension of) education in post-Soviet Central Asia, and to invite others to fruitful partnership with Mission Eurasia within the “**Religious Freedom Initiatives.**” The report is intended to draw attention to the human rights situation in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan in order to change the mechanisms for protecting human rights in these areas. Mission Eurasia is committed to (1) **raising awareness** among national and international leaders, policy- and decision-makers and community representatives about continued violations of the human rights to freedom of religion, expression, association and education, and unequal treatment of religious minorities in Central Asian states, (2) to **advocating** for the rights of oppressed and persecuted religious minorities in Central Asian states and (3) to **providing training** on national and international mechanisms of justice and protection of human rights to freedom to religion, expression, association and education.



## Introduction

The purpose of this report is to highlight the main problems and challenges to freedom of religion, expression, association and to the religious dimension of education in the five post-Soviet Central Asian states: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. Our objective is to identify main problems and risks to human rights to freedom of religion, to expression, association, and education by analyzing the socio-cultural situation, juridical legislation and contemporary practice within the context of the aforementioned states. Problems in the legislative regulation of the religious sphere which, according to the view of the authors, do not meet the minimum requirements to ensure the adequate realization and protection of social and cultural rights of citizens are addressed. Each of the following sections gives a brief background on the situation in the social, political and religious spheres, provides an overview of the religious demographics and legislation(s) on religion and describes main cases of violation of human right to freedom to religion in a specific country context. General challenges to religious freedom in each country are described against the background of individual case studies and factual descriptions of the violation of citizen's rights and freedoms in Central Asian states.

Judicial documents of global and regional character that define human rights and freedoms, documents such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, Convention for the Protection of Human Rights and Fundamental Freedoms, and the Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms serve as the normative legal foundation of this review. The information presented in this report is based on empirical field and in-house research, analytical study of materials provided by various human rights and religious organizations, first and secondary sources, publications and legal texts, and on information posted by governmental agencies and institutions on official websites, and by non-governmental/ not-profit organizations. The authors of the report also thank local and international religious and human rights organizations for their invaluable assistance and providing materials and information.

The religious situation in Central Asia, including legislation pertaining to religion and religious activity, is considered within the context of existing individual and collective rights to freedom of conscience and religion.<sup>2</sup> In this regard, individual and collective aspects of the right to freedom of religion are defined as the right of an individual or social (religious) organization to freedom of religious preference and their manifestation.<sup>3</sup>

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<sup>2</sup> A.V. Pchelintsev, *Svoboda sovesti i veroispovedaniia kak pravovoi institute [Freedom of Conscience and Religion as a Legal Institution,]* 25-09-2015, p. 12. Available online at <[www.ateist.ru/4r10.rtf](http://www.ateist.ru/4r10.rtf)>

<sup>3</sup> Evhenii Zhovtis, *Analiz osnovnykh tendentsii pravovoho regulirovaniia prava na svobodu sovesti, religii ili ubezhdenii v Respublike Kazakhstan [Analysis of main trends of legal regulation of the right to freedom of conscience, religion, or convictions in the Republic of Kazakhstan,]* in "Freedom of Religion and Beliefs in Central Asia: Trends and Challenges. Kyrgyzstan, Kazakhstan, Tajikistan 2015," D. Kabak, A. Alisheva and

Individual rights and freedoms include the following:

- the right to hold any belief, including the religious, of any religion;
- the right not to adhere to any belief and to profess no religion;
- the right to change religion or belief;
- the right to establish a new religion or belief;
- the right to express and disseminate religious views or other religious convictions and act in accordance with them;
- the right to receive religious instruction, education or upbringing according to one's personal choice;
- the right of parents or official children's caretakers to provide a religious upbringing and education to their children;
- the right of parents or official children's caretakers to protect their children from religious education and training;
- the right to have free access to places of worship;
- the right not to give any oath, if contrary to one's religious beliefs;
- the right to openly express religious convictions or beliefs;
- the right to equal treatment and tolerance by the state of legal expressions of religion or belief;
- the right to privacy of religious convictions or beliefs;
- the right to exemption from civic duties if they are contrary to one's religious convictions, and if necessary, the right to substitute one civic duty for another.

Collective rights and freedoms include the following:

- the right to freedom of association in a religious or faith based organization, which must be registered in the prescribed manner in a state register of legal entities;
- the right to establish and maintain freely accessible places of worship and assembly;
- the right to freedom to express and disseminate religious beliefs, convictions and practices without any coercion or interference by the government and outsiders;
- freedom to acquire and maintain places of worship, to conduct and attend religious services and events;
- the right to manage and direct organizations/associations formed on the basis of religious convictions or beliefs according to institutionally accepted hierarchical structures, including the right to elect, appoint and replace leading personnel in accordance with their own requirements or statutes;
- the right to produce, purchase, import, export and distribute religious literature, in printed or digital form, including audiovisual materials and other items used for religious services and activities;
- the right to establish private schools and to manage them, as well as to engage in educational, cultural, charitable and social activities;
- the right to seek and receive voluntary material and financial assistance from individuals and legal entities within the state and/or from abroad to ensure the continuation of its activities.<sup>4</sup>

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H. Kolodzinskaia, eds., Central-Asian Forum "Human Rights-Rights of Believers" (Bishkek: OSCE ODIHR, Norwegian Helsinki Committee, Public Fund "Open Position"), 7-10.

<sup>4</sup> Anatoliy Vasil'evich Pchelintsev, *Svoboda sovesti i veroispovedaniia kak pravovoi institute [Freedom of Conscience and Belief as Legal Entity,]* Site of Atheists of Runet, available online <[www.ateist.ru/4r10.rtf](http://www.ateist.ru/4r10.rtf)>

Within the framework of this report, the authors believe that the term “freedom of religion” more adequately reflects their definition of religious freedom than that embodied in the concept of “freedom of belief.” This freedom belongs to every person from birth and is an essential component of personal rights; it is part of the more general category of “freedom of conscience,” which encompasses the whole range of other philosophical rights and freedoms.<sup>5</sup> In the matter of definitions of freedom of conscience and religion, the authors adhere to the theory of freedom of religion which is defined as the human right to accept or reject any world view or religious belief, to profess, individually or jointly with others, any religion or no religion at all; to freely choose, have, change, express and disseminate religious or other convictions and act in accordance with them, without being subjected to harassment and discrimination by the state and society. The right to accept or reject religious convictions or beliefs implies the freedom of individual choice on the basis of ideological, ethical and moral values and preferences. The right to manifest one’s religion guarantees the opportunity to follow any doctrine, to disseminate and openly express personal religious beliefs and convictions, and to make them accessible to a wide audience through sermons, speeches and indirect material objects such as books, television, video, advertising, etc. Recognition of the right to operate without restrictions, in accordance with the statutes of the preferred religious organization, implies the freedom to be a member of an existing religious organization or to establish new religious communities, to carry out religious rites and ceremonies, and to produce and distribute religious literature and religious objects, etc.<sup>6</sup>

The authors of the report address a wide range of individuals and organizations interested in improving the human rights situation within the context of freedom of religion, expression, association and education in post-Soviet Central Asia. The authors intend to draw attention to necessary steps for improving the situation through implementation of a number of urgent political and communication measures. The cooperation of national Central Asian governments and the international (European) community is, therefore, a must. Mission Eurasia’s Religious Freedom Initiatives provide an essential platform and format for cooperation between the two.

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<sup>5</sup> Anatoliy Vasil’evich Pchelintsev, *Svoboda veroispovedaniia i relihioznykh ob’edinenii v Rossiiskoi Federatsii (constitutsionno-pravovoe issledovanie) [Freedom of Belief and Religious Associations in the Russian Federation (Legal-constitutional research)]* Scientific monograph as partial requirement for the academic degree of Doctor of Juridical Sciences, specialty 12.00.02 (constitutional law; municipal law), Faculty of Constitutional and Municipal Law, FHBOU VPO ‘Russian State Trade-Economic University’, defended on 12-05-2012 in Moscow.

<sup>6</sup> Ibid.

## **Mission Eurasia**

Mission Eurasia (formerly Russian Ministries) was founded by Reverend Peter and Anita Deyneka immediately after the collapse of the Soviet Union in 1991 in order to react quickly and decisively to new opportunities for democratic development and leadership training in the former communist empire.

Founded upon Christian social and democratic thinking, Mission Eurasia's goal is to train, equip and mobilize new leadership throughout Eurasia that will engage in service among the indigenous population, community leadership and educational ministries by developing creative and strategic initiatives, and by facilitating national and international partnerships and cooperation. Our vision is to train, equip and mobilize the next generation of leadership in countries of the former Soviet Union/Eurasia in order that they might lead the democratic transformation of their communities while remaining sensitive to the challenges and benefits of cultural and religious diversity.

During the 1990s, Mission Eurasia (ME) and its in-country affiliate, the Association for Spiritual Renewal (ASR), helped to train more than 5,000 national community leaders and support more than 1,000 social, cultural and religious initiatives through 52 local centers in the former Soviet Union (FSU). Today, Mission Eurasia/ASR works in 13 countries of the FSU/Eurasia and Israel training, equipping and mobilizing the next generation of leaders in the transformation to democratic societies.

The collapse of the Soviet Union more than 20 years ago brought great hope for freedom, including religious freedom, to this part of the world. During the last several years, however, there has been a sharp increase in violations of religious freedom, particularly against religious minorities living here. Because of this alarming trend, Mission Eurasia launched the Religious Freedom Initiatives in order to raise awareness about these violations in the former Soviet Union, and to encourage action and support from the global international community. Our Religious Freedom Initiatives are rallying global leaders to end persecution, while defending our brothers and sisters who are suffering for their religious convictions and beliefs.

### ***Mission Eurasia priorities represented in the Religious Freedom Initiatives:***

- Rally global leaders and local policymakers to end religious persecution in Eurasia.
- Create awareness concerning increasing religious persecution in Eurasia among thousands of community leaders in the US, Canada and Western Europe.
- Mobilize action in the West to stop violation of religious rights throughout Eurasia.
- Provide training on issues of religious freedom for religious leaders in Eurasia, especially in the countries of Central Asia, where religious persecution is more prevalent.
- Provide advocacy and direct assistance to religious leaders in Central Asia who are either imprisoned or facing the threat of imprisonment due to their religious convictions and beliefs.

## Challenges to freedom of religion in post-Soviet Central Asia

In the early 1990s, the former Soviet republics became independent states. The years following independence were a time of significant political reform, of re-arrangement of political elites, and the adoption of new legal texts, norms and values corresponding to the new socio-economic-political situation. Post-Soviet countries also began the process of active integration into the system of international relations, of establishing sovereign diplomatic relations, and adhering to international political and economic unions, conventions and treaties.

All five post-Soviet, Central Asian states – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan – adopted in the early 1990s national constitutions, which guarantee their citizens (and foreigners possessing legal residence and stateless persons) individual and collective rights and freedoms. New laws regarding legal provisions for freedom of religion, expression, association and education were adopted: unlike Soviet legislation on religious cults, these new legal provisions bestowed unprecedented rights upon believers to engage openly and freely in religious activities, to establish new religious communities and organizations entitled to official state recognition and registration, and the right to print and distribute religious literature, etc. As a rule, this significant extension of religious freedom was due to the desire of national governments to conform to the image of democratic states, (or states in transition to democracy<sup>7</sup>) and commitments made in regards to signed international conventions.

This liberalization of legislation gave significant judicial freedom to cultural and religious communities that received legal protection from state interference in the internal affairs of religious associations. In practice, the state began to interfere less in the internal life of religious communities. The media significantly decreased the amount of negative “hate speech” in publications depicting religious organizations and their activities. Religious communities were given an opportunity to officially invite and receive foreign missionaries, and religious groups became actively involved in the social and cultural life of the local community and in political activities on the national level. Religious freedom in Central Asian states has significantly contributed to the development of international – Eurasian and European – cooperation and partnerships in the social, cultural and religious arenas.

However, certain government bodies and structures entitled by the state to exercise a sometimes limited control over religious organizations have survived in all five countries, or were re-established after a short break. Thus, a return to the Soviet model of state-religious relations has gradually reappeared, to varying degrees, in post-Soviet Central Asian countries:

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<sup>7</sup> For more information on “democracy in transition”, please, see the following sources: Mykola Riabchuk, *Agony of a “Blackmail State”: Rise and (Possible) Fall of Post-Soviet Semi-Authoritarian Regimes*, in “Ukraine on its Meandering Path between East and West”, Andrej N. Luchnycky and Mykola Riabchuk, eds., Series Interdisciplinary Studies on Central and Eastern Europe, Rolf Fieguth and Nicolas Hayoz, eds., Vol. 4, Bern: Peter Lang 2009; L. Diamond, “Thinking about Hybrid Regimes”, *Journal of Democracy*, Vol. 13, No. 2, 2002; Vitaliy V. Proshak, *Introduction: Religion, State, Society, and Identity in Transition*, in “Religion, State, Society, and Identity in Transition: Ukraine”, Rob van der Laarse, Mykhailo N. Cherenkov, Vitaliy V. Proshak, and Tetiana Mykhalchuk, eds., Oisterwijk: Wolf Legal Publishers, 2015.

restrictions were implemented in Turkmenistan and Uzbekistan quite early and harshly, then in Kazakhstan, Kyrgyzstan and Tajikistan, where they are still attempting to determine appropriate forms and degrees of state control of religion.

The underlying reason for these restrictions was, most likely, the growth of religiosity and a significant increase in the number of religious organizations. As a result of missionary activity by Islamic, Christian and other religious groups, mass religious conversions among the population took place. The population of Central Asian states became, in fact, a field for ideological competition between missionaries representing various religious traditions and denominations. The spread of radical Islam, as opposed to Sunni Islam of Hanafi Madhhab, which is popular in Central Asia, has caused a great amount of anxiety among state structures. In the early 90s, for example, representatives of various radical Islamic organizations from Pakistan, Bangladesh, Saudi Arabia and other countries visited essentially all of the major cities and regions of Central Asia promoting "pure Islam," devoting special attention to missionary work among the underprivileged and poorest of the poor, youth and those in detention. Funds from foreign Islamic organizations flooded the region and made possible the establishment of thousands of mosques and prayer rooms. Education or the lack of access to state-run national educational institutions has also played a role in the spread of radical beliefs: thousands of students from Central Asia received training in religious schools abroad. It is important to note that due to a lack of qualified personnel, official Islamic institutions could not effectively counter the spread of radical religious movements in the region. For example, in 2009, according to Kanybek Osmonaliev, then head of the State Committee on Religion in the Kyrgyz Republic, only 10-15% of the 36 members of the Ulema Council possessed a basic education, while the rest were educated at home via distance education programs. Close ties between some imams and corrupt officials or mafia clans, or even direct corruption of the "official" clergy itself have significantly contributed to a distrust of existing religious organizations and forced certain groups to seek new religious perspectives and ways of life.<sup>8</sup>

At the end of the 1990s, the Uzbek government criticized the liberal politics of the Kyrgyz government in religious matters in the region. This was due to raids conducted by militants belonging to the Islamic Movement of Uzbekistan (IMU) that penetrated the Fergana Valley via Kyrgyzstan. Harsh statements, in particular, came from Tashkent after the famous "Batken Incidents" of 1999, when President Islam Karimov blamed Bishkek for collaborating with radical Islamists.<sup>9</sup> In reply to Tashkent's claims, an official from Bishkek stated, "The head of the Uzbek state refuses to acknowledge that it is exactly the repressive actions of Tashkent against religious leaders and Islamic organizations in the early and mid '90s that has resulted in a strong radical reaction, the formation of an armed opposition, which," as he put it, "has for two

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<sup>8</sup> M. Kalishevskii, *Kyrgyzstan: Islamization Irreversible?* Almanac, 31-01-2014, <<http://navoine.info/krgz-islam.html>>; Other experts comment that poor economic conditions and a high level of corruption could be regarded as main reasons for the search for religious alternatives to "state religiosity," - Anora Sarkova, *Tajikistan: Islamism ot nitshety i bezvyhodnosti [Tajikistan: Islamism from poverty and hopelessness]* BCC: Russian Services, January 26, 2011 <[http://inosmi.ru/middle\\_asia/20110126/165992335.html](http://inosmi.ru/middle_asia/20110126/165992335.html)>

<sup>9</sup> In 1999 between 650-1000 militants belonging to the Islamic Movement of Uzbekistan (IMU) entered into the Fergana valley via Kyrgyzstan to establish an Islamic state in Fergana. After military confrontations with the state army, militants retreated again via Kyrgyzstan.

years now been quietly passing from Tajikistan to Uzbekistan through Kyrgyzstan."<sup>10</sup> He also noted that "the pressure on any particular group of believers can have negative results: it may force them underground, eventually pushing them toward terrorism."<sup>11</sup>

Another important factor in the religious demography of Central Asia is the considerable growth of Protestant Christian communities, including those consisting of representatives of Asian nations. This was a result of active missionary efforts by national and international Christian (Protestant) missionaries and mission organizations. However,

The rapid deployment of foreign Christian missions and, as a result, the conversion of indigenous people to Christianity caused a hostile reaction from Muslim religious leaders, who believe that Central Asia belongs to Islam. Although they proclaim their respect for Christianity, some pressure was applied (or sharply increased) on religious movements that proselytize among Muslim populations too openly. In the long term, according to the Spiritual Directorate of each of the Central Asian republics, a clear division between "indigenous people – Muslims" and "Europeans – Christians" must be applied. . . . Representatives of the Islamic and Orthodox clergy are seeking to build a religious construct around two interrelated poles - Orthodoxy and Islam. Both groups appear to assign to themselves a definite place in the Central Asian mosaic of religions and withhold from proselytism among nationalities traditionally belonging to the other religious tradition...[*Translation from Russian by authors*]<sup>12</sup>

Thus, governmental influence in the religious sphere of public life was subsequently divided between the two ethnic/religious majority groups. This led to the development of not a twofold model of power structures, i.e. state/Islam, but to a threefold model, i.e. state/Islam/Orthodoxy.<sup>13</sup> In this case, Islam and Orthodoxy are presented as "traditional" religions, while other religious traditions are referred to as "sects" or "movements."<sup>14</sup>

The tightening of religious laws and the imposition of certain limitations on human rights to freedom of religion took place at the end of the 1990's and in the early 2000's in the countries of Central Asia. The first to impose religious restrictions were Turkmenistan, Uzbekistan and Tajikistan. According to explanations from the government, the main reason for introducing new limitations and restrictions in religious law was the necessity to respond to the threat of religious extremism and terrorism.<sup>15</sup> The relevance of this argument is justified by the increased activity of radical religious groups within the states themselves and their close geographic location to Afghanistan. However, it should also be noted that while this is an important reason,

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<sup>10</sup> M. Kalishevskii, *Kyrgyzstan: Islamization Irreversible?* Almanac, 31-01-2014, <<http://navoine.info/krz-islam.html>>

<sup>11</sup> *Ibid.*

<sup>12</sup> Sebastien Peyrouse, *Perestroenie spectra religii v Tsentral'noi Azii: soiuz mezhdyy islamom i pravoslavnyim khristianstvom [Rebuilding the spectrum of religions in Central Asia: an alliance between Islam and Orthodox Christianity]*, Scientific conference "Islam, Identity and Politics in post-Soviet Space: Comparative Analysis of Central Asia and European Russia," Kazan' Centre on Federalism and Public Policy, French Institute on Research on Central Asia, 1-2 April 2004, Kazan', available online at <[www.kazanfed.ru/actions/konfer7/11/](http://www.kazanfed.ru/actions/konfer7/11/)>

<sup>13</sup> *Ibid.*

<sup>14</sup> Kadyrzhan Smahulov, *Sovremennaiia relihioznaia situatsia v Kazakhstane [Contemporary Religious Situation in Kazakhstan]*, "Central Asia and Caucasus," Vol 14, No. 3, 2011: 53-73.

<sup>15</sup> Eric Freedman, *Avtoritarnye rezhimy, relihioznye prava mysyl'man v Tsentral'noi Azii i nedostatochnoe osvetshenie narushenij etih prav v inostrannoii presse [Authoritarian Regimes, Religious Rights of Muslims in Central Asia and Insufficient coverage of the Violation of these Rights in Foreign Media]*, "Central Asia and the Caucasus," Vol. 13, No. 1, 2010: p. 164.

it is certainly not the only reason for imposing religious restrictions: among others are the intention of government agencies to control the flow of funds and religious literature, the fear of growing political influence by religious organizations, and their increasing impact on cultural processes in society. In addition, the government is concerned that mass conversion of the Asian population, traditionally Islamic, to another religion might drive fundamental Islamic groups who wish to protect their sphere of influence to radical extremism.<sup>16</sup> Correspondingly, the *cascade* factor should not be excluded: legislative bodies in Central Asian countries quite often follow the example of the neighboring state, and the Russian Federation especially, in implementing certain norms, terminology, and methodology already in practice there.

Thus, important factors for understanding the current religious situation in the Central Asian region are: (1) the change in the religious demography (the growing number of citizens who are actively celebrating religious rites and traditions, and the increase in religious diversity, etc.) and (2) the mass migration of representatives of minority groups, which leads to an increase in the number of mono-ethnic and mono-religious communities, as well as labor migration of Central Asians in Russia and other countries and (3) the geopolitical, including religious influence of neighboring states, both near and far, that seek to influence the development of the Central Asian republics. These include Turkey, Iran, the Middle East, and Russia.

In the last decade a shift in emphasis from notions of *equal opportunities* for all religious communities to the concept of *formal equality* among religious organizations, i.e. equality within a certain group but not between all existing groups, has begun to appear in legislative and political discourse.<sup>17</sup> This is typical in other post-Soviet developing states as well.<sup>18</sup> In the Central Asian context it is obvious in the opposition of “traditional” and “non-traditional” religions, where the first receive special preferences and privileges. This subdivision of “traditional” and “non-traditional”, or of “ours” and “foreign”, of “friend” and “foe”, creates potential fear of everything that is not familiar, and of further divisions that could lead to discrimination of minority groups.<sup>19</sup> The media has actively taken part in “anti-sectarian” propaganda, which has already led to a deterioration of the public’s relations with religious minorities. The situation is complicated by the fact that with imperfect religious legislation, which often contains contradictory and incomplete terminology that leads to vague, dual understandings or interpretations of the rules, even in countries with more liberal legislation like Kazakhstan, Kyrgyzstan and Tajikistan, the activity of religious organizations and their

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<sup>16</sup> Struggle for religious influence and the necessity to protect it is regarded as a possible reason for the growth of religious extremism, - V.V. Kim, *Ekstremistskie potentsii relihioznoho fundamentalizma: ot istokov do nashih dnei* [*Extremist Potential of Religious Fundamentalism: From Beginning to our Days*,] “Islamovedenie” [“Islamic Studies,”] No. 4, 2014: 7.

<sup>17</sup> Timo Makkonen for EU Directorate General for Employment, Social Affairs and Equal Opportunities and the Finnish Ministry of Labor, *European Handbook on Equality Data: Why and how to build to a national knowledge base on equality and discrimination on the grounds of racial and ethnic origin, religion and belief, disability, age and sexual orientation* (Luxembourg; Office for Official Publications of the European Communities, 2007), 14.

<sup>18</sup> The same trends could be observed in Ukraine during the government of Yanukovych, - Vitaliy V. Proshak, *Human Rights to Freedom to Religion, Expression, Association, and Education in the Ukraine: Contemporary Situation and Challenges*, in “Religion, State, Society, and Identity in Transition: Ukraine,” Rob van der laarse, Mykhailo N. Cherenkov, Vitaliy V. Proshak, and Tetiana Mykhalchuk, eds. (Oisterwijk: Wolf Legal Publisher, 2015), 631.

<sup>19</sup> A. Grigorenko, “Friend” or “Foe” in the History of Religion, “Bulletin of the Russian State Pedagogic University A.I. Gertsena,” No. 146, 2012: 41.



existence depends on state registration. At the same time, regulations on registration are usually insurmountable for representatives of minority religious communities. Thus, religious minorities often find themselves threatened with illegal status and persecuted for unauthorized religious activity.

Central Asian states believe that they provide necessary protection of the right to association, peaceful assembly and to expression of one's religion or belief. But this is based upon the state's understanding of these rights, and how and to what extent they can be limited.<sup>20</sup> Thus, as Maina Kiai, the UN Special Rapporteur on the right to freedom of peaceful assembly and association noted after a visit to Kazakhstan, these rights become privileges granted by the State.<sup>21</sup> According to Manfred Nowak and Tanya Pospornik, "Intrusion into the sphere of religious freedom does not happen because officials are questioning the right of citizens to freedom of religion and belief, but because they mistakenly believe that the specific restrictions that they impose are quite justified."<sup>22</sup>

The sections below present a more detailed characterization of the situation in the Central Asian states of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. This includes background information on the social, political and religious spheres, and on religious demography and legislation, which was mentioned previously. Major challenges to religious freedom in each country are supported by descriptions of violations of citizens' human rights and freedoms, as well as personal case studies.

Table 1: Population during the first census in the post-Soviet period<sup>23</sup>

State	Year of censor	Population, in millions
Kazakhstan	1999	14,953
Kyrgyzstan	1999	4,851
Tajikistan	2000	6,127
Turkmenistan	1995	4,481
Uzbekistan	1989 <sup>24</sup>	19,905

<sup>20</sup> E.A. Zhovtis, *Kontsepsiia natsionalnogo plana deistvii v oblasti prav cheloveka v Respublike Kazakhstan [Concept of National Action Plan in the Area of Human Rights in the Republic of Kazakhstan]*, Publication of the Research Centre on Legal Policy (Almaty, 2014), available online at <www.lprc.kz>

<sup>21</sup> United Nations, General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. Mission to Kazakhstan*, A/HRC/29/25/Add2, Human Rights Council, 29<sup>th</sup> Session, 16 June 2015.

<sup>22</sup> T. Lindholm, K. Durema and B. Tahzib-li, *Svoboda religii i ybezhdanii: osnovnye principy [Freedom to Religion and Belief: Foundational Principles]*, R. Lunkin, T. Tomaeva, A. Aleksandrov, and N. Purtova, trans. Moscow: Institute of Religion and Law, Brigham Young University, 2010.

<sup>23</sup> Roza Zharkynbaeva, *Osobennosti demograficheskogo razvitiia Tsentralno-Aziatskogo rehiona v period nezavisimosti [Distinctive Features of Demographic Development of the Central-Asian region in the Period of Independence]*, "Central Asia and Caucasus," Vol. 14, No. 4, 2011: 76.

<sup>24</sup> There was no censor in Uzbekistan in the post-Soviet period; the data is from the Soviet period.

## KAZAKHSTAN

### *General Information*

The Republic of Kazakhstan is a unitary state with a presidential form of government. According to the Constitution, the country is a democratic, secular, legal and social state whose highest priority is the individual, his/her life, rights and freedoms. The population of Kazakhstan as of June 1, 2012 was 16, 760, 000 people. Currently, the country is home to 130 ethnic groups.

Table 2: Ethnic composition of Kazakh society, as of 2009

<b>Ethnic group</b>	<b>Percent</b>
Kazakhs	63.07%
Russians	23.70%
Uzbeks	2.85%
Ukrainians	2.08%
Uighurs	1.40%
Tatars	1.28%
Germans	1.11%
Other	4.51%

### *The religious situation*

Currently in Kazakhstan there are 3,547 religious associations representing 18 various denominations. The largest religious groups are Islamic - 2459 branches of the Spiritual Administration of Muslims of Kazakhstan (SAMK), and Orthodox - 318 associations of the Russian Orthodox Church (ROC).

Table 3: Religious composition of Kazakhstan society as of 2015<sup>25</sup>

<b>Denomination</b>	<b>Amount</b>
Muslim	2459
Orthodox	318
Pentecostal Church	219
Evangelical Christians-Baptists	181
Presbyterian Church	101
Catholic	84
Jehovah's Witnesses	60
Seventh-day Adventists	42
The New Apostolic Church	26
Methodist	14
Evangelical Lutheran Church	13
Hare Krishna	9

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<sup>25</sup> The official website of the Committee for Religious Affairs of the Ministry of Culture and Sports of the Republic of Kazakhstan, <[http://www.din.gov.kz/rus/religioznye\\_obedineniya/?cid=0&rid=1715](http://www.din.gov.kz/rus/religioznye_obedineniya/?cid=0&rid=1715)>

Baha'i	6
Jewish	6
Mennonite	4
Buddhist	2
The Church of Jesus Christ of Latter-day Saints (Mormons)	2
Moon's Unification Church (Moonies)	1
<b>Total</b>	<b>3547</b>

Between 1992 and 2010, the activities of religious associations were regulated by the “Law on Freedom of Conscience and Religious Associations” adopted on January 15, 1992 by the Supreme Council of the Republic of Kazakhstan. Since the passage of this law two decades ago, which was more liberal than previous Soviet law, religious life in Kazakhstan has been characterized by a rapid growth in the number and size of existing religious organizations and the emergence of a number of confessions that were not previously represented in Kazakhstan. As of January 1, 2011 there were 4,551 religious associations representing 46 confessions in Kazakhstan, including various religious branches and small groups of religious minorities, some of which were not officially registered.

Since 1994, numerous (including unsuccessful) attempts were made by state policy-makers to increase state control over religious matters in the country. For example, in 1998 and in 2002-2003 an amendment to existing law was proposed that would create new rules allowing the state to strengthen its control of religious matters, and to impose legal restrictions - especially on so-called “non-traditional” religious movements. However, these projects were sent back for revision because, according to legal experts and representatives of religious minorities, they were a serious contravention of international standards and legal documents to which Kazakhstan had signatory obligations.

In 2010 a new “Law on Religious Activity and Religious Associations” came into force. Despite sharp criticism from local and international human rights organizations, this law and proposed amendments to existing laws relating to religion, including the Administrative Code, were adopted by Parliament and signed into law by President Nazarbayev on October 11, 2011. This adoption of new repressive laws was officially justified by changes in the socio-political situation, along with an increase in religious justification for social activism since various extremist and terrorist groups hide under religious pretense. Thus, changes in security situation provided a “justification” for the implementation of law regulating religious practice.<sup>26</sup>

In subsequent years more than fifteen by-laws, legal regulations and policies addressing varying aspects of religious activity were adopted. New rules have been defined for the regulation of missionary activity, the construction of religious buildings, the application of religious expertise, the location and use of premises for religious ceremonies outside of religious buildings, and for the distribution of religious literature. In particular, according to current legislation, missionary activity may be performed only by representatives of officially registered religious communities

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<sup>26</sup> According to some state experts, the religious situation in Kazakhstan is “potentially dangerous,” - Muhit Asanbaev and Liazat Umirzakova, *Novaia forma relihioznoho ekstremisma v Kazakhstane: destruktivnye sekty i kulty [New Form of Religious Extremism in Kazakhstan: Destructive Sects and Cults]* “Central Asia and Caucasus,” No. 1(61), 2009: 53.

possessing a special missionary permit, i.e., a sort of missionary identification card. Foreign missionaries may enter the country only at the invitation of officially registered religious organizations. Thus, religious groups that are not in the list of registered religious associations, or whose official registration was withdrawn for certain reasons, cannot be engaged in missionary work in the country. Individuals engaged in missionary work not in accordance with these new legal provisions are subject to administrative measures and punishment resulting in financial penalties or fines.

Sergey G., a Baptist minister, for example, was detained while distributing evangelistic booklets in the city of Tshchuchinsk, in the northern part of Kazakhstan.<sup>27</sup> Booklets were distributed in front of the local bookshop within the framework of the “Mobile Christian Library” initiative. At the moment of their arrest, Sergey G. and another believer had nineteen booklets containing words from the Gospels and an invitation to visit the local Baptist church on them. According to the aforementioned regulations, which were harshly criticized by various international organizations and human rights activists, distribution of religious literature in Kazakhstan is permitted only in strictly assigned places. In November 2013, the administrative court of the Burabaisk region of Akmolinsk Oblast found Sergey G. guilty of breaking the law and subject to administrative penalty – a fine of fifty Monthly Payments Indicators (MPI). Another believer accompanying Sergey G. received the same punishment. Both believers involved appealed the court decision, since the court found nothing illegal in the content of the booklets, only of their unauthorized distribution. In February 2014 the court executor also issued an order expropriating Sergey G’s personal automobile, a Volkswagen “Sharan.” According to Sergey G., the price of the car significantly exceeds the fine imposed by the Burabaisk administrative court: the financial value of his car exceeds 1000 Monthly Payments Indicators (MPI), while the fine was only 50 MPis. According to the “Law on Executive Procedures and the Position of Court Executors” No. 261-IV of April 2, 2010 the expropriation of property on the basis of a court decision must be in accordance with the financial value of the property and the fine issued: the value of the expropriated property should not exceed the set fine.<sup>28</sup> At the moment this report was issued, Sergey G’s car was in court custody in a private parking lot waiting to be sold, which will increase costs for the individual involved.

Within a year after the implementation of the new “Law on Religious Activity and Religious Associations”, religious communities and organizations were required to re-register. After re-registration, the number of religious communities and organizations in Kazakhstan had decreased by an average of thirty percent. Also, according to official data, the number of religious denominations has decreased as well – from forty-six to eighteen - due to their more rigorous classification within the existing religious composition of Kazakh society. The authors of this report consider this change far too large to be explained by “natural” evolution in religious demography. One must suspect that legal pressure on religious organizations is really an attempt to make the Kazakh society more homogeneous.

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<sup>27</sup> Svetlana Glushkova, *Broshiury obernulis’ baptistam konfiskatsiei mashiny [Broshures in Confiscated Car Turn Out to Belong to Baptists,]* Radio Azattyk, Human Rights Section, 25 September 2015  
<<http://rus.azattyq.mobi/a/27268938.html>>

<sup>28</sup> Law of the Republic of Kazakhstan, “On Executive Procedures and the Position of Court Executors,” No. 261-IV, as of 2 April 2010, Chapter 7, Paragraph 1, Article 55, Section 5.

After the process of re-registration was concluded, the judicial liquidation/expropriation of property belonging to non-existing communities, i.e., religious communities that were not able to fulfill the requirements for re-registration or those who had not completed the process within the given time period, was launched. After the introduction of the new “Law on Religious Activity and Religious Associations” in 2011, which contains restrictive regulations and procedures for registration of religious organizations in Kazakhstan and makes re-registration mandatory, hundreds of religious communities were eliminated in 2012-2013.

After the adoption of the new law and re-registration of existing religious communities, state policy on religion was characterized by more stringent control over all aspects of the activities of religious organizations. According to official explanations, the need to respond to the growing activities of various extremist religious groups that promote radical ideas, especially among young people via modern social and information technology, is responsible for the tightening of state control and restrictions placed upon religious organizations. As a result, the authorities introduced preventative mechanisms to combat the growth of religious extremism and terrorism, primarily through consciousness-raising initiatives among the population, especially among children and young adults. The necessity to combat religious extremism and terrorism is a priority in the state program for 2013-2017.<sup>29</sup> As part of this initiative, a list of terrorist and extremist organizations prohibited by the court in the Republic of Kazakhstan has been made public.

According to information provided by the Kazakh Ministry of Culture and Sports, 708 expert groups on religion comprised of staff from government and civil agencies, religious experts, theologians and representatives of the so-called traditional clergy were organized. The total number of specialists involved in this work is more than four thousand. During the first nine months of 2014, approximately fifteen thousand different events were conducted by information groups involving more than one million two hundred and fifty thousand people. In 2013, five hundred information groups reached about one and a half million people. Online communities were created on the most popular social networks, such as “Facebook” and “VKontakte,” where the aforementioned group experts conduct outreach on a regular basis. In addition, relevant state agencies are monitoring the Internet to identify extremist sites and content.<sup>30</sup> As a result, in 2014 more than fifty websites and online resources were deemed extremist and closed.

### ***Challenges to freedom of religion***

According to a study conducted in 2014 by the organization Forum 18, a steady increase in the number of restrictions and violations in the religious sphere were observed in Kazakhstan.<sup>31</sup> Examples of restrictions on religious freedom include the following:

- *Raids and inspections of religious organizations.*

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<sup>29</sup> Interview with Vice Minister of Culture and Sport, *Na Printsipakh mezhkonfessional'noho sohlasia i bezopasnosti [On the Principles of Inter-confessional Agreement and Security]*, ReligiiKZ: Information-Educational Resource, 07 November 2014 <<http://religii.kz/ru/home-ru/item/223-na-printsipakh-mezhkonfessionalnogo-soglasiya-i-bezopasnosti>>

<sup>30</sup> Ibid.

<sup>31</sup> Forum 18 News Service, *Kazakhstan*, <<http://forum18.org/archive.php?country=29&page=1>>

The introduction of repressive law on religion has actually provided a “legal” basis for numerous regular searches and for control by the National Security Committee (NSC) over places where various religious organizations gather. These raids are usually directed at so-called “non-traditional” religious organizations, which include all but representatives of Sunni Hanafi Islam, Orthodoxy, Catholicism, Lutheranism, and Judaism. “Non-traditional” religious organizations are accused of a lack of inherent connection to the history and culture of the state or individual ethnic groups within Kazakh society, as well as of overly active missionary activity. Anti-sectarian centers are actually funded by the state, which also promotes hostile remarks and “hate speech” against “non-traditional” beliefs in state-controlled national and local media. Raids are carried out within the framework of “operational preventative efforts to combat religious extremism and terrorism,” among communities that, for whatever reason, remain unregistered, or that were not able to re-register, such as congregations of the Baptist Council of Churches or independent mosques.

As E. Zhovtis comments,

Regional state representatives and local executive bodies (akimats) have actually been assigned the functions of law enforcement agencies in relation to religious organizations. It is obvious that this attitude on the part of the state is stimulating further stigmatization of religious communities, not to mention of individual believers.<sup>32</sup>

- *Restrictions on missionary work*

The definition and consequent restriction of missionary activity, which is aimed at the spread of a particular religious doctrine or belief and performed by individuals or on behalf of a registered religious association, violates international standards on the right not only of religious groups, but also of individuals to freely express and disseminate their religion as part of the broader right to freedom of conscience and religion. Moreover, it violates international standards on the right to freedom of expression and to disseminate any philosophical or religious view. Thus, the very basic conceptual definition of the aforementioned law already raises serious questions in regard to its use in a legal sense. The right to express personal religious beliefs and convictions and to engage in missionary activity, in accordance with Article 3 of the law, shall be in accordance with the laws of the Republic of Kazakhstan.<sup>33</sup> What this means is that by equating simply practicing one’s faith as missionary activity, which is illegal, one is, in effect, breaking the law.<sup>34</sup>

- *Continued tightening of legislation*

On January 1, 2015 new versions of the law providing a “legal” basis for imposition of certain penalties for violations of religious law came into force: this includes the new Criminal Procedural Code (which includes a prohibition against inmates possessing uncensored religious literature), the new Criminal Code and the new Code of Administrative Offences. As a result,

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<sup>32</sup> E.A. Zhovtis, *Kontsepsiia natsionalnogo plana deistvii v oblasti prav cheloveka v Respublike Kazakhstan [Concept of National Action Plan in the Area of Human Rights in the Republic of Kazakhstan]*, Publication of the Research Centre on Legal Policy (Almaty, 2014), available online at <[www.lprc.kz](http://www.lprc.kz)>

<sup>33</sup> The Law of the Republic of Kazakhstan, “On Religious Activity and Religious Associations,” No. 483-IV, 11 October 11, Chapter 1, Article 3.

<sup>34</sup> *Ibid.*

Seventh-day Adventist K. Yklas, for example, faces between five to ten years of imprisonment for perversion of religious harmony while discussing his faith with students and offering them books on Christianity.<sup>35</sup> Seventh-day Adventist church members deny these charges of religious perversion. On another occasion, four members of Tabligh Jamaat Muslim missionary movement were convicted in three different cities in Kazakhstan and five more were imprisoned in pre-trial detention. The prosecution accused the members of Tabligh Jamaat of unauthorized religious activity that violates the constitutional system and public order. In reply to an inquiry by Forum 18 News Service concerning these accusations and court decisions, an assistant to the head of the Astana KNB [Committee on National Security] said, "We [KNB] are the kind of organization that can't answer your questions."<sup>36</sup> Likewise, no explanation was given to believers when Shymkent City Administration, the local secret police and the National Security Committee (KNB) closed the prayer room located on the premises of Shymkent market.<sup>37</sup>

- *The prohibition against unregistered or unauthorized religious activity*

Since the opportunity to re-register expired October 25, 2012, many religious communities have not been able to comply with newly implemented rules for re-registration and have therefore failed to re-register. Religious communities that were not able to collect 50 signatures of founding members were forcibly closed by the courts. The new registration procedure is extremely complex, confusing and expensive. According to the new regulations, local religious organizations must have at least fifty adult founding members for registration, regional organizations – at least five hundred, and national - at least five thousand adult citizens from all regions of the country, including the capital and all large cities, with a minimum of 300 members present in each locality. In accordance with Article 15, all participating founders of religious communities must submit their full data to the state registration body, which is authorized to verify the correctness of the data and the registration process.<sup>38</sup> This is, according to experts, a discriminatory norm intended to intimidate potential founders of religious communities. Current law also specifies that religious organizations officially deemed "local" or "regional" may engage in activities only in the area in which they are registered, and not beyond the geographic area. Activities of unregistered religious organizations are prohibited and punishable by law. In addition, only regionally and nationally registered religious organizations are allowed to train clergy in state-accredited educational institutions. At the same time, it is unclear if religious organizations are allowed to engage in religious education that is not directed toward the preparation of clergy.

The aforementioned regulations are in contradiction to the OSCE "Guidelines for Review of Legislation Pertaining to Religion or Belief," in which it is stated that:

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<sup>35</sup> Felix Corley, *Kazakhstan: Secret police-inspired criminal prosecutions*, Forum 18 News Service, 13 October 2015 < [http://www.forum18.org/archive.php?article\\_id=2110](http://www.forum18.org/archive.php?article_id=2110)>

<sup>36</sup> Felix Corley, *Kazakhstan: Wave of prosecutions against "extremist" Muslims*, Forum 18 News Service, 7 October 2015 < [http://www.forum18.org/archive.php?article\\_id=2108](http://www.forum18.org/archive.php?article_id=2108)>

<sup>37</sup> Muchfig Bayram, *Kazakhstan: Why do authorities close public prayer rooms?* Forum 18 News Service, 17 August 2015 < [http://www.forum18.org/archive.php?article\\_id=2090](http://www.forum18.org/archive.php?article_id=2090)>

<sup>38</sup> The Law of the Republic of Kazakhstan, "On Religious Activity and Religious Associations," No. 483-IV, 11 October 2011, Chapter 4, Article 15.

- 1 Registration of religious organizations should not be mandatory, although it is appropriate to require registration for the purposes of obtaining legal identification and similar benefits.<sup>39</sup>
- 2 Consistent with principles of autonomy, the state should not decide that any particular religious group should be subordinate to another religious group or that religions should be structured on a hierarchical pattern. (A registered religious entity should not have “veto” power over the registration of any other religious entity.)<sup>40</sup>

According to Kazakh administrative and criminal legislation, however, religious activity by an unregistered religious organization is punishable by administrative penalties, financial fines and criminal prosecutions.

- *Censorship of religious literature*

According to the law on religion, “Nationals of the Republic of Kazakhstan, foreigners, stateless persons and religious associations shall have the right to acquire and use religious literature, religious materials and religious articles at their discretion.”<sup>41</sup> However, the distribution of religious literature is permitted, in accordance with Article 9, Part 2, only on “cultic premises, in religious educational institutions, or on permanent premises specially defined by executive bodies.”<sup>42</sup> Further, Article 9 Part 3 states that the import of religious literature “in addition to literature for personal use” is permitted only by registered religious organizations with prior approval of the State Committee on Religious Affairs, which must examine each separate item.<sup>43</sup> This particular regulation, which requires each item be examined by the State Committee on Religious Affairs, provides grounds for possible discrimination and makes religious organizations dependent on the Committee, since no time period for this examination is prescribed by law. In 2013 the Court ordered religious literature that was not approved by the committee destroyed. Thus, 121 books were confiscated from an unregistered Baptist community in the Akmola region of Kazakhstan. The confiscated books included Bibles, children’s Bibles, various booklets, brochures and books mainly in the Kazakh language.

From the point of view of human rights organizations in Kazakhstan, the state’s religious expertise

is highly questionable from a legal point of view and international experts are rightly concerned about granting to the state the right to pass judgment on the acceptability of religious doctrine. In reality, theological disputes and subjective individual views of experts in religious studies are accepted as a basis for administrative and legal decisions

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<sup>39</sup> European Commission for Democracy through Law (Venice Commission), *Guidelines for Legislative Reviews of Laws Affecting Religion or Belief*, OSCE/ODIHR Panel of Experts on Religion or Belief, Opinion no. 271/2004, CDL (2004) 061, Strasbourg, 11 June 2004, p. 12. Available online at <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2004\)061-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2004)061-e)>

<sup>40</sup> European Commission for Democracy through Law (Venice Commission), *Guidelines for Legislative Reviews of Laws Affecting Religion or Belief*, OSCE/ODIHR Panel of Experts on Religion or Belief, Opinion no. 271/2004, CDL (2004) 061, Strasbourg, 11 June 2004, p. 12. Available online at <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2004\)061-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2004)061-e)>

<sup>41</sup> The Law of the Republic of Kazakhstan, “On Religious Activity and Religious Associations,” No. 483-IV, 11 October 2011, Chapter 3, Article 9, Point 1.

<sup>42</sup> Ibid. Chapter 3, Article 9, Point 2.

<sup>43</sup> Ibid. Chapter 3, Article 9, Point 3.



designed to permit or restrict the existence and activity of a particular religion or belief.  
(Translation by authors)<sup>44</sup>

- *Restrictions on children's rights to religious freedom and belief*

Article 3 Part 16 of the law on religion requires religious leaders to "undertake measures to prevent involvement and/ or participation of minors in the activity of a religious association because of a minor's parent or his/her other legal representatives might object."<sup>45</sup> This rule allows parents and local community members, therefore, to put pressure on children and young people. The phrase "other legal representatives" could also be interpreted as allowing local school teachers, government or civil agents to intervene in the education or upbringing of a minor, which might prevent them from participating or attending religious services. This particular article could also be interpreted as permitting the involvement of members of the aforementioned state committees in the upbringing of minors, especially those belonging to minority religious groups or to so-called "non-traditional" religious movements. In 2001, article 19 of the law "On the Rights of the Child in the Republic of Kazakhstan" was amended to prohibit the dissemination of religion beliefs during children's parties, sports, cultural and artistic events, and other activities like camping.<sup>46</sup>

- *Hostility toward "non-traditional" religions*

Despite the fact that Kazakhstan has officially declared a tolerant attitude toward all religions and beliefs, government officials at the highest level often demonstrate extremely negative attitudes toward so-called "non-traditional" religions. It is important to mention that this division of religions into "traditional" and "non-traditional" was introduced and reinforced at the highest levels of authority in the republic. For example, in his speech on December 14, 2014 President Nazarbaev, speaking on the necessity to foster Kazakh patriotism, noted that "non-traditional" and "pseudo-religious" movements and organizations are a serious threat to the unity and harmony of Kazakh society:

The question of non-traditional and pseudo-religious movements is a serious issue for our people today. Some young people blindly accept these strange world views. Segments of our society are susceptible to alien pseudo-religious influence. Our Constitution guarantees freedom of religion, it is - a fact. However, as we know, there is no unlimited freedom, it [i.e., *unlimited freedom*] is - chaos. Everything should be within the framework of the Constitution and laws. Everyone has the right to choose. The choice of religious preferences should be taken very seriously, because it determines one's way of life, one's lifestyle, often one's entire life. ... The activities of non-traditional sects and conspicuous pseudo-religious movements should be severely suppressed.<sup>47</sup>

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<sup>44</sup> E.A. Zhovtis, *Kontsepsiia natsionalnogo plana deistvii v oblasti prav cheloveka v Respublike Kazakhstan [Concept of National Action Plan in the Area of Human Rights in the Republic of Kazakhstan]*, Publication of the Research Centre on Legal Policy (Almaty, 2014), available online at <[www.lprc.kz](http://www.lprc.kz)>

<sup>45</sup> The Law of the Republic of Kazakhstan, "On Religious Activity and Religious Associations," No. 483-IV, 11 October 2011, Chapter 1, Article 3, Point 16.

<sup>46</sup> Law of the Republic of Kazakhstan, "About the Rights of the Child in the Republic of Kazakhstan," No. 345-II, 8 August 2002, last edition as of 29 December 2014, Chapter 3, Article 19.

<sup>47</sup> Address of the President of the Republic of Kazakhstan, Leader of the Nation N.A. Nazarbaev to the people of Kazakhstan, *Strategy 'Kazakhstan-2050': New Political Course of the Established State*, 14 December 2014, pp. 52-53, available at <[www.kz-oms.ru/files/poslanie/PoslanieRussian.doc](http://www.kz-oms.ru/files/poslanie/PoslanieRussian.doc)>

Certainly, negative connotations associated with the words “non-traditional,” “sect” and “pseudo-religious” could be seen as sanctioning the restriction of a religious minority’s activities. At the same time, these terms lack clear definition, and could thus be misinterpreted by local and regional authorities. The strong call to consolidate Kazakh society and empower it in global combat against religious extremism, terrorism, and separatism, and vague definitions of “non-traditional” religions could lead to varying degrees of discrimination against religious minorities in Kazakhstan.

## KYRGYZSTAN

### *General Information*

Kyrgyzstan, a Unitarian parliamentary republic with a poly-confessional and multicultural society, is the fourth largest of the five Central Asian countries, with a population of around 5.2 million.<sup>48</sup> The history of Kyrgyzstan spans more than 2000 years. It often found itself at the crossroads of important empires and significant trade routes such as the Silk Road.<sup>49</sup> While isolated by highly mountainous terrain, Kyrgyzstan played an important role in the development of cultural, economic, social and political life in the Central Asian region. A peculiar feature of Kyrgyzstan is the strong multinationalism of the Muslim community: Kyrgyz make up 70% of the Islamic population, Uzbeks 15%; Kazakhs, Tatars, Tajiks, Dungan, Uighur Turks, Bashkirs, Chechens, Dargin and others account for another 15%. Almost all Muslims of, so-called, “non-titular” nationalities are also Sunni Hanafi. At the same time, a few thousand Shiites and Ahmadis live in Kyrgyzstan. In the south of the country, particularly in the Osh region, the Muslim population has traditionally been more religious than in the more industrialized northern regions.<sup>50</sup>

Since its independence in 1991, Kyrgyzstan has survived many upheavals in political, economic and social issues.<sup>51</sup> In March 2005 and April 2010, as a result of popular discontent, presidents were dismissed from office by the ruling regimes. In June 2010, in the southern part of the country there was a large inter-ethnic conflict, which led to hundreds of deaths. Several

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<sup>48</sup> Dmitrii I. Kabak and Hul'shaiyr Abdirasulova, *O realizatsii prava na svobodu veroispovedania v Kyrgyzstane [On the realization of the right to freedom of belief in Kyrgyzstan,]* in “Obzor sobliudenia svobody veroispovedania v Kyrgyzskoi Respublike” [“Review of observance of freedom of belief in the Republic of Kyrgyzstan”] D.I. Kabak and A.R. Alisheva, eds. (Bishkek: OSCE Centre in Bishkek, USAID, Freedom House, Norwegian Helsinki Committee, Public Fond “Open Position,”) 6.

<sup>49</sup> Religious diversity brought by Indo-European nomad tribes and Silk Road merchants could be considered as foundational for interreligious diversity in Kyrgyzstan, - Indira Aslanova, *Kratkii obzor istorii relihii na territorii Kyrgyzstana [Short overview of the history of religion on the territory of Kyrgyzstan,]* in “Obzor sobliudenia svobody veroispovedania v Kyrgyzskoi Respublike” [“Review of observance of freedom of belief in the Republic of Kyrgyzstan,]” D.I. Kabak and A.R. Alisheva, eds. (Bishkek: OSCE Centre in Bishkek, USAID, Freedom House, Norwegian Helsinki Committee, Public Fond “Open Position”), 50-54.

<sup>50</sup> Whether due to economic or political reasons, religious extremist ideas often appear in marginal groups. - A.V. Rimskiy and A.V. Artiukh, *Ekstremizm i terrorism: poniatie i osnovnye formy proiavlennia [Extremism and Terrorism: Definitions and Main Forms of Expression,]* “Nauchnye vedomosti Belhorodkoho Gosudarstvennogo Universiteta” [“Scientific Bulletin of Belhorod State University,]” Vol. 16, No. 10, 2009: 247.

<sup>51</sup> Kyrgyzstan has also experienced two major waves of migration: first, the ethnic emigration of groups previously exiled to Kyrgyzstan and second, the migration of ethnic Asians to neighboring countries for employment. - U.Zh. Erheshbaev, *Sovremennaia trudovaia mihratsia naselenia stran Tsentral'noi Azii v Rossii [Contemporary Labor Migration of Central Asian Populations to Russia,]* “Nauchnye vedomosti Belhorodkoho Gosudarstvennogo Universiteta” [“Scientific Bulletin of Belhorod State University,]” Vol. 10, No. 7-1(62), 2009: 74.

thousand people were injured and hundreds of thousands fled from the conflict zone. The government managed to stabilize the situation with the support of the international community, which has offered humanitarian assistance, support for projects to reconstruct the infrastructure and various other measures to restore the level of public confidence in the government.<sup>52</sup> As a result of a national referendum held after the events of April 2010, a new Constitution was approved; according to which a new administrative state structure was accepted – a parliamentary form of government. Thus, Kyrgyzstan became the first parliamentary republic on the territory of post-Soviet Central Asia.

According to the World Development Report 2013, Kyrgyzstan occupies 126<sup>th</sup> place (out of 187 countries) with a human development index equal to 0.62. This means that the country is at a lower level of human development among the group of countries with a medium indicator, suggesting the existence of regional and urban/rural differences and inequalities between men and women. The level of poverty is also characterized by sharp regional differences: in some areas the poverty level reaches fifty percent, while extreme poverty is around 4.5 percent.

In 1990 there were 39 functional mosques in Kyrgyzstan and the number has grown significantly: according to 2014 statistics, there are 2362 mosques and 81 Islamic schools included within the structure of the Spiritual Administration of Muslims of Kyrgyzstan (hereinafter - the SAMK). Also, as of 2014, 68 registered Muslim centers, foundations and associations involved in educational and charitable activities and the construction of places of worship could be found in the Kyrgyz Republic. The rapid growth in the number of religious objects was made possible due to the influence and financial support of Turkish, Pakistani, Arab, Iranian and other international religious organizations and leaders. This process led to the emergence of new religious practices and further segregation within the Muslim community, which may in the future lead to contradictions and conflicts on religious grounds.

The number of Christian organizations in the country also continues to grow, and reached 378 in 2014. According to the number of believers, the largest Christian organization is the Bishkek and Kyrgyz Eparchy of the Russian Orthodox Church of the Moscow Patriarchate (hereinafter referred to as ROC). Until 1991, there were 29 ROC parishes in Kyrgyzstan; currently, 49 ROC parishes and one convent operate in the country. In 2012, Orthodoxy marked its 140th anniversary in Kyrgyzstan.

Table 4: Other religious organizations in Kyrgyzstan

<b>Religious organization</b>	<b>Number</b>
Pentecostal Churches	56
Baptist Churches	50
Charismatic Churches	43
Jehovah's Witnesses Communities	41

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<sup>52</sup> One of the important measures undertaken was the reconstruction of national constitutional and administrative law in accordance with UN, EU, CoE, and OSCE international standards, - Dmitrii Kabak, *Obzor osnovnykh problem realizatsii prav veruiutshikh na svobodu veroispovedaniia v Kyrgyzskoi Respublike [Review of the main problems facing the implementation of believers' rights to freedom of belief in the Kyrgyz Republic]* in "Freedom of Religion and Belief in Central Asia: Trends and Challenges. Kyrgyzstan, Kazakhstan, Tajikistan 2015," D. Kabak, A. Alisheva and H. Kolodzinskaia, eds., Central-Asian Forum "Human Rights-Rights of Believers" (Bishkek: OSCE ODIHR, Norwegian Helsinki Committee, Public Fund "Open Position,") 19-20.

Presbyterian Churches	38
Seventh-day Adventist Churches	31
Foreign Protestant missions	26
Lutheran Churches	20
Other Christian organizations	18
Baha'i Faith	12
Catholic Churches	4
Jewish communities	1
Buddhist communities	1

The table above presents only registered religious communities. A number of religious communities, organizations and associations exist in Kyrgyzstan and conduct religious activities without official registration by the authorized state body. These organizations might also be registered as public, charitable, cultural, educational, or recreational etc. organizations.<sup>53</sup> National experts also note a significant increase in Protestant communities due to (1) a withdrawal of the Slavic population from the Orthodox Church and (2) the conversion to Protestantism of the ethnic Muslim population. For example, the largest of the Protestant communities, the Church of Jesus Christ, has around 14 thousand parishioners among which 35% are ethnic Kyrgyz.

Table 5: Religious organizations in Kyrgyzstan per territorial unit<sup>54</sup>

Territorial unit	Religious organizations				
	Islam	Christianity	Judaism	Buddhism	Other
Batken Oblast	245	6	-	-	1
Bishkek	74	111	1	1	4
Zhalal-Abad Oblast	464	19	-	-	2
Naryn Oblast	56	3	-	-	1
Osh Oblast	669	15	-	-	1
Talas Oblast	84	10	-	-	1
Chui Oblast	238	149	-	-	2
Issyk-Kul Oblast	83	33	-	-	2

As mentioned above, the highest number of Islamic religious organizations – 669 communities, is located in the southwestern region of Osh, which borders Uzbekistan and has a population of approximately 200,000 people. In the central southeastern region of Naryn, however, there are only 56 religious communities among 52,300 people. According to statistics on Christianity, the northern region of Chui, on the border with Kazakhstan, with a population of approximately 790,000, has the highest number of religious organizations - 238 communities. In the central southeastern region of Naryn there are only 3 Christian communities among a population of 52,300 people. In relation to both Islam and Christianity, the smallest number of religious communities is located in the Naryn region, while the regions with the highest numbers vary.

<sup>53</sup> *Concept of the State Policy of the Kyrgyz Republic in the Religious Sphere for 2014-2020*, Decree of the President of the Kyrgyz Republic, №203, 14 November 2014.

<sup>54</sup> Dmitrii Kabak and Almaz Esengeldiev, *Freedom to Belief in the Kyrgyz Republic: Analysis of Legal Provisions and Practice*, Fond "Open Position," with support of OSCE office in Bishkek, Bishkek, 2011, pp. 14-15.

There are more Islamic communities in the rural region of Osh and more Christian communities in the industrial region of Chui, where 111 Christian religious communities are located in the capital city of Bishkek alone.

### ***The situation in the religious sphere***

After the adaption of the new law “On Freedom of Conscience and Religious Organizations” in 2009, state policy on religion has been characterized by a severe tightening of control over all aspects of the activities of religious organizations in Kyrgyzstan.<sup>55</sup> This law was analyzed by the Venice Commission and the Advisory Council of the OSCE /ODIHR and sharply criticized by both organizations in the joint report on freedom of religion and belief. According to representatives of religious minorities and legal experts, the acting law significantly infringes upon religious sentiments and civil rights, and contains many contradictions.<sup>56</sup> The specifics of the current religious situation are not fully reflected in the proposed control mechanisms governing the religious sphere in the state. As a result, subjective and prejudicial interpretations of rules and practices that hinder the development of a relationship between state and religious organizations following democratic models are allowed to blossom. Toughening of the rules for registration, caused by the desire of the state to eradicate religious extremism, in practice is not an effective tool for combating or monitoring extremism since, on the one hand, it removes many organizations from state control. It also makes it more difficult for law-abiding religious organizations to act within a legal context, causes a chain of negative reactions, and disturbs the balance of a fragile religious harmony in Kyrgyz society.

However, recent legislative initiatives have tightened the already discriminatory law even further, which again contradicts international norms and covenants that determine the relationship between state and religious organizations. In particular, as the head of the state’s press service declared in February 2014, President Almazbek Atambayev signed a decree “On the implementation of decisions by the Kyrgyz Republic’s Defense Council on state policy in the sphere of religion”.<sup>57</sup> As stated in the decree, on February 3, 2014 the Defense Council addressed the issue of public policy in the religious sphere as part of the National Sustainable Development Strategy of the Kyrgyz Republic for the period 2013 to 2017. It recognized the existing framework of relations as *mistaken*. Developed in the early years of independence, the

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<sup>55</sup> Almaz Esenhel’diev, *Problemy pravovoho obespechenia svobody verouchenia v Kyrgyzstane [Problems of legal protection of freedom of belief in Kyrgyzstan,]* in “Obzor sobliudeniya svobody veroispovedaniya v Kyrgyzskoi Respublike” [“Review of observance of freedom of belief in the Republic of Kyrgyzstan,”] D.I. Kabak and A.R. Alisheva, eds. (Bishkek: OSCE Centre in Bishkek, USAID, Freedom House, Norwegian Helsinki Committee, Public Fond “Open Position,”) 32; Law of the Kyrgyz Republic, “On Freedom of Conscience and Religious Organizations,” No. 282, 31 December 2008, Bishkek.

<sup>56</sup> Dimitrii Kabak, ed., *Freedom of Belief: On Realization of Rights of Believers in Kyrgyzstan*, publication of Public Fond “Open Position” with support of Norwegian Helsinki Committee, Interfaith Council and Regional Council of UVKPCh for Central Asia, Bishkek, 2015, p. 5; Almaz Esenhel’diev, *Problemy pravovoho obespechenia svobody verouchenia v Kyrgyzstane [Problems concerning the legal protection of freedom of belief in Kyrgyzstan,]* in “Obzor sobliudeniya svobody veroispovedaniya v Kyrgyzskoi Respublike” [“Review of observance of freedom of belief in the Republic of Kyrgyzstan,”] D.I. Kabak and A.R. Alisheva, eds. (Bishkek: OSCE Centre in Bishkek, USAID, Freedom House, Norwegian Helsinki Committee, Public Fond “Open Position,”) 36.

<sup>57</sup> The President signed a decree *On the implementation of decisions of the Council of Defense of the Kyrgyz Republic on state policy in the religious sphere*, KNews, Society, 7 February 2014, <[http://www.knews.kg/society/44739\\_prezident\\_podpisal\\_ukaz\\_o\\_realizatsiiresheniya\\_soveta\\_oborony\\_i\\_kr\\_o\\_gosudarstvennoy\\_politike\\_v\\_religioznoy\\_sfere/](http://www.knews.kg/society/44739_prezident_podpisal_ukaz_o_realizatsiiresheniya_soveta_oborony_i_kr_o_gosudarstvennoy_politike_v_religioznoy_sfere/)>

liberal practice of maintaining a distance between state organs of control and processes taking place in the religious sphere and in the activities of religious organizations was recognized as incompetent, especially within the context of contemporary challenges like religious fundamentalism, extremism, and possible threats of religious terrorism.

Currently, several laws addressing the abovementioned contemporary challenges are being drafted, including the law “On Religious Education and Religious Educational Institutions” and another “On Amendments and Additions to the Code of the Kyrgyz Republic on Administrative Responsibility”. The authors of this report express their concern that the new drafts could bring about even further restrictions and limitations on freedom of religion and the activity of religious organizations.

### ***Challenges to freedom of religion***

In its recent report, the Norwegian Helsinki Committee noted critically that existing legal frameworks place certain unnecessary restrictions and limitations on human rights to freedom of religion and to the religious dimension of the human rights to freedom of association, expression and education. The following points emphasize this situation in regard to religious freedom in Kyrgyzstan:

- *Legal restrictions concerning the use of religious materials*

Existing legal frameworks severely restrict the use of religious materials. Firstly, state authorities are permitted to examine religious literature, which includes all imported religious literature, and to further restrict the distribution of religious materials – all with direct involvement of the National Security Service. Censorship of religious materials, including on the import, production, acquisition, transport, transfer, storage and distribution of printed materials, films, photos, audio and video products and other materials containing ideas on religious life and faith, is exercised by authorized state bodies in line with state programs on countering religious extremism, separatism and fundamentalism.

Secondly, existing law on religion permits the storage and use of religious materials only in places designated in the law, such as places of worship, libraries of religious educational institutions etc. According to the current law,

Distribution of religious literature, audio, video and other religious materials can be carried out by religious organizations only in buildings that belong to religious organizations, as well as in places allocated for this purpose by local state administrations in the prescribed manner. It is forbidden to distribute literature, printed, audio or video materials of a religious nature in public places (streets, boulevards), neighboring apartments, childcare centers, schools and higher educational institutions. Citizens and religious organizations have the right to acquire and use religious literature in any language of their choice, as well as other articles and materials of religious significance only in places of worship and in specialized stores.<sup>58</sup>

These rules, in essence, deprive believers of the right to store religious literature at places of their personal residences. In cases when a local religious minority community has no official building or is not officially registered, individual believers have no right to keep or/and use

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<sup>58</sup> Law of the Kyrgyz Republic, “On Freedom of Conscience and Religious Organizations,” No. 282, 31 December 2008, Bishkek, Chapter 4, Article 22, Points 6 and 7.

religious literature in their homes. For example, the possession of individual copies of the Holy Scriptures for personal use may not be permitted in case with unregistered religious minority community. But this particular regulation might be disregarded in reference to so-called “traditional” religious organizations, while very much applicable in the case of religious minority groups. The legal prohibition on personal ownership, possession or storage of religious literature and other materials of a religious character is contrary to Article 33 of the Constitution of the Kyrgyz Republic, which states that “everyone has the right to freely seek, receive, store, and use information and disseminate it orally, in writing or in other manners.”<sup>59</sup> This particular restriction on the acquisition, storage and dissemination of printed or oral information of a religious character is a direct violation of the human right to expression. This particular case is a clear example of a “double standard” used to designate the difference between secular and religious information as described in nationally significant legal canons.

- *Legal restrictions concerning the registration of religious organizations*

Another major area in which human rights are violated in Kyrgyzstan is in the strict registration process for religious associations and missions belonging to foreign religious organizations, and in legally prescribed provisions for punishment of persons engaged in activities on behalf of unregistered religious organizations. State restrictions regarding the registration process for religious communities, organizations, associations, missions etc. are of specific concern. According to existing legal regulations, in order to register a religious organization must first pass an official threshold of 200 members, i.e., members who are ready to provide their full personal information and details, including their place of work, source of income, etc.<sup>60</sup> This means that every participating citizen must declare their attitude toward religion in an official document. Article 4 of the current law on religion prohibits, however, official registration of a person’s stance on religion or their affiliation with any religious group: “Registration of a citizen’s attitude toward religion in an official document is prohibited, as well as coercing them to indicate this. . . .”<sup>61</sup> Thus, on the one hand, the law requires citizens to indicate their religious preferences in an official document, i.e., the application for registration of a particular religious organization, while, on the other hand, in previous articles of the same law, forcing citizens to indicate/ register their religious preferences in official documents is prohibited.<sup>62</sup> Thus, the aforementioned procedures for registration of religious organizations represent a serious legal dilemma for religious activists: in order to register a religious organization, a list of 200 potential members, i.e., an official document in which a citizen’s support of a particular religious tradition is indicated, must be submitted to the authorities - while doing so is legally prohibited.

Considering the fragility of the economic situation and access to labor markets, this requirement alone is a serious violation of the human right to privacy and further development of personality. Taking into account the historical background of regional relations between the state and religion, this personal information could be misused in order to exercise certain administrative, economic, social, as well as personal or familial pressure on new members in question. Secondly, a religious organization must already have religious communities in at least

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<sup>59</sup> Constitution of the Kyrgyz Republic, Chapter 2, Article 33.

<sup>60</sup> Law of the Kyrgyz Republic, “On Freedom of Conscience and Religious Organizations,” No. 282, 31 December 2008, Bishkek, Chapter 2, Article 8, Point 3 and Chapter 2, Article 10, Point 2.

<sup>61</sup> Ibid. Chapter 1, Article 4, Point 2b-3a.

<sup>62</sup> Ibid. Chapter 2, Article 8, Point 3 and Chapter 2, Article 10, Point 2 and Chapter 1, Article 4, Point 2b-3a.



nine regions of the Kyrgyz Republic prior to registration of the central administration for religious organizations.<sup>63</sup> Members of these communities must also be scrutinized, as described in the previous paragraph. Thirdly, the religious organization in question must already have a required minimum of ten religious communities operating in the country, and be able to demonstrate it has been in existence and officially registered for at least fifteen years.<sup>64</sup> Thus, the abovementioned restrictions placed upon groups to have at least 200 members in 10 communities located in at least 9 regions, and to demonstrate that they have been in official existence for 15 years are really a deliberate hindrance to the registration process, especially since the existence and activity of non-registered religious organizations is punishable by the law.<sup>65</sup>

In the near future, these legal requirements regarding the registration of religious organizations will inevitably result in a large number of religious organizations being unable to obtain legal status. It is also possible that a number of religious organizations, not wanting to put their believers under unnecessary pressure or difficulty, will generally refuse to register. For example, as a result of new implementations in the law, from 2008 through 2011 only twenty-six new religious organizations were registered in the country. These 26 organizations fulfilled all necessary requirements for state registration and were granted legal status as a judicial entity. The aforementioned religious organizations belong to two, main-stream religious traditions - twenty three representing new Islamic organizations and three the Russian Orthodox Church. Thus, after the amendments to the law on freedom to religion were implemented, only Islamic and Russian Orthodox organizations were able to register.<sup>66</sup> Other religious organizations have not succeeded in this process.

- *Legal restrictions concerning religious instruction and education*

Religious minority groups in Kyrgyzstan do not have full access to childhood education and instruction based upon individual or group religious and cultural preferences within the state educational structures; likewise, religious higher education of minority groups is not incorporated into these state structures. Religious organizations are permitted to organize educational institutions to train future clergy and to provide general instruction for parishioners. The institution must be located on the premises of the religious organization in question, and be sponsored by the organization itself.<sup>67</sup> While permitting religious education in general, the current law on religion prohibits individual religious instruction or education, i.e., no one-on-one teacher-student interactions.<sup>68</sup> By imposing this restriction, the state is, most likely, attempting to combat unauthorized individual missionary activity and proselytism under

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<sup>63</sup> Ibid. Chapter 2, Article 8, Point 4b.

<sup>64</sup> Ibid. Chapter 2, Article 8, Point 5.

<sup>65</sup> Law of the Kyrgyz Republic, "On Freedom of Conscience and Religious Organizations," No. 282, 31 December 2008, Bishkek, Chapter 2, Article 8, Point 2.

<sup>66</sup> Dmitrii Kabak and Almaz Esengeldiev, *Freedom to Belief in the Kyrgyz Republic: Analysis of Legal Provisions and Practice*, Fond "Open Position," with support of OSCE office in Bishkek, Bishkek, 2011, pp. 16-17.

<sup>67</sup> Law of the Kyrgyz Republic, "On Freedom of Conscience and Religious Organizations," No. 282, 31 December 2008, Bishkek, Chapter 1, Article 6, Point 3 and 4.

<sup>68</sup> Ibid. Chapter 1, Article 6, Point 7.

the guise of religious instruction.<sup>69</sup> However, individual student-teacher interactions are a significant method that contributes to both educational quality and results. In this case, by prohibiting individual teaching activities on all levels, the state is intervening in the theory, approach and practice of educational methods used by religious educational institutions, which could potentially hinder the educational process and thus its outcomes.

In addition to restrictions on national religious education, the existing institutions of religious education are allowed to send people to study abroad only on the basis of agreements signed with foreign educational institutions, and after approval received from the government agency for religious affairs. The approval of the government agency also depends on the status and activity of the hosting institution. As a result, members of religious minorities have to travel abroad to study according to the provisions of tourist, work, or migrant visas. This unnecessary restriction limits the rights of the potential student in question to access social and employment benefits during their study abroad. Also, if potential students are using other types of visas, the state has no direct access to information on the programs or activities a student may have engaged in while studying abroad. In this case, the state actually limits its own access to information that might be important in combating religious extremism, separatism and fundamentalism. On the contrary, providing opportunity and access to state education in line with religious or cultural preferences, or allowing a student the chance to study abroad under the provisions of an international visa and student status, will equip state authorities with measures to combat religious extremism, separatism and fundamentalism, since state agencies will have an opportunity to engage in dialogue and to partner, to a certain degree, with educational institutions established by religious minority communities.

It should also be mentioned that, within the context of the previous evaluation of freedom of education and access to educational opportunities, the legal practice of issuing only a one-year teaching permit to religious instructors is also a discriminatory practice.<sup>70</sup> Certainly, to insure the quality of education and appropriate teaching level, a teaching license should be required for instructors, lecturers, docents, etc., who are involved in religious instruction in religious educational institutions. However, the practice of issuing a teaching license for the duration of one year only presupposes the dependency of the teacher on state agencies on religious affairs. Taking into account the variety of legal acts concerning freedom of religion in Kyrgyzstan that leave a certain degree of “margin of appreciation” or legal interpretation of administrative rights to regional administrative units, the authors of this report conclude that this particular regulation could serve as grounds for unequal treatment or possible discrimination against the rights and access to education of the religious minority groups in question.

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<sup>69</sup> Proselytism became a new phenomenon in Kyrgyzstan during the transitional period of 1990<sup>th</sup> – Atyrkul R. Alisheva, *Foreword*, in “Obzor sobliudenia svobody veroispovedania v Kyrgyzskoi Respublike” [“Review of observance of freedom of belief in the Republic of Kyrgyzstan,”] D.I. Kabak and A.R. Alisheva, eds. (Bishkek: OSCE Centre in Bishkek, USAID, Freedom House, Norwegian Helsinki Committee, Public Fond “Open Position”), 4.

<sup>70</sup> Conference, Konferentsiia “Obsuzhdenie izmenenii i dopolnenii v zakonodatel’nie akty Kyrgyzskoi Respubliki, reguliruyushchie religioznuiu sferu.” [Discussion of proposed changes and amendments to legal acts by the Kyrgyz Republic in the religious sphere.] National Institute of Strategic Research of the Republic of Kyrgyzstan, State Committee on Religious Affairs of RK, Working Sub-Group of the RK Defense Council concerning state policy in regards to religion, Program “World and Development” of PROOON, 9 October 2014, Bishkek <<http://www.nisi.kg/ru-events-745>>

- *Legal restrictions on the application of children's rights to freedom of religion and belief*

The OSCE High Commissioner on National Minorities has emphasized that children's rights to education, in line with their cultural-religious heritage should not be politicized.<sup>71</sup> In other words, the rights of children to a religious upbringing should not be neglected and must be preserved.

Article 4 of the current law on religion prohibits the "involvement of children in religious organizations . . ." <sup>72</sup> Most likely, this provision is a direct heritage of Soviet law on religion, which prohibited the involvement of minors under sixteen in religious services and other religious activity. Thus, based upon a single Article, children of believers were forbidden to attend services during the Soviet period. And any attempt to educate minors in religion was punished by corrective labor in the camps.<sup>73</sup> This provision is a direct violation of legal provisions protecting the rights of children, as indicated in the Convention on the Rights of the Child: "States parties shall respect the right of the child to freedom of thought, conscience and religion."<sup>74</sup>

- *The problem of non-Muslim Asian graves*

The question of burial places for non-Islamic persons of Asian ethnic background is another area in which religious minorities are subject to discrimination. This problem is a potential source of conflict in local communities. Members of local communities, mainly in rural areas, often do not allow persons of non-Islamic faith to be buried in the family cemetery, even if the deceased was indigenous to the area. If no solution is found and locals do not allow burial in the family cemetery, the faithful in question, wishing to preserve peace and prevent any further conflicts, compromise with the community and agree to bury the dead in private cemeteries or at sites already designated for these purposes. However, the number of designated sites is extremely small, and they provide no opportunity observe ethnic or familial burial traditions, which might be kept for centuries, from one generation to the next, and which one might observe in the family cemetery. In these situations, the believer is forced to discontinue familial traditions, which may result in personal emotional trauma and further segregation from the local community or family ties. At the same time, non-Muslim clergy and relatives of the deceased are often subjected to strong pressure, negative images created, in some cases, by the local media, and their lives may be threatened. The family of the deceased may also be spoken about quite negatively, which, in some areas, may result in further violation of their social and economic rights. The question of burial of Asian persons of non-Islamic faiths, therefore,

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<sup>71</sup> Knut Vollebaek, *On visit to Moldova, OSCE High Commissioner on National Minorities welcomes dialogue on Latin script in Transnistria*, 27 June 2013 < <http://www.osce.org/hcnm/103189>>

<sup>72</sup> Law of the Kyrgyz Republic, "On Freedom of Conscience and Religious Organizations," No. 282, 31 December 2008, Bishkek, Chapter 1, Article 4, Point 5.

<sup>73</sup> Vitaliy V. Proshak, *Religion and Education in the Ukraine: Historical Overview, 989-1991* (München: GRIN Verlag GmbH, 2010), 31; *Criminal Code of the USSR*, Article 122, quoted by William W. Brickman and John T. Zepper, *Russian and Soviet Education 1731-1989*, "Reference Books in International Education," Edward R. Beauchamp, ed., vol. 9 (New York and London: Garland Publishing Inc., 1992), 39; Vitaliy V. Proshak, *From Civil Spring to Democratic Summer: Constitution, Human Rights and Freedom of Religion in Eurasia* (Nijmegen: Wolf Legal Publishers, 2014), 138-139.

<sup>74</sup> *Convention on the Rights of the Child*, General Assembly Resolution 44/25, 20 November 1989, Article 14, Point 1.

represents a sharp dilemma that could result in further violations against minorities and segregation by local societies, since it touches not only upon religious, cultural and traditional aspects of life, but may also involve personal memories, pain and trauma.

However, central or local authorities could solve this problem by allocating appropriate plots of land for burial of Asian persons of non-Islamic faith. In places with a higher percentage of religious diversity, a political decision on allocation of plots for non-Muslim Asians could also be supplemented by a range of other measures, including the development and implementation of clear procedures for allocating land to already existing cemeteries. Other suitable places and cemeteries could be created to serve the needs of the non-Islamic population. The authors of this report also suggest that central and local authorities might approach the solution of these dilemmas not only from political and legal perspectives, but also from social and cultural as well. The elimination of legal definitions dividing religions into “traditional” and “non-traditional” groups, and investing in the development of multicultural dialogue focused on creating a culture of “living together as equals in dignity”<sup>75</sup> could potentially eradicate the dilemma.<sup>76</sup>

Initially, these and other aforementioned legal restrictions were openly discussed among civil society organizations and human rights activists, and were removed from draft law upon their request. However, this decision was later negated on a higher legislative level and the amendments were adopted by the Parliament and signed by the President without any further public notice or discussion. Thus, as a result of the implementation of these amendments, the following observations could be regarded as direct or indirect violations of human rights to freedom of religion, expression, association and education, or provoking violence:

- A set of fuzzy or vague wordings that do not give a clear definition of the activity of religious organizations and individuals with religious convictions or beliefs could provoke abuse by local authorities and officials and possible discrimination of religious minorities;
- No prohibition against the state making judgments about the theological beliefs of a group of people;
- Taking into account the complicated process for acquiring legal status for individuals or groups involved in religious activities, the prohibition of activity without official registration is disproportionate and is an unnecessary limitation to freedom of religion and belief;

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<sup>75</sup> Council of Europe, *White Paper on Intercultural Dialogue “Living Together as Equals in Dignity,”* Council of Europe, F-67075 Strasbourg Cedex, Ministers of Foreign Affairs, 118th Ministerial Session in Strasbourg, 7 May 2008; also, on the importance of intercultural/interreligious dialogue, see – Vitaliy V. Proshak, *Juridical Foundation of Religious Education in the Post-Soviet Eastern European State: Three Model Theory of the REDCo Research Project in Application to the Ukraine* (Nijmegen: Wolf Legal Publishers, 2012), p. 1-2.

<sup>76</sup> Halina Kolodzinskaia, *Mezhkofessional’nyi dialog v Kyrgyzskoi Respublike [Interconfessional Dialogue in Kyrgyz Republic]*, in “Obzor sobliudeniya svobody veroispovedaniya v Kyrgyzskoi Respublike” [“Review of observance of freedom of belief in the Republic of Kyrgyzstan,”] D.I. Kabak and A.R. Alisheva, eds. (Bishkek: OSCE Centre in Bishkek, USAID, Freedom House, Norwegian Helsinki Committee, Public Fond “Open Position,”) 46.

- Requirements on the minimum number of members and the duration of legal existence and activity of a group are unacceptable for obtaining the status of a legal entity;
- Unsuitable restrictions on freedom of expression and the right to disseminate religious information and other materials;
- The amendments do not protect the right to freedom of religion and conscience of persons who are not permanent residents of the Kyrgyz Republic;
- The amendments prohibit "persistent actions aimed at converting believers of one religion to another (proselytism), as well as any illegal missionary activity . . ." <sup>77</sup> thus presenting the conversion from one denomination to another is presented in a very negative light, which is contrary to the Constitution of the Kyrgyz Republic and international treaties that preserve the right of every individual to freedom of choice in regards to religion or belief.<sup>78</sup>
- Religious convictions or beliefs are not considered as legal grounds for exceptions from citizens' responsibilities prescribed in the Constitution of Kyrgyzstan and other legal documents, i.e., civil substitution for military service is permitted but strictly regulated.<sup>79</sup>

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<sup>77</sup> Law of the Kyrgyz Republic, "On Freedom of Conscience and Religious Organization in the Kyrgyz Republic," No. 282, 31 December 2008, amended on 15 June 2011 (No. 46) and 7 December 2011 (No. 196), Chapter 1, Article 5, Point 4.

<sup>78</sup> Freedom House, *Statement on Freedom of Belief in Kyrgyzstan*, OSCE Human Dimension Implementation Meeting 2013, Working Session 6, "Issues in Legal Implementation of Freedom of Belief in Kyrgyzstan," 26 September 2013, Warsaw, Poland. Available online at <<https://freedomhouse.org/sites/default/files/Statement%20-%20Freedom%20of%20Belief%20in%20Kyrgyzstan.pdf>>

<sup>79</sup> Conference, Konferentsiia "Obsuzhdenie izmenenii i dopolnenii v zakonodatel'nie akty Kyrgyzskoi Respubliki, reguliruyushchie religioznuiu sferu." [*Discussion of proposed changes and amendments to legal acts by the Kyrgyz Republic in the religious sphere.*] National Institute of Strategic Research of Republic of Kyrgyzstan, State Committee on Religious Affairs of RK, Working Sub-Group of RK Defense Council concerning state policy in regards to religion, Program "World and Development" of PROOON, 9 October 2014, Bishkek <<http://www.nisi.kg/ru-events-745>>

## TAJIKISTAN

### *General information*

The Republic of Tajikistan is a state in southeastern Central Asia bordering on Uzbekistan, Kyrgyzstan, China and Afghanistan. It is a presidential republic consisting of four provinces. According to the census of 2000, the population of Tajikistan exceeded 6 million people, and statistical reports for 2004 show that the population has grown another 6.5 million. The results of statistics gathered in 2013 indicate that the population exceeds 8 million. During the civil war of 1992-1994, tens of thousands of people were killed, nearly half a million became refugees in other countries, such as the Commonwealth of Independent States and abroad, while many more have become IDPs (Internally Displaced Persons) in other regions of Tajikistan. Despite some outflow of the population, mainly the Russian-speaking, the population of Tajikistan has grown 25% in the last fifteen (15) years and Tajikistan remains a multinational society.<sup>80</sup>

Table 6: Ethnic groups in Tajikistan

Ethnic group	Percentage
Tajik	79,9%
Uzbek	15,3%
Russian	1,1%
Other <sup>82</sup>	3,7%

Table 7: Religious divisions in Tajikistan<sup>81</sup>

Religious group	Percentage
Sunni Muslims	96,6%
Ismaili Muslims	2,8%
Other (Christians, Jews, Atheists etc)	0,6%

The territory of the Gorno-Badakhshan Autonomous Oblast, which comprises about 45% of the country, is populated mainly by Pamir groups - Shugnants, Rushants, Bartangts, Orshorts, Yazgulemts, Ishkashimts, and Wakhi; however, all these groups are officially registered as Tajiks. The valleys of Yagnob (Aini district Sogd region) and Varzob (Central Tajikistan) are populated mainly by ethnic Yagnobts.

The majority of the population (over 90%) is Sunni Muslim. The people of Badakhshan region are Ismaili (3%). The majority religious group, Islamic believers, is relatively free to visit places

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<sup>80</sup> Tajikistan is one of the three main states in Central Asia from which migration, including for employment, occurs. - U.Zh. Erheshbaev, *Sovremennaiia trudovaia mihratsia naselenia stran Tsentral'noi Azii v Rossii [Contemporary Labor Migration of the Population of Central Asian States to Russia]*, "Nauchnye vedomosti Belhorodkoho Gosudarstvennogo Universiteta" ["Scientific Bulletin of Belhorod State University,"] Vol. 10, No. 7-1(62), 2009: 74.

<sup>81</sup> Muatar Haidarova, *O svobode slova i ubezhdenii v Respublike Tajikistan [About Freedom of Speech and Convictions in the Republic of Tajikistan]*, in "Freedom of Religion and Beliefs in Central Asia: Trends and Challenges. Kyrgyzstan, Kazakhstan, Tajikistan 2015,"] D. Kabak, A. Alisheva and H. Kolodzinskaia, eds., Central-Asian Forum "Human Rights-Rights of Believers" (Bishkek: OSCE ODIHR, Norwegian Helsinki Committee, Public Fund "Open Position"), 25.

<sup>82</sup> This category includes Tatars, Kyrgyz, Turkmen, Kazakh and other (Asian, Slavic, Germanic) ethnic groups.

of worship: a mosque is located in almost every settlement, religious schools (madrassas) have been organized in some areas, and a religious higher educational institution (Islamic University) is active in the capital.

In 2012 the US government included Tajikistan in the list of the world's sixteen major violators of religious freedom. The United States Commission on International Religious Freedom (USCIRF), funded by the US Congress, criticized Tajikistan for "systematic, ongoing, and egregious violation of religious freedom..."<sup>83</sup> and mentioned that Tajikistan is one of the countries of special concern. In the 2012 report the Commission stated that Dushanbe "suppresses and punishes all religious activity independent of state control, and imprisons individuals on unproven criminal allegations linked to religious activity or affiliation."<sup>84</sup>

### ***The situation in the religious sphere***

In the beginning of 1990, there were only 34 religious associations in Tajikistan - 17 mosques, 15 churches and Christian prayer houses and 2 synagogues. As of June 14, 2013, the following religious organizations were recorded in the state register of religious associations of the Republic of Tajikistan: 1 Islamic center, 45 Central Friday mosques, 362 Cathedral mosques, 3493 mosques in which prayer is conducted five times a day, 44 temporary Friday mosques, 6 institutions of religious education (madrassas), 74 non-Islamic religious organizations, 1 Ismaili dzhamoathona, and 1 religious community of non-Islamic belief.<sup>85</sup> According to the information provided by State Committee on Religious Affairs, 96.6% of the population of Tajikistan are adherents of Hanafism-Sunni Islam. Another 2.8% are Ismaili, followers of a Shiite movement. Only 0.6% of the population are Christians or adherents of other religious movements, or atheists.<sup>86</sup>

The 2011 law on religion entitled "On Freedom of Conscience and Religious Associations" has replaced the previous law and established a framework for state control over the existence and activity of religious organizations. The new law, while "recognizing and reaffirming the right of everyone to freedom of conscience and freedom of religion . . ." extends the legal power and authority of the government, including regional governments, to regulate the activities, also on the local level, of religious communities.<sup>87</sup>

### ***Challenges to freedom of religion***

- *Unequal treatment of religious traditions*

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<sup>83</sup> U.S. Commission on International Religious Freedom, *2012 Annual Report*, "Tajikistan," p. 184, available online

<[http://www.uscirf.gov/sites/default/files/resources/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/sites/default/files/resources/Annual%20Report%20of%20USCIRF%202012(2).pdf)>

<sup>84</sup> Ibid.

<sup>85</sup> OSCE ODIHR, *Freedom of Conscience, Religion and Belief, Tajikistan*, (HDIM.DEL/0211/13) 26 September 2013, available online <<http://www.osce.org/ru/odihr/105756?download=true>>

<sup>86</sup> State Committee on Religious Affairs, *On Regulation of the National Traditions and Ceremonies*, Government of the Republic of Tajikistan, <<http://www.din.tj/>>

<sup>87</sup> Law of republic of Tajikistan, "On Freedom of Conscience and Religious Organizations," No. 739, 28 June 2011, available online <[http://catholic-kazakhstan.org/Zakon/Tajik%20Law%20on%20freeodm%20of%20belief%202011\\_Ru.pdf](http://catholic-kazakhstan.org/Zakon/Tajik%20Law%20on%20freeodm%20of%20belief%202011_Ru.pdf)>

The aforementioned statistics demonstrate that Tajik society is mainly mono-religious, with a minor percentage of interreligious segmentation. In the context of mono-religious societies, equality and non-discrimination are of significant importance. Quite often mono-religious societies focus on development of the main religious tradition, while indirectly discriminating against the religious minority. For example, it is mentioned in the Law of Tajikistan “On Freedom of Conscience and Religious Organizations” that Hamafit Islamic religious tradition plays a special role in the development of the national culture and spiritual life of the Tajik people.<sup>88</sup> Thus, the law indirectly assumes that other religious traditions do not play any special role in the development of Tajik national culture and do not make viable contribution to the process. This legal provision represents an incorporation of the polytheistic model of coexistence with mono-religious preferences, i.e., when the state/ society recognizes the existence of various religious traditions, claims and beliefs, while obviously demonstrating a preference or placing greater value on a particular tradition or belief.<sup>89</sup> This could also be compared to the principle of “formal equality,”<sup>90</sup> which may lead other religious minority groups that exist in transitional societies<sup>91</sup> to develop an “avoidance strategy.”<sup>92</sup> The unequal treatment of religious traditions is a major challenge to the human right to freedom of religion and triggers further violations in other aspects of social, political, and cultural life. The failure of the state to realize economic, social and cultural rights of religious minority groups, as well as violations of these rights, could cause a conflict between state and religious minorities or between various groups in a multicultural society.<sup>93</sup> Certainly, unequal treatment of religious traditions should not be legalized on the constitutional and administrative levels.

- *Strict control by state authorities and the application of penalties for “unauthorized religious instruction”*

The new Tajik law on religion, which was passed in 2011, permits the state to further engage in the control of religious activity and to issue certain punishments for unauthorized religious activity. The financial penalty for individuals engaged in unauthorized religious instruction is

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<sup>88</sup> Law of the Republic of Tajikistan, “On Freedom of Conscience and Religious Organizations,” No. 739, 28 June 2011, Preamble.

<sup>89</sup> Vittorio Cotesta, *Global Society and Human Rights*, trans. Matthew D’Auria, Series International Comparative Social Studies, Mehdi P. Amineh, ed., Vol. 28 (Leiden and Boston: Brill, 2012), 31.

<sup>90</sup> “Formal equality” is when equality and anti-discrimination protections are provided to one group and within that group only, but not outside of its cultural, religious, ethnic etc. borders - Timo Makkonen, 2007, 14.

<sup>91</sup> The formal equality dilemma and avoidance principle could be considered as general to all states that qualify for classification as “democracies in transition;” see, Vitaliy V. Proshak, *Human rights to freedom to religion, expression, association, and education in the Ukraine: Contemporary situation and challenges*, in “Religion, State, Society, and Identity in Transition: Ukraine,” Rob van der Laarse, Mykhailo N. Cherenkov, Vitaliy V. Proshak, and Tetiana Mykhalchuk, eds. (Oisterwijk: Wolf Legal Publishers, 2015), 621-656 and Vitaliy V. Proshak, *Introduction: Religion, State, Society, and Identity in Transition*, in “Religion, State, Society, and Identity in Transition: Ukraine,” Rob van der Laarse, Mykhailo N. Cherenkov, Vitaliy V. Proshak, and Tetiana Mykhalchuk, eds. (Oisterwijk: Wolf Legal Publishers, 2015), 1-15.

<sup>92</sup> “Avoidance strategy,” means voluntarily distancing oneself from possible encounters with situations where discrimination may occur, avoiding contacts with other equality group in order to decrease the possibility of discrimination - Timo Makkonen, 2007, 15-16.

<sup>93</sup> *Transitional Justice and Economic, Social and Cultural Rights*, United Nations, Human Rights, Office of the High Commissioner (New York and Geneva: United Nations Publications, 2014), p. 1, available online <<http://www.ohchr.org/Documents/Publications/HR-PUB-13-05.pdf>>



around 800 USD and for institutions - approximately 1600 USD.<sup>94</sup> Unauthorized religious instruction abroad is also punishable by law.<sup>95</sup> Penalties may be increased threefold in cases in which further violations of the legal regulations concerning religious instruction occur.<sup>96</sup> The size of the penalties is quite significant considering that the official minimum monthly wage and pension in Tajikistan in 2010 was 19 USD.<sup>97</sup>

In addition, high financial penalties are assigned for the release, printing, distribution, import or export of religious literature without the approval of state censors. New 2011 laws on religion contain legal provisions imposing strict state censorship of religious literature, prohibition of religious practice outside of the officially approved and registered places of worship, restrictions on religious activities and on education of children. They also require state approval for contact with believers outside of Tajikistan, and create conditions for political interference by the state in the appointment of imams and the planning of activities at mosques.<sup>98</sup> In August of 2011, a new rule on parental responsibility entered into force that prohibits children from taking part in virtually all forms of religious life, including visits to mosques and attendance at religious funeral services. The resolution permits, however, religious instruction of children supervised by state authorities, i.e., either in state educational institutions, via state approved educational channels or with approved partners.<sup>99</sup> In February 2012, two residents of the Isfarin region of Sohdiilsk oblast were arrested for unauthorized religious instruction of underage children 5-13 years of age; religious instruction materials and literature were confiscated and instructors were detained for pre-trial period.<sup>100</sup> In October 2012, a muezzin from the central mosque was charged 280 somoni for violating Article 474 of the Tajik law "On the responsibilities of parents for the education and upbringing of children," and articles 4, 7 and 8 of the law "On Freedom of Conscience and Religious Organizations" because underage

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<sup>94</sup> *Tajikistan Joins "World's Worst Religious Freedom Violators"—US Report*, EurasiaNet.org, "Central Asia Today," March 20, 2012 <<http://www.eurasianet.org/node/65157>>; *SShA schitaiut Tajikistan odnim iz hlavnukh narushitelei svobody veroispovedaniia [USA considers Tajikistan one of the main violators of freedom of belief.]* editorial article, inoSmi.ru, March 21, 2012 <[http://inosmi.ru/middle\\_asia/20120321/188806049.html](http://inosmi.ru/middle_asia/20120321/188806049.html)>

<sup>95</sup> Law of Republic of Tajikistan, "On Freedom of Conscience and Religious Organizations," No. 739, 28 June 2011, Ch.2, Art. 8, P. 6 and 7; Firuz Umarzoda, *Ogranichenia v relihii uhudshat situatsiiu [Restrictions on Religion Will Worsen the Situation]*, Gazette of the New Tajikistan "Asia-Plus," 15-06-2015 <<http://news.tj/tj/node/123003>>

<sup>96</sup> *Tajikistan Joins "World's Worst Religious Freedom Violators"—US Report*, EurasiaNet.org, "Central Asia Today," March 20, 2012 <<http://www.eurasianet.org/node/65157>>; *SShA schitaiut Tajikistan odnim iz hlavnukh narushitelei svobody veroispovedaniia [USA considers Tajikistan one of the main violators of freedom of belief.]* editorial article, inoSmi.ru, March 21, 2012 <[http://inosmi.ru/middle\\_asia/20120321/188806049.html](http://inosmi.ru/middle_asia/20120321/188806049.html)>

<sup>97</sup> Ibid; however, Human Rights Watch gives different information on monthly salaries in 2015 - Human Rights Watch, *World Reports 2015: Tajikistan*, "Freedom of Expression," accessed on 10-11-2015 <<https://www.hrw.org/world-report/2015/country-chapters/tajikistan>>

<sup>98</sup> Human Rights Watch, *World Reports 2015: Tajikistan*, "Freedom of Religion," accessed on 10-11-2015 <<https://www.hrw.org/world-report/2015/country-chapters/tajikistan>>

<sup>99</sup> Ibid.

<sup>100</sup> *V Tajikistane zaderzhany dvoe muzhchin za 'nezakonnoe relihioznoe obyehenie detei' [In Tajikistan two men were detained for "unauthorized religious education of children.]"* 7 February 2012, Information-analytical channel "Anzar.Ru" <<http://www.ansar.ru/rfsng/v-tadzhikistane-zaderzhany-dvoe-muzhchin-za-nezakonnoe-religioznoe-obuchenie-detej>>

children were present in the mosque during prayer time.<sup>101</sup> In addition, according to the Eurasia Program of the Open Societies Foundation, the new law restricts the right of children (and adults as well) to dress in accordance with religious traditions and the right of parents to choose religious names for their children.<sup>102</sup>

Under the pretext of combating extremism and religious terrorism, a number of Islamic religious communities in Tajikistan are prohibited; similar prohibitions are enforced against several Christian minorities, such as Jehovah's Witnesses.<sup>103</sup> Courts, based on vague and unreliable evidence, often issue decisions to close mosques and regularly accuse practicing Muslims of involvement in a terrorist activity or organization. In 2015, several people wearing traditional beards complained about police harassment. In general, cases of state prosecution of public displays of religiosity have increased.<sup>104</sup> For example, several cases of bearded Muslim men being forcibly shaved have come to light in Tajikistan. In addition, by a decree of President Emomali Rakhmon, women are forbidden to wear the hijab. Some experts comment that these unnecessary efforts might actually generate a wave of anger and could lead to further radicalization of populations; they may even provoke physical violence from Islamic believers who would otherwise have remained moderate.

- *Intrusion into the internal affairs of religious organizations*

On July 3, 2015 a representative of the Ministry of Internal Affairs of Tajikistan addressed believers who had gathered to attend Friday prayer in the central mosque in Dushanbe. Colonel Barotali Hamidzoda, while expressing his respect for Hanafi madhab, told the faithful that no one could leave the mosque during prayer, or they would be punished. No further explanation was given, other than a statement that those who were not present for the entire prayer are not followers of the Hanafi tradition, and that their actions may be subject to punishment.<sup>105</sup> This particular incident is of significant importance and requires further investigation because, according to Article 4 Item 4 of the 2011 law on religion, it is unlawful to force an individual to participate or not to participate in religious worship or prayer service, to practice or not practice any religious tradition or ritual, and participation in religious organizations is voluntary.<sup>106</sup> Further, on the basis of Article 4 Item 6, these actions cannot be justified as an expression of respect to Hanafi madhab as mentioned in the preamble, which “recognizes the special role of the Hamafit, Islamic religious tradition in the development of national culture and

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<sup>101</sup> Law of Republic of Tajikistan, “On Freedom of Conscience and Religious Organizations,” No. 739, 28 June 2011, Ch. 1, Art. 4, P. 14 and 15, Ch. 2, Art. 7 and Ch. 2, Art. 8, P. 5; *Tajikskoho muedzina oshtrafovali za azan [Tajiks muezzin was fined for azan]*, 5 October 2012, Information-analytical channel “Ankar.Ru” <<http://www.ansar.ru/rfsng/tadzhikskogo-muedzina-oshtrafovali-za-azan>>

<sup>102</sup> *Tajikistan Joins “World’s Worst Religious Freedom Violators”—US Report*, EurasiaNet, Eurasia Program of the Open Societies Foundation, 20 March 2012 <<http://www.eurasianet.org/node/65157>>

<sup>103</sup> Human Rights Watch, *World Reports 2015: Tajikistan*, accessed on 09-11-2015 <<https://www.hrw.org/world-report/2015/country-chapters/tajikistan>>

<sup>104</sup> Human Rights Watch, *World Reports 2015: Tajikistan*, “Freedom of Religion,” accessed on 10-11-2015 <<https://www.hrw.org/world-report/2015/country-chapters/tajikistan>>

<sup>105</sup> Hurshed Hamdam, *MVD: “Kto ne dochitaet namaz do kontsa, bidet nakazan” [MVD: “Whoever fails to read the namaz to the end will be punished.”]* Radio OZODI: Tajikistan, 03-07-2015 <<http://rus.ozodi.org/content/mia-calls-prayers-dushanbe-be-hanafis/27107917.html>>

<sup>106</sup> Law of Republic of Tajikistan, “On Freedom of Conscience and Religious Organizations,” No. 739, 28 June 2011, Chapter 1, Article 4, Points 1, 4, 5.

spiritual life of the Tajik people,”<sup>107</sup> since Article 4 Item 6 prohibits any propagandizing of religious superiority.<sup>108</sup> “Recognition” of the special role of one religious tradition in the development of national culture and spiritual life should not prevail over the “prohibition” against religious superiority, even though “recognition” does not imply direct action, while “prohibition” implies that certain actions are not to be taken. This idea that Hamafit, Islamic religious tradition plays a special role in the development of Tajik national culture and spiritual life is a new phenomenon in Tajik law, while the prohibition against discrimination or propaganda in favor of religious superiority is a part of the legal tradition and was included in the 1999 version of the Law of the Republic of Tajikistan “On Religion and Religious Organizations.”<sup>109</sup>

The limitation of individual or group rights to religion represents another aspect of state interference in the internal affairs of religious organizations. On the basis of the Article 4 Item 7, individual or corporate rights to religion may be limited for purposes of defending the constitutional order, territorial unity, the safety and security of the people, public order, health and state-sanctioned definitions of morality, as well as the rights and freedoms of other individuals and groups.<sup>110</sup> However, as reported by the OSCE, the tendency to trample on or severely limit the right to religion on the grounds of protecting national security, national identity, or national unity based upon particular so-called “traditional values”<sup>111</sup> has been observed in some contemporary states. Tajikistan is not an exception to this:

At this time, we are witnessing an increase in efforts to stifle opposition and dissent in parts of the OSCE region where there is widespread fear of political change. As part of this trend, religious freedoms are also being trampled upon by governments that exploit arguments about ensuring national security and stability to defend policies that impose excessive restrictions on religious activities, undermine religious pluralism, and result in violations, in particular, of the rights of members of so-called non-traditional religious communities.<sup>112</sup>

- *The complexity of registration*

Unlike the requirements for social and cultural organizations and associations, certain new legal provisions of the Republic of Tajikistan reflect a significant increase in the minimum number of members required for registration of a religious organization. In practice, in various areas of Tajikistan, local governments hesitate to register non-Islamic organizations or communities

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<sup>107</sup> Ibid. Preamble.

<sup>108</sup> Ibid. Chapter 1, Article 4, Point 6.

<sup>109</sup> Law of Republic of Tajikistan, “On Religion and Religious Organizations,” September 1999, Chapter 1, Article 5a.

<sup>110</sup> Law of Republic of Tajikistan, “On Freedom of Conscience and Religious Organizations,” No. 739, 28 June 2011, Chapter 1, Article 4, Points 7.

<sup>111</sup> Vitaliy V. Proshak, *Human Rights to Freedom to Religion, Expression, Association, and Education in Ukraine: Contemporary Situation and Challenges*, in “Religion, State, Society, and Identity in Transition: Ukraine,” Rob van der Laarse, Mykhailo N. Cherenkov, Vitaliy V. Proshak, and Tetiana Mykhalchuk, eds. (Oisterwijk, The Netherlands: Wolf Legal Publishers, 2015), 627.

<sup>112</sup> *Worrying Trends Regarding Religious Freedoms in the OSCE Region*, written statement by International Partnership for Human Rights (Belgium), the Norwegian Helsinki Committee, Kazakhstan International Bureau for Human Rights and Rule of Law, Nota Bene (Tajikistan) and the International Human Rights Association – Fiery Hearts Club (Uzbekistan, in exile in France), 2014 OSCE Human Dimension Implementation Meeting, Working session 14, Wednesday 1 October 2014 (available at: <http://www.iphronline.org/hdim-statement-freedom-of-religion-20140922.html>)

unless there is a sufficient ground for its existence. This pertains especially the communities of Evangelical Christians-Baptists, members of the Local Spiritual Assembly of the Baha'is and others. Local governments often violate the registration procedure by not meeting legal deadlines for registration. Also, there are cases where the registration of a religious organization or community was concluded only after a direct appeal to the central state authorities; in other cases, registration of a non-Islamic religious organization or community was suspended only because more than one community belonging to the same tradition exists in a particular area.

- *Unclear legal regulations concerning religion*

Vague legal provisions concerning what is permitted or restricted could create a certain degree of uncertainty in the activity of religious minority groups. In addition, it could place their destiny in the hands of local authorities who interpret particular legal ambiguities. For example, as was mentioned above, the 2011 version of the Law of Tajikistan “On Freedom of Conscience and Religious Organizations” recognizes the special role of the Hamafit Islamic religious tradition in the development of the national culture and spiritual life of Tajikistan. However, the same law also states that all religious movements and traditions are equal and any claims of religious superiority, as well as historical or cultural, are prohibited.<sup>113</sup> Thus, theoretically, on the basis of this legal provision the state 1) is allowed to dissimilate religious propaganda about the privileged position of a particular religious movement, which is actually legally forbidden, while (2) members of religious minority groups may be considered in violation of the law if they speak about the contribution of a particular religious tradition in the development of Tajik national culture.<sup>114</sup>

On the other hand, according to the same 2011 law on religion, every Tajik citizen, legal foreign resident or registered stateless person is free to confess, individually or in a group, or not to confess, free to choose, disseminate, or change any religious belief or worldview; every Tajik citizen and legal resident is free “to act” in accordance with their chosen religious worldview or belief.<sup>115</sup> What exactly is meant under legal permission “to act in accordance with one’s religious beliefs” is not clear: Article 4 Point 1 permits every Tajik citizen, legal foreign resident or registered stateless person to disseminate personal religious beliefs while Article 4 Point 9 limits this right to official representatives of registered religious organizations.<sup>116</sup> In this case, the individual right to religion is violated by the collective right as interpreted by state authorities.

The substitution of individual rights with collective rights is one of the main features of a non-democratic government.<sup>117</sup> In this case, the violation of individual rights could be “justified” by totalitarian state ideology as a contribution toward a common good, toward the development of a collective national identity, toward safety of the group, etc. No matter what justification is

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<sup>113</sup> Law of Republic of Tajikistan, “On Freedom of Conscience and Religious Organizations,” No. 739, 28 June 2011, Chapter 1, Article 4, Point 5.

<sup>114</sup> Ibid. Chapter 1, Article 4, Point 6.

<sup>115</sup> Ibid. Chapter 1, Article 4, Point 1.

<sup>116</sup> Ibid. Chapter 1, Article 4, Point 1 and 9.

<sup>117</sup> Vitaliy V. Proshak, *From Civil Spring to Democratic Summer: Constitution, Human Rights and Freedom to Religion in Eurasia*. (Oisterwijk: Wolf Legal Publishers, 2014), 185, 211.

offered, however, the violation of individual rights for the sake of group privileges is not acceptable in a democratic society.

The abovementioned challenges to freedom of religion, expression, association, and education could be eliminated or significantly decreased if the government would engage civil society in a discussion of proposed legal changes. At the present time, civil society is not fully engaged in the formation of legal canons regulating social and cultural processes in the country.<sup>118</sup> The absence of adequate legal and political mechanisms involving civil society in the development of the state could lead to further confrontations between civil society and the government.

On the other hand, under the guise of anti-terrorist, anti-fundamentalist and anti-extremist measures, the government of Tajikistan believes that, in relation to religion, a certain degree of authoritarianism in their manner of governing is a necessary prerequisite in transition to democracy.<sup>119</sup> This pretense, i.e., the idea that they are combating terrorism, extremism and fundamentalism should not, however, serve as legitimate ground for violating minority rights. At the same time, the question as to whether ethnic non-Slavic and Asian persons should be considered a minority if they belong to a religion other than Islam is under debate. Quite often the question arises as to what qualifies a group as a minority entitled to protection under UN regulations, i.e., the right to exist, the right to non-discrimination, etc.<sup>120</sup> The relationship between ethnicity and religiosity plays a significant role here: should non-Islamic believers of Asian origin be considered a self-sufficient minority group that requires special national and international attention and protection? Authors of this report believe the answer to this question is “yes”.

On the basis of the aforementioned cases and others similar to them, The United States Commission on International Religious Freedom has recommended that Tajikistan be placed in the category of states in which the legal protection of human rights to freedom of religion is alarming.<sup>121</sup> The USCIRF has recommended CPC status for Tajikistan, i.e., that Tajikistan a “country of particular concern” due to continued violations of human rights to religion. According to the USCIRF report, Tajik authorities “suppress and punish all religious activity outside of state control.”<sup>122</sup>

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<sup>118</sup> *Report on the implementation of the International Covenant on Civil and Political Rights by the Republic of Tajikistan*, Coalition NPO Tajikistan, with support of International Federation for Human Rights (FIDH) and Tajikistan Office of the Open society Institute, Dushanbe, 2013

<[http://www1.umn.edu/humanrts/russian/hrcommittee/Rngoreport\\_tajikistan2013.html](http://www1.umn.edu/humanrts/russian/hrcommittee/Rngoreport_tajikistan2013.html)>

<sup>119</sup> Craig Young and Kathrin Hörschelmann, *Identity under Communism and post-Communism*, in “Global Geographies of post-Socialist Transition: Geographies, Societies, Policies,” Tassilo Herrschel, ed. (London and New York: Routledge, 2007), 212.

<sup>120</sup> Chris Chapman, *Transitional Justice and the Rights of Minorities and Indigenous Peoples*, in “Identities in Transition: Challenges to transitional Justice in Divided Societies,” Paige Arthur, ed. (Cambridge and New York: Cambridge University press, International Center for Transitional Justice, 2011), 252.

<sup>121</sup> Human Rights Watch, *World Reports 2015: Tajikistan*, accessed on 10-11-2015

<<https://www.hrw.org/world-report/2015/country-chapters/tajikistan>>

<sup>122</sup> The United States Committee on International Religious Freedom, *Annual Report 2015*, “Tajikistan,” p. 121, available online <<http://www.uscirf.gov/sites/default/files/Tajikistan%202015.pdf>>

## TURKMENISTAN

### *General information*

According to government estimates, the total population of Turkmenistan in July 2014 was 5.2 million. The annual growth rate in 2006 was approximately 1.8 percent.<sup>123</sup> There are 121 registered religious organizations and 7 registered religious groups in the country; no new religious organizations were registered in 2014.<sup>124</sup> A majority of the population are Sunni Muslims. Christians are mainly followers of Russian Orthodoxy, although there are a small number of Catholic and Protestant churches. The non-Abrahamic religions are represented by Baha'i and Hare Krishna groups. There are also a small number of unregistered communities of Jehovah's Witnesses, Jews, Muslims, Shiites, and Evangelical Christians, including Baptists and Pentecostals.

Table 8: Religious organizations and groups in Turkmenistan, 2012<sup>125</sup>

<b>Religious tradition / Denomination</b>	<b>Organizations</b>
Islamic religious groups and organizations	104
- <i>Sunni Muslim</i>	99
- <i>Shiite Muslim</i>	5
Russian Orthodox	13
Roman Catholic Church, Protestants, Baha'i, Hare Krishna and others	11
<b>Total</b>	<b>128</b>
- <i>Religious organizations</i>	<i>121</i>
- <i>Religious groups</i>	<i>7</i>

In general, most ethnic Russians and Armenians in Turkmenistan are Christians and, usually, belong to the Russian Orthodox Church. While ethnic Russians and Armenians are an essential part of the unregistered religious communities in the country, ethnic Turkmen still, however, make up a larger percentage of these groups than Russians and Armenians.<sup>126</sup> There are a small number of Shia Muslim communities consisting mainly of Iranians, Azerbaijanis, or Kurds living along the border with Iran and in the city of Turkmenbashi in the west of the country. Also, there are around 400 Jews in the country. There is, however, a tendency among Jews in

<sup>123</sup> *International Religious Freedom Report for 2014: Turkmenistan*, Section I "Religious Demography," Bureau of Democracy, Human Rights and Labor, United States Government (USG), <<http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>>; *Country Profile – Turkmenistan*, Section "Society," Library of Congress, Federal Research Division, February 2007, p. 4.

<sup>124</sup> Ibid.

<sup>125</sup> *Turkmenistan 2012 International Religious Freedom Report*, United States Government (USG), p. 1-2, available online at <<http://www.state.gov/documents/organization/208656.pdf>>

<sup>126</sup> Ibid.

Turkmenistan to associate Judaism more with ethnicity than with religious identity. There are no synagogues or rabbis in Turkmenistan and no Jewish public religious ceremonies are held.<sup>127</sup>

According to Human Rights Watch, no real improvement has been made in relation to the complicated situation with human rights in Turkmenistan.<sup>128</sup> There is a tendency on behalf of the government to restrict citizens' access to human rights protection mechanisms and to full enjoyment of fundamental human rights and freedoms such as freedom of association, expression and religion. The mass media is under government control and the country is virtually closed to independent media and non-governmental, civil engagement initiatives.<sup>129</sup> Independent non-governmental organizations are not sufficiently free to work outside of the state-approved ideological framework, and human rights activists and journalists who live in exile and have families living in Turkmenistan are at constant risk of retaliation by the state. Authorities use imprisonment as a tool for settling any problematic relations with political opposition and refuse to disclose information on the status of such prisoners. Since Turkmen prisons are known for their harshness, the fate of dozens of people who are in prison – some for more than ten years – remains unclear. According to international law, this practice qualifies as a form of “enforced disappearance” (ED).<sup>130</sup> In an attempt to combat this particular tool of oppression, the Convention for the Protection of All Persons from Enforced Disappearance, which was adopted in 2006 and entered into force in 2010, has established a Committee on Enforced Disappearance (CED). This CED committee's task is to monitor and prevent the use of ED as a tool for suppressing political opposition and the activity of undesirable religious, cultural, ethnic NGOs and associations. However, Turkmenistan has not signed the Convention.<sup>131</sup>

### **The situation in the religious sphere**

The Rights and freedoms of the Turkmen people, including the religious, are protected and insured by the constitution. The Constitution of Turkmenistan contains a “general constitutional package” governing the rights and freedoms of citizens, foreign and stateless persons living in Turkmenistan: (1) it secures conditions for the free development of each individual (2) it protects the life, honor, dignity and freedom of all (3) it protects natural and inalienable rights of citizens and (4) it insures the responsibility of citizens before the state.<sup>132</sup> From this perspective, the Constitution of Turkmenistan does not differ from any other constitution adopted in a democratic state.

In the Preamble to the Constitution and in its first article it mentions that this law strengthens the “. . . permanent neutrality of Turkmenistan . . .” which is “. . . recognized by the world

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<sup>127</sup> *Turkmenistan 2012 International Religious Freedom Report*, United States Government (USG), p. 1-2, available online at <<http://www.state.gov/documents/organization/208656.pdf>>

<sup>128</sup> Human Rights Watch, *Central Asia: Worsening Rights Record. Need More External Pressure to Reverse Backsliding*, 29 January 2015, available at <<http://www.hrw.org/ru/news/2015/01/29/266556>>

<sup>129</sup> *Country Profile – Turkmenistan*, Section “Society,” Library of Congress, Federal Research Division, February 2007, p. 13.

<sup>130</sup> Ibid.

<sup>131</sup> Irena Bunic and Jan de Vries, *The Committee on Enforced Disappearances: Addendum to the Manual “Practical Guide for Relatives of Disappeared Persons and NGOs Using Law Against Enforced Disappearances,”* Justice and Peace Netherlands and Netherlands Helsinki Committee, The Hague, 2015.

<sup>132</sup> Constitution of Turkmenistan, 2008, Article 3.

community . . . .”<sup>133</sup> The status of “permanent neutrality” also cuts across the rights and freedoms of citizens, insuring civil peace and national accord and sustaining the foundations of democracy and a secular state. Turkmenistan’s secular position is also underlined in the first article.<sup>134</sup> One might ask, however, how this secular and neutral position is reflected in internal state policies regulating the social and cultural life of the people of Turkmenistan.<sup>135</sup>

The Constitution of Turkmenistan says that it is the state’s responsibility to safeguard the “. . . national, historical and cultural heritage . . .” and to insure “. . . equality between social and ethnic communities. . . .”<sup>136</sup> According to the Constitution, every person has the right and freedom to determine his/her personal attitude toward religion and the state is responsible for respecting this choice and guaranteeing full freedom of choice to worship or not to worship.<sup>137</sup> Further, the Constitution declares that religious organizations are separate from the state and that the public educational system is separate from religious organizations.<sup>138</sup> In fact, this provision for . . . separation of religious organizations from state education is not a new phenomenon and could be rather considered a heritage of the Soviet past. Originally it appeared under the Bolsheviks who, influenced by Marxism-Leninism, established a new framework for relations between the state and church in 1918: although church (religious organizations) were separated from state and school, nevertheless the state preserved its prerogative to interfere in the affairs of the church in the interest of the ruling political ideology.<sup>139</sup> Thus, it was only a matter of limiting the influence of religious organizations and had little to do with neutrality and religious freedom.

Currently, in addition to constitutional provisions, religious life in Turkmenistan is also regulated by the Turkmen law “On Freedom of Conscience and Religious Organizations,” which was adopted in 2003. This includes the following amendments and additions introduced into the law: on 16.03.2004, № 217-II; 18.04.2009, № 32-IV; 02.07.2009, № 44-IV; 03.05.2014, № 75-V; 16.08.2014, № 112-V and on 05.23.2015, № 228-V.

Furthermore, Turkmenistan recognizes the “. . . internationally accepted norms of international law . . .” and makes the fulfillment of international legal standards a state priority.<sup>140</sup> According to constitutional provisions, in cases in which the national law of Turkmenistan contradicts international treaties, the rules of international treaties shall apply.<sup>141</sup> In relation to the research focus of this report, the legal provisions of the following international treaties protecting the right to freedom of religion are applicable: The Charter of the United Nations, the Convention on

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<sup>133</sup> Ibid. *Preamble*, Article 1; *Permanent Neutrality of Turkmenistan*, Resolution of the United Nations General Assembly, 12 December 1995.

<sup>134</sup> Constitution of Turkmenistan, 2008, Article 1.

<sup>135</sup> See further discussion in the following section below.

<sup>136</sup> Constitution of Turkmenistan, 2008, Article 11.

<sup>137</sup> Ibid. Article 12b.

<sup>138</sup> Ibid. Article 12a.

<sup>139</sup> Vitaliy V. Proshak, *From Civil Spring to Democratic Summer: Constitution, Human Rights and Freedom of Religion in Eurasia* (Oisterwijk: Wolf Legal Publishers, 2014), 114-123; Vitaliy V. Proshak, *Human Rights to Freedom to Religion, Expression, Association and Education in the Ukraine: Contemporary Situation and Challenges*, in “Religion, State, Society, and Identity in Transition: Ukraine,” Rob van der Laarse, Mykhailo N. Cherenkov, Vitaliy V. Proshak, and Tetiana Mykhalchuk, eds. (Oisterwijk: Wolf Legal Publishers, 2015), 637-638.

<sup>140</sup> Constitution of Turkmenistan, 2008, Article 6.

<sup>141</sup> Ibid.



the Rights of the Child, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Discrimination in Respect to Employment and Occupation, the Convention for the Safeguarding of Intangible Cultural Heritage, the International Covenant on Economic, Social and Cultural Rights, the Freedom of Association and Protection of the Right to Organize Convention, the Convention on the Elimination of all Forms of Discrimination Against Women, and other international treaties related to the subject. Thus, according to Section I, Article 6 of the Turkmen Constitution, the provisions of the abovementioned international treaties concerning the right to freedom of religion should prevail over national Turkmen law.

On the basis of provisions in the constitutional and administrative laws of Turkmenistan, religious organizations are obliged to register with state authorities any investments, financial, technical or humanitarian relief aid provided by foreign organizations. According to the law of Turkmenistan “On Amendments to the Law of Turkmenistan ‘On Freedom of Conscience and Religious Organization,’” accepted on May 3 2014, all religious organizations in Turkmenistan are to report their finances, technical investments or amount of humanitarian aid received to the responsible state committee for investigation in line with anti-terrorism programs.<sup>142</sup> This law is intended to prevent extremist organizations from receiving financial, technical or humanitarian support from foreign agents under the guise of religious development. However, the current law also makes it for religious organizations that have no extremist inclinations difficult to receive foreign support. To a certain degree, this particular legal amendment limits the right to freedom of association, especially of association in an international dimension, that is, association with foreign fellow believers. Some experts could object that these amendments have no relation to the right to freedom of association, since in this case it implies no limits to association, but is directed toward increasing control over financial inflow from foreign organizations. In this case, it could be regarded as increasing state control over foreign technical, financial or humanitarian investments or aid programs for NGOs active on the territory of Turkmenistan. However, even if this new amendment does not target the human rights of religious NGOs in Turkmenistan to freedom of association (in an international context) and is just a preventive initiative in state anti-terrorist programs, the new law could be regarded as a basis for future discrimination, or contribute toward “indirect discrimination” against religious minority groups.<sup>143</sup>

Contrary to the theoretical provisions of the constitutional and administrative laws of Turkmenistan protecting the rights and freedoms of citizens, the situation in the religious sphere there remains problematic, but hopeful. The following below section addresses the challenges to freedom of religion in Turkmenistan in four areas: failure to protect national,

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<sup>142</sup> Law of Turkmenistan, “On Amendments to the Law of Turkmenistan on Freedom of Conscience and Religious Organizations,” 3 May 2014, Art. 1 and 2.

<sup>143</sup> Although “indirect discrimination” means treating a person neutrally, it places individuals in a less advantageous position due to their racial or ethnic background, religious belief, disability, or age. While indirect discrimination may have no immediate discriminating effect(s), it leads to possible disadvantages for an individual in the future, - Timo Makkonen for EU Directorate General for Employment, Social Affairs and Equal Opportunities and the Finish Ministry of Labor, *European Handbook on Equality Data: Why and how to build to a national knowledge base on equality and discrimination on the grounds of racial and ethnic origin, religion and belief, disability, age and sexual orientation* (Luxembourg; Office for Official Publications of the European Communities, 2007), 15-16.

historical and cultural heritage, violation of the rights of believers, violation of rights of religious minorities groups, and prohibition of missionary activity.

### **Challenges to freedom of religion**

- *Failure to protect national historical and cultural heritage*

The Constitution of Turkmenistan contains provisions protecting national, historical and cultural heritage and bestows this responsibility on the state: “The state is responsible for safeguarding national, historical and cultural heritage . . .”<sup>144</sup> This constitutional provision corresponds to UNESCO’s “Convention for the Safeguarding of Intangible Cultural Heritage” (2003) and the UNESCO “Convention on the Protection and Promotion of the Diversity of Cultural Expressions” (2005). These conventions were adopted in reference to international provisions of the Universal Declaration on Human Rights (1948); the International Covenant on Economic, Social and Cultural Rights (1966); the International Covenant on Civil and Political Rights (1966), to which Turkmenistan is a signatory (via the USSR in case with UDHR). Consequently, persecution of religious minorities is a violation of national, constitutional and administrative law and international treaties protecting cultural heritage and cultural diversity, since religion is an essential part of culture and religious diversity is an essential component of that cultural diversity. And, according to the UNESCO 2003 Convention, practices, expressions, rituals, knowledge, objects, and cultural spaces that communities, groups and, in some cases, individuals identify as part of their cultural heritage are recognized as cultural heritage.<sup>145</sup> And the global community must protect the cultural diversity of local, national and regional cultural expressions from the unifying tendencies of global culture.<sup>146</sup> However, authorities of some states, and Turkmenistan is not an exception in this case, justify the violation of rights of believers and limitations imposed on religious minorities by the necessity to protect public order and national safety.<sup>147</sup> Thus, cultural expression by minority groups is perceived as a threat to national safety and order. But how does one measure or define correctly national

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<sup>144</sup> Constitution of Turkmenistan, 2008, Article 11.

<sup>145</sup> UNESCO *Convention for the Safeguarding of the Intangible Cultural Heritage* (Paris, 2003), Article 2, Point 1.

<sup>146</sup> Marie-Theres Albert, *World Heritage and Cultural Diversity: What Do they Have in Common?* in “World Heritage and Cultural Diversity,” Dieter Offenhäuser, Walther Ch. Zimmerli and Marie-Theres Albert, eds., German Commission for UNESCO, Brandenburg University of Technology at Cottbus, UNESCO Chair in Heritage Studies, (Germany, Cottbus: DRUCKZONE GmbH & Co., 2010), 17.

<sup>147</sup> Law of Turkmenistan, “On Freedom of Conscience and Religious Organizations,” 2003, Chapter 1, Article 3; *Worrying Trends Regarding Religious Freedoms in the OSCE Region*, written statement by International Partnership for Human Rights (Belgium), the Norwegian Helsinki Committee, Kazakhstan International Bureau for Human Rights and Rule of Law, Nota Bene (Tajikistan) and the International Human Rights Association –Fiery Hearts Club (Uzbekistan, in exile in France), 2014 OSCE Human Dimension Implementation Meeting, Working session 14, Wednesday 1 October 2014 (available at: <http://www.iphronline.org/hdim-statement-freedom-of-religion-20140922.html>) ; Vitaliy V. Proshak, *Human Rights to Freedom to Religion, Expression, Association, and Education in Ukraine: Contemporary Situation and Challenges* in “Religion, State, Society, and Identity in Transition: Ukraine,” Rob van der laarse, Mykhailo N. Cherenkov, Vitaliy V. Proshak, and Tetiana Mykhalchuk, eds. (Oisterwijk: Wolf Legal Publisher, 2015), 627.

safety and order? This question becomes especially complex since the diversity of cultures in Turkmenistan is as old as culture itself.<sup>148</sup>

A majority of experts on culture would comment that culture, if alive, is not static, but is in a constant process of development; contrarily, culture, if not developing, is dead. As Zimmerli comments,

By “culture” on the one hand we understand both the process of transformation of nature by human beings and the results of this transformation. The very notion of culture thus comprises the whole range from physical to intellectual transformation, from “tangible” to “intangible.”

Human beings, on the other, hand are but transformers of nature into culture. At the same time, we are beings, both constituted by and constitutive of time: Our own products are cultural products only insofar as they are temporal entities being transferred from one generation to the next. This transfer process is what we usually call “tradition” or – in a slightly different perspective – “heritage”.<sup>149</sup>

Thus, according to Zimmerli, the continuation or transference of temporal entities from one generation to another is called “tradition” or “heritage”.<sup>150</sup> In relation to the current topic, therefore, the continuation or transference of religious beliefs from one generation to the other is called “religious tradition” or “religious heritage,” which is an essential component of local culture and has intergenerational value.<sup>151</sup> Thus, consistent with the UNESCO 2003 Convention, practices, expressions, knowledge, rituals, objects, and cultural spaces belonging to religious minorities - even the identity of religious minorities themselves<sup>152</sup> - are to be protected as part of the national cultural heritage.<sup>153</sup> Instead of violating the rights of religious minorities, the state should foster cultural interaction among various groups and promote diversity of cultural expression and exchange on a local, national and international level.<sup>154</sup> In addition to protecting

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<sup>148</sup> Marie-Theres Albert, 2010, p. 19.

<sup>149</sup> Walther Ch. Zimmerli, *A Philosophical Preface*, in “World Heritage and Cultural Diversity,” Dieter Offenhäuser, Walther Ch. Zimmerli and Marie-Theres Albert, eds., German Commission for UNESCO, Brandenburg University of Technology at Cottbus, UNESCO Chair in Heritage Studies, (Germany, Cottbus: DRUCKZONE GmbH & Co.), 11.

<sup>150</sup> The question of the relationship between “tradition,” “heritage” and the “tangible-intangible” dichotomy of cultural heritage is also addressed in the work of Britta Rudolf. - Britta Rudolf, *Local Identity on the Global Stage: The Challenges of Representing Diversity*, in “World Heritage and Cultural Diversity,” Dieter Offenhäuser, Walther Ch. Zimmerli and Marie-Theres Albert, eds., German Commission for UNESCO, Brandenburg University of Technology at Cottbus, UNESCO Chair in Heritage Studies, (Germany, Cottbus: DRUCKZONE GmbH & Co.), 104.

<sup>151</sup> Here, the theory of intergenerational value of cultural landscapes is applied to cultural identities, - Mechtild Rössler, *World Heritage and Sustainable Development: The Case of Cultural Landscapes*, in “World Heritage and Cultural Diversity,” Dieter Offenhäuser, Walther Ch. Zimmerli and Marie-Theres Albert, eds., German Commission for UNESCO, Brandenburg University of Technology at Cottbus, UNESCO Chair in Heritage Studies, (Germany, Cottbus: DRUCKZONE GmbH & Co., 2010), 196 – 202.

<sup>152</sup> For more on the discussion of the relationship between a religious minority’s identity and cultural heritage, see Mounir Bouchenaki, *World Heritage and Cultural Diversity: Challenges for University Education*, in “World Heritage and Cultural Diversity,” Dieter Offenhäuser, Walther Ch. Zimmerli and Marie-Theres Albert, eds., German Commission for UNESCO, Brandenburg University of Technology at Cottbus, UNESCO Chair in Heritage Studies, (Germany, Cottbus: DRUCKZONE GmbH & Co., 2010), 26.

<sup>153</sup> UNESCO *Convention for the Safeguarding of Intangible Cultural Heritage* (Paris, 2003), Article 2, Point 1.

<sup>154</sup> UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (Paris, 2005), Article 1.

national, historical and cultural heritage, the state should ensure equality between social and ethnic communities.<sup>155</sup>

- *Violation of believers' rights*

The Constitution of Turkmenistan guarantees the freedom of religion and worship to citizens, foreign and stateless persons legally residing in Turkmenistan.<sup>156</sup> The Constitution protects personal and collective rights (1) to profess or not to profess any religion (2) to express religious beliefs (3) to disseminate religious beliefs, and (4) to participate in religious services, rituals and ceremonies.<sup>157</sup> However, regardless of the theoretical constitutional provisions granting the right to conduct religious services, the freedom to use this right is limited by prescribed conditions where religious services can be held. Despite the absence of laws that directly prohibit religious services in a residential area, the Housing Code states that municipal housing must be used only for accommodations. The law on religion states that religious services should be held in explicitly designated places of worship in the area where the religious organization is located, and that personal residences may be used only if necessary for ritual reasons.<sup>158</sup> However, the law does not further define "ritual reasons." Can, for example, a *small group* gathering of Protestant believers for Bible study be considered a "ritual reason," since it is a part of the spiritual exercise given by God – ". . . abide in Me . . ." and ". . . hold to My teaching . . ." <sup>159</sup> In this case, a legal contract should define rental conditions and any financial remuneration involved.<sup>160</sup>

During the Niyazov regime (1991-2006<sup>161</sup>), all religious organizations were obliged to recognize Niyazov as the spiritual authority in the country and quote him during religious ceremonies. The *Ruhnama*, a spiritual code written by Niyazov, was given equal status with the Quran and the Bible. It became a centerpiece of state education and was forced upon the Turkmen people as their spiritual guide for daily life without any significant consideration of their ethnic, cultural and religious background and diversity.<sup>162</sup> As a result, worship services conducted by Protestant groups, Shia Muslims, the Armenian Apostolic Church, Bah'ai Muslims, Jews, and other groups were raided and shut down, and religious leaders were arrested without a warrant.<sup>163</sup> However, according to the law on religion, registration of a religious organization

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<sup>155</sup> Constitution of Turkmenistan, 2008, Article 11.

<sup>156</sup> Ibid. Article 12a.

<sup>157</sup> Constitution of Turkmenistan, 2008, Article 12b.

<sup>158</sup> Law of Turkmenistan, "On Freedom of Conscience and Religious Organizations," 2003, Chapter 4, Article 19.

<sup>159</sup> *Gospel of John*, Chapter 15, Verse 7 and Chapter 8, Verse 31, New International Version.

<sup>160</sup> Ibid. Chapter 3, Article 16.

<sup>161</sup> However, Niyazov became powerful in Turkmenistan much earlier than 1991. In 1985-1991, Niyazov was the First Secretary of the Turkmen Communist Party and in 1991 supported a Soviet coup attempt. After the attempt failed, the Turkmen Supreme Soviet, chaired by Niyazov, declared Turkmenistan an independent state and appointed him its first president. In 1999, the Parliament of Turkmenistan appointed Niyazov president for life. In December 2006 Niyazov suddenly died.

<sup>162</sup> *Country Profile – Turkmenistan*, Section "Society," Library of Congress, Federal Research Division, February 2007, p. 16; *Religious Freedom in Turkmenistan*, Briefing of the Commission on Security and Cooperation in Europe, 108<sup>th</sup> Congress, 2<sup>nd</sup> Session, Washington, 11 May 2004, p. 6 and 7.

<sup>163</sup> *Country Profile – Turkmenistan*, Section "Society," Library of Congress, Federal Research Division, February 2007, p. 16.

can be withdrawn only by decision of the Turkmen Ministry of Justice or by a court ruling, and not as a consequence of a raid.<sup>164</sup>

The aforementioned cases are a direct violation of constitutional provisions for free development of the individual and could be treated as examples of state failure to protect the freedom and dignity of its citizens.<sup>165</sup> In addition, state policies that limit the religious freedom of Turkmen citizens and legal foreign residents could be interpreted as attacks on the right to intellectual value, since, in a philosophical context, religion could be considered an intellectual value.<sup>166</sup> In this case, if one considers religion an intellectual value, then the violation of religious rights could be interpreted as a violation of the international treaties protecting intellectual values.<sup>167</sup>

- *Violation of the rights of religious minorities*

The law of Turkmenistan “On Freedom of Conscience and Religious Organizations” states that all citizens of Turkmenistan are equal before the law in all areas of civil, political, economic and cultural life regardless of their religious beliefs, and that granting privilege to or imposing limitations on a particular religion or denomination is prohibited.<sup>168</sup> The same law also forbids any direct or indirect violation or limitation of the right to religion for the citizens of Turkmenistan, as well as foreigners and stateless persons who either permanently or temporarily reside on the territory of Turkmenistan.<sup>169</sup>

However, existing gray zones or contradictions in the abovementioned law serve as a foundation for multiple direct or indirect violations of the rights and freedoms of ethnic or religious minorities. For example, the law on religion states that it is not allowed to force citizens, foreign legal residents or stateless persons to express their attitude toward religion;<sup>170</sup> it is also prohibited to wear religious clothes and symbols in public places, since it would be an obvious expression of personal religious preferences.<sup>171</sup> However, the same law also requires that the application documents for registration of a religious organization should include a list of founding members indicating their full names, dates of birth and places of residence.<sup>172</sup> And during the admission process to higher educational programs, state post-secondary educational institutions are obliged to run an ethnic profile check on all applicants, officially registering each

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<sup>164</sup> Law of Turkmenistan, “On Freedom of Conscience and Religious Organizations,” 2003, Chapter 2, Article 14.

<sup>165</sup> Constitution of Turkmenistan, 2008, Article 3.

<sup>166</sup> For a discussion of the intellectual value of religion, see Russell T. McCutcheon, ed., *The Insider/Outsider Problem in the Study of Religion: A Reader*, reprint, London and New York: Continuum, 2005 [1999]; Julie A. Ruben, *The Making of the Modern Universities: Intellectual Transformation and the Marginalization of Morality*, Chicago and London: University of Chicago Press, 1996; Russell T. McCutcheon, *A Default of Critical Intelligence? The Scholar of Religion as Public Intellectual*, “Journal of the American Academy of Religion,” Vol. 65, No. 2 (Summer 1997), pp. 443-468; other sources are available as well.

<sup>167</sup> However, this supporting point is not strong and could not be used in court to protect believers’ rights, since the notion of the intellectual value of religion is not universally recognized.

<sup>168</sup> Law of Turkmenistan, “On Freedom of Conscience and Religious Organizations,” 2003, Chapter 1, Article 4 and 5.

<sup>169</sup> Ibid. Chapter 1, Article 3.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid. Chapter 4, Article 19.

<sup>172</sup> Ibid. Chapter 2, Article 11.

applicant's ethnicity.<sup>173</sup> Thus, official registration of religious groups, organizations or communities, or individual applications to an institution of higher education requires official registration of one's religious or ethnic affiliation. As pertains to minority groups, this could result in instances of direct and indirect discrimination. For example, there have been cases in which parents and children from Protestant families were subject to public humiliation and pressure, both in school and in the workplace, aimed at coercing them to sign a statement renouncing their faith. On other occasions, children from Protestant families were denied state subsidized places in summer camps during school holidays, and Protestant school employees were dismissed from their jobs. Violations like those mentioned above force Protestant religious organizations without official registration to become underground religious movements.<sup>174</sup>

However, according legal provisions of the constitutional and administrative law of Turkmenistan, religious organizations and religious communities must be registered with state authorities in order to conduct religious services. Unregistered religious groups or unregistered branches of registered religious groups are not permitted to conduct religious activities, including creating places of worship, assembling for religious services, distributing religious materials, or converting others to their faith. Unregistered religious activity is considered an administrative offense and is punishable by a fine of 355 to 1422 Manat (100-500 US dollars), depending on whether the offense was carried out by an individual person or on behalf of a religious group. Registered religious groups can also be fined for unauthorized religious activity, i.e., publication or distribution of religious materials without the consent of state authorities.

There have, however, been cases in which state authorities applied harsher punishments. As reported in Forum 18, fourteen Jehovah's Witnesses were arrested for short periods in February 2015. On May 19, 2015 Bahram Hemdemov was sentenced to a four-year term in prison after he was arrested and tortured during pre-trial imprisonment. Prisoner of conscience Hemdemov was accused of allegedly inciting religious hatred. Along with other Turkmen prisoners of conscience, Bahram Hemdemov' son, Serdar Hemdemov, was also imprisoned for fifteen days and tortured while in custody. Those detained were tortured, forms of which included beatings with a bottle of water and the punishing cruelties of electric shock.

- *Prohibition of missionary activity*

Missionary activity conducted by a national, religious minority group could be considered a form of cultural expression by a particular group, a manifestation of cultural diversity.<sup>175</sup> In Turkmenistan religious expression by minority groups is a representation of cultural diversity and plays an integral role in the cultural development of Turkmen society; it is not a phenomenon attributable to recent social developments.<sup>176</sup> Diversity of cultures in

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<sup>173</sup> *Country Profile – Turkmenistan*, Section "Society," Library of Congress, Federal Research Division, February 2007, p. 5.

<sup>174</sup> *Religious Freedom in Turkmenistan*, Briefing of the Commission on Security and Cooperation in Europe, 108<sup>th</sup> Congress, 2<sup>nd</sup> Session, Washington, 11 May 2004, p. 6.

<sup>175</sup> For further discussion of national minorities, see Kristin Henrard, *The Ambiguous Relationship between Religious Minorities and Fundamental Minority Rights* (The Hague: Eleven International Publishing, 2011), 26.

<sup>176</sup> For further discussions of the role of cultural diversity in the formation of culture, see – Marie-Theres Albert, *World Heritage and Cultural Diversity: What Do they Have in Common?* in "World Heritage and Cultural Diversity," Dieter Offenhäuser, Walther Ch. Zimmerli and Marie-Theres Albert, eds., German

contemporary states, including democracies in transition like Turkmenistan, is as old as culture itself.<sup>177</sup> However, existing legislation in Turkmenistan significantly limits the freedom of cultural expression and hinders the continuing existence of ancient religious minority traditions.

In 2003 a new law was adopted in Turkmenistan that required all public associations to register with the Ministry of Justice. Together with requirements for registration, the law also prohibits the operation of unregistered public associations and requires all foreign assistance be registered with the Ministry of Justice.<sup>178</sup> The newly adopted law on religion prohibits foreign missionary activity as well as the activity of foreign religious organizations. However, the law does not prohibit foreigners from worshiping with local registered religious groups. Unauthorized publication of religious literature in the country is prohibited by law and imported religious literature must be approved by the Council for Religious Affairs under the President of Turkmenistan. Only registered religious groups are allowed to import religious literature following approval by state authorities. These particular limitations on the activity of foreign religious organizations represent a significant challenge to religious education and access to published religious materials. This could result in indirect discrimination against religious minorities and a continued impediment to the expression of the diversity of cultures and traditions in Turkmenistan.

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Commission for UNESCO, Brandenburg University of Technology at Cottbus, UNESCO Chair in Heritage Studies, (Germany, Cottbus: DRUCKZONE GmbH & Co., 2010), 17-22.

<sup>177</sup> Marie-Theres Albert, 2010, p. 19.

<sup>178</sup> *Country Profile – Turkmenistan*, Section “Society,” Library of Congress, Federal Research Division, February 2007, p. 16.

## UZBEKISTAN

### *General information*

Uzbekistan is a sovereign democratic republic located in the heart of Central Asia that shares its borders with Afghanistan, Kazakhstan, Kyrgyzstan, Tajikistan, and Turkmenistan.<sup>179</sup> Uzbekistan's central location means it plays a key role in various aspects of the political, economic, social and cultural life of Central Asia. In July 2013 Uzbekistan's population was 29.7 million, which represents a significant increase from the 19.9 million reported in 1989.<sup>180</sup> According to local statistics, approximately 93 percent of the population is Muslim. Most Islamic believers in Uzbekistan are followers of the Sunni tradition of the Hanafi school (madhhab), and around 1 percent are Shiite Muslims, who reside mainly in Bukhara and Samarkand. Approximately 4 percent of the population is Russian Orthodox; however, this figure is lower, as ethnic Russians and other Slavs continue to emigrate.<sup>181</sup> The remaining 3 percent of the population include small religious communities of Catholics, Korean Christians, Baptists, Lutherans, Seventh-day Adventists, Evangelicals, Pentecostals, Jehovah's Witnesses, Buddhists, Baha'is, Hare Krishna's, as well as atheists. According to statistics from 2000, there are 6,000 Ashkenazi and Bukhara Jews living mainly in Tashkent, Bukhara, Samarkand and the Fergana Valley, but the Jewish population continues to decline due to emigration.

Table 9: Religious organizations and groups in Uzbekistan, in numbers as of 2015<sup>182</sup>

<b>Religious tradition / Denomination</b>	<b>Number</b>
Islamic religious groups and organizations	2064
Christian religious groups and organizations	158
Jewish communities	8
Baha'i communities	6
Hare Krishna societies	1
Buddhist temples	1
<b>Total</b>	<b>2238</b>

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<sup>179</sup> Constitution of the Republic of Uzbekistan, 1993, Chapter 1, Article 1.

<sup>180</sup> There was no censor in Uzbekistan in the post-Soviet period; the data is from the Soviet period.

<sup>181</sup> Uzbekistan is one of the three main Central Asian states from which migration (including labor) takes place. - U.Zh. Erheshbaev, [*Sovremennaiia trudovaia mihratsia naselenia stran Tsentral'noi Azii v Rossii* [*Contemporary Labor Migration of the Population of Central Asian States to Russia*] "Nauchnye vedomosti Belhorodkoho Gosudarstvennogo Universiteta" ["Scientific Bulletin of Belhorod State University,"] Vol. 10, No. 7-1(62), 2009: 74.

<sup>182</sup> Committee on Religious Affairs under the Cabinet of Ministers of the Republic of Uzbekistan, *Statistics: 2015*, available at <<http://religions.uz/ru/page/view?id=50>>



Table 10: Religious organizations and groups in Uzbekistan, as a percent in 2015

Religious tradition / Denomination	Percentage
Islamic religious groups and organizations	93
- <i>Sunni Muslim</i>	92
- <i>Shiite Muslim</i>	1
Russian Orthodox	4
Other	3

### The situation in the religious sphere

Since the government is trying to control religious processes in the country, the protection of religious rights and freedoms is quite complicated in Uzbekistan.<sup>183</sup> On the one hand, written laws provide seemingly adequate protection of citizen's rights and freedoms, also in respect to religion. The Constitution of Uzbekistan, first of all, insures a respectful attitude toward the languages, customs and traditions of all nationalities and ethnic groups living in the country, and proclaims that no ideology or opinion shall be granted the status of state ideology.<sup>184</sup> According to the Constitution, public life in Uzbek society is based on the pluralistic principle of diversity of political institutions, ideologies and opinions.<sup>185</sup> The Constitution proclaims equality of rights and freedoms of citizens and prohibits discrimination on the basis of gender, race, nationality, language, religion, social origin, convictions, social status, or the individual.<sup>186</sup> The equality of citizens, legal foreign residents, as well as stateless persons is also reinforced by the law on freedom of religion.<sup>187</sup> Furthermore, the Constitution provides for equality within a collective or institutional context: all religious organizations are equal before the law, and the state should not interfere in the activity of religious organizations.<sup>188</sup>

Secondly, the Constitution of Uzbekistan upholds a citizen's right to freedom of conscience and protects their right to profess or not to profess any religion.<sup>189</sup> The law of the Republic of Uzbekistan, "On Freedom of Conscience and Religious Organizations (1998)," extends the right to religion in both its theoretical and practical aspects: every citizen is free *to practice* or *not to*

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<sup>183</sup> However, some experts comment that government involvement in the religious life of Uzbek citizens is not greater than the involvement in our aspects of life. - Eric Freedman, *Avtoritetnye rezhimy, relihioznye prava musul'man v Centralnoi Azii i nedostatochnoe osvetshenie narushenii etih prav v inostrannoi presse [Authoritarian regimes, religious rights of Muslims in Central Asia and Insufficient Coverage of the Violation of these Rights in the Foreign Media]* "Central Asia and Caucasus," Vol. 13, No. 1, 2010: 165; E. McGlinckey, *Divided Faith: Trapped between State and Islam in Uzbekistan*, in "Everyday Life in Central Asia: Past and Present," J. Sahadeo and R. Zanca, eds. (Bloomington, Indiana: Indiana University Press, 2007), 305.

<sup>184</sup> Constitution of Uzbekistan, 1993, Chapter 1, Article 4 and Chapter 2, Article 12.

<sup>185</sup> Ibid. Chapter 2, Article 12.

<sup>186</sup> Ibid. Chapter 5, Article 18.

<sup>187</sup> Law of Republic of Uzbekistan, "On Freedom of Conscience and Religious Organizations," 1998, Articles 3 and 4.

<sup>188</sup> Constitution of Uzbekistan, 1993, Chapter 13, Article 61; Law of Republic of Uzbekistan, "On Freedom of Conscience and Religious Organizations," 1998, Article 5.

<sup>189</sup> Constitution of Uzbekistan, 1993, Chapter 8, Article 31.

*practice* any religion or belief.<sup>190</sup> Limitations on personal and collective rights to freedom of religion could be imposed by the state in the following cases: (1) to insure national security (2) use of religion for the purpose of anti-state or anti-constitutional propaganda, (3) incitement of enmity or hatred, or actions against principles of social justice (4) international discord (5) breach of moral principles and civil accord, (6) distribution of slanderous insinuations that might destabilize a situation, (7) spreading panic among the population and (8) taking other actions against the state, society and rights and freedoms of others.<sup>191</sup>

The third important legal provision of the Constitution and administrative law concerns the relationship between the state and religion, i.e., church-state relations.<sup>192</sup> This principle of separation of church and state is reflected in institutional, educational and cultural aspects of Uzbek constitutional and administrative law. In the institutional dimension, the principle of separation of church and state follows the old Soviet model which, while implying that church and religious organizations are separate from the state, nevertheless preserves the state's prerogative to interfere in the affairs of the church or religious organizations. In the cultural dimension, the principle of separation of church and state forces religious minority organizations into partial isolation since the law significantly limits the right of religious organizations to express their religious views. Lastly, in terms of education, the principle of separation of church and state restricts the rights of religious organizations to education while permitting educational activity within the organization only, i.e. only for the purpose of training clergy and lay people. In addition, religious educational institutions in Uzbekistan must be registered with the Ministry of Justice and not with the Ministry of Education. This means they are denied the right to state accreditation, and that their right to ". . .freedom of research . . .," which is protected by the constitution, is significantly limited.<sup>193</sup>

Some experts comment that freedom of religion in Uzbekistan is guaranteed in name only, since the abovementioned rights and freedoms are granted only to organizations and groups that are able to complete the strict registration process and that are able to maintain their registration after the process is completed.<sup>194</sup> The Criminal Code and the Code of Administrative Liability imposes severe penalties for violations of law on religion and other legal regulations pertaining to religious activity. The Criminal Code also establishes a formal distinction between "illegal" groups, i.e., those that are not properly registered, and "prohibited" organizations," i.e., those that are considered bearers of extremist ideology.

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<sup>190</sup> Law of Republic of Uzbekistan, "On Freedom of Conscience and Religious Organizations," 1998, Article 3.

<sup>191</sup> Law of Republic of Uzbekistan, "On Freedom of Conscience and Religious Organizations," 1998, Article 3 and 5; Constitution of Uzbekistan, 1993, Chapter 3, Article 6; Chapter 5, Article 18 and 20; Chapter 11, Article 48.

<sup>192</sup> Law of Republic of Uzbekistan, "On Freedom of Conscience and Religious Organizations," 1998, Article 5.

<sup>193</sup> Constitution of Uzbekistan, 1993, Chapter 9, Article 42; Law of Republic of Uzbekistan, "On Freedom of Conscience and Religious Organizations," 1998, Article 9.

<sup>194</sup> *Religious Freedom in Uzbekistan*, The Institute on Religion and Public Policy, The United States Department of Justice, 2014, available on <<http://www.justice.gov/sites/default/files/eoir/legacy/2014/09/29/Uzbekistan%20Immigration%20Report.pdf>>

According to government classifications, “religious extremists” are groups or individuals who advocate for the replacement of the current secular government and religiously neutral laws with those based on mono-religious principles. Thus, “religious extremism” is considered a threat to the existence of the state, its national security and stability in Uzbek society. The government has, however, overlooked the fact that freedom of religion and conscience, as part of the democratic process, presupposes the existence of the secular state.<sup>195</sup> This has resulted in government prohibition of the activity of several religious organizations. The following Islamic organizations were labeled extremist and membership in these organizations was made synonymous to a crime against the state: *Akromiya*, *Tablighi Jamaat* and *Hizbut Tahrir*. The government also banned the organization *Nur*, which was founded by Kurdish Mullah Said Nursi, who is associated with the religious doctrines of the Turkish scholar Fethullah Gulen.<sup>196</sup> The aforementioned organization *Nur* (or *Nur cemaati*) was labeled extremist despite the fact that the organization has publicly condemned violent extremism.

In response to national and international critics concerned with violations of the right to religion, the government claims that its actions against persons or organizations suspected of religious extremism are not a matter of freedom of religion, but are rather a preventive measure against the overthrow of secular authorities, and against other provocative actions that might destabilize the multinational ethnic stability of Uzbek society, thus fostering ethnic or religious hatred. In these cases, the government justifies legal penalties of up to twenty years in prison for organizing or participating in the activities of “religiously extremist,” fundamentalist, separatist or other prohibited or illegal religious organizations. Appearing in cult robes, i.e. religious clothing, in public places is considered fundamentalist activity aimed at destabilizing ethnic or religious harmony and is prohibited by law – although an exception is made for those ministering with registered religious organizations.<sup>197</sup>

According to Uzbek criminal law, organizing or participating in the activities of illegal religious organization is a criminal offense against the state and is punishable by imprisonment for up to five years or a fine of between four and eight million sums (approximately 1,700 USD – 3,600 USD.) Even if an offender is found guilty in accordance with the Administrative Responsibility Code, any recurrence of a previous offence may be brought to justice under the Criminal Code. In addition to the aforementioned religious activities that are considered illegal and criminal, the following activities are also prohibited by law: the existence of an unregistered religious group or persuading others to join these groups; the involvement of minors in religious organizations without parental consent; conducting or participating in any religious service or rituals conducted by an unregistered religious organization. According to legal regulations the right to publish, import, and distribute religious literature applies solely to central administrative bodies of registered religious organizations.<sup>198</sup> These includes organizations like

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<sup>195</sup> Charles Villa-Vicencio, *A Theology of Reconstruction: Nation-building and Human Rights*, Series Cambridge Studies in Theology and Religion, Duncan Forrester and Alistair Kee, eds. (Cambridge: Cambridge University Press, 1992), 264.

<sup>196</sup> Ismail Caglar, *From Symbolic Exile to Physical Exile: Turkey's Imam Hatip Schools, the Emergence of a Conservative Counter-elite, and Its Knowledge Migration to Europe* (Amsterdam: Amsterdam University Press, 2014), 12.

<sup>197</sup> Law of Republic of Uzbekistan, “On Freedom of Conscience and Religious Organizations,” 1998, Article 14.

<sup>198</sup> *Ibid.* Article 19.

the Bible Society of Uzbekistan (BOU), the Muslim Board of Uzbekistan, Tashkent Islamic University, Tashkent Islamic Institute, the central government of the Russian Orthodox Church, the Full Gospel, Baptist, and Roman Catholic churches.

According to the Administrative Responsibility Code, the illegal production, storage, import or distribution of materials of religious content without state permission is punishable by monetary fines: an individual fine of 20 to 100 times the minimum monthly salary or 91,530 sums (approximately 41 USD), and institutional fine for legal entities ranging from 50 up to 150 times the minimum monthly wage. In addition to these fines, the materials in question and their corresponding means of production and distribution must be confiscated. According to the Criminal Code, a fine ranging between 100 to 200 times the minimum monthly wage may be levied against repeat offenders, as well as three years correctional labor.

Only central administrative bodies of registered religious organizations are permitted to engage in educational activity. But registration of a central administrative body is permitted only when the religious organization has registered communities in eight out of fourteen territorial units of the country, including the Republic of Karakalpakstan and Tashkent city. According to government statistics, only six religious denominations have legal permission to train clergy, and even then the law limits religious instruction to officially registered religious schools and state-approved instructors. The law does not permit private religious instruction and any violation of the law is punishable by monetary fines or correctional labor in cases involving repeat offenders.<sup>199</sup> The law also prohibits the teaching of religious subjects in public educational institutions.<sup>200</sup>

However, several Islamic registered educational institutions have received state permission to offer full secondary education. Eleven madrassas, including two for female pupils, provide full secondary education, including compulsory secular subjects. The Cabinet of Ministers recognizes diplomas granted by madrassas as equivalent to other secular diplomas, thus enabling their graduates to continue their education in the madrassas and universities. In addition to madrassas, the Islamic Institute and Islamic University in Tashkent, which is actually a secular university, provide an opportunity for higher education in religious programs.

### **Challenges to freedom of religion**

#### *- Prohibition against missionary activity*

According to the law on religion, the state is responsible for aiding in the establishment of mutual tolerance and respect between citizens of differing religious beliefs or non-believers.<sup>201</sup> In a collective or institutional context, this means that the state is to insure peace and accord between religious organizations of similar or differing traditions. The idea of peaceful coexistence, accord and mutual respect between different religious organizations is interpreted by the state through prohibition of proselytism or any other activity aimed at converting practitioners of one religion into another. A resolution passed by the Cabinet of Ministers in 2003 restricts the activities of non-governmental and faith-based organizations: the law

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<sup>199</sup> Law of Republic of Uzbekistan, "On Freedom of Conscience and Religious Organizations," 1998, Article 9.

<sup>200</sup> Ibid. Article 7.

<sup>201</sup> Ibid. Article 5.

prohibits any actions aimed at recruiting members of another religious tradition, as well as any other missionary activity. To this end, proselytism is prohibited by the state and punishable in various ways. For example, according to the Criminal Code, proselytism or other missionary activity is punishable by corrective labor or up to 3 years imprisonment.

However, according to the constitution of Uzbekistan, it is the “compulsory” imposition of religion or belief that is prohibited.<sup>202</sup> Both the Constitution and the law of Uzbekistan “On Freedom of Conscience and Religious Organizations” prohibit any compulsion or application of force in questions of religious identification. But on cases of voluntary interest in other religious traditions or voluntary change of one’s religious worldviews the factor of “compulsion” is not applicable. Nonetheless, by imposing a restriction on proselytism or missionary activity in which the use of force or compulsion is absent, the government is actually implementing judicial force against its citizens by restricting their ability to change religious identity. By imposing administrative and criminal punishments for proselytism, the government of Uzbekistan is forcing citizens to remain in a religious tradition they have previously chosen. Thus, the government’s imposition of religiosity on its citizens is in direct contradiction to constitutional provisions preserving the right of citizens to practice or abstain from religious practice altogether.

- *Violation of minority rights*

The aforementioned prohibition of cultural diversity, exchange and religious expression indirectly leads to a violation of the collective and individual rights of religious and ethnic minorities. The prohibition against proselytism and missionary activity, and restrictions on wearing religious clothing significantly limit the right of religious minorities to expression.

According to information provided by Forum 18, Gulchohra Norbaeva was dismissed from her teaching job because she insisted on wearing the hijab (Islamic headscarf). Three years later she is still being summoned on a regular basis to the police station where she is asked if she is “illegally” teaching the Koran. The police conduct regular searches in attempt to find prohibited religious literature. According to the police, Norbaeva, regardless of whether she wears a headscarf or not, has been placed on “preventive registration”. This allows the police to employ “preventive measures,” such as dismissal from one’s teaching position. In addition, police have resumed the search for Guldzhahon Kuzebaeva, a Protestant believer from southern Kashkadarya region, who has been in hiding since July 2014. Kuzebaeva is accused of proselytism because she talked with members of her family about her Christian faith. Kuzebaeva’s brother claimed that his sister is afraid of police brutality during interrogation, as well as the possibility of administrative arrest. The authorities in Uzbekistan often employ physical violence and torture or the threat of enforced disappearance.

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<sup>202</sup> Constitution of Uzbekistan, 1993, Chapter 7, Article 31; Law of Republic of Uzbekistan, “On Freedom of Conscience and Religious Organizations,” 1998, Article 3.

## Recommendations

Freedom of religion is a fundamental human right that cuts across all aspects of participation in social, political and cultural life. Trends in the multiculturalization and globalization of contemporary society leave almost no room for governmental neglect of the religious aspect of citizens' lives. Focusing on the Central Asian context, this report emphasized the main challenges and problems concerning religious freedom in the five, post-Soviet Central Asian states of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. On the basis of the presented research, authors suggest the following recommendations on approaching the situation within the context of religious rights in Central Asia and improving the protection of fundamental human rights in the region.

- *Take urgent measures against the reduction of individual freedoms in the religious sphere.*

Governments in Central Asia and all interested parties need to take urgent measures against the reduction of individual freedoms in the religious sphere. It is essential that the freedom of religion guaranteed by all the Constitutions of Central Asian countries is not limited solely to religious sentiments and outlook, but also makes it possible to individually and collectively "display, show, express, and promulgate" one's religious beliefs. (The word "manifest," as specified in international treaties, was inaccurately translated into Russian as "confess.") – No registration or any authorization from the government or other public institutions is necessary in order to express one's individual beliefs. It is up to the individual to satisfy his/her own ideological, including religious, needs without being a member or a participant of any organization. At the same time, it is essential that central Asian countries maintain complete freedom and provide opportunity for the collective implementation of its citizen's religious needs, as they are an integral part of most believers' lives.

- *Exclude religious divisions like "traditional" and "nontraditional" from legislation and public discourse.*

In exercising its powers the state must remain neutral towards any religion, faith or belief. The question concerning the use of the terms "conventional" or "unconventional" in the legal field and in church/state relations remains very controversial. This approach is in conflict with the provisions of article 26 of the International Covenant on Civil and Political Rights, which prohibits discrimination based upon religion and a guarantee of freedom. In addition, this division of religions into "traditional" and "nontraditional" has a negative impact on law enforcement and leads to the marginalization of religious minorities.

- *Adhere strictly to the principle of respect for the right of religious communities to autonomy in religious affairs within the context of church/state relations.*

Questions concerning the content of religious doctrine and practice, the structure and management of staff, religious education and upbringing, or religious mystery must remain the

prerogative of religious organizations. Restrictions of these rights should be strictly and clearly delineated in the legislation.

- *Reform religious and related legislation in order to eliminate discriminatory provisions*

Legislation on religion, as well as that related to it, must be brought in line with international standards. In all of the initiatives passed in recent years a clearly visible trend has appeared: Central Asian governments attempt to solve their problems by administrative means, which in and of itself is a daunting task for the government. Wishing to bring order to the religious sphere, government authorities tend to strengthen legislative restrictions, pressure and control, thereby so infringing upon the rights of believers that, at times, it would be better to call laws on religious freedom "laws on the lack of religious freedom," or "laws restricting the rights of believers." Unfortunately, as a result of this pressure and control, it is often the respectable and law-abiding citizens who suffer, and not those belonging to radical and extremist groups.

Controversial notions such as "spiritual security," "sect" and "proselytism" also need to be excluded from legislation. Restricting the rights of believers for reasons of "spiritual security" is completely unreasonable and inherently subjective. The word "sect" originally appeared in the religious lexicon in theological polemics. In recent times the word has migrated into the vocabulary of politicians and journalists, who often use it to make generalizations about religious trends they know nothing about.

In Russian, the term "sect" has historically carried a negative connotation. In the law of secular states its use is completely unacceptable since it is the state, willingly or unwillingly, that bears responsibility for determining "principal" and ancillary doctrine. Due to the word's negative emotional coloring, even many religious scholars avoid using the term, preferring instead notions such as "religious group," "religious organization," or "religious institutions."

Undoubtedly the problem of so-called "new religious movements" is acute, but legal regulations pertaining to them contain a large number of excesses and are often based on myths and stereotypes. Eileen Barker, a world-famous British sociologist and a leading expert on the phenomenon is convinced, in accordance with current recommendations by the Council of Europe, that

. . . it is unproductive to pass special laws on the NRM, or to punish entire groups of people on the basis of prejudices concerning "cults," or the bad behavior of individual followers. Instead, one needs to follow common criminal and civil law with respect to any individual convicted of illegal activities.<sup>203</sup>

- *Clarify and simplify the registration system for religious organizations*

An increase in the required number of founding members for a religious organization, up to 50, 200, 500, means that complicating the registration procedures in all Central Asian countries is actually discriminatory and, contrary to stated objectives, in fact a very ineffective tool for combating extremism. We need to remember that representatives of terrorist and extremist

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<sup>203</sup> T. Lindholm, K. Durema and B. Tahzib-li, *Svoboda relihii i ybezhdanii: osnovnye principy [Freedom to Religion and Belief: Foundational Principles]* R. Lunkin, T. Tomaeva, A. Aleksandrov, and N. Purtova, trans. Moscow: Institute of Religion and Law, Brigham Young University, 2010.

organizations, as a rule, are not in any way interested in registration, as they operate underground. As pertains to religion, membership numbers are not a determining factor in the conversation, as obviously, large extremist organizations exist. And establishing a high registration limit only constrains exactly those law-abiding citizens who want to remain within in the law. Due to the introduction of a complicated registration system, a great number of organizations have not been able to obtain legal status, while others groups, not wishing to force believers into a conflict with their conscience, simply refuse to register.

Countries with high limits on registration, for example, Austria and others in Europe, are often mentioned in the argument for stricter registration processes. At the same time, however, nothing is mentioned about the fact that, as a rule, there exists a multi-stage system of registration in these countries, and that in order to officially register a religious group one only needs a few founding members. A higher limitation on membership exists only in the second and third stages of registration, when it comes time for the government to grant subsidies or other privileges.

In the opinion of the authors of this report, the way out of the current situation is to maximally simplify the registration process, to designate clear registration criteria, and to also guarantee transparency in this process. This will provide the opportunity for anyone who wishes to register. Other laws will need to be passed to deal with extremist and terrorist groups. Obviously, the government's main intent should be to register religious communities in order to possess detailed information about religious groups in the country. If the registration threshold is too high, then a great number of religious organizations will find themselves outside of the law, and remain hidden from government eyes.

At the very least, a two-step registration system needs to be instituted. In this sense, registration should denote notification and not permission. Also, it is important to designate that a religious group may be registered without becoming a legal entity, that is, simply notify the state of its existence. The state will only benefit from this . . . and law-abiding religious organizations will be able to work within the law.

- *Create an effective system for defending the rights of believers.*

Government institutions must be responsible for defending their citizen's rights and freedoms. All institutions of state power, within the scope of their jurisdiction, must participate in guaranteeing these human rights and freedoms. In an instance where responsible parties do not provide necessary assistance, there should be a mechanism for lodging a complaint with higher-ranking authorities or in the courts. Also, the public should be informed of the possibility of appealing to international, human rights organizations.

- *Stop the persecution and marginalization of religious converts.*

Issues regarding the change of religious affiliation arise in many countries around the world as a result of missionary activity and ensuing conflicts between so-called "traditional" and "non-traditional" religious communities. But we need to remember that expressing one's opinions and performing charitable deeds is an essential part of the life and belief of any religious community. The "Universal Declaration of Human Rights" (UN General Assembly Resolution of 10 December 1948) states,



Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.<sup>204</sup>

Thus, state's actions that limit proselytism through discriminatory means or support of the interests of others are not in accord with internal standards on human rights.<sup>205</sup> In the meantime, neither charity, aggressive actions, intimidation, nor bribery, etc., should be used as tools for replenishing the ranks of the religious. Legal means for defending and counteracting both physical and psychological pressure on those who change their religious affiliation, forms of which include loss of family support, denial of burial in a family plot, or "hate speech," need to be worked out.

The legal and moral rights of Asian citizens of non-Islamic belief to be buried next to their ancestors must be defended. This issue is often a potential source of conflict in local communities. The only way to resolve this situation is by means of a political decision on a national and local level, and through a complex of measures that would include the development and implementation of clear procedures for citizens, the allocation of land in existing cemeteries or in other suitable places, and outreach to representatives of local authorities and the population. All of the measures mentioned above could help relieve pressure and protect the legitimate rights of citizens.

- *Stop the censorship of religious literature.*

Laws restricting the distribution of religious literature and other informational materials of a religious content, that restrict religious items only to religious buildings or specialized premises and shops, or laws that ban the distribution of religious literature that, upon theological examination by state committee, lack a "positive approval" - are a violation of international law and are actually a form of censorship, which is prohibited by the constitutions of Central Asian countries.

In this way, according to specialists, the government regards religious literature and religious objects as "dangerous," or for limited use in restricted areas only. Concern for a secular state or for national security and public order should not be accompanied by a disproportionate interference by the state in the implementation of the rights to freedom of conscience and religion, by limiting believers' rights, or by a violating the right to freedom of expression. These limitations obviously do not correspond to the principal of legal certainty and predictability, are unnecessary in a democratic society, and are disproportionate to any alleged threat.<sup>206</sup>

- *Create opportunities for the development of religious education and upbringing, and for the training and socialization of the clergy.*

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<sup>204</sup> *Universal Declaration of Human Rights*, 1948, Art. 18.

<sup>205</sup> T. Lindholm, K. Durema and B. Tahzib-li, *Svoboda religii i ybezhdanii: osnovnye principy [Freedom to Religion and Belief: Foundational Principles]*, R. Lunkin, T. Tomaeva, A. Aleksandrov, and N. Purtova, trans. Moscow: Institute of Religion and Law, Brigham Young University, 2010.

<sup>206</sup> United Nations, General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. Mission to Kazakhstan*, A/HRC/29/25/Add2, Human Rights Council, 29<sup>th</sup> Session, 19 - 27 January 2015.

There should be a balance between three elements in the discussion of religious education: the responsibility of states to ensure tolerance, respect for the interests of the child, and the rights of parents or guardians to educate their children in conformity with their religious and moral convictions.<sup>207</sup> The ban on home schooling that has been adopted in some countries in principle does not take into account the specifics of the current practice of religious education, and contradicts Article 14 of the Convention on the Rights of the Child: "State Parties shall respect the right of the child to freedom of thought, conscience and religion."<sup>208</sup>

Many believers prefer to educate their children at home, where relatives or others with experience serve as educators. Educational courses and programs for children may be organized not only by parents, but also by educational institutions and religious organizations in places where believers gather. These particularities should be taken into account in the legal regulation of religious education.

Recently, there has been active discussion in Central Asian countries over the introduction of legislation regarding licensing requirements for religious education. It is extremely important, however, to distinguish between professional and other types of education in this matter. The authors of this report are convinced that only secular disciplines should be licensed by secular authorities, and only in those cases when a religious educational institution issues diplomas in specialized secondary or higher education. Licensing of specific religious disciplines should be left up to the religious institutions themselves.

When drafting legislation regulating religious education it is essential to determine how secular, general educational courses that are governed by existing educational standards and curriculums will be combined with religious disciplines. It still remains debatable, however, whether governments should interfere in internal issues pertaining to religious educational institutions that have already registered with the state, unless they are teaching general educational subjects.

It is also necessary to determine exactly who will be responsible for religious education, a particular denomination or educational institution, although the first seems a more logical choice. Also, if we are talking about "religious educational standards," it will be necessary to clarify how and by whom these standards will be worked out, and how they will be correlated with existing secondary and higher educational norms. How authorities on religious affairs will make decisions regarding the religious component of school programs remains completely unclear.

When discussing issues pertaining to the standardization and licensing of religious education it is extremely important to put aside notions such as the enlightenment and spiritual upbringing of believers, and the professional education of clerics. The first concept refers to the worship service, meetings, communication, training, programs, lectures and seminars, which are carried out by religious organizations that consider themselves responsible for the moral and spiritual state of the faithful. And these forms of spiritual education should not and cannot be licensed. As

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<sup>207</sup> T. Lindholm, K. Durema and B. Tahzib-li, *Svoboda religii i ybezhdanii: osnovnye principy [Freedom to Religion and Belief: Foundational Principles]*, R. Lunkin, T. Tomaeva, A. Aleksandrov, and N. Purtova, trans. Moscow: Institute of Religion and Law, Brigham Young University, 2010.

<sup>208</sup> United Nations General Assembly, *Convention on the Rights of the Child*, Resolution 44/25, 20 November 1989, Article 14, Point 1.

a rule, religious organizations open special schools for the professional training of clergy, in which educational instruction is carried out according to spiritual disciplines and programs already accepted and agreed upon within the faith community.

When deciding to license professional education it is important to distinguish between cases where the religious institution only provides training in religious subjects solely on the basis of existing secular secondary and higher educational norms, and does not claim to issue diplomas from a specialized secondary or higher educational institution. In this case, the licensing of religious programs remains the sole prerogative of the various denominations. If a religious educational institution conducts courses according to existing, secular secondary and higher educational norms, both in religious and secular disciplines, and claims to issue diplomas from a specialized or higher educational institution, then, without a doubt, these secular disciplines must be licensed. If a religious educational institution on the basis of the existing secular (secondary and higher) education provides training, both in religious and in secular disciplines and pretends to issue diplomas of specialized secondary or higher education, of course, it is necessary to introduce licensing for secular programs disciplines. We believe that the religious component of the program is a matter of the confession's internal affairs.

It would seem a good idea to allow religious schools the opportunity to issue diplomas not only for a professional religious education, but also in an additional secular specialty in order to integrate the clergy better into society, and to enhance their authority. One problem, however, is that legislative rules on the exit of citizens abroad for religious educational purposes must be in accord with state authorities on religious and educational affairs. It is not clear according to what criteria the state will judge a school acceptable is still not clear.

- *End the practice of following and limiting missionary's rights.*

We consider it important to mention that, around the entire globe, missionaries are highly respected. Moved by their faith and wishing only to serve others, they travel to foreign lands providing aid. Conditions need to be created so that local and foreign missionaries operate legally, respect the local culture and are useful to religious communities and local fellowships. Registration procedures for missionaries need to be simplified; clear criteria for registration must be defined, and the transparency of the procedure ensured.

- *Avoid hate speech in the media.*

Journalists as well as photojournalists who report on religious topics must hold to the same professional rules and practices and to the same journalistic ethic as their colleagues who cover other areas. Journalists preparing material on any issue must know their topic, must understand what they are photographing, writing, or speaking about. Inaccuracies and mistakes, which any journalist may unwittingly commit while preparing material about religion or members of a certain religious organization or on topics relating to religion, are unacceptable and can even offend one or another group of people. And this group may have many members. Journalists, therefore, must be sensitive to believers' feelings, since what they believe in may be more important to them than life itself. Thus photographing, writing or speaking about religion means photographing, writing or speaking about a person's faith – the most subtle and psychologically complex component of human society.

- *Create opportunities for social partnership between the state and religious organizations.*

Charity and mercy are the essential elements in the religious life of many believers. The government should create opportunities for social partnership between the state and religious organizations. Mutual trust between denominations and in relation to the government is an evolving and dynamic process. Prerequisites for joint activity should include focused discussions with religious organizations regarding the role they can play in solving social problems,

Focused discussions with religious organizations concerning their role in solving social problems could serve as a prerequisite for joint activities, thus creating a precedent for partnership. Joint social activity shared by believers of different faiths could be a good way of getting acquainted, and thus learning to accept “the other” and how to live “together as equals in dignity.”<sup>209</sup> This could lessen the potential for conflict and encourage peacemaking. The government needs to rid itself of prejudice and fear of all things religious. And a huge task stands before religious leaders if they want to understand and rid themselves of myths about one another.

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The report is intended to draw attention to the human rights situation in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan in order to change the mechanisms for protecting human rights in these areas. The report aims to address a wide range of individuals and organizations interested in improving the situation with freedom to religion, expression, association and (to the religious dimension of) education in post-Soviet Central Asia, and to invite others to fruitful partnership with Mission Eurasia within the “**Religious Freedom Initiatives.**” Mission Eurasia is committed to (1) **raising awareness** among national and international leaders, policy- and decision-makers and community representatives about continued violations of the human rights to freedom of religion, expression, association and education, and unequal treatment of religious minorities in Central Asian states, (2) to **advocating** for the rights of oppressed and persecuted religious minorities in Central Asian states and (3) to **providing training** on national and international mechanisms of justice and protection of human rights to freedom to religion, expression, association and education.

**Mission Eurasia** invites national and international governmental institutions, decision and policy-makers, financial donors, human rights activists, community leaders, etc. to effective partnership in **Religious Freedom Initiatives.**

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<sup>209</sup> Council of Europe, *White Paper on Intercultural Dialogue “Living Together as Equals in Dignity”*, 118<sup>th</sup> Ministerial Session of the Ministers of Foreign Affairs, 07-05-2008, Strasbourg, France.



**Appendix A: Ratification Status of International Treaties<sup>210</sup>**

Treaty	Ratification Date, Accession(a), Succession(d) Date				
	KZ*	KG*	TJ*	TM*	UZ*
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	26-08-1998(a)	05-09-1997(a)	11-01-1995(a)	25-06-1999(a)	28-09-1995(a)
Optional Protocol of the Convention against Torture	22-10-2008	29-12-2008(a)	-----	-----	-----
International Covenant on Civil and Political Rights	24-01-2006	07-10-1994(a)	04-01-1999(a)	01-05-1997(a)	28-09-1995(a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolish the death penalty	-----	06-12-2010(a)	-----	11-01-2000(a)	23-12-2008(a)
Convention for the Protection of All Persons from Enforced Disappearance	27-02-2009(a)	-----	-----	-----	-----
Convention on the Elimination of All Forms of Discrimination against Women	26-08-1998(a)	10-02-1997(a)	26-10-1993(a)	01-05-1997(a)	19-07-1995(a)
International Convention on the Elimination of All Forms of Racial Discrimination	26-08-1998(a)	05-09-1997(a)	11-01-1995(a)	29-09-1994(a)	28-09-1995(a)
International Covenant on Economic, Social and Cultural Rights	24-01-2006	07-10-1994(a)	04-01-1999(a)	01-05-1997(a)	28-09-1995(a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	-----	29-09-2003(a)	08-01-2002	-----	-----
Convention on the Rights of the Child	12-08-1994	07-10-1994(a)	26-10-1993(a)	20-09-1993(a)	29-06-1994(a)
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	10-04-2003	13-08-2003(a)	05-08-2002(a)	29-04-2005(a)	23-12-2008(a)
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	24-08-2001	12-02-2003(a)	05-08-2002(a)	28-03-2005(a)	23-12-2008(a)
Convention on the Rights of Persons with Disabilities	21-04-2015	29-09-2011**	-----	04-09-2008(a)	27-12-2009**

<sup>210</sup> *Ratification Status*, Office of the United Nations High Commissioner for Human Rights, available online at <[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=189&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=189&Lang=EN)>

\* A two-letter system of country identification is used in the table in accordance with ISO and UN standards: Kazakhstan (KZ), Kyrgyzstan (KG), Tajikistan (TJ), Turkmenistan (TM), and Uzbekistan (UZ)

\*\*Signature date

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