

# KAZAKHSTAN

Kazakhstan is a sparsely-populated country in Central Asia with a population of approximately 17 million. More than 70% of the population is Muslim, mainly Sunni of the Hanafi School, 26.2% is Christian, mainly Russian Orthodox, and the rest is composed of other religious or belief minorities such as Jews and non-believers.

The country's ethnic composition is divided between two major groups: the Kazakhs (63.1% of the population, which are mostly Muslim) and Russians (23.7% which are mainly Christian). The Kazakhs became a distinct group in the 16<sup>th</sup> century, only to be dominated two hundred years later by the Russians. Kazakhstan became a part of the Russian Empire in the 19<sup>th</sup> century and then became the Kazakh Soviet Socialist Republic in 1936.

Kazakhstan was the last of the Soviet republics to declare its independence following the dissolution of the Soviet Union in 1991. Nursultan Nazarbayev has been the country's president since independence.

## **Protestant in Prison**

On 14<sup>th</sup> August 2015, **Yklas Kabduakasov**, an Adventist, was arrested by the National Security Committee (KNC) in Astana on charges of spreading incitement of social, national, class, racial, or religious discord (officially under Criminal Code Article 174, Part 2). He had discussed his faith and offered Christian books to others.

On 9<sup>th</sup> December 2015, Kabduakasov was sentenced to seven years of house arrest. On 28<sup>th</sup> December, the court increased the punishment to two years imprisonment in a labour camp.

## **Tablighi Jamaat Followers in Prison**

Tablighi Jamaat is a revivalist missionary movement within Islam, founded in India in the early twentieth century. The Tablighi Jamaat movement seeks to revitalise Muslims in their faith and encourage them to follow Islamic religious practices more vigorously. It does not use or advocate violence.

On 26<sup>th</sup> February 2013, a court in Astana banned Tablighi Jamaat as an 'extremist' organisation, although the court did not specify which of the movement's teachings were considered extremist.

The movement is also prohibited in Iran, Uzbekistan (2004), Tajikistan (2006), Turkmenistan, and Russia (2009).

On 26<sup>th</sup> February 2013, a court in Astana banned Tablighi Jamaat as an ‘extremist’ organisation. Even still, it is still popular throughout the country. Trials of people alleged to be part of Tablighi Jamaat have been typically shrouded in secrecy. The following followers of Tablighi Jamaat are known to be presently in prison or otherwise detained in Kazakhstan.

On 2<sup>nd</sup> December 2014, **M. Turashov**, was sentenced to three years imprisonment, under Criminal Code Article 337-1 Part 2.

On 19<sup>th</sup> December 2014, **Adi Bakyt, Bakitkali Konirbayev, and Samat Shadmanov** were arrested in Aktobe and charged under Criminal Code Article 405, Part 2, with taking part in Tablighi Jamaat. On 29<sup>th</sup> April 2015, Bakyt was sentenced to two years of restricted freedom.

On 11<sup>th</sup> February 2015, **S. Tulbayev** was arrested, and was sentenced to four years, eight months under Criminal Code Articles 405 Part 2, and 174 Part 1.

On 7<sup>th</sup> October 2015, **B. Serikov, A. Shakentayev and M. Shopenov**, were arrested. They were sentenced under Criminal Code Article 405 Part 1; Serikov and Shopenov to two years imprisonment and Shakentayev to thirty months.

On 18<sup>th</sup> November 2015, **Murat Takaumov** was arrested and is facing charges under Criminal Code Article 405 Part 2. On 2<sup>nd</sup> June 2016, an Astana court convicted him of Tablighi Jamaat membership and handed down a nine-month prison term. It also ordered him to pay court costs. On 20<sup>th</sup> July, Astana City Court rejected his appeal in his absence.

On 11<sup>th</sup> March 2015, **E. Dzhakayev and V. Surkhayev** were arrested for involvement with Tablighi Jamaat. Dzhakayev was sentenced to three years in prison under Criminal Code Article 405, Part 1 and 2, and Surkhayev was sentenced to one year three months under Criminal Code Article 405 Part 1.

On 29<sup>th</sup> September 2015, **Orazbek Apakashev** was arrested in the Karaganda Region and sentenced the same day to three years in prison for his involvement in the banned organization of Tablighi Jamaat.

The full list of documented cases of FoRB prisoners for each denomination is available on the USB key attached to this report and on our website: <http://hrwf.eu/forb/forb-and-blasphemy-prisoners-list/>.

## **Laws Used to Criminalize Religious Activities**

**Criminal Code Article 174 Part 1:** Incitement of social, national, clan, racial or religious hatred or antagonism with imprisonment of two to seven years or restricted freedom for the same period.<sup>1</sup>

**Criminal Code Article 174 Part 2:** Punishes incitement of social, national, clan, racial or religious discord by repeat offenders with prison terms of between five and ten years.<sup>2</sup>

**Criminal Code Article 337-1, Part 2:** Organizing or participating in the activity of a social or religious association or other organization after a court decision banning their activity or their liquidation in connection with extremism or terrorism they have carried out.

**Criminal Code Article 405, Part 1:** Organising the activity of a social or religious association or other organisation after a court decision banning their activity or their liquidation in connection with extremism or terrorism they have carried out with a fine or up to six years imprisonment.<sup>3</sup>

**Criminal Code Article 405, Part 2:** Participating in the activity of a social or religious association or other organisation after a court decision banning their activity or their liquidation in connection with extremism or terrorism they have carried out, resulting in possible fines or up to two years imprisonment.<sup>4</sup>

## **National Standards for Detention Conditions**

The Constitution of Kazakhstan specifies rights for prisoners and for those arrested in terms of their processing and the prohibition of torture:

Article 16:

2. Arrest and detention shall be allowed only in cases stipulated by law and with the sanction of a court with right of appeal of an arrested person. Without the sanction of a court, a person may be detained for a period no more than seventy-two hours.

3. Every person detained, arrested and accused of committing a crime shall have the right to the assistance of a defence lawyer (defender) from the moment of detention, arrest or accusation.

Article 17:

---

<sup>1</sup> <http://www.refworld.org/docid/56cffca04.html>Criminal

<sup>2</sup> <http://www.refworld.org/docid/561e004a4.html>

<sup>3</sup> [http://www.forum18.org/archive.php?article\\_id=2139](http://www.forum18.org/archive.php?article_id=2139)Criminal

<sup>4</sup> [http://www.forum18.org/archive.php?article\\_id=2139](http://www.forum18.org/archive.php?article_id=2139)

1. A person's dignity shall be inviolable.
2. No one must be subject to torture, violence or other treatment and punishment that is cruel or humiliating to human dignity.<sup>5</sup>

Subsequent to constitutional rights, the 1999 law entitled On Procedure and Conditions of Detention of Persons in the Special Institutions, Providing Temporary Isolation from Society (revised in 2010) affords prisoners with basic rights and living conditions. These include access to legal advice, due process, free and adequate meals, physical and mental health care, eight hours of sleep per night, one hour of walking every day, cell separation according to specific criteria, access to religious literature, freedom of religious practice, individual bed, and general sanitary facilities.<sup>6</sup>

From 2008-2012, Kazakhstan ratified a number of laws aimed at strengthening the rights of prisoners and to better comply with requirements of international law. The Act of 10<sup>th</sup> December 2009 seeks to improve the penal correction system, providing for different types of lock-ups within the same facility by guaranteeing strict segregation. The new arrangements would also better facilitate more regular visits to convicted persons. In addition, the Act establishes conditions for the social rehabilitation of persons released from places of detention and enhances the legal and social safety for staff of correctional centres.

Supreme Court Regulatory Decision No. 7 of 28<sup>th</sup> December 2009 creates the legal bases for criminal liability for the use of torture and improper exercise of authority, essentially applying already established norms of criminal law and criminal procedure law. The decision ensures that the three-hour time limit on the initial period of custody is respected, that an individual who is detained is handed over to an investigator without delay and that the decision to further detain someone after their initial custody is made within three hours of their arrest. The decision also clarifies the prohibition against torture to include not only officials of criminal prosecution bodies but also those of other bodies, such as government or military units.

Article 75 of the Code of Criminal Procedure guarantees victims' compensation for damage to property caused by offences, including torture, and the reimbursement of expenses incurred as a result of their participation in pre-trial investigations and trials, including lawyers' fees.

An extensive multi-year programme for developing Kazakhstan's correction system was reported complete in 2009. The plan calls for the rebuilding of four correctional institutions and two remand centres. Repairs were also carried out on 134 installations at forty-eight other facilities.

---

<sup>5</sup> [www.legislationline.org/download/action/.../Kazakh\\_Constitution\\_am\\_2011\\_en.pdf](http://www.legislationline.org/download/action/.../Kazakh_Constitution_am_2011_en.pdf)

<sup>6</sup> The Law of the Republic of Kazakhstan, 'On Procedure and Conditions of Detention of Persons in the Special Institutions, Providing Temporary Isolation from Society'. <http://adilet.zan.kz/eng/docs/Z990000353>

On 1 February 2010, the Procurator-General issued Order No. 7, which approved procedures for the verification of reports of the use of torture or other unlawful methods involving cruel treatment of people in detention. The Order assures the direct participation of a procurator in the investigation of reports of torture and other methods using cruel treatment.

Two Joint Orders were issued by the Kazakh government in 2010, one calling for the mandatory participation of forensic medical specialists in the examination of persons showing signs of bodily injury, the other ensuring cooperation between law enforcement agencies and civil society actors in the verification of such complaints and the criminal prosecution of these cases.

The Act of 18 January 2011 strengthened guarantees of fair treatment and legality in criminal proceedings.

In March 2012, the Ministry of Internal Affairs approved a number of measures related to the penal correction system, including rules governing visits to correctional institutions and those pertaining to the supervision of persons held in detention.

In the same month, Government Decision No. 400 issued a national mechanism to prevent torture and other cruel, inhuman, or degrading treatment. The bill calls for a system of regular visits to special facilities without any restrictions on the number or length of visits. Following the visits, reports on the institutions must be submitted, the content of which has to include recommendations for improvement in the institution and proposals on improving relevant legislation.

Order No. 93 of the Procurator-General of 13 August 2012, approved the pro-curatorial oversight for the enforcement of penalties, custody of persons in specialised facilities, and supervision of persons released from places of detention.

### **National and International Reports on Prison Conditions in Kazakhstan**

A 2013 government report declared great improvements in detention facilities and success in the implementation of programme reforms for the 2007-2009 period: better medical care, detention conditions, security mechanisms, better staff trainings for staff, and an improvement of overcrowding concerns.

The 2012-2015 programme calls for better staffing and equipment of health services as well as improved detention facilities and larger cell size. Kazakhstan has also initiated a project called ‘the duty procurator at the police station: guarantor of citizens’ rights,’ which works to protect the rights of citizens brought to correctional offices. The government reports that procurators are now present in criminal prosecution bodies and video recordings, surveillance, and electronic registration of all persons brought to such places are introduced. The responsibilities of

procurators under this project include ‘identifying violations of citizens’ rights by monitoring reports and video recordings; taking immediate action to stop such violations; releasing persons who are detained in or brought to the relevant premises unlawfully; in the event that cases of torture are identified, implementing urgent measures and forwarding the relevant materials for further investigation; and receiving complaints from the public.’

Other safety mechanisms, specifically targeting overcrowding issues, have reportedly been improved by the creation of new prisons and wings and separation of prisoners on the bases of sex, age, severity of offence, and whether or not they are repeated offenders. Overall, Kazakhstan reported that ‘the State is taking measures to reduce the number of persons held in institutions...and the number of convicted and remand prisoners has declined each year.’

Staff numbers of the penal corrections system have increased and employees have received improved trainings according to the report. These trainings include lectures, seminars, and courses for staff and prisoners themselves on proper conduct, relations, and rights.

Despite the extensive legal framework that has been put in place, multiple human rights NGOs have reported on the harsh prison conditions and use of torture in Kazakhstan’s correctional facilities.

**Open Dialogue** reported in January 2014 that torture is still widely used:

Torture in Kazakhstan is exerted both on detainees as a form of interrogation with the aim of obtaining confessions, and to prisoners in prisons and penal colonies. At the same time, the problem of torture has reached such proportions that even the authorities of the country can no longer completely turn a blind eye to it. Recently, the Prosecutor’s Office of Kazakhstan reported on criminal cases instituted against workers of law enforcement bodies and prisons. The reasons for instituting criminal investigations were incidents of the ill-treatment of detainees, criminal suspects and prisoners.

In recent years, the number of complaints of torture, as well as the number of criminal cases instituted with regard to alleged torture has increased in Kazakhstan. According to official data, in 2009, 14 statements on the use of torture were registered in Kazakhstan, in 2010 - 36 statements, 2011 - 52 statements, 2012 - 602 statements and during the first 5 months of 2013 - 304 statements were submitted. In 2009, three criminal cases were instituted in connection with torture in Kazakhstan, in 2010 - 10 cases, in 2011 - 15 cases, in 2012 - 18 cases and during the first 5 months of 2013 - 19 cases [1]. Within six months of 2013, the Kazakhstan Coalition of NGOs Against Torture received 201 complaints of torture and other forms of cruel treatment. Official statistics show that the number of criminal cases, instituted against law enforcement officers on charges of torture, is negligibly small compared to the number of statements on the use of torture. At the same

time, law enforcement officials and prison staff who exerted torture, do not face charges under Article 141, section 1 ('Torture') of the Criminal Code of the Republic of Kazakhstan (the CC of the RK), but under Article 308 ('Abuse of power and official authority')...

Despite the statements of witnesses and international observers on the shocking beating of prisoners, the government does not respond adequately to the reports of torture, and human rights organisations are not permitted to enter penal colonies. Due to the closed nature of the penitentiary system in Kazakhstan, it is almost impossible to effectively investigate the statements regarding ill-treatment, filed by prisoners.

**Amnesty International** issued a report in 2016 titled 'Dead End Justice: Impunity for Torture in Kazakhstan', which describes ongoing abuses in correctional facilities:

Of the hundreds of reports of torture that human rights organizations receive each year in Kazakhstan, just a handful ever lead to a conviction, indicating that impunity for torture and other ill-treatment by law enforcement officials remains commonplace in Kazakhstan's criminal justice system. Despite positive revisions to the Criminal Code and Criminal Procedure Code in the last four years, and the introduction of a new Criminal Code and Criminal Procedure Code in 2015, legal remedies available to victims of this gross human rights violation remain ineffective. The official complaints process, and the appeal procedures against inaction and failure to investigate acts of torture and other ill-treatment, are onerous and riddled with loopholes that allow perpetrators to evade justice. Public distrust of state institutions, including the justice system, and the lack of an effective victim and witness protection system, means that very few victims attempt to seek justice and reparations beyond the first official rejection of their complaint.

The failure to investigate effectively all allegations and bring every official responsible for, or complicit in, torture and other ill-treatment to justice flouts Kazakhstan's obligations under international human rights law. Crucially, it also undermines public confidence in the criminal justice system and people's trust in law enforcement services. From the point of view of those who have suffered torture and other ill-treatment and members of their families, the search for justice and reparation is an arduous, frustrating and often hopeless process, and for some it is also directly associated with further personal risks. As well captured by Roza Akylbekova, Director of The Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR), impunity for torture and other ill-treatment engenders amongst survivors of torture as well as the general public 'feelings of helplessness and intimidation'...

For all the difficulties in documenting and assessing the scale of a widely underreported phenomenon, there is little doubt that torture and ill-treatment remains a pervasive problem in Kazakhstan that is sustained by a prevailing culture of impunity. Piecemeal reforms over the last decade have failed to significantly chip away at this egregious human rights violation.

**The NGO Coalition against Torture in Kazakhstan** on 25<sup>th</sup> February 2016 published the ‘Follow-up to the United Nations Committee Against Torture’s Concluding Observations on Kazakhstan (CAT/C/SR.1286 and CAT/C/SR.1287),’ which analysed detention centres within the country:

Laws and policies concerning the state’s protection of human rights and prevention of torture and ill-treatment remain to be inconsistently implemented in practice...

Most allegations of torture and ill-treatment continue to be referred for preliminary investigation to the same department as that in which the persons accused of torture are employed...

Comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment by law enforcement, security and prison personnel, including in detention facilities is still absent...

Detention is seen as a tool of the investigative process or a means to compel prisoners to confess to the charges against them and thus amplifies the risk of torture and ill-treatment in such places...

The National Preventive Mechanism has not always been able to undertake ad hoc visits...[it] does not provide for visits to all places...[and] the findings and recommendations of the NPM are only made public in the form of an annual report that is subject to prior review and approval by the President...<sup>7</sup>

In 2014, the **United Nations Committee against Torture** issued a report on Kazakhstan that repeated what many of the NGOs have reported and also added that:

... while welcoming the reduction in the number of detained persons as a result of decriminalization of certain acts, release on parole, amnesties, presidential pardons and resort to non-custodial penalties, the Committee is concerned about the high number of persons in detention facilities. It is also concerned at the dilapidated infrastructure and poor material conditions in a number of remand facilities and penal correctional institutions which are not in conformity with international standards, such as poor quality and quantity of nutrition and inadequate health care, in particular regarding inmates with serious illnesses and infectious

---

<sup>7</sup>[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGS%2fKAZ%2f23418&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGS%2fKAZ%2f23418&Lang=en)

diseases such as tuberculosis and HIV/AIDS and their high mortality rate. The Committee is further concerned at reports that persons in detention have been held in solitary confinement for long periods and denied necessary medical care in retaliation for engaging in expression of opinions that are protected by human rights law.’<sup>8</sup>

## Conclusions

As with other former Soviet republics, religious freedom in Kazakhstan is limited. Rigid conditions for the registration of religious activities have made it impossible for many churches to operate legally. The impact of functioning as a non-registered entity is more readily felt by smaller religious minorities. State-sponsored discrimination often parallels that of society, falling hardest on ‘new Christians’: predominantly Protestant groups, missionaries, and converts whose evangelisation efforts are a perceived threat.

The generally decentralised and simple church structure of Protestant churches with presbyterian or congregationalist polities have contributed to their persistence - and even growth at times - in adverse environments. Such was the case for the proliferation of Baptist churches in the USSR. However, the same decentralisation can also place members of these churches at risk of repression.

The Kazakh authorities perceive the Tablighi Jamaat movement as a threat to national security and regularly crack down on its (alleged) members.<sup>9</sup> Due to the scarcely available information in each individual case, it is not easy to check the validity of the charges.

Despite the movement’s claims to being politically neutral and peaceful, it has not explicitly distanced itself from Islamist leaders that have promoted *jihad bi as-saif* (jihad through the sword) over *jihad bi an-nafs* (jihad through conscience), the ideology more commonly accepted by Tablighi Jamaat. The movement has therefore sometimes been regarded as a fertile recruiting ground for terrorist groups and violent activities.

---

<sup>8</sup> UN Committee Against Torture: Concluding observations on the third periodic report of Kazakhstan. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fKAZ%2fCO%2f3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fKAZ%2fCO%2f3&Lang=en)

<sup>9</sup> Political scientist Mumtaz Ahamd has written: ‘In fact, the Tablighi Jamaat detests politics and does not involve itself in any issues of socio-political importance.’