

# RELIGIOUS FREEDOM IN KAZAKHSTAN: FACING THE KAZAKHSTANI LAW ON RELIGIOUS ACTIVITIES AND RELIGIOUS ASSOCIATIONS

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## I. INTRODUCTION

Kazakhstan is a predominantly Muslim country. However, the Constitution of Kazakhstan has proclaimed that Kazakhstan is a secular state.<sup>1</sup> Article 14 of the Constitution states a guarantee that “no one shall be subject to any discrimination for reasons of. . . attitude towards religion.”<sup>2</sup> Freedom of conscience and freedom of forming associations are guaranteed in articles 22 and 23, and censorship is prohibited by article 20.<sup>3</sup>

However, on October 11, 2011, the President of Kazakhstan signed the Law on Religious Activity and Religious Associations (the Law), replacing the former law on religious freedom.<sup>4</sup> The Law has been criticized by international human rights activists and organizations as infringing religious freedom because it requires registration, restricts religious materials, and prohibits religious activities in public places.<sup>5</sup> For example, the United States Commission on International Religious Freedom (USCIRF) in its Annual Report for 2013 called the Law “repressive” and the cause of “a sharp drop in the number of registered religious groups in 2012.”<sup>6</sup> The USCIRF for the first time classified Kazakhstan as a tier-2 country.<sup>7</sup>

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<sup>1</sup> CONSTITUTION OF THE REPUBLIC OF KAZAKHSTAN, 1995, art. 1.

<sup>2</sup> *Id.* art. 14.

<sup>3</sup> *Id.* arts. 20, 22–23.

<sup>4</sup> Zakon Respubliki Kazakhstan o Religioznoi Deiatel'nosti i Religioznykh Obieedineniakh [The Law of the Republic of Kazakhstan on Religious Activity and Religious Associations] (Oct. 11, 2011), art. 3, § 11, *available at* [http://online.zakon.kz/Document/?doc\\_id=31067690](http://online.zakon.kz/Document/?doc_id=31067690) [hereinafter the Law].

<sup>5</sup> *Id.* arts. 7–9, 15.

<sup>6</sup> *United States Commission on International Religious Freedom Annual Report 2013*, U.S. COMMISSION ON INT'L RELIGIOUS FREEDOM, 243–44 (Apr. 2013), [http://www.uscirf.gov/sites/default/files/resources/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/sites/default/files/resources/2013%20USCIRF%20Annual%20Report%20(2).pdf) [hereinafter *USCIRF Annual Report 2013*].

<sup>7</sup> *Id.* at 242. To be placed on Tier-2, USCIRF must find that the violations of religious freedom are increasing, particularly severe, and at least one of three elements of the “systematic, ongoing, egregious” standard is met. *Id.* at 3.

The Director of the Organization for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), Ambassador Janez Lenarčič, expressed concern about the Law saying, "[t]he law appears to unnecessarily restrict the freedom of religion or belief and is poised to limit the exercise of this freedom in Kazakhstan."<sup>8</sup>

The criticism of the Law is not baseless. A sharp drop in the number of registered religious groups took place after the new religious law went into effect.<sup>9</sup> The official statistics depict the drop as approximately one third.<sup>10</sup> By October 2012, when a year-long re-registration period ended, the number of registered religious organizations fell from 4,551 to 3,088 religious communities, from forty-six to seventeen religious confessions, and from twenty-eight to thirteen religious educational institutions.<sup>11</sup>

Kayrat Lama-Sharif, the then head of the Agency for Religious Affairs of the Republic of Kazakhstan (ARARK), said that among 666 protestant Christian groups, 462 could not re-register, meaning that 69% of them were closed.<sup>12</sup> He explained the drop by claiming that many of the previously registered groups existed on paper, but not in fact.<sup>13</sup>

Lama-Sharif's statement that the drop was caused by the closure of non-existent associations is disputable, as discussed later in this article. The requirements of the Law did influence the drop in the number of registered Christian communities as well as other aspects of religious freedom; but it must be noted that this article is not intended to focus on how to "argue" with the lawmakers. Rather, the goal of this research is to give an overview of the Law's impact on Christian activities in Kazakhstan as well as suggestions for how Christians can legally work within the framework of the Law.

There are three major spheres that were affected by the Law: (1) the registration of religious associations and missionaries; (2) restrictions on

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<sup>8</sup> Thomas Rymer, *OSCE Human Rights Chief Expresses Concern over Restrictions in Kazakhstan's New Religion Law*, OSCE (Sept. 29, 2011), <http://www.osce.org/odihr/83191>.

<sup>9</sup> *Chislo Religioznykh Obieedinenii v RK Sokratilos' na 32% Posle Pereregistratsii – Lama Sharif [The Number of Religious Associations in RK Has Decreased for 32% After the Re-registration – Lama Sharif]*, NOVOSTI-KAZAKHSTAN, AGENTSTVO MEZHDUNARODNOI INVORMATSII [NEWS-KAZAKHSTAN, AGENCY OF INT'L INFO.] (Oct. 25, 2012), <http://newskaz.ru/society/20121025/4179139.html> [hereinafter News-Kazakhstan].

<sup>10</sup> *Id.*

<sup>11</sup> *V Kazakhstane Podschitali Kolichestvo Religioznykh Obieedinenii [The Number of Religious Associations Was Counted in Kazakhstan]*, NOVOSTI GAZETA.KZ (May 15, 2013, 2:34 PM), <http://news.gazeta.kz/news/v-kazakhstane-podschitali-kolichestvo-religioznykh-obiedinenijj-newsID381077.html>.

<sup>12</sup> NEWS-KAZAKHSTAN, *supra* note 9.

<sup>13</sup> Dimmukhammed Kalikulov, *Kazakhstan Uslozhniaet Registratsiiu Religioznykh Grupp [Kazakhstan Makes Registration of Religious Groups More Complicated]*, BBC RUSSKAIA SLUZHBA [BBC RUSSIAN SERVICE] (Sept. 29, 2011, 7:33 PM), [http://www.bbc.co.uk/russian/international/2011/09/110929\\_religious\\_law\\_kazakhstan](http://www.bbc.co.uk/russian/international/2011/09/110929_religious_law_kazakhstan).

the use of religious literature and other religious materials; and (3) the places and mode of religious activities. These three spheres will be discussed below.

## II. REGISTRATION

### A. *The Requirement of a Minimum Number of Founders*

The first step to start with is registration. Religious activities of non-registered associations are prohibited.<sup>14</sup> All emerging communities must be registered, and all existing communities were required to re-register within one year from the enactment of the Law.<sup>15</sup> The communities that failed to re-register within one year were to be liquidated through the court.<sup>16</sup>

The requirement of registration is not something new. The old 1992 law also required registration, but the Law took it one step further; it included a more detailed description of required documents<sup>17</sup> and increased the minimum number of founding members.<sup>18</sup> The new minimum number is now fifty members in order to be eligible for the registration of a local association,<sup>19</sup> 500 members are required for the registration of a regional association, and 5,000 members are required for the registration of a national association.<sup>20</sup>

According to the USCIRF, religious groups have described the re-registration process as “complex,” “burdensome,” “arbitrary,” “unnecessary,” and “expensive.”<sup>21</sup> Lama-Sharif, the head of ARARK at the time of the Law’s implementation, said that the Law treats all religions

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<sup>14</sup> Zakon Respubliki Kazakhstan o Religioznoi Deiatel’nosti i Religioznykh Obiedineniiaakh [The Law of the Republic of Kazakhstan on Religious Activity and Religious Associations] (Oct. 11, 2011), art. 3, § 11, *available at* [http://online.zakon.kz/Document/?doc\\_id=31067690](http://online.zakon.kz/Document/?doc_id=31067690) [hereinafter the Law].

<sup>15</sup> *Id.* art. 24, § 2.

<sup>16</sup> *Id.* art. 24, § 3.

<sup>17</sup> *Id.* art. 15, § 3 (stating seven documents required for the registration of religious association: (1) bylaws of the religious association signed by the leader of the association; (2) minutes of the initial meeting, (3) the list of the founding members; (4) a confirmation of the association’s location, (5) religious materials about the history and theological features of the denomination, including the description of its religious activities; (6) registration fee; and (7) decision on the election of a leader or approval of the appointment by the ARARK if the leader was appointed by a foreign religious center).

<sup>18</sup> *Id.*; *cf.* Zakon Respubliki Kazakhstan o Svobode Veroinspovedaniia i Religioznykh Obiedineniiaakh [Law of the Republic of Kazakhstan on Religious Freedom and Religious Associations] (Jan. 15, 1992), art. 9, *available at* <http://www.pavlodar.com/zakon/?dok=00160&al=all> [hereinafter Religious Freedom and Association Law]. Compared to the old law’s requirement of only ten founding members, the Law’s minimum number is fifty adult members.

<sup>19</sup> The Law, *supra* note 14, art. 12, § 2.

<sup>20</sup> *Id.* art. 12, §§ 3–4.

<sup>21</sup> USCIRF *Annual Report 2013*, *supra* note 6, at 244.

evenly and emphasizes the “secular character of the State.”<sup>22</sup> It is true that the Law sets a high threshold of registration for all religions, be it Islam, Christianity, Judaism, or Hinduism. However, the impact of the Law draws a vivid line between those groups that are stronger in number and the minorities, as is obvious from the statistics.

Ninel Fokina, the head of the Helsinki Committee in Almaty, a nongovernmental human rights organization and member of International Helsinki Federation for Human Rights, commented on the Law stating, “[a]ll will be affected, but especially minorities like Catholics, Lutherans, and Jews. It will be difficult for them to gather fifty people for the registration.”<sup>23</sup> The statistics speak for themselves. According to ARARK’s official web site, as of January 1, 2015, there were 3,514 registered religious organizations of eighteen confessions.<sup>24</sup> This number is almost one third less than the number before the Law was enacted (4,551 associations of forty-six confessions).<sup>25</sup> As the table below shows, Pentecostals, Baptists, Presbyterians, Lutherans, the New Apostolic Church, Baha’i, Judaism, Buddhism, and Mennonites dropped in number by a rate more than half after the re-registration deadline (those confessions are highlighted in the chart below).

Table 1: Religious Organizations in the Republic of Kazakhstan<sup>26</sup>

No	Confessions	As of Jan. 1, 2011	As of Oct. 25, 2012	As of Jan. 1, 2014
1	Islam	2,811	2,229	2,367
2	Orthodoxy	304	280	293
3	Pentecals	400	189	230

<sup>22</sup> Kalikulov, *supra* note 13.

<sup>23</sup> *See id.*

<sup>24</sup> *Religious Associations*, COMMITTEE FOR RELIGIOUS AFF. OF THE MINISTRY OF CULTURE AND SPORT 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) (last visited Mar. 18, 2015).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

4	Evangelical Christians-Baptists	364	100	185
5	Catholics	118	79	84
6	Jehovah's Witnesses	70	59	60
7	Presbyterians	229	55	92
8	Seventh-Day Adventists	67	42	42
9	Lutherans	32	13	13
10	Methodists	18	11	12
11	The New Apostolic Church	47	8	25
12	Krishnaitis	14	8	9
13	Baha'i	20	6	6
14	Judaism	26	4	7
15	Buddhism	4	2	2

16	Church of Jesus Christ of Latter-Day Saints (Mormons)	1	2	2
17	Mennonites	6	1	4
18	Moon's Unification Church (Moonies)	-	-	1
	<b>TOTAL</b>	<b>4,551</b>	<b>3,088</b>	<b>3,434</b>

As stated in the introduction, Lama-Sharif, the former head of ARARK, explained the drop by reasoning that many of the previously registered groups existed only on paper, but not in fact.<sup>27</sup> However, the requirement of at least fifty members as a prerequisite for registration has apparently played a significant role in the post re-registration statistics.<sup>28</sup> The imposition of this restriction favors associations that are strong in numbers, and at the same time makes the registration of new associations difficult.

To give an illustration, a usual way of planting churches is a “pioneer model”<sup>29</sup> where a church is started as a small independent gathering of five to ten people or as a house church and then it grows in number. In view of the minimum fifty founders requirement, this kind of church planting method is strongly disfavored and greatly inhibited.

Nonetheless, there are some ways to overcome such difficulties. For example, one of the approaches could be an “adoption model”<sup>30</sup> where a small gathering of less than fifty adult members is held under the name of an already registered church. The registered church in this way would have full responsibility for all religious activities of the “adopted” smaller community. Additionally, the plant church’s property or premises would

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<sup>27</sup> Kalikulov, *supra* note 13.

<sup>28</sup> *Id.*

<sup>29</sup> The term “pioneer model” here is used purely for the purpose of convenience, not in a missiological context.

<sup>30</sup> The term “adoption model” here is used purely for the purpose of convenience, not in a missiological context.

need to be registered under the name of the “adopting” church because the Law requires religious activities to be held only in such places.<sup>31</sup>

Another avenue for church planting would be to focus on family units keeping religious activities in the form and within the boundaries of family affairs. Kazakhstan Constitution article 27 puts marriage and family under the protection of the State.<sup>32</sup> The International Covenant on Civil and Political Rights, ratified by Kazakhstan,<sup>33</sup> in article 18 section 4 states that State Parties must have respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.<sup>34</sup> Article 2 of the Code of the Republic of Kazakhstan on Marriage and Family states that interference with family affairs is impermissible.<sup>35</sup>

The above listed laws guarantee that if family members choose to believe in Christ, the State cannot interfere with their right to have family worship and teach their children the Bible. To put it simply, the State protection of family produces in some sense a “side-effect” protection of family religious activities. However, one of the difficulties in this family centered approach is that only family members can enjoy this privilege. Once a non-family member joins the worship, it can be a violation of the Law unless the non-family member is a registered missionary.<sup>36</sup> It follows that this approach will require a registered missionary who would work with each family separately, and only when there will be enough families to form a church, will the missionary be able to gather them together. Unfortunately, before that point, the families may not gather together for unified worship.

Another potential way of planting churches in Kazakhstan is the “grow and multiply” approach where a registered church grows up to 100 or more members and then creates two new churches in the place of the old one.<sup>37</sup> This model, however, works only when there is already a registered church. The downside of this model is that it requires more work with legal formalities (e.g. liquidation of the old church and registration of the two new ones).

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<sup>31</sup> The Law, *supra* note 14, art. 7, § 2.

<sup>32</sup> CONSTITUTION OF THE REPUBLIC OF KAZAKHSTAN, art. 27.

<sup>33</sup> *Chapter IV Human Rights*, UNITED NATIONS TREATY COLLECTION (Mar. 13, 2015), [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (listing that Kazakhstan signed the International Covenant on Civil and Political Rights on Dec. 2, 2003 and ratified it on Jan. 24, 2006).

<sup>34</sup> International Covenant on Civil and Political Rights art. 18, §1, *adopted* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

<sup>35</sup> The Code of the Republic of Kazakhstan on Marriage and Family (Dec. 26, 2011), art. 2, § 2(4), *available at* [http://online.zakon.kz/Document/?doc\\_id=31583872](http://online.zakon.kz/Document/?doc_id=31583872).

<sup>36</sup> Registration of missionaries will be discussed in part C *infra*.

<sup>37</sup> OM INTERNATIONAL, *A Baby Brings Breakthrough*, OM (Aug. 9, 2011), <http://news.om.org/country-article/r27748>.

The above methods or even a combination of them can be used for church planting in Kazakhstan, but it is important to remember that although the methods need to be changed in view of the new requirements, the essence and the power of the Gospel remains unchanged. Although the minimum requirement of fifty founding members has had a substantial impact on the number of registered religious associations in Kazakhstan, Christians in Kazakhstan should apply new approaches. According to one pastor in Kazakhstan, even though it does not appear that the situation inhibiting church planting will improve, churches need to change their methods where possible to overcome these difficulties.<sup>38</sup>

### *B. Choosing an Organizational Form*

A religious association can be registered only in one of the permitted organizational forms, i.e. in the form of a religious association or a religious educational institution.<sup>39</sup> It follows that Christians cannot be involved in religious activities if the activities are held under the name of a business entity, corporation, or non-profit organization. However, this does not mean that Christians are prohibited from founding schools, NGOs, or LLCs. The restrictions concern only the contents of the activities. As long as the activities are not religious, Christians are free to found non-religious entities. It is then important to understand what religious activities include.

Religious activity is defined in article 1 of the Law as an “activity directed to satisfy the religious needs of believers.”<sup>40</sup> What religious needs include is not defined by the Law, but article 10 implies that religious needs do not necessarily include charity. Per article 10, religious associations may establish charity organizations, however, with the restriction that associations should not use material neediness of other people to coerce them into religious activities.<sup>41</sup> It follows that if an NGO gives charity without coercing the recipients to go to Sunday worship, it is not a religious activity, and the charity is not given for religious needs.

This opens a question of how far Christians can go in their expression of beliefs when they minister through charity, education, business, counseling, or social work in rehabilitation centers or orphanages. Can a Christian doctor pray at his hospital? Can Christians open schools or colleges with mandatory chapel in the curriculum? Can Christians invite people to church during or through an activity of a non-profit organization?

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<sup>38</sup> Interview with the pastor via Skype (the name of the pastor and his church are not disclosed at the request of the interviewee) (June 5, 2014).

<sup>39</sup> The Law, *supra* note 14, art. 13, § 4.

<sup>40</sup> *See id.* art. 1, § 2.

<sup>41</sup> *See id.* art. 10, § 1.



The Constitution of the Republic of Kazakhstan article 19 states that every person has the right “to determine and indicate or not to indicate” his religious affiliation.<sup>42</sup> The International Covenant on Civil and Political Rights states in article 18 that, “[e]veryone shall have the right to freedom of . . . religion. This right shall include freedom . . . either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”<sup>43</sup> Based on these international and Constitutional norms, any Christian has the right to express his or her *personal* belief in Christ as Savior in the course of social work, casual talk, or as an answer to a question.

It is important to note, though, that this freedom is a personal one, and it can be restricted by law.<sup>44</sup> According to the Administrative Offences Code of the Republic of Kazakhstan article 375 section 1, violation of the Law concerning charitable activities entails a fine.<sup>45</sup> It follows that if a Christian charity organization distributes clothes or food to people in need with the primary purpose to coerce them into going to church, it may expose Christians to a fine in the amount of approximately US\$500.<sup>46</sup> For leaders of religious groups the amount is double,<sup>47</sup> and for legal entities the amount is approximately US\$2000<sup>48</sup> and the suspension of operations for a period of three months.<sup>49</sup>

The line between one’s right to manifest religion or belief “in worship, observance, practice, and teaching”<sup>50</sup> on one hand, and the restriction on coercion of others into religious activities<sup>51</sup> on the other hand can be hard to draw. What is clear, is that if an expression of a belief is a purely personal matter, a person is free to manifest it. A Christian may invite people to church whom he met in the course of his work in a charity organization. He may also talk about his personal beliefs. However, if he

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<sup>42</sup> CONSTITUTION OF THE REPUBLIC OF KAZAKHSTAN, art. 19.

<sup>43</sup> ICCPR, *supra* note 34, art. 18, § 1.

<sup>44</sup> *See id.* art. 18, § 3.

<sup>45</sup> Administrative Offences Code of the Republic of Kazakhstan (Jan. 30, 2001), art. 375, § 1, available at <http://adilet.zan.kz/eng/docs/K010000155>.

<sup>46</sup> *Svedeniia o Minimal’noi Zarabotnoi Plate, MRP i Prozhitochnom Minimume (na 1995-2015 gody)* [A Chart of Minimum Wage, MCI, and Living Wage (as to 1995–2015 years)], ONLINE.ZAKON.KZ, [http://online.zakon.kz/Document/?doc\\_id=1026672](http://online.zakon.kz/Document/?doc_id=1026672) (last visited Mar. 15, 2015) [hereinafter *Chart of Minimum Wage*] (stating that per Law “on Republican Budget for 2015–2017 year” (Nov. 28, 2014), one monthly calculation index in 2014 is 1,982 Kazakhstani tenges which is approximately US\$10. Therefore, fifty monthly calculation indexes is US\$500).

<sup>47</sup> *See id.* (One hundred monthly calculation indexes is approximately US\$1000).

<sup>48</sup> *See id.* (Two hundred monthly calculation indexes is approximately US\$2000).

<sup>49</sup> Administrative Offences Code of the Republic of Kazakhstan, art. 375.

<sup>50</sup> ICCPR, *supra* note 34, art. 18, § 1.

<sup>51</sup> The Law, *supra* note 14, art. 10, § 1.

gives charity on the condition that a recipient will go to church, this person and the charity organization could be fined.

As with charity organizations, it can be said that any other Christian entity, be it a counseling center, a non-profit organization, or a rehabilitation center, can be engaged in its activities as long as the manifestation of Christian faith stays within the boundaries of personal belief.

For example, a doctor in a hospital has the right to pray, but he cannot pray in a way that would imply that he is inducing others to pray with him or that he is acting on behalf of the hospital. To exercise his religious freedom without these restrictions, a doctor should go to a registered church or a religious educational institution.

It should be noted that educational institutions such as orphanages, schools, colleges, and universities are explicitly excluded from the allowed places of worship.<sup>52</sup> While it is possible to establish Christian schools or orphanages, it is not permissible to have religious activities in such institutions unless the educational institution is a “religious organization of education.”<sup>53</sup> The Law of the Republic of Kazakhstan on Education article 1 subsection 52 defines “religious organization of education” as an institution which implements vocational education programs (profession-oriented curriculums) for preparing clergy ministers.<sup>54</sup> Therefore, if an educational institution does not prepare professional clergy, no worship can be held there, especially a mandatory chapel.

According to the official statistics, as of July 1, 2013 there were fourteen registered religious educational institutions in Kazakhstan, twelve of which were Muslim, one was Catholic, and one was Christian Orthodox.<sup>55</sup> Looking at this proportion, it is of great importance to have religious training of indigenous leaders, especially as the Law puts restrictions on the foreign religious presence in Kazakhstan.

### *C. Leadership from Abroad and Registration of Missionaries*

Another important matter that should be mentioned here is the impact of the Law on foreign missionary activities in Kazakhstan. There are two major tools provided by the Law to oversee foreign missionary

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<sup>52</sup> *Id.* art. 7, § 3(3).

<sup>53</sup> Law of the Republic of Kazakhstan on Education (July 27, 2007), art. 1, § 52, available at [http://www.iqaa.kz/documents/law\\_of\\_education](http://www.iqaa.kz/documents/law_of_education).

<sup>54</sup> *Id.* art. 1, § 52.

<sup>55</sup> *Deiatel'nost' Dukhovnykh Uchebnykh Zavedenii* [Activity of Religious Educational Institutions], OFITSIAL'NYI INTERNET-RESURS AGENTSTVA RESPUBLIKI KAZAKHSTAN PO DELAM RELIGII [OFFICIAL INTERNET RESOURCE OF THE AGENCY OF THE REPUBLIC OF KAZAKHSTAN FOR RELIGIOUS AFF.] (Sept. 16, 2013), available at [http://www.din.gov.kz/rus/deyatelnost\\_agentstva/deyatelnost\\_duxovnyx\\_uchebnyx/?cid=0&rid=1188](http://www.din.gov.kz/rus/deyatelnost_agentstva/deyatelnost_duxovnyx_uchebnyx/?cid=0&rid=1188) [hereinafter *Activity of Religious Educational Institutions*].

activities: approval of religious leader candidates by ARARK and mandatory registration of missionaries.

The provision for the approval of religious leader candidates is provided in the Constitution of Kazakhstan. Article 5 section 5 of the Constitution says that appointment of heads of religious associations by foreign religious centers “shall be carried out in coordination with the respective state institutions of the Republic.”<sup>56</sup> The Law repeats this provision;<sup>57</sup> and the Administrative Offences Code of the Republic of Kazakhstan states that leadership without the abovementioned approval entails a fine on citizens of the Republic of Kazakhstan in the amount of US\$500,<sup>58</sup> and on foreigners and stateless persons in the same amount as well as administrative deportation from the Republic.<sup>59</sup>

The requirement of ARARK’s approval by itself should not constitute a significant hindrance to the work of foreign missions since the approval once obtained is valid for the entire term of appointment until the head of the religious association stops being the head. What needs more careful attention is the second tool, i.e. the mandatory registration of missionaries.

To be allowed to do missionary activities a person must first be registered<sup>60</sup> with the local administrative bodies.<sup>61</sup> The registration must be renewed on a yearly basis.<sup>62</sup> Failure to register or re-register is punishable by a fine in the amount of US\$1000<sup>63</sup> or even deportation from the Republic of Kazakhstan.<sup>64</sup> It is important, then, to know when

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<sup>56</sup> CONSTITUTION OF THE REPUBLIC OF KAZAKHSTAN, art. 5.

<sup>57</sup> The Law, *supra* note 14, art. 4, § 8.

<sup>58</sup> *Chart of Minimum Wage*, *supra* note 46.

<sup>59</sup> Administrative Offences Code of the Republic of Kazakhstan, art. 375, § 7.

<sup>60</sup> The Law, *supra* note 14, art. 8, § 4 (stating that for the registration as a missionary Kazakhstan citizens must submit five documents to local administrative bodies: (1) a photocopy of passport or ID; (2) an application indicating period and area of the planned missionary activities; (3) documents indicating that the person is permitted by the sending religious organization to do missionary activities; (4) state registration certificate and a copy of the bylaws of the sending religious organization; and (5) religious literature and other information or materials that will be used in the missionary activities. If an applicant is a foreigner or a person without citizenship, the Law additionally requires for the registration as a missionary: (1) an approved or apostilled confirmation that the sending religious organization is officially registered according to the laws of the foreign state; and (2) an invitation from a religious association registered in Kazakhstan).

<sup>61</sup> *Id.* art. 8, § 1.

<sup>62</sup> *Id.* art. 8, § 3.

<sup>63</sup> *Chart of Minimum Wage*, *supra* note 46.

<sup>64</sup> Administrative Offences Code of the Republic of Kazakhstan art. 375, § 3 (stating that implementation of missionary activities without registration (re-registration), as well as the use by the missionaries of religious literature, informational materials of religious content, and religious items without a positive conclusion of religious examination entail a fine of citizens of the Republic of Kazakhstan in the amount of one hundred monthly calculation indexes—for foreigners and stateless persons in the amount of one hundred

the mandatory registration is triggered. For this reason, the definition of missionary activity requires closer attention.

Missionary activity is defined in the Law as the “activity of *citizens* of the Republic of Kazakhstan, *foreigners* and *stateless persons*, on behalf of religious associations registered in the Republic of Kazakhstan and directed on the *spreading* of the *teaching in the territory* of the Republic of Kazakhstan.”<sup>65</sup> Five elements can be found in this definition: (1) citizen, foreigner, or stateless person, (2) spreading, (3) teaching, (4) in the territory of Kazakhstan, and (5) on behalf of a registered religious association. All of them must be present in order to trigger the requirement of mandatory registration.

It is proper here to briefly address each of the elements. First, as is evident from the definition, the term “missionary” is used in a broad sense. It includes not only foreigners but also citizens of Kazakhstan and stateless persons. Any Christian can be a potential “missionary” in the meaning of the Law.

The second element is “spreading.” Although the Law is silent about what “spreading” may include, it can be implied from the words “on behalf of religious associations” that the target of the “spreading” must be a non-member of the religious association, and a missionary conveys to that person certain information.

Third, the contents of conveyed information should be that of “teaching.” It is important to distinguish “teachings” from simple invitations to church. For instance, if inviting someone to church does not involve sharing of Christian beliefs, then it is not a missionary activity. Such phrases as “please, come to church,” or “we invite you to a Christian seminar on marriage” do not include “teachings.”<sup>66</sup> However, if a person gives to an invitee a booklet with verses from the Scripture in it, this will likely be a “teaching” within the meaning of missionary activity.

Fourth, the spreading must take place in the territory of Kazakhstan. The fifth and the most significant element is “on behalf of a registered religious association.” This element can potentially become a stumbling block for missionaries who want to come to Kazakhstan from abroad. To enter Kazakhstan, they will need an invitation from a registered church or religious educational institution.<sup>67</sup> This means that foreign

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monthly calculation indexes—to administrative deportation from the Republic of Kazakhstan).

<sup>65</sup> The Law, *supra* note 14, art. 1, § 5 (emphasis added).

<sup>66</sup> *Missionerskaia Deiatel'nost'* [Missionary Activity], OFITSIAL'NYI INTERNET-RESURS AGENTSTVA RESPUBLIKI KAZAKHSTAN PO DELAM RELIGII [OFFICIAL INTERNET-RESOURCE OF THE AGENCY OF THE REPUBLIC OF KAZAKHSTAN FOR RELIGIOUS AFF.] (May 19, 2014), [http://www.din.gov.kz/rus/rabota\\_s\\_naseleniem/voprosy\\_i\\_otvety/?cid=14](http://www.din.gov.kz/rus/rabota_s_naseleniem/voprosy_i_otvety/?cid=14).

<sup>67</sup> *Pravila Vydachi Viz Respubliki Kazakhstan, a Takzhe Prodleniia i Sokrashcheniia Srokov Ikh Deistviia* [Rules of Issuance of the Visas of the Republic of Kazakhstan and

missionaries must have a prior connection with an already existing church in Kazakhstan. To put it simply, if a foreigner wants to spread the Gospel in the territory of Kazakhstan, he can do it only as a guest, not as a pioneer. Not only that, but the period of sojourn for holders of missionary visas (“E1,” “E2,” and “E3”) is relatively short. According to the new visa rules, missionary visas are issued for up to 180 days and can be extended for another 180 days.<sup>68</sup>

The short period of sojourn and the complicated process of obtaining missionary visas were criticized by Forum 18, a Norwegian human rights organization.<sup>69</sup> Forum 18 refers to the right to “worship, observance, practice and teaching” as stated in the International Covenant on Civil and Political Rights, and to the fact that this right belongs to everyone including foreigners and stateless persons.<sup>70</sup>

According to Forum 18 News Service, there have been several cases where foreign pastors were deported or refused a visa extension. For example, Kim U Sob, who led the Love Presbyterian Church in the southern town of Kyzyl-Orda, was held liable for “missionary work without registration,” and subsequently was refused an extension on his visa, forcing him to leave the country.<sup>71</sup> Another example is Baptist pastor Viktor Lim who was ordered to leave the country for illegal missionary activity in a registered church.<sup>72</sup>

It must be noted that the requirement of registration and yearly re-registration existed even in the old law,<sup>73</sup> but the change in the visa issuance policy and the increasing number of cases like those described above show that the change can be sensed more and more.

All the restrictions such as limited period of sojourn, the complicated application process, mandatory approval by ARARK of candidate leaders of religious associations, and the requirement of annual re-registration show that the overall attitude toward foreign affiliated religious and mission activity can be characterized as restrictive. Foreign missionaries’ abilities as pertaining to religious activity become less and less. Therefore, it is essential in the present situation to stress the necessity of training

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Shortening and Extension of Their Period] (Mar. 7, 2013), § 38, *available at* [http://online.zakon.kz/Document/?doc\\_id=31385062#sub\\_id=6](http://online.zakon.kz/Document/?doc_id=31385062#sub_id=6).

<sup>68</sup> *See id.* § 119, attachment 6, line 18.

<sup>69</sup> Mushfig Bayram and Felix Corley, *Kazakhstan: Government “Trying to Force All Foreign Religious Believers out of the Country?”*, FORUM 18 NEWS SERVICE (Oct. 1, 2010), [http://www.forum18.org/archive.php?article\\_id=1494](http://www.forum18.org/archive.php?article_id=1494).

<sup>70</sup> ICCPR, *supra* note 34, art. 18, § 1.

<sup>71</sup> Igor Rotar, *Kazakhstan: Expelled for “Missionary Activity Without Registration,”* FORUM 18 NEWS SERVICE (Nov. 15, 2006), [http://www.forum18.org/archive.php?article\\_id=871](http://www.forum18.org/archive.php?article_id=871).

<sup>72</sup> Felix Corley, *Kazakhstan: Pastor Deported, Orthodox Priest to Follow?*, FORUM 18 NEWS SERVICE (Sept. 30, 2013), [http://www.forum18.org/archive.php?article\\_id=1880](http://www.forum18.org/archive.php?article_id=1880).

<sup>73</sup> Religious Freedom and Association Law, *supra* note 18, arts. 4-1 to 4-2.

indigenous leaders. While foreigners still may be present in Kazakhstan on a short basis (e.g. mission trips, conferences or seminars), the main burden of Christian ministry should be placed on the shoulders of those who enjoy the privileges of citizenship.

The attitude toward foreign missionaries partially stems from the general attitude toward Christianity as a foreign religion. One pastor noted in an interview that Kazakh people, with their predominantly Muslim historical background, do not associate themselves with Christianity; this view is especially predominant in Southern and Western Kazakhstan.<sup>74</sup> Another minister stated that Protestantism is viewed as a foreign religion in Kazakhstan.<sup>75</sup> Thus, building a platform for understanding through participation in social life of the Kazakh people, and addressing their needs should be one of the priorities for Christians in Kazakhstan.<sup>76</sup>

## II. RELIGIOUS LITERATURE

Another important concern about the Law as noted by the director of the OSCE Office for Democratic Institutions and Human Rights, Ambassador Janez Lenarčič, is the requirement for religious organizations to submit to a “religious study examination” of the materials about their religious teachings as well as to the restrictions on the distribution of religious literature outside of religious buildings.<sup>77</sup>

Overall there are five situations when ARARK’s religious examination is needed or required: (1) on the request of a person or legal entity; (2) when it is submitted to libraries of the Republic of Kazakhstan; (3) when persons apply for registration as *missionaries*; (4) when it is *imported* from abroad for non-personal use; and (5) when the head of ARARK orders it.<sup>78</sup> Prior to sending materials for examination, ARARK

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<sup>74</sup> Interview with the pastor via Skype (the name of the pastor and his church are not disclosed on the request of the interviewee) (June 5, 2014), *supra* note 38.

<sup>75</sup> *Ministry in Kazakhstan, Episode 21: Scott Tucker*, THE MISSION SOCIETY, <http://www.themissionsociety.org/learn/multimedia/medialib/media-templ/article/48478> (last visited June 13, 2014).

<sup>76</sup> *Missionary Testimony – Jim Ramsay*, THE MISSION SOCIETY, <http://www.themissionsociety.org/learn/multimedia/medialib/media-templ/article/48299> (last visited June 13, 2014).

<sup>77</sup> Rymer, *supra* note 8.

<sup>78</sup> The Law, *supra* note 14, art. 6, § 1(2)–(4).

checks the materials' authenticity and authorship.<sup>79</sup> Then the materials are directed to experts for examination on issues posed by ARARK.<sup>80</sup>

Religious literature is not only examined for its content, but it is also restricted in terms of who can distribute it and where it can be distributed. The Law narrows down the places for Christian libraries, bookshops, or places for distribution of Christian materials to sites approved by the local administrative bodies.<sup>81</sup> Distribution of other forms of literature that spread religion can be done only on the premises of churches, religious educational institutes, and the sites specifically appointed by the local administrative bodies.<sup>82</sup> Importation of Christian books or other religious informational materials for non-personal use without the permission of ARARK is prohibited.<sup>83</sup> Missionaries can also be fined or deported if they distribute religious literature, informational materials having religious content, or other religious items without approval from the religious examination.<sup>84</sup>

Recently 121 religious books including Bibles were confiscated from a Christian, Vyacheslav Cherkasov, and were ordered by a court to be destroyed after Cherkasov was detained by police on the street for offering Christian literature to passerbys.<sup>85</sup> Yevgeni Zhovtis, a human rights defender of the Kazakhstan International Bureau for Human Rights, told Forum 18 that "religious literature has frequently been confiscated since the new Religion Law came into force . . . but I've never heard that religious literature is being destroyed, unless it is extremist."<sup>86</sup>

The Law's restrictions on distributing religious literature raise the question of censorship. Censorship is prohibited by the Constitution, but no definition of censorship is provided in it.<sup>87</sup> It is helpful then to take a

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<sup>79</sup> Pravila Provedeniia Religiovedcheskoi Exspertizy [Rules on Conducting Religious Examination] (Feb. 7, 2012), § 9(1)–(8), <http://www.inform.kz/rus/article/2446587> (stating the issues that must be resolved before sending the materials for examination, specifically the issue whether materials belong to an organization prohibited by court's order or by international law; whether they were written by a person convicted by international courts and for crimes against humanity; whether they have contents prohibited by court's order; or whether they were distorted or do not have authentic translation into Kazakh or Russian languages).

<sup>80</sup> *See id.* § 18.

<sup>81</sup> The Law, *supra* note 14, art. 4, § 11 and art. 5, § 7.

<sup>82</sup> *See id.* art. 9, § 2.

<sup>83</sup> *See id.* art. 6, § 1(4).

<sup>84</sup> Administrative Offences Code of the Republic of Kazakhstan art. 375, § 3 (stating the amount of the fine as one hundred monthly calculation indexes (it is approximately 1,000 US dollars), and for foreigners and stateless persons—in the same amount with administrative deportation from the Republic of Kazakhstan).

<sup>85</sup> Felix Corley, *Kazakhstan: Court-Ordered Religious Book Burning a First?*, FORUM 18 NEWS SERVICE (Mar. 14, 2013), [http://www.forum18.org/archive.php?article\\_id=1813](http://www.forum18.org/archive.php?article_id=1813).

<sup>86</sup> *Id.*

<sup>87</sup> CONSTITUTION OF THE REPUBLIC OF KAZAKHSTAN, art. 20, § 1.

look at the Law on Mass Media. According to this law, censorship is present when mass media has to coordinate its materials and publication with state organs on the demand of the state organs or on other conditions because of restrictions and prohibitions on spreading certain materials.<sup>88</sup> Mass Media materials are defined as periodical publications, and audio, radio, and television programs, including information posted on the Internet.<sup>89</sup>

Speaking strictly in terms of the Mass Media Law, the ban on censorship does not cover all Christian literature. It is clear from the Mass Media Law that ARARK cannot require Christian mass media organizations to present the content of its periodicals, news, talk-shows, and Internet-posted information prior to their publication.<sup>90</sup> However, if Christian literature is not spread by mass media but by a person, the Mass Media Law's ban of censorship does not cover such situations. Therefore, the new religious law's restrictions do not contradict the Mass Media Law; but it is worth noting that the Mass Media Law's ban on censorship gives Christians protection that they can make a good use of.

While the question of inconsistency between the religious and Mass Media laws does not seem to have standing, the question of constitutionality is valid and open. No definition of censorship is given in the Constitution, nor has there been any opinion issued by the Constitutional Council interpreting "censorship" in article 20 section 1 of the Constitution. With all these gaps it is hard to draw conclusions on the constitutionality of the requirements of ARARK's religious examinations. This question would require separate research that is not within the scope of this article, but several points can be made to summarize the situation of religious literature distribution.

The first point is that so-called "street evangelism," such as the case of Vyacheslav Cherkasov, according to the Law, may amount to missionary activity because it includes both elements, "spreading" religious literature and "teaching" religious content.<sup>91</sup> Thus, the person who spreads literature must either (1) have a valid registration as a missionary<sup>92</sup> and spread only the literature approved by the ARARK,<sup>93</sup> or (2) spread it only on the premises of religious associations, religious education institutions, or places appointed by the local government.<sup>94</sup>

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<sup>88</sup> Zakon Respubliki Kazakhstan o Sredstvakh Massovoi Informatsii [Law of the Republic of Kazakhstan on Mass Media] (July 23, 1999), art. 1, § 18, *available at* [http://online.zakon.kz/Document/?doc\\_id=1013966#sub\\_id=140000](http://online.zakon.kz/Document/?doc_id=1013966#sub_id=140000).

<sup>89</sup> *See id.* art. 1, § 5.

<sup>90</sup> *See id.* art. 2.

<sup>91</sup> The Law, *supra* note 14, art. 1, § 5.

<sup>92</sup> *See id.* art. 8, §§ 1, 3.

<sup>93</sup> Administrative Offences Code of the Republic of Kazakhstan, art. 375, § 3.

<sup>94</sup> The Law, *supra* note 14, art. 9, § 2.



Invitations to church and spreading cards with the name and address of a church, but without any information about Christian beliefs is not a missionary activity because it does not have the element of teaching.<sup>95</sup> However, if a person is not registered as a missionary and spreads booklets with Christian teachings, it is allowed only if she spreads them within the church premises or other permitted sites.<sup>96</sup> In other words, if a person is a registered missionary, she is freer in going outside, but less free in choosing literature and materials that she can use. On the other hand, if a person is not a registered missionary, she is freer in spreading literature, but less free in the choice of places where she can do it.

The second point to note is the import of literature for non-personal use. It is allowed only after a positive conclusion of religious examination performed by persons with special knowledge in theology or religious studies.<sup>97</sup> Violation of this requirement is punishable by a fine of up to US\$2000 and suspension of operations for a period of three months.<sup>98</sup> Christian literature from abroad is becoming a rare pleasure (unless it is available on the Internet) because of the Law's restrictions. It appears that Kazakhstan Christians need their own Kazakhstani publication and mass media establishments that will enjoy protection under the Mass Media Law.

In view of the Law's restrictions on literature distribution, the words of one pastor interviewed for this article must be mentioned. He stated a simple, but powerful Christian principle: personal contact is crucial.<sup>99</sup> Although spreading literature and other informational materials is restricted in certain ways, there are materials that can be found on-line; but personal contact and the love of Christ cannot be substituted by anything else.

### III. PLACES AND MODES OF RELIGIOUS ACTIVITIES

Places and modes of worship are subject to regulation. As stated above, religious activities are tied to specific organizational forms. Likewise, they are also tied to specific places. The Law allows religious activities to be held on the premises of religious associations or premises used by religious associations, or at cemeteries, crematories, homes, or restaurants.<sup>100</sup>

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<sup>95</sup> *Activity of Religious Educational Institutions*, *supra* note 55.

<sup>96</sup> The Law, *supra* note 14, art. 6, § 3 and art. 9, § 2.

<sup>97</sup> *See id.* art. 9, § 3.

<sup>98</sup> Administrative Offences Code of the Republic of Kazakhstan, art. 375, § 1 (two hundred monthly calculation indexes is approximately US\$2000).

<sup>99</sup> Interview with the pastor via Skype (the name of the pastor and his church are not disclosed on the request of the interviewee) (June 5, 2014), *supra* note 38.

<sup>100</sup> The Law, *supra* note 14, art. 7, § 2.

On the other hand, the law explicitly prohibits worship, ceremonies, gatherings, or missionary activities in the buildings of public and state entities, the Army, courts, and educational institutions (except religious educational institutions).<sup>101</sup> Also, any religious associations in state organizations, public entities, educational institutions, and healthcare institutions are prohibited.<sup>102</sup>

After the Law was enacted, all prayer rooms in state buildings were banned.<sup>103</sup> According to Forum 18, mosques, churches, and prayer rooms in prisons were also closed.<sup>104</sup> This is of special concern because prisoners already have very limited access to religion. Article 7 section 4 of the Law provides a possibility of visitations of prisoners and people in hospitals or nursing homes, but these visitations are available only at the request of a prisoner or a patient, and by clerical ministers of registered religious associations.<sup>105</sup> Though limited, Christians should take advantage of these visitation opportunities because it might be the only way prisoners and nursing home residents can have Christian fellowship.

The Law inherited from the old law an emphasis on the separation of religion and education.<sup>106</sup> It follows from article 7 of the Law that no Christian clubs or prayer and Bible study groups can be created in schools, colleges, or universities. Creation of such groups can be punished by fine in the amount of up to US\$2000.<sup>107</sup> The only exception is for religious educational institutions.<sup>108</sup>

Another important restriction that Christians should know concerning places of worship is that venues for religious events that are to be held outside of registered religious buildings should be approved by local administrative bodies.<sup>109</sup> For example, a place for an outdoor worship service or a children's camp must be approved.

Furthermore, the participation of minor children in religious activities is not allowed if at least one of the parents or guardians object.<sup>110</sup> Additionally, the head of a religious association must take measures to

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<sup>101</sup> See *id.* art. 7, § 3.

<sup>102</sup> See *id.* art. 13, § 5.

<sup>103</sup> *Kazakhstan Bans Prayer Rooms in All State Buildings*, WORLD BULLETIN (Sept. 2011), <http://www.worldbulletin.net/haber/79254/kazakhstan-bans-prayer-rooms-in-all-state-buildings>.

<sup>104</sup> Felix Corley, *Kazakhstan: Prison Mosques, Churches, and Prayer Rooms Closed Down*, FORUM 18 NEWS SERVICE (Nov. 11, 2011), [http://www.forum18.org/archive.php?article\\_id=1635](http://www.forum18.org/archive.php?article_id=1635).

<sup>105</sup> The Law, *supra* note 14, art. 7, § 4.

<sup>106</sup> Religious Freedom and Association Law, *supra* note 18, art. 9.

<sup>107</sup> Administrative Offences Code of the Republic of Kazakhstan art. 375, § 6.

<sup>108</sup> The Law, *supra* note 14, art. 7, § 3(3).

<sup>109</sup> See *id.* art. 5, § 7.

<sup>110</sup> *Id.* art. 3, § 16.

prevent involvement of minors in the activities of religious association in the case of objections. Failure to prevent such involvement is punishable with a fine in the amount of US\$500 or administrative deportation from the Republic.<sup>111</sup>

Several things should be mentioned about preaching. There are no direct restrictions on the content of sermons. It is, however, prohibited to urge others to cease relationships with relatives; to urge others not to accomplish their state duties;<sup>112</sup> to force others to participate in religious activities using their material neediness;<sup>113</sup> or to force members of a religious association to donate their property to the religious association, its leaders, or other members.<sup>114</sup>

What implications might these restrictions have on the content of sermons based on the following passages? “Do you think I came to bring peace on earth? No, I tell you, but division.”<sup>115</sup> “I have come to turn ‘a man against his father, a daughter against her mother, a daughter-in-law against her mother-in-law—a man’s enemies will be the members of his own household.’”<sup>116</sup> “Bring the whole tithe into the storehouse, that there may be food in my house.”<sup>117</sup> Technically, these verses alone and isolated may be problematic. However, any difficulties should be overcome as long as such teachings are presented within a holistic view of the Bible, providing a background of the passages.

All the restrictions on asking permission from local administrative bodies and children’s parents, as well as restrictions on the way certain things should be preached, will cause additional administrative work for Christian ministers and necessitate more caution in preparing the text of sermons. Street evangelism has become less available as a tool in spreading the Gospel as well. This brings us to the conclusion that focusing on the importance of interpersonal relationships when it comes to evangelism, with wise administrative precautions in dealing with the authorities is more helpful in the present situation.

#### IV. CONCLUSION

The Law created many restrictions on religious activities of churches starting with registration and ending with the mode of worship. Church planting is challenging with respect to the problem of the minimum number of founding members. Foreign missionaries struggle with visas

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<sup>111</sup> Administrative Offences Code of the Republic of Kazakhstan, art. 375, § 7.

<sup>112</sup> Religious Freedom and Association Law, *supra* note 18, art. 3, § 12.

<sup>113</sup> *Id.* art. 3, § 13; art. 10, § 2.

<sup>114</sup> *Id.* art. 3, § 14.

<sup>115</sup> *Luke* 12:51 (NIV).

<sup>116</sup> *Matthew* 10:35 (NIV).

<sup>117</sup> *Malachi* 3:10 (NIV).

and registration and places for worship have become limited. The distribution and importation of literature depends on the approval of ARARK.

Nevertheless, “God’s word is not chained.”<sup>118</sup> “Nothing can hinder the Lord from saving, whether by many or by few.”<sup>119</sup> With this in mind, we should stay “as shrewd as snakes and as innocent as doves.”<sup>120</sup> It is time to be unified, support each other, raise indigenous leaders, and keep our trust in the Lord.

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<sup>118</sup> 2 *Timothy* 2:9 (NIV).

<sup>119</sup> 1 *Samuel* 14:6 (NIV).

<sup>120</sup> *Matthew* 10:16 (NIV).