



# EQUAL RIGHTS TRUST

## Equal Rights Trust

### Statement for the Organisation for Security and Cooperation in Europe Human Dimension Implementation Meeting 2017

#### Working Session 6: Freedom of thought, conscience, religion, or belief

##### Statement of Interest

1. The Equal Rights Trust exists to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. We focus on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice. The Trust is the only international organisation which focuses exclusively on the right to equality and which approaches equality from a unified human rights framework.
2. Since our establishment in 2007, we have been engaged in combating discrimination and promoting equality in a large number of Organisation for Security and Cooperation in Europe (OSCE) participating states. Our work in the region ranges from documenting ethnic and religious discrimination in Kazakhstan and Kyrgyzstan to supporting civil society in Moldova and Ukraine to promote the adoption of comprehensive anti-discrimination law, to working with lawyers and non-governmental organisations in Bosnia and Herzegovina, Croatia and Serbia to improve implementation and enforcement of recently-enacted anti-discrimination laws.
3. Since 2013, we have undertaken a variety of activities aimed at supporting civil society in Central Asia to combat discrimination – with a particular focus on ethnic and religious discrimination – specifically in Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. As part of these activities, we published reports on discrimination and inequality in Kazakhstan, Kyrgyzstan and Uzbekistan in 2016, and plan to release a report on Tajikistan in late 2017. Alongside the Human Dimension Conference, we will launch *Legacies of Division: Discrimination on the Basis of Ethnicity and Religion in Central Asia*, a publication which consolidates the findings of our research from all four states, in order to identify transnational patterns of ethnic and religious discrimination. Work on these studies, has led us to be increasingly concerned about the growing problem of religious discrimination and discriminatory denial, restriction and limitation of the freedom of religion.

##### Introduction

4. As a result of our work in a number of countries in the OSCE region, the Equal Rights Trust is concerned by the increasing range of measures employed by participating OSCE states which have the effect of preventing the exercise of religious freedom. Given our focus on promoting equality and combating discrimination, we are particularly concerned by the discriminatory impact of these measures which, by their nature, have a disproportionate impact on those from religious minority groups.

5. This submission focuses on the equal enjoyment of the rights to Freedom of thought, conscience, religion, or belief, and to non-discrimination on the basis of religion or belief. It takes as its starting point the commitments to protect and guarantee these rights which have been made by participating states, including in particular at the Vienna Meeting of the Conference on the Human Dimension, in 1989, where states committed, *inter alia*, to:

*(16.1) - take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;*

*(16.2) - foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;*

*(16.3) - grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;*

*(16.4) - respect the right of these religious communities to establish and maintain freely accessible places of worship or assembly, organize themselves according to their own hierarchical and institutional structure, select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State, solicit and receive voluntary financial and other contributions;*

*(16.5) - engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;*

*(16.6) - respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others.<sup>1</sup>*

6. As participating states will be aware, Article 18 of the International Convention on Civil and Political Rights (ICCPR) ensures the right to freedom of thought, conscience and religion, which includes freedom to have or to adopt a religion or belief of one's choice, and freedom, either individually or in community with others, to manifest religion or belief in worship, observance, practice and teaching.<sup>2</sup> Under Article 18(3) of the ICCPR, limitations on the freedom to manifest religion or belief must be both clearly prescribed by law and strictly necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.<sup>3</sup> In addition, Article 26 of the same Convention guarantees all persons equal and effective protection against discrimination in all areas of life regulated by law, on a wide range of grounds, including religion. Furthermore, Article 27 of the ICCPR guarantees that persons belonging to ethnic, religious or linguistic minority groups shall not be denied the right to enjoy their own culture, to practise their own religion, or to utilize their own language.

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<sup>1</sup> Concluding Document of the Vienna Meeting of the Conference on the Human Dimension of the OSCE, Vienna 19 January 1989.

<sup>2</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Article 18.

<sup>3</sup> *Ibid.*

7. Our research and consultation with civil society actors and human rights defenders in Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan has identified four types of legal restrictions which limit the freedom of thought, conscience, religion, or belief.
  - (1) Laws which impose onerous regulations on the establishment of religious associations, and so result in both direct and indirect discrimination against religious minorities.
  - (2) Laws which purport to combat “religious extremism” and other threats to national security, but which have been applied in ways which, in practice, deny or restrict religious freedom.
  - (3) Laws or practices which discriminate against those who observe certain religious lifestyles and those who publicly display their religion.

#### Registration requirements for religious associations

8. The right of religious communities to establish and maintain places of worship and assembly is severely limited in the Central Asia region as a result of the maintenance of a strict regulatory regime for the registration of religious associations. Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan all include onerous state registration, and re-registration requirements for religious associations in their domestic legal system. Registration is necessary in order to ensure the legality of many aspects of religious worship, observance, practice and teaching. These registration requirements represent a limitation on the freedom to manifest religious belief; our research indicates that they are also applied in ways which discriminate both directly and indirectly, against certain religious groups.
9. In all four countries, despite variations between them, laws regulating the registration of religious associations have three common features: a requirement to evidence support for the registration of the association by a certain number of citizens; a requirement to provide extensive documentary evidence related to the beliefs and functioning of the religious community; approval by an authority with responsibility to make registration decisions.

#### *The requirement to provide evidence of support*

10. The legal requirement to evidence the support of a certain number of citizens for the establishment of a religious association has been found across all the Central Asian states reviewed the ERT. This requirement is most burdensome in Kazakhstan. The Law of the Republic of Kazakhstan on Religious Activity and Religious Associations of 2011 created a three-tier registration procedure, classifying religious associations into local, regional, and national levels.<sup>4</sup> At the local level, an application to register an association must include signatures from at least 50 citizens resident in the relevant oblast or city.<sup>5</sup> At the regional level, this number is 500, and the signatures must be collected from at least two separate oblasts or cities, while at the national level, 5000 signatories are required, of which 300 must come from each region.<sup>6</sup>

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<sup>4</sup> Law of the Republic of Kazakhstan, 11 October 2011 No. 483-IV “On religious activity and religious associations” amended 22 December 2016, Article 12.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

11. In Kyrgyzstan, there exists a similar requirement for religious associations. The Law of the Kyrgyz Republic on the Freedom of Conscience and Religious Associations in the Kyrgyz Republic,<sup>7</sup> requires the applicant to submit the full personal details of at least 200 citizens indicating their support for the association.<sup>8</sup> The threshold for the establishment of a religious organisation in Tajikistan is the lowest, with only 10 signatures required.<sup>9</sup> However, it should be noted that the Law of the Republic of Tajikistan On Conscience and Religious Associations also imposes a precondition for the establishment of mosques, related to the number of persons residing in a certain area, a significant cause for concern in a country where an estimated 98% of the population identify as Muslim. In Uzbekistan, the Law requires submission of a list of 100 supporters.<sup>10</sup>

#### *Documentary evidence requirements*

12. In addition to providing evidence of a certain number of supporters, the law in each of the aforementioned countries requires the submission of a range of documents in order to secure registration and so ensure the legality of religious practice. In Kyrgyzstan, for example, applicants are required to provide: the religious organisation's charter; minutes from its initial meeting; information about the religious organisation and its practices; and information about the religious group's history, attitude towards the family, marriage and the health of its adherents.<sup>11</sup> The requirements in Kazakhstan,<sup>12</sup> Tajikistan<sup>13</sup> and Uzbekistan<sup>14</sup> are largely similar.

#### *Assessment of applications, and theological review*

13. Prospective religious associations face not only strict formal application requirements, but can also experience improperly substantiated and discriminatory refusal to have their organization registered. In each country where we conducted research, the law provides for a subjective assessment of theology or doctrine to establish whether a putative religious association is socially acceptable. There is significant evidence that statutory

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<sup>7</sup> Law of the Kyrgyz Republic "On Freedom of Conscience and Religious Organisations in the Kyrgyz Republic", 31 December 2008, № 282.

<sup>8</sup> Law of the Kyrgyz Republic "On Freedom of Conscience and Religious Organisations in the Kyrgyz Republic", 31 December 2008, № 282, Article 8, Para 3 and Article 10 respectively.

<sup>9</sup> Law of the Republic of Tajikistan "On Conscience and Religious Associations", Law No. 739 of 28 June 2011, Article 13(5).

<sup>10</sup> Law of the Republic of Uzbekistan on Freedom of Conscience and Religious Organisations, Law No. 289-XII of 14 June 1991, as amended by the Law of the Republic of Uzbekistan on Amendments and Supplements to the Law of the Republic of Uzbekistan on Freedom of Conscience and Religious Organisations, Law No. 618-I of 1 May 1998, Article 10-11.

<sup>11</sup> *Ibid.*, Article 10, Para 2.

<sup>12</sup> Law of the Republic of Kazakhstan "On Religious Activity and Religious Associations", Law No. 483-IV of 11 October 2011, Article 15(3).

<sup>13</sup> Law of the Republic of Tajikistan "On Conscience and Religious Associations", Law No. 739 of 28 June 2011, Article 13(5).

<sup>14</sup> Law of the Republic of Uzbekistan on Freedom of Conscience and Religious Organisations, Law No. 289-XII of 14 June 1991, as amended by the Law of the Republic of Uzbekistan on Amendments and Supplements to the Law of the Republic of Uzbekistan on Freedom of Conscience and Religious Organisations, Law No. 618-I of 1 May 1998, Article 10-11.

bodies responsible for the registration of religious associations have refused registration even where the objective requirements have been met by the prospective religious association.

14. In Kazakhstan, Article 6 of the 2011 Religious Association Law requires any group applying for registration to undergo a theological review conducted by a state-appointed “expert”.<sup>15</sup> The Law states that the expert should evaluate the theological elements of the religion in question, while supporting documents provide detailed guidance on how such an evaluation should be conducted. The opinions of these experts inform the decision of the relevant public decision-making authority, and there is evidence that this has resulted in discriminatory denial of registration. The Ahmaddiya Muslim Community, for example, had its application for registration repeatedly denied because the tenets of the faith run contrary to traditional Sunni Islamic principles.<sup>16</sup>
15. Legislation also provides for an element of theological review (scrutiny by “state confessional experts”) in Kyrgyzstan, Tajikistan, and Uzbekistan. Again, there is evidence that statutory authorities have also refused to register religious groups whose theology or ideology is considered unacceptable. In Kyrgyzstan, for example, the Ahmadiyya community has been repeatedly refused registration, despite meeting the other conditions for registration set out in the 2008 law governing religious associations.<sup>17</sup>
16. Further examples of arbitrary application of the law arise in Kyrgyzstan, where local authorities have consistently refused to approve the registration of Jehovah’s Witnesses. Whilst the Constitutional Chamber of Kyrgyzstan ruled that this denial was unlawful, authorities continue to refuse to register Jehovah’s Witnesses associations.<sup>18</sup> Jehovah’s Witnesses associations have effectively been banned in Tajikistan, as they have not been legally registered since 2007.<sup>19</sup>

#### *Discriminatory nature of registration regimes*

17. In Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, registration as a religious association is necessary in order to ensure the legality of many aspects of religious worship, observance, practice and teaching. Thus, the registration regime presents a limitation to the right to freedom of religion, as protected by Article 18(1) of the ICCPR.
18. Therefore, in order to be permissible under the ICCPR, such limitation must, in the words of Article 18(3), be strictly “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”. The UN Human Rights Committee has concluded that registration requirements will only be permissible where “strictly necessary” to achieve one of the stated purposes in Article 18(3), requiring a strong

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<sup>15</sup> Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations”, Law No. 483-IV of 11 October 2011, Article 6.

<sup>16</sup> Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt*, 23 December 2014, UN Doc. A/HRC/28/66/Add.1, Para 34.

<sup>17</sup> Decree of the Supreme Court of the Kyrgyz Republic, Case No. AD-130/13, 10 July 2014.

<sup>18</sup> Bayram, M., “Kyrgyzstan: Impunity for officials, mob and torturers ignoring law”, *Forum 18*, 3 March 2016.

<sup>19</sup> Corley, F., “Tajikistan: Jehovah's Witnesses banned”, *Forum 18*, 18 October 2007, available at: [http://www.forum18.org/archive.php?article\\_id=1036](http://www.forum18.org/archive.php?article_id=1036).

degree of justification<sup>20</sup> and the adoption of the least restrictive measures where possible.<sup>21</sup>

19. In the view of the Equal Rights Trust, the limitations placed on freedom of religious practice through the registration regimes established in Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan do not meet the test of strict necessity to achieve one of the purposes set out in Article 18(3).
20. Moreover, as demonstrated, there is significant evidence that the registration regime in each country is applied in a way which limits religious freedom not uniformly, but in a way which disproportionately impacts on adherents of minority and heterodox religions.
21. The registration regime in each of the countries in question creates significant scope for the exercise of discretion, with government officials applying a subjective assessment of the beliefs of a particular religious group. The OSCE's Advisory Panel of Experts on Freedom of Religion or Belief has noted that any "substantive as opposed to formal review of the statute or charter of a religious organisation" is "impermissible".<sup>22</sup> Such substantive review procedures create significant opportunity for direct discrimination against those professing minority and heterodox religious beliefs.
22. As noted above, and set out in more detail in our publication *Legacies of Division: Discrimination on the Basis of Ethnicity and Religion in Central Asia*, there are examples from throughout the region of direct discrimination against religious minority groups – such as the Ahmadiyya – whose religious beliefs conflict with the majority religion.
23. In addition to enabling direct discrimination by those involved in administering the registration process, the requirements for registration themselves – the securing of a number of signatures, and the provision of documents – are indirectly discriminatory. Whilst the requirements of securing of a number of signatures, and the provision of documents apply equally to all prospective religious associations seeking to register themselves, these requirements disproportionately disadvantage smaller, less well-established and religious organisations, as they experience problems in securing the required number of signatures in support of their application, especially where the support must be obtained in a small geographical area. Such organisations can also experience problems in generating the relevant documentation, given their small size and limited human and other resources.
24. The sheer number of religious groups which have been closed in Kazakhstan, for example, indicates the indirectly discriminatory impact of the registration requirements. According to the Agency for Religious Affairs, as of October 2012, the 2011 Law resulted

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<sup>20</sup> *Malakhovsky and Pikul v Belarus*, Human Rights Committee, Communication No. 1207/2003, UN Doc. CCPR/C/84/D/1207/2003, 2005.

<sup>21</sup> In its *General Comment No. 34 on Freedoms of Opinion and Expression*, the Human Rights Committee emphasised that restrictions on the right to freedom of expression "must not be overbroad", requiring the adoption of the "least intrusive" measures. See, Human Rights Committee, *General Comment No. 34: Freedoms of Opinion and Expression*, UN Doc. CCPR/C/GC/34, 2011, Para 34.

<sup>22</sup> Organization for Security and Co-operation in Europe (OSCE), *Guidelines for Review of Legislation Pertaining to Religion or Belief*, 19 June 2004, p. 11, available at: <http://www.osce.org/odihr/13993?download=true>.

in the closure of more than 1,400 religious associations, 32% of those which existed before the Law came into force.<sup>23</sup>

25. In Kazakhstan, the as of October 2012, the 2011 Registration Law resulted in the closure of more than 1,400 religious associations - 32% of those which existed before the Law came into force.<sup>24</sup> Furthermore, in Kyrgyzstan, many religious minorities, such as Hare Krishna and Catholics, cannot find the requisite number of members in certain areas to support an application to register a religious association, which in the end inhibits them from registering.<sup>25</sup>

### *Impacts of non-registration*

26. Whether arising as a result of direct discrimination, or as a result of the indirectly discriminatory nature of the registration requirements, the denial of registration has the effect of depriving the affected groups of the benefits of legal status, which inhibits their access to legal protection, and social goods and services.

27. Furthermore, across the four Central Asian states, violation of the registration laws is an offence under administrative law, which typically carry monetary penalties and can result in bans on organisational activity.<sup>26</sup> Article 395 of the Code of the Kyrgyz Republic on Administrative Liability, for example, establishes offences for, *inter alia*, non-registration of a religious group, and violation of rules related to the organisation and conduct of religious meetings, processions and other ceremonies, established by law resulting in a fine of up to 5 monthly accounting indicators. Uzbekistan imposes both administrative and criminal liability for violation of rules regarding registration religious associations.<sup>27</sup>

28. In addition, registered and unregistered religious groups are at risk of harassment and abuse by state authorities. In Kyrgyzstan for example, interviews conducted by ERT have confirmed that Ahmaddiya adherents experience harassment by police and other state bodies.<sup>28</sup> Similarly, in August 2015, police in Osh raided a Jehovah's Witness service,

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<sup>23</sup> The News, "The number of religious organisations in Kazakhstan decreased by 32%", *The News*, 25 October 2012, available at: <https://thenews.kz/2012/10/25/1241977.html>; Agency for Religious Affairs of the Republic of Kazakhstan, Report on the situation with religious freedom in the Republic of Kazakhstan, 2014, p. 3.

<sup>24</sup> The News, "The number of religious organisations in Kazakhstan decreased by 32%", *The News*, 25 October 2012, available at: <https://thenews.kz/2012/10/25/1241977.html>; Agency for Religious Affairs of the Republic of Kazakhstan, Report on the situation with religious freedom in the Republic of Kazakhstan, 2014, p. 3.

<sup>25</sup> Forum 18, *Kyrgyzstan UPR submission, June 2014*, Para 12, available at: [http://www.upr-info.org/sites/default/files/document/kyrgyzstan/session\\_21\\_-\\_january\\_2015/forum\\_18\\_-\\_forum\\_18.pdf](http://www.upr-info.org/sites/default/files/document/kyrgyzstan/session_21_-_january_2015/forum_18_-_forum_18.pdf); Bayram, M., "Kyrgyzstan: "Don't meet for worship"", *Forum 18 News Service*, 13 August 2009, available at: [http://www.forum18.org/archive.php?article\\_id=1336](http://www.forum18.org/archive.php?article_id=1336).

<sup>26</sup> See, for example, Code of Administrative Offences of the Republic of Kazakhstan, Law No. 235 of 5 July 2014, Article 489 (9-11), 490(1, 4-5).

<sup>27</sup> Article 240 of the Code of the Republic of Uzbekistan on Administrative Liability and Article 216.2 of the Criminal Code of Uzbekistan.

<sup>28</sup> Equal Rights Trust, Interview with M., a representative of the Ahmadiyya community, Bishkek, 24 November 2014.

shouting at the attendees and physically assaulting one of the men.<sup>29</sup> Forum 18 has reported similar cases in Kazakhstan.<sup>30</sup>

### Regulation of registered religious associations

29. The regulatory regimes in Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, have discriminatory impacts beyond the denial of registration. Authorities on religious affairs possess wide-ranging powers, including powers to monitor and regulate religious associations which are registered by law, to review and authorise various aspects of religious practice, in addition to the power to close down religious associations which are unregistered. For example, the State Commission on Religious Affairs of Kyrgyzstan has been endowed in 2015 with the power to exercise sweeping functions, including the “interruption” of activity of religious associations, which cause damage or a threat to the health, morals, rights and legal interests of citizens, bases of constitutional order, and state security.<sup>31</sup>
30. In all four states, these statutory bodies on religious affairs are empowered to review religious literature and information before publication.<sup>32</sup> This power is particularly far reaching in Tajikistan, where the “[p]roduction, export, import, sale and distribution of religious literature, as well, and other religious texts and materials is allowed only after obtaining opinion of a state theological expertise”.<sup>33</sup> Uzbekistan has effectively banned religious literature in homes and subjected to its seizure and destruction, and imposing criminal charges against people who possess such literature. Reports show that five-year prison sentences have been imposed for the mere possession of the Koran on a mobile phone.<sup>34</sup>

### Laws on extremism and bans on religious organisations

31. Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan maintain laws which may be utilized to ban religious organizations and prosecute its members criminally, if the organisation

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<sup>29</sup> European Association of Jehovah's Christian Witnesses, *Statement to the OSCE Human Dimension Implementation Meeting, Warsaw: Jehovah's Witnesses in Kyrgyzstan: Religious Freedom Concerns*, September 2015, p. 2.

<sup>30</sup> Forum 18. *Kazakhstan: Religious Freedom Survey, 20 March 2014*, 2014, p. 9, available at: [http://www.forum18.org/archive.php?article\\_id=1939&pdf=Y](http://www.forum18.org/archive.php?article_id=1939&pdf=Y).

<sup>31</sup> Order of the President of the Kyrgyz Republic, 3 November 2015, no.220 on “Statute on the State Commission on religious affairs of the Kyrgyz Republic”, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/61761>.

<sup>32</sup> Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations”, Law No. 483-IV of 11 October 2011, Article 9; Law of the Kyrgyz Republic “On Freedom of Conscience and Religious Organisations in the Kyrgyz Republic”, 31 December 2008, № 282, Article 22; Law of the Republic of Tajikistan “On Conscience and Religious Associations”, Law No. 739 of 28 June 2011, Article 22; Law of the Republic of Uzbekistan on Freedom of Conscience and Religious Organisations, Law No. 289-XII of 14 June 1991, as amended by the Law of the Republic of Uzbekistan on Amendments and Supplements to the Law of the Republic of Uzbekistan on Freedom of Conscience and Religious Organisations, Law No. 618-I of 1 May 1998, Article 19.

<sup>33</sup> Law of the Republic of Tajikistan “On Conscience and Religious Associations, Article 22(3).

<sup>34</sup> Bayram, M., “Uzbekistan: “His only fault was to have some sermons on his mobile phone”, *Forum 18*, available at: [http://www.forum18.org/archive.php?article\\_id=2165](http://www.forum18.org/archive.php?article_id=2165)

has been deemed to espouse “extremist” views.<sup>35</sup> Equal Rights Trust research has found that anti-terror laws have been applied in ways which discriminate against members of religious minority communities, in violation of obligations under international human rights law.

32. Under the ICCPR, justifications for imposing restrictions in order to fight terrorism must be derived strictly from concerns regarding public safety, or as means to prevent propaganda for war or incitement.<sup>36</sup> As the UN Human Rights Committee has emphasised, national security is not a permitted ground of limitation of the right to freedom of religion under the ICCPR.<sup>37</sup> Pursuant to this, the same Committee found that Kazakhstan had failed to justify its restrictions on religious freedom in a way that is in accordance with international human rights law, criticising it for its “broad formulation” of “extremist” offences.<sup>38</sup>
33. There are myriad examples of the abuse of anti-terror legislation in Uzbekistan, where individuals following an interpretation of Islam which is not state-endorsed have been penalised by a range of Criminal Code provisions.<sup>39</sup> Under Article 244<sup>1</sup> of the Criminal Code, for example, the “use of religion to violate civil concord” – a vague and broad term which could include many expressions of non-orthodox belief – is subject to criminal penalty. According to Human Rights Watch August 2015, over 12,000 faith adherents had been imprisoned on charges of religious extremism in Uzbekistan.<sup>40</sup> In one case, individuals were imprisoned for the mere possession of CDs containing sermons on the Islamic Caliphate.<sup>41</sup>

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<sup>35</sup> See, for example: Criminal Code Republic of Kazakhstan, Article 404 “Creation, leadership and participation in the activity of illegal social and other associations”; Criminal code of the Kyrgyz Republic, Article 299-1(2) “Organisation of activity of a social association and religious organisation or other organisation, in relation to which a court has made a decision about the liquidation or prohibition of activity in relation to the carrying out of extremist activity”; Criminal Code of Uzbekistan, Article 156 “Incitement of national, race, ethnic or religious enmity”, Article 159 “Infringement on the constitutional order of the Republic of Uzbekistan”, Article 244.1. “Preparation, storage, distribution or demonstration of materials, containing a threat to social security or social order”, and Article 244.2 “Creation, leadership, participation in religious, extremist, separatist, fundamentalist and other prohibited organisations”.

<sup>36</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Articles 18(3) and 20.

<sup>37</sup> United Nations Human Rights Committee, *General Comment 22 on Article 18 of the ICCPR on the Right to Freedom of Thought, Conscience and Religion*, CCPR/C/21/Rev.1, 30 July 1993, Para 8.

<sup>38</sup> Human Rights Committee, Concluding Observations on Kazakhstan, 2016, available at: <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>.

<sup>39</sup> Criminal Code of the Republic of Uzbekistan, Code No. 2012-XII of 22 September 1994, Articles 156, 159, 216, 221, 242, 244 and 246.

<sup>40</sup> Human Rights Watch, *World Report 2016*, 2016, p. 629, available at: [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2016\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf).

<sup>41</sup> Bayram, M., “Uzbekistan: Large Fines for “Illegal” Religious Literature”, *Forum 18*, 7 June 2016, available at: [http://www.forum18.org/archive.php?article\\_id=2185](http://www.forum18.org/archive.php?article_id=2185).

34. The authorities in Tajikistan have similarly used the Law of the Republic of Tajikistan on the Fight Against Extremism to ban nonviolent religious groups,<sup>42</sup> and impose lengthy prison sentences, including life sentences on their members.<sup>43</sup>
35. There is also evidence that states in the region are seeking to further increase sanctions in the area of “religious extremism”. In December 2016 Kazakhstan adopted a law, which introduces new sanctions to the criminal and administrative codes.<sup>44</sup> In the same year, Articles 244<sup>1</sup> and 244<sup>2</sup> of the Criminal Code of Uzbekistan were amended to increase jail terms and strengthen penalties.<sup>45</sup>

### Discrimination by non-state actors

36. Equal Rights Trust research on religious discrimination in Central Asia indicates that the legal regimes in Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan legitimises religious discrimination by both state and non-state actors. Despite the legal guarantees of non-discrimination provided in national constitutions, our research found instances of discrimination in education and employment, affecting mainly visibly recognizable devout Muslims.

### *Education*

37. In schools, our research found examples of direct discrimination against girls who wear the hijab and other religious clothing. For example, in Kazakhstan, an interview conducted by the Trust’s local partner, the Kazakhstan International Bureau of Human Rights and Rule of Law, exposed that the authorities of school had demanded a Muslim student not to wear a long dress and a headscarf, and that the school director gave instructions not to admit her to classes.<sup>46</sup> In Kyrgyzstan, an interviewee stated that “[s]chool children were not allowed to go to the school in Ak-Talaa district because they were wearing Muslim hijab. Also, the administration of a college puts pressure [on those] who wear hijab”.<sup>47</sup>
38. Equal Rights Trust researchers were told that the Education Ministry in Tajikistan published a Decree with the aim of restricting the wearing of Islamic attire at her university, and after these rules entered into force, officials at the entrance of the university barred those wearing religious clothes from entry to the premises.<sup>48</sup> Other

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<sup>42</sup> United States Commission on International Religious Freedom, *Annual Report: Tajikistan*, 2016, p. 2, available at: <http://www.uscifr.gov/countries/tajikistan>.

<sup>43</sup> Amnesty International, *Tajikistan: 14 high-ranking members of political opposition party sentenced to long prison terms in unfair trial*, 7 June 2016, available at: <file:///C:/Users/Jim/Downloads/EUR6042142016ENGLISH.pdf>.

<sup>44</sup> Law on Amendments and Additions to Various Laws on Questions of Countering Extremism and Terrorism.

<sup>45</sup> Bayram, M., “Uzbekistan: Harshened Criminal and Administrative Code Punishments”, *Forum 18*, 15 June 2016, available at: [http://www.forum18.org/archive.php?article\\_id=2189](http://www.forum18.org/archive.php?article_id=2189).

<sup>46</sup> The Equal Rights Trust, *Legacies of Division: Discrimination on the Basis of Religion and Ethnicity in Central Asia*, Chapter 2.

<sup>47</sup> Equal Rights Trust, *Looking for Harmony: Addressing Discrimination and Inequality in Kyrgyzstan*, 18 December 2016, citing Equal Rights Trust interview with Farida, Naryn, 25 June 2014, available at: [http://www.equalrightstrust.org/ertdocumentbank/Kyrgyzstan\\_EN\\_0.pdf](http://www.equalrightstrust.org/ertdocumentbank/Kyrgyzstan_EN_0.pdf).

<sup>48</sup> Equal Rights Trust, Interview with B.R, Dushanbe, Tajikistan 4 December 2016.

organisations have made similar findings. In Tajikistan, Forum 18 reported that in March 2015, “President Rahmon (...) condemned women wearing “uncharacteristic” dress, and state TV showed footage of police stopping women in hijabs on the street, claiming they were prostitutes”.

39. In Uzbekistan, the Law on Freedom of Conscience and Religious Organisations prohibits the wearing of religious clothing in public places, including places of education.<sup>49</sup> Contravention of this rule gives rise to an administrative offence.<sup>50</sup> Interviews conducted by the Equal Rights Trust indicate that religious clothing rules and accompanying punishment disproportionately affect Muslim women who wear the hijab. The most extreme examples include female Muslim students being told to stop wearing the hijab or face expulsion from school.<sup>51</sup>

### *Employment*

40. In the area of employment, research by the Equal Rights Trust has found examples of direct discrimination against visibly devout Muslims in the four Central Asian countries where we undertook research. As in the findings concerning discrimination in the field of education, religious attire again constitutes the basis for unfavourable treatment here.
41. Individuals interviewed in Kyrgyzstan gave examples of direct discrimination against Muslim men with beards and women who wear hijabs. In Talas, a focus group participant described the case of a man who was told that he would only be offered a job at a bank if he shaved his beard off.<sup>52</sup> Another participant recalled the case of a friend who was told to remove her headscarf or be fired from the kindergarten where she worked.<sup>53</sup>
42. Similar examples arise in Tajikistan, most notably in the teaching sector. Testimony of a female teacher acquired by our researchers indicates that in 2014, teachers at a private university were told by a Government commission that teachers could not wear religious clothes during work.<sup>54</sup> The interviewee detailed that the teachers who contravened the rule were fired immediately.<sup>55</sup> Equal Rights Trust researchers found evidence of similar

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<sup>49</sup> Law of the Republic of Uzbekistan on Freedom of Conscience and Religious Organisations, Law No. 289-XII of 14 June 1991, as amended by the Law of the Republic of Uzbekistan on Amendments and Supplements to the Law of the Republic of Uzbekistan on Freedom of Conscience and Religious Organisations, Law No. 618-I of 1 May 1998, Article 11., Article 14.

<sup>50</sup> Code of Administrative Responsibility of the Republic of Uzbekistan, Code No. 2015-XII of 22 September 1994, Article 184.

<sup>51</sup> Equal Rights Trust, *After the Padishah Addressing Discrimination and Inequality in Uzbekistan*, citing Equal Rights Trust interview with G., a Muslim woman, November 2014, Tashkent, available at: [http://www.equalrightstrust.org/ertdocumentbank/Uzbekistan\\_EN.pdf](http://www.equalrightstrust.org/ertdocumentbank/Uzbekistan_EN.pdf).

<sup>52</sup> Equal Rights Trust, *Looking for Harmony: Addressing Discrimination and Inequality in Kyrgyzstan*, 18 December 2016, citing Equal Rights Trust interview with Farida, Naryn, 25 June 2014, available at: [http://www.equalrightstrust.org/ertdocumentbank/Kyrgyzstan\\_EN\\_0.pdf](http://www.equalrightstrust.org/ertdocumentbank/Kyrgyzstan_EN_0.pdf).

<sup>53</sup> Equal Rights Trust, *Looking for Harmony: Addressing Discrimination and Inequality in Kyrgyzstan*, 18 December 2016, citing Equal Rights Trust interview with Baktygul, Talas, 23 June 2014, available at: [http://www.equalrightstrust.org/ertdocumentbank/Kyrgyzstan\\_EN\\_0.pdf](http://www.equalrightstrust.org/ertdocumentbank/Kyrgyzstan_EN_0.pdf).

<sup>54</sup> Equal Rights Trust interview with SF, Khudzhand, Tajikistan, 4 December 2016.

<sup>55</sup> *Ibid.*

cases in Uzbekistan, where several women explained how wearing a long headscarf that covers the head and neck (rather than the shorter style common in the country) can result in dismissal or other forms of discrimination.<sup>56</sup>

### Recommendations

The Equal Rights Trust calls on participating states to:

1. Reiterate their commitments, made in Vienna in 1989, and Copenhagen in 1990, to ensure the freedom of thought, conscience and religion, including the right to manifest one's religion or belief.
2. Condemn the adoption of legislation or the implementation of measures which restrict or limit the freedom of thought, conscience and religion.
3. Repeal or amend regulations on the establishment of religious associations which have the effect of limiting or denying religious freedom, and discriminating directly and indirectly against members of religious minorities and non-orthodox religions.
4. Refrain from applying anti-extremism laws in ways which persecute religious groups and individuals on the ground of national security.
5. Provide adequate legal protection from discrimination on the basis of religion, and ensure that both state and non-state actors refrain from discriminating against individuals and groups on the basis of religion.

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<sup>56</sup> Equal Rights Trust, *After the Padishah Addressing Discrimination and Inequality in Uzbekistan*, citing Equal Rights Trust interview with A., a Muslim woman, November 2014, Tashkent, available at: [http://www.equalrightstrust.org/ertdocumentbank/Uzbekistan\\_EN.pdf](http://www.equalrightstrust.org/ertdocumentbank/Uzbekistan_EN.pdf).