



VIETNAM

MAY 2015 · FOR PUBLIC USE

SUMMARY OF CONCERNS REGARDING THE DRAFT (4) LAW ON RELIGION AND BELIEF

1. INTRODUCTION

Since Vietnam began to implement the policy of 'reform and renewal' (*doi moi*) in 1986, there has been a series of policy documents relating to religion, including resolutions in 1990 and 2003, but until now there has been no law on religion or belief in Vietnam.

During his July 2014 visit to Vietnam, the UN Special Rapporteur on freedom of religion or belief learned that a law on religious affairs is likely to be passed in 2016. CSW believes that Vietnam must use this opportunity to bring its laws and policies in line with Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and to address and remove the obstacles to religious freedom found in the Ordinance and Decree (see below).

This briefing summarises some of the main concerns with Draft 4 of the proposed Law on Religion and Belief, drawing on comments from human rights organisations, religious freedom experts, British and international lawyers, and religious leaders. CSW is indebted to BPSOS for providing an unofficial translation of the draft, and to BPSOS and VETO! for their invaluable comments and insights. This briefing pulls together our combined conclusions.

report¹ includes cases of violations against Buddhists, Catholics, Cao Daists, Hoa Hao Buddhists, Protestants and Muslims, ranging from harassment, intimidation and intrusive monitoring, to arrest, imprisonment, torture and extra-judicial killing.

As mentioned above, until now there has been no law on religion or belief in Vietnam. Instead there was an Ordinance on Belief and Religion (2004) followed by Decree 22 (2005), which provided guidance on the implementation of the Ordinance, later revised to become Decree 92 (2013). CSW's 2013 analysis of Decree 92 described the concerns raised by religious leaders, lawyers and activists, who criticised the new decree for being harsher than its predecessor, for its use of vague and ambiguous terminology, and for introducing new bureaucratic obstacles to the peaceful and lawful activities of religious believers. According to one expert's analysis, under Decree 92 it would take 23 years for a religious group to be recognised as a religious organisation, if their application is successful. For more information please see CSW's 2013 briefing, available on request.

1.1 FREEDOM OF RELIGION OR BELIEF IN VIETNAM

Although there have been improvements in the protection of freedom of religion or belief in Vietnam, the ongoing violations of this right cannot be overlooked. What positive developments there have been have mostly taken place at central level: for example the addition of a chapter on human rights in the amended constitution (2013), and the recognition of additional religious groups. However, these developments are undermined by continued reports of violations against the right to freedom of religion or belief of adherents to every one of Vietnam's recognised religions. CSW's 2014 Vietnam

¹ CSW, *Freedom of Religion or Belief in Vietnam: The alternative report*, 4 December 2014 www.csw.org.uk/2014/12/04/report/2451/article.htm



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2. ANALYSIS

2.1 REGISTRATION OF RELIGIOUS ACTIVITIES AND ORGANISATIONS

Under the new draft law, registration requirements for religious adherents limit the right to freedom of religion or belief both directly and indirectly. In the first place, it is clear that registration is a requirement, not an offer from the government. There is no alternative legal personality for organisations who do not wish to register or who are denied registration. In addition, according to Article 3 the term 'adherent' refers to 'a person who believes in a religion and is recognized by a religious organisation', potentially excluding adherents of beliefs not affiliated to a recognised organisation. Furthermore, like the Ordinance, the draft equates 'religion/belief' with a 'religion/belief organisation'. Again, this narrow definition excludes forms of religion or belief which do not have an organisational structure and are not affiliated to a recognised organisation.

Groups and individuals can conduct some activities without being registered as religious organisations; however, they are still required to register their activities and must meet certain conditions to do so (Article 12). In fact, all religious activities, except a limited range of activities at individual level and in private homes, must be registered and approved. All activities that involve a group, even those conducted in private homes, must be registered and pre-approved.

The large number of activities requiring registration or permission, and the burdensome nature of the registration process, mean that registration as a requirement indirectly limits adherents' right to freedom of religion or belief. For example, under Article 9 all religious activities of registered religious organisations must be registered before 15 November each year *for the following year* and approved by the appropriate People's Committee. Furthermore, some activities, such as charitable activities (Article 15), can only be carried out by registered organisations.

2.2 INTERFERENCE IN INTERNAL AFFAIRS

The level of interference into the internal affairs of registered religious organisations, and the difficulties involved in registering, has led many groups to consider whether it is worth applying at all. Under Article 33 a religious organisation must apply to register amendments to its charter or rules and regulations - a decision which would usually be considered an internal affair concerning only the members of the organisation. The government unit receiving the application has the right to deny the request. Furthermore, under Article 8, clause 2, '[r]epresentatives or the management of religious facilities shall be elected or nominated by their community, *or created or approved by the government*' (italics added).

This gives the authorities the power to appoint staff to represent or manage religious facilities.

The draft law also stipulates that religious training schools must include Vietnamese history. Under the current system, such courses are generally not politically neutral, and cover the history and atheist doctrine of the Vietnamese Communist Party. Making this course a curriculum requirement essentially interferes with the internal affairs of the training institute.

Article 35, clause 3 requires candidates for ordination, promotion, appointment, election, or nomination in a religious organisation to submit a curriculum vitae (also translated as 'biographical information') certified by the appropriate commune-level People's Committee. This opens up the process to abuses of power, and allows officials to interfere with internal appointments even before the candidate applies for registration.

2.3 LACK OF CONFORMITY WITH INTERNATIONAL HUMAN RIGHTS STANDARDS

Article 5, clause 2 stipulates that 'If an international covenant to which the Socialist Republic of Vietnam is a party has clauses that differ from this Law, the international covenant's clauses take precedence.' This presumably includes the ICCPR, which includes provisions for the right to freedom of religion or belief under Article 18. However, the draft law contains many stipulations and prohibitions which contradict the ICCPR. In practice there is cause for concern that, in cases where the ICCPR and the draft law are at odds, the ICCPR will be ignored and the draft law will be implemented without due regard for international law.

Furthermore, there is no article in the draft law which stipulates explicitly that the right to have and to adopt a religion of one's choice is an absolute right. This is one of the fundamental provisions of Article 18 of the ICCPR. Even if the rights under Article 18 are taken as being guaranteed by virtue of Article 5 of the draft law, the law should also explicitly state that this right is protected as an absolute right which is not subject to the limitations laid out elsewhere.

2.4 AMBIGUOUS NATIONALISTIC LANGUAGE

A number of articles include vague references to the need for religious adherents and activities to preserve 'national traditions and cultural traits' (Article 4), and reflect 'the traditional, historical, cultural, and ethical values of Vietnamese communities' (Article 3, clause 1). The draft law also prohibits showing 'negative behaviour toward the religion or belief of adherents of religious organisations which are recognized by the government' (Article 6, clause 3), and 'sow[ing] divisions between ethnic groups and religions' (Article 6, clause 5b). This language is open to interpretation and could be abused by those prejudiced against a religion, a religious organisation or an individual adherent, to prevent them exercising their right to freedom of religion or belief. It also promotes religious organisations approved by the government over those still awaiting registration, or who have been denied registration or chosen not to apply for

registration for reasons of conscience or practicality. As was the case with Decree 92, there is no expansion on the definition of these terms, rendering them vulnerable to misinterpretation or misuse by those responsible for implementation of the law.

Behind these ambiguous terms is a pervasive narrative of 'great national unity'. One religious freedom advocate and leading expert on Vietnam describes this narrative, *dai doan ket*, as the standard against which religions and beliefs are considered to conform to Vietnamese tradition and culture, and therefore tolerated. It is left to those implementing the law to decide what does and does not constitute a tradition or custom of Vietnam. In reality, Vietnam, as the government acknowledges, is home to a diverse range of ethnic and linguistic communities with different customs, traditions, lifestyles and beliefs. In addition, 'imported' religions and beliefs have in many cases been part of Vietnam's cultural make-up for hundreds of years: Vietnamese adherents of Catholicism, for example, sometimes come from families or communities with religious customs and traditions going back centuries. There is a danger that the construction of a narrative of 'national unity' will come at the expense of minority groups whose customs and traditions are not part of the majority narrative, and at the expense of adherents of 'foreign' or 'imported' religions.

As one analyst observes, the key concern here is that rights are 'relativised' in reference to support for 'great national unity'. This 'relativisation' is incompatible with the Universal Declaration of Human Rights, which entitles everyone to the right to freedom of religion or belief 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (Article 2). Furthermore, the ICCPR makes special provision for those potentially outside the majority narrative, specifically ethnic, religious or linguistic minorities, to profess and practise their own religion (Article 27).

2.5 CIRCULAR REQUIREMENTS AND INTERNAL CONTRADICTIONS

In addition to the thematic concerns listed above, there are several circular requirements ('Catch-22s') which appear to contradict other articles of the law. For example, under Article 17, clause 1, to qualify for recognition by the government an organisation must have conducted 'religious operations' for ten consecutive years. Under the glossary in Article 3, religious operations include the dissemination and practice of the doctrines, laws, rituals of a religion, and management of a religious organisation. However, under Section III - Registration for Religious Activities and Registration for Religious Operations - it seems that citizens who do not own a registered religious organisation may register for religious activities (Article 12), but religious operations are only allowed for registered religious organisations (Article 15). If this interpretation is correct, it would be impossible for an organisation applying for registration to have a ten-year record of religious operations.

Additionally, under Article 17 the applicant organisation needs to have a 'legal office'. It is unclear whether 'legal' means that the office must be registered as a facility for the purposes of administration for a religious organisation, which would be impossible if the organisation is not already registered with the government. If 'legal' has a different meaning, this is not specified.

In other places in the text, provisions appear to be nullified within the same article. For example, under Article 4, clause 3, detainees in Vietnam 'have the right to satisfy their personal need for religion and/or belief' but subject to 'regulations in their detention center'. There are no details which determine what this might mean in practice. In effect, this article does little or nothing to protect detainees' right to have or to manifest religion or belief. Finally, the text contains several references to other laws which are not specifically named, or makes vague references to 'the law' in general. For example, Article 17 states that organisations applying for registration must have a charter and regulations which 'conform to the law', implying that there is another law, apart from this one, which includes stipulations on religious organisations. Such references render the text open to misinterpretation or misuse by those implementing the new law.

2.6 IMPROVEMENTS AND POSITIVE ASPECTS

One positive aspect of the draft law is that it stipulates that '*everyone* has the right to freedom of religion and belief, to follow or to not follow a religion' (Article 2, *italics added*); under the Ordinance, the state guaranteed only *citizens'* right to religious freedom. This reflects a change to the revised constitution: the 1992 constitution also restricted protection of the right to 'freedom of belief and religion' to *citizens* in Article 70, whereas the 2013 constitution states in Article 24 that *everyone* shall enjoy freedom of belief and religion.

Another change which can be interpreted as an improvement is that the draft reduces the number of years of religious operations required to register as a religious organisation from 20 to 10. However, as mentioned above, it is unclear whether a group of religious adherents not registered as a religious organisation could legally conduct religious operations under this draft law.

Like Decree 92, the draft law requires reasons for denial of registration when authorities refuse to register a religious organisation, and includes time limits for the notification and explanation of a denial. These measures, if properly implemented, will create a more transparent process and reduce the risk of wrongful rejection of applications. Article 66 of the draft law also allows religious organisations and believers to file complaints or seek redress against administrative decisions or actions related to religion and belief. In his 2014 visit report, the Special Rapporteur noted that while there had been a few cases in which petitions filed with higher

authorities had helped to resolve conflicts, in many other cases the authorities had either not given any response, or had referred the issues back to the local authorities for reconsideration. Therefore, while allowing religious organisations to file complaints against administrative decisions is a positive step, religious adherents must also have the option of legal recourse to an independent judiciary, as recommended by the Special Rapporteur. The draft law does not guarantee this option.

2.7 PRIME MINISTER'S DECISION ON THE COMMITTEE OF RELIGIOUS AFFAIRS

Shortly before the fourth draft law was sent to religious organisations for comment in April 2015, another set of regulations concerned with religious affairs came into effect. Prime Minister's Decision 06/2015/QĐ-TTg, issued on 12 February and effective as of 1 April, sets out the tasks, responsibilities and organisational structure of the Committee of Religious Affairs under the Ministry of Home Affairs, also known as the Ministry of the Interior. Article 1 of the Decision states that the function of the Committee of Religious Affairs (CRA) is to advise the Minister of Home Affairs on the management of religious matters and on the implementation of public services in the field of religion.

Under Article 2 the CRA also submits to the minister and the Prime Minister draft laws, ordinances, resolutions and decrees, and is tasked with strategy and planning, training, and implementation of legal provisions, among other things.

According to one observer, several senior staff within the CRA also have, or have had, positions in the security services. The current head of the CRA is a former official from the Ministry of Public Security. One Vice Director is also a colonel formerly with the Ministry of Public Security, while the head of the Protestant section within the CRA was recently promoted to a higher rank in the security services. The apparently close relationship between the security services and the CRA suggests that the government still views religious affairs as something to be managed and controlled, rather than promoted and protected.

3. CONCLUSIONS

In his 2014 visit report the Special Rapporteur proposed that the upcoming law on religious affairs offers an opportunity to 'introduce substantive revisions to Ordinance 21 in conformity with international human rights law in order to strengthen the protection of the right to freedom of religion or belief'. However, the fourth draft of the law, discussed here, inherits many limitations, loopholes and inconsistencies from the Ordinance and Decree 92. Rather than addressing aspects of the Decree which violate the right to freedom of religion or belief, the draft law cements these problems.

The time given to religious organisations in Vietnam for feedback on the draft was prohibitively short - only 13 days for some groups. Unsurprisingly, the draft law has drawn considerable criticism from human rights activists, religious leaders and independent experts on freedom of religion or belief. Catholic Bishop Hoang Duc Oanh and Bishop Emeritus Tran Thanh Chung of Kontum have stated that the draft law contradicts the Universal Declaration of Human Rights and the Constitution of the Socialist Republic of Vietnam, and maintain that the government's purpose is to "profoundly interfere with religious affairs". Msgr. Joseph Nguyen Duc Hieu of the diocese of Bac Ninh described the draft as a "setback" compared to the 2004 Ordinance, asserting that "freedom of religion is a right, not a privilege".² In addition, an independent legal expert told CSW he believes the law actually tries to restrict the expression of religious belief, and described it as "the very opposite of protection" of the right to freedom of religion or belief. A second legal expert agreed: "[The draft] seems to regulate, more than affording freedom", and "gives the state a lot of control" over religious affairs. Other key concerns put forward by human rights organisations BPSOS and VETO! are reflected in this briefing.

In conclusion, CSW finds that the draft maintains the government's approach of regulating and controlling religious affairs, lacks the necessary safeguards to protect against the abuse of power, and contains ambiguous language and administrative burdens which prevent rather than protect the enjoyment of full freedom of religion or belief.

² AsiaNews, 'Hanoi consults bishops on a new law on faiths that violates religious freedom', 4 May 2015 www.asianews.it/news-en/Hanoi-consults-bishops-on-a-new-law-on-faiths-that-violates-religious-freedom-34143.html

4. RECOMMENDATIONS

To the government of the Socialist Republic of Vietnam:

- Revise the draft law in open and free consultation with leaders and representatives of religion or belief communities, including ethnic and religious minorities and unregistered/independent religious communities, as well as experts in international human rights law;
- Accept the offer of the UN Special Rapporteur on freedom of religion or belief of his expertise in reviewing the draft law from the perspective of international standards;
- Revise the law to conform with Article 18 of the ICCPR and international standards on freedom of religion or belief;
- Ensure that registration is an offer from the government, rather than a requirement;
- Ensure that organisations and groups who do not wish to register, or are unable to, have the option of taking on an alternative legal personality;

- Remove and revise articles which place a heavy administrative burden on religion or belief communities for the purposes of registration;
- Remove the requirement that religious groups have ten years of operations before applying for permission for activities: where there is suspicion of violent or illegal activities, investigate the history of organisations on a case by case basis;
- Ensure persons named in applications for registration of activities/organisations will not suffer ill treatment or be placed on any form of 'watch list' as a result of being named in the application;
- Remove vague terminology including 'national unity', 'traditions and customs', etc. Where these terms are relevant and unavoidable, they should include a full definition which clearly demonstrates what does and does not constitute a crime in relation to these terms;
- Provide additional avenues for feedback from the aforementioned parties with regards to this draft, and actively and carefully consider comments and criticism put forward by the international community.

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