

The Congressional-Executive Commission on China
Roundtable: “China’s New Regulations on Religious Affairs: A Paradigm Shift?”
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Statement by Human Rights in China



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Human Rights in China (HRIC) is an international, non-governmental organization (NGO) founded by Chinese scientists and scholars in March 1989. Our mission is to promote universally recognized human rights and advance the institutional protection of those rights as a fundamental parameter of China’s social and political transformation.

The new legal provisions on religious affairs issued by the Chinese government on November 30, 2004 came into effect on March 1, 2005. Because of the timeliness and importance of this roundtable discussion, HRIC respectfully submits this statement to provide some input and suggestions as the Congressional-Executive Commission on China (CECC) continues to monitor human rights compliance in China and development of rule of law.

The human rights context in which the new regulations are implemented includes serious religious persecution and the detention of hundreds of religious practitioners and activists:

- The Cardinal Kung Foundation indicates that 30 priests and other Catholics loyal to the Pope are currently in custody;
- Amnesty International has recorded 150 Muslim Uighurs in the Xinjiang Autonomous Region arrested between mid-1999 and mid-2002 for terrorism/separatist offenses;
- Tibetan Center for Human Rights and Democracy has recorded 146 Tibetans in labor camps and prisons, including 91 monks, as of February 2005;
- The Falun Gong estimates that 500 Falun Gong practitioners have been sentenced to up to 18 years, 100 of whom are believed to be in Jinlin Prison. 100,000 practitioners are believed to have been sentenced to reeducation through labor (RTL) and thousands more have been forcibly admitted into mental hospitals; and
- The Committee for Investigation on Persecution of Religion in China (CIPRC) estimates that since the economic reform period began at the end of the 1970s, 2.7 million members of unauthorized protestant Christian house churches have been arrested, 440,000 sentenced to RTL, more than 10,000 tortured to death, and over 130 imprisoned.

New Regulations aim at control not protection

The new religious regulations do not reflect a relaxation in the administration of religion in China. The chief rationale behind the adoption of new regulations, “to deal with new situations and issues that have emerged in recent years with China’s rapid socioeconomic development,”¹ indicates that the Chinese central government has again drafted a document not to protect, but to regulate all religious activities.

At the core of China's religious policy is the toleration of beliefs and practices that do not threaten the Party-State, but the close regulation and, where deemed necessary, the aggressive repression of beliefs and practices that are perceived as a threat. Since the late 1970s China has allowed believers greater latitude for worship, but in exchange for accepting a regulatory structure designed to limit clergy autonomy and stifle congregational growth.

Official claims that the new regulations will enhance the protection of religious freedom are not supported by the language of the regulations, despite the government's effort to frame the issue in official media. Further, although international human rights instruments¹ guarantees freedom of religion (which includes collective and public dimensions),² China only recognizes freedom of religious belief (宗教信仰自由). The freedom to practice one's religion "in community with others" is not a right to be granted by the State. It is a human right and its existence does not depend on compliance with formal prerequisites.

The principal mechanism through which the state maintains its control continues to be prior government approval—a system of “registration”—for the establishment of any religious group or place of worship. In light of this complete state control, the system effectively nullifies freedom of religion, as any unregistered group, site, or activity is “illegal”. The new regulations aim to “further standardize the registration system for the establishment of a religious body or site for religious activities,”³ perpetuate and strengthen the existing system.

No paradigm shift away from state controlled religion

A detailed analysis of the provisions clearly indicates that there has been no paradigm shift in the administration of religion, but rather a continuation of the classic pattern of state-controlled religion.

Of course appropriate changes in religious policies or implementation should not be ruled out—as a matter of fact it can be expected that the dynamics of state-society relations are ultimately bound to compel the Party-state to further retreat from the religious sphere. However, given the nature of the new regulations, any change or sign of relaxation can be attributed to *policy variations* and not a change of the regulatory framework or in the substantive content of the provisions.

Signs of relaxation have, for example, been seen in official directives distributed to party cadres in the past few months reflecting the central government's emerging view of religious leaders as a possible positive source of social stability. At a high level meeting with China's top religious leaders, held in *Zhongnanhai* on February 1, 2005, Jia Qinglin (number 4 in the Chinese nomenclature) expressed general support for religious activity in the country, stressing that religious morality and culture do benefit social development, and that positive progress has been made during the past year in the religious domain.

Notwithstanding these official expressions, careful scrutiny of the letter of the law shows that any progress, so far, has only been partial with many remaining loopholes, leaving the door open to arbitrary interpretation and implementation of the new provisions.

It is important to note that the regulatory devices that have been used in the suppression of legitimate religious activities in the past remain in the current regulations: 1) mandatory prior registration; 2) patriotic character of the clergy; and 3) protection of national and public order and prohibition of religious extremism. On these grounds, the authorities continue: 1) to routinely arrest and detain religious figures or parishioners; 2) to cancel the registration of religious groups; 3) to close religious venues; 4) to oversee overhaul religious personnel; 5)

¹ *Inter alia* the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Even though China has yet to ratify the ICCPR, by virtue of being a signatory, it has the obligation not to enact legislation that would contravene the spirit of the Covenant.

² “Everyone has the right to freedom of religion... this right includes . . . freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” (UDHR, Art. 18).

³ “Regulations better safeguard religious freedom in China,” *China Daily*, December 20, 2004.

to impose administrative punishment (including fines and short-term detention); 6) administrative harassment; and 7) to impose restrictions on religious personnel movements, contacts, visits and correspondence.

In a schematic way, variations in the degree of strictness of religious administration, both in time and place, can be attributed to a number of parameters, of which legislation actually remains the lesser one. The variations and interplay of these parameters result in markedly different situations (i.e., from the relative laissez-faire policy in Wenzhou to the systemic repression in Xinjiang):

- The first parameter relates broadly to whether, at any point in time, the Party-State favors accommodation or repression in respect to social groups. This pendulum swings according to overall political factors that are often beyond the religious sphere (for example intra-party politics, leadership transitions, social climate, and international factors);
- The second parameter relates to the ethnic identity of the religious community considered, and in particular its perceived degree of loyalty to the State (i.e. Uighurs and Islam, Tibetans and Buddhism);
- The third parameter depends on the local situation, which can be the result of any number of variables, such as:
 - Level of popular dissatisfaction with the authorities;
 - Reality and perception of the existence of challenges to local stability;
 - Relation between the local clergy and the authorities;
 - Quality of local governance (predatory administration);
 - Existence of economic incentives allowing or proscribing religious congregations; or
 - Personalities of the personnel in charge of religious affairs.

While recent internal party documents state that administrative powers must not be used to suppress religion, the party still distrusts what religion might become: the same documents draw a clear difference between religious issues that may arise from a “contradiction among the people,” and those that can become a “problem of opposition,” or a challenge to the Party. Such distinctions inherently void the validity of procedural protections provided by the new regulations.

In conclusion, it appears that the premise for the Chinese government to adopt this new set of regulations is not based on the desire to make freedom of religion available to its citizens, but is motivated by its overarching need to regulate freedom of association in the name of national security and public order.

Recommendations

In order to develop and strengthen genuine protections for freedom of religion, HRIC urges China to respect the following:

- Freedom of individuals and groups to freely practice their religion without prior registration;
- Freedom of religion should not be conditioned on national security clauses;
- Governmental discretion in the current registration system including in interpretation of vague and broad provisions, must be limited by clear criteria, definitions, scrutiny and procedural protections;
- Intervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed.

References

- State Council (Order N. 426), *Regulations of Religious Affairs*, promulgated November 30, 2004, effective March 1st, 2005 [中华人民共和国国务院令（第426号）, *宗教事务条例*, 2004年11月30, 2005年3月1日起施行], <http://www.china.org.cn/chinese/2004/Dec/732346.htm> (accessed February 14, 2005)
- “Organization of the propaganda week activities about the legal system for ethnic and religious affairs of the United Front Department for the year 2004” [统战部2004年民族和宗教法制宣传周活动安排], <http://www.ecnu.edu.cn/gonggao/103.htm>, exact date unknown.
- Shanghai Municipality Ethnic and Religious Affairs Committee, “Notice on developing the propaganda week movement on the legal system for ethnic and religious affairs”, 2004 (exact date unknown) [上海市民族和宗教事务委员会《关于开展2004年民族和宗教法制宣传周活动的通知》]
- “Jia Qinglin and the leaders of the national religious bodies hold a new year discussion meeting,” *People’s Daily* (in Chinese) [“贾庆林与全国性宗教团体负责人举行迎春座谈”, *人民日报*, 2005年02月02日].
- “Interview with the State Administration of Religious Affairs on new Religious Affairs Regulations,” *Legal Daily*, December 20, 2004 [国家宗教事务局负责人就《宗教事务条例》答本报记者问, *法制日报*, 2004-12-20]
- Anthony Lam, “A cursory critique of the “Regulations of religious Affairs,” January 6, 2005, Holly Spirit Center (Hong Kong) (in Chinese) [林瑞琪, “簡評《宗教事務條例》”, 2005年1月6日主顯節, 聖神研究中心 (香港)].
- Nicolas Becquelin, “Reigns tight on religious affairs”, *The Standard* (Hong Kong), February 18, 2005.