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CHINA: Would a religion law help promote religious freedom?

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Some both inside the country and abroad argue that a national religion law would help end China's arbitrary treatment of religious believers and restrictions on their rights by allowing them to appeal to an objective law. But the authorities avoided adopting a religion law and instead passed updated religion regulations in late 2004, though the question of whether a law should be adopted remains live. While the current regulations are contradictory and are implemented arbitrarily - some unregistered places of worship face severe crackdowns while others are untouched - Forum 18 News Service concludes that without an independent judiciary capable of enforcing a law objectively and while existing state laws are interpreted arbitrarily, any religion law would be unlikely to end state interference in religious life and allow religious believers to defend their rights.

One important characteristic of post-Mao China is the proliferation of formal institutions of governance - not simply physical buildings or government bureaucracies, but also laws and regulations. Indeed, "legalisation" is arguably the other keyword in post-Mao China, next to "economic development". The idea that rules and regulations must be established permeates the Chinese polity, economy and society. On the surface, this emphasis on legalisation is to be welcomed since the ostensible aim of institutionalisation is to avoid the arbitrary excesses of the Maoist period.

In the realm of religion, the communist state has issued numerous party directives and government regulations since the era of reform began in the late 1970s. The most recent manifestation of this ongoing legalisation process is the November 2004 promulgation of an updated set of religious affairs regulations (see F18News 8 March 2006 <http://www.forum18.org/Archive.php?article_id=740>) by China's State Council. The State Council - which is headed by Premier Wen Jiabao, the third-ranking member of the Communist Party - is composed of all government ministries and key government offices, including the State Administration for Religious Affairs (SARA) and the Ministry of Public Security.

One of the arguably less satisfying aspects of the decision to promulgate the November 2004 regulations was the decision to postpone, yet again, the creation of a comprehensive religion law in favour of, yet again, another set of government regulations.

For many years, some religious believers and experts both inside and outside China have advocated the creation of a comprehensive religion law through the National People's Congress, China's legislature. They argue that such a law is needed because existing rules and regulations are contradictory and because government regulations are easily manipulated by state authorities during their enforcement. They believe the rights of religious believers would be better protected by being clearly stipulated and codified in an objective law of the land.

As an earlier Forum 18 analysis suggested, serious internal debates among state officials on key issues that include an appropriate definition for "religion" might have caused this delay (see F18News 8 March 2006 <http://www.forum18.org/Archive.php?article_id=740>). Without a resolution of similar fundamental questions, it might seem prudent to postpone the adoption of any "law of the land" on religion.

However, even if these debates are somehow resolved, is a comprehensive religion law that is applied nationwide something that would end arbitrary moves against religious believers in the near future? To answer this, it is necessary to first examine at least four issues: (1) the broad legal context, as represented by the Chinese Constitution and the Criminal Law, and may include the Decision of the Standing Committee of the National People's Congress (NPCSC) on Banning Heretical Cult Organisations, Preventing and Punishing Cult Activities; (2) the state's view of the role of law in governance; (3) the way existing religious rules and regulations are implemented now; and (4) the historical or popular view of the role of law.

Article 36 of the Constitution of the People's Republic of China stipulates: "Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organisation or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination."

Four important dimensions or prohibitions are addressed in this article, which reflects the vagaries of the existing laws and

regulation that were mentioned earlier. First, religious "belief" is explicitly guaranteed, but whether religious "practice" is similarly guaranteed is less certain. Second, "normal" religious activities are protected, so one can assume that anything considered "abnormal", at the very least, will not receive similar state protection and at the very worst, will actually be banned. Yet, as many experts have already noted, no definition is provided here about what constitutes "normal" religious activities.

Third, religion cannot be used to engage in socially disruptive and harmful activities; yet again, which religious activities would be subjected to this prohibition is not clear. Is the establishment of one-week vacation Bible schools an "interference with the educational system of the state"? Does the establishment of madrassas for students of Islamic cultural heritage, which is in part a reaction to the atheistic teachings of state schools, violate this stipulation? If so, how does the state reconcile this determination with the long-standing official rhetoric that the cultural heritage of ethnic minorities must be protected?

Fourth and finally, religious affairs should not be subjected to any "foreign domination". However, recalling the recent case in Shanxi Province in which a Protestant pastor was dismissed for inviting a foreign preacher to guest-preach at his church, does the act of inviting foreign religious figures constitute "foreign domination"? If so, why was American Protestant evangelist Luis Palau permitted to preach in China?

Neither the Criminal Law nor the aforementioned NPCSC decisions on cults is very helpful in clarifying these issues. Neither document provides clear definitions for "heretical cults", "sects", "secret societies", "superstitious sects" and "weird religious organisations". To the extent that these types of groups are outlawed, it is defined in terms of their potential violation of state laws, rules and regulations. Yet, based on the letter of these laws and legal decisions, there is no indication that it is illegal to form these types of groups if they do not violate state laws, rules and regulations.

Indeed, as one Chinese scholar told Forum18, the general consensus within the country is that "cults" and "sects" are defined as those groups that are not registered with the state and do not fall under the category of the five recognised religions - Buddhism, Catholicism, Daoism, Islam, and Protestant Christianity. In other words, "cults" and "sects" are partly defined in terms of what they are not, which is that they are not recognised religions.

Despite the words contained in China's laws and regulations, what is even more important is how those words are interpreted - which in turn is affected by one's view on the roles played by laws and regulations in society. On this point, it goes without saying that most officials still view laws and regulations primarily as instruments of control rather than as safeguards of individual rights and freedoms (see F18News 28 April 2004 <http://www.forum18.org/Archive.php?article_id=309> and F18News 8 March 2006 <http://www.forum18.org/Archive.php?article_id=740>).

As if this understanding needs to be repeatedly emphasised, SARA Director Ye Xiaowen again stressed this point in a July 2006 interview with Xinhua News Agency, maintaining that the Chinese government would work "to help the religions restrain their negative elements and promote their positive ones through enhancing management according to the law and adhering to the established practice of running religious affairs in an independent and self-support way".

The title of an article in a recent 2006 issue of the journal Seek Truth from Facts clearly reflects this instrumental view of laws and regulations when dealing with religious matters. The bimonthly journal is published by the Xinjiang Autonomous Region Communist Party School and the article - written by a faculty member of the school - was entitled "Reflections on Improving the Ability to Manage Nationality and Religious Affairs in Accordance with Law".

It is therefore interesting to note that when responding to queries in dialogue with foreign officials and critics, Chinese officials often contradict this basic view of the role of law. Responding to a question on registration posed by members of a foreign government delegation that visited China in 2005, SARA Director Ye Xiaowen, following a detailed response given by the head of SARA's policy and regulation office, insisted that the essence of registration is the protection of religious groups. Therefore, "there are some sites of religious activities or religious groups that are tentatively not equipped with some simple conditions for registration; we are willing to help them complete those conditions; there is no such thing as so-called legality or illegality."

The interesting point here is: if the state views laws and regulations in purely instrumental terms, that means it may selectively apply them, especially when they can serve as justifications for state repression. This in turn partly explains why religious violations vary across different parts of China and among different religious groups. This inconsistency in the implementation of rules and regulations is reflected in the contradictions mentioned in the earlier analysis of Article 36 of the Constitution. However, examples of inconsistency in the application of existing religious regulations are not limited to the ones mentioned. They are quite well documented.

For example, if the regulations - including the State Council Regulations on the Registration of Social Organisations - are taken seriously and literally, then all unregistered Protestant "house churches" ought to be banned or made to register with the state. Yet despite the consistent and persistent state crackdowns on house churches in rural China, the state has also decided not to crack down on many house churches and meeting points.

Indeed, as indicated earlier, SARA Director Ye Xiaowen suggested that it is not automatic that unregistered religious groups and

sites are subjected to punitive responses from the government. Groups awaiting registration may be granted quasi-legal status. Sources in China told Forum 18 that house churches or meeting points exist in large numbers in major urban settings, including Beijing and Shanghai. The state is aware of their presence, yet most of them have been permitted to exist in large part because the state simply does not have the resources to eliminate them. This logic also appears to apply to the current state policy on Falun Gong, which, sources have told Forum 18 in China, continues to be practised by individuals in private. Again, the state seems fully aware of these underground activities but has decided to simply proclaim victory that the movement no longer operates in the open.

In Beijing this year, Forum 18 found a government notice in a little travelled side street in the Muslim district which urged people to stop practicing "superstitions". Interestingly, in contrast to the aforementioned legal documents, this notice actually provides specific examples of superstitions, which include fortune telling, fengshui (which is based on the belief that an individual's fortune is strongly affected by his or her living and working environments), and even conducting funeral services in accordance with folk traditions.

In addition to the fact that this notice was found in a lightly travelled alley, equally interestingly Forum 18 was unable to find similar notices near Christian churches and Buddhist temples in Beijing. Many shops selling items used in funerals are located within a few blocks of this notice, primarily because there are hospitals in the area. One owner of a shop that sells clothes for the dead even suggested to Forum 18 that traditional funeral services are regularly conducted for the dead, especially for those with means.

The inconsistency in the application of rules and regulations may reflect a cultural view that laws are the last resort in resolving disputes. The Chinese have a saying that when resolving disputes, one must first appeal to sentiments or feelings (qing). If the dispute in question cannot be resolved by appealing to human sensibilities, then people should appeal to reason (li). It is only when reason fails to resolve the dispute that people should appeal to law (fa).

This cultural argument seems adequate as an explanation for many of the contradictions and inconsistencies in state practices. Naturally, one should understandably be cautious in carrying any cultural argument too far, as clearly observing the direct effects of culture on behaviour is very difficult. In addition, one must not forget that cultures are the products of human beings and the institutions that they establish. However, these considerations notwithstanding, the potential significance of the cultural explanation cannot be overlooked.

Taken together, the analysis so far suggests that it may not be the ideal time for the establishment of a comprehensive religion law. First, no matter how well crafted the law might be, it will in all likelihood be implemented in the context of the existing Constitution, Criminal Law and other relevant legal decisions by the National People's Congress. Without changes to the country's fundamental legal context, religious believers and groups are unlikely to be treated fairly in the eyes of the law.

Second, and this is clearly connected to the first point, as long as state officials continue to view laws as justifications for government control rather than as safeguards of the rights and freedoms of individual citizens, it is safe to assume that a religion law will be used in the same manner. Third, and perhaps most importantly, if laws continue to be viewed as something that can be violated at will and selectively applied, then there is no guarantee that a religion law will be universally effective.

This last point is not to suggest that laws should be inflexibly applied and interpreted. Rather, its intent is to point out that both the offender and the offended cannot view laws as expedients. Laws must be seen as objective, unbiased standards that are equally applied to all parties to disputes. This then raises the all-too-well-known issue that there does not exist in China today a truly independent, politically non-partisan, and powerful judiciary, an issue that is directly connected to China's legal context.

Without an independent judiciary, even a well-crafted law is likely to fail on its first try. Yet, it is clear that an independent judiciary is not possible within the existing political-legal context. As long as the state remains authoritarian, and while the political and legal culture remain unchanged, it also seems likely that a comprehensive religion law will not in itself end arbitrary state moves that inhibit the religious freedom of China's citizens. (END)

For analyses of other aspects of religious freedom in China, see <<http://www.forum18.org/Analyses.php?region=3>>

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