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VIETNAM: Implementation will test new religious ordinance

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Believers have responded warily to the new religious ordinance which codifies the state's policies on religious affairs, though implementation will test if it makes religious practice easier or more difficult. The ordinance, adopted by the National Assembly's standing committee in June, comes into force on 15 November. Officials have already met religious representatives to discuss the content. The ordinance lays greater stress on believers "abiding by law" rather than needing specific permission for many activities, but still reflects official suspicion of religious groups. Registered groups will need annual permission to hold regular meetings in their own buildings, while conferences in other premises will require specific permission. Unclear is whether home meetings are allowed. Religious activities and even beliefs can be banned. Prisoners are banned from religious activity, while former prisoners need permission. Local officials must approve assignment of clergy, while religious groups' contacts with abroad remain under official control. The ordinance does not mention the return of confiscated places of worship. Three Catholic priests described the ordinance as "a tool of the state to oppress people of faith".

Officials and religious believers in Vietnam are still digesting the recently-adopted religious ordinance which officially codifies the state's policies and guidelines on religious affairs, trying to determine whether it makes religious activity easier or more difficult – and how it will be implemented on the ground. Even before its entry into force on 15 November, copies of the ordinance have been circulated throughout Vietnam and the government has already held meetings with representatives of religious groups to discuss the contents. Religious leaders - including three well-known Catholic priests, Fr Chan Tin, Fr Nguyen Huu Giai and Fr Phan Van Loi, and the unregistered Vietnam Evangelical Fellowship, which brings together several hundred house churches - have issued critiques of the document.

The Standing Committee of Vietnam's National Assembly promulgated the long-anticipated ordinance (No. 21/2004/PL-UBTVQH11) on 18 June. The 41-article document replaced the 1999 Prime Ministerial Decree as Vietnam's primary policy document on religious affairs. By all accounts, the document has been in the works for several years: the National Assembly was originally scheduled to ratify the ordinance by the end of 2003.

Officials have presented the ordinance as a reflection of the government's effort to protect religious freedom. However, many critics have complained that the document is at best "old wine in a new wineskin". The three Catholic priests described it as "a tool of the state to oppress people of faith".

An examination of the document proves that when it comes to the state's distrust of religions and religious groups "old habits die hard". The new ordinance appears to mirror the concerns of most Communist governments. Indeed, many key provisions bear a striking resemblance to regulations on religious affairs in other communist states, such as China. (For an analysis of China's regulations on religious affairs, see F18News 28 April 2004 http://www.forum18.org/Archive.php?article_id=309 .)

While stating in the first article that the "state guarantees freedom of religious belief and of religion for its citizens", the ordinance later admonishes those who dare to use religion to "undermine national unity; disseminate information against the state's prevailing laws and policies; [and] spread superstitious practices..." The same article, Article 8, also bans any attempt to use religion "to sow division among the people, ethnic groups, and religions; to cause public disorder; to do harm to other people's lives, health, dignity, honour, and property; to hinder people from exercising their rights and public obligations." These stipulations expand on similar provisions in the 1999 Decree. This persistent suspicion of religions and their adherents is directly related to the state's unwillingness to surrender its control of religious organisations and their activities.

Regarding religious organisations, the ordinance added to the provisions of the 1999 Decree by specifying the criteria for government approval of such groups. Article 16 of the ordinance sets out the requirements a religious group must meet to obtain legal recognition. First, it must demonstrate that "it is an organisation of people with the same belief, who follow religious tenets and rites that do not go against the nation's fine traditions and customs, and the common benefit of the people". Second, the organisations must have a charter or "regulations outlining principles, objectives and activities favouring attachment to the nation and not contrary to the provisions of the law." Third, as mentioned earlier, it must register its activities and "maintain long-term, stable operations". Fourth, the organisation must have an office and administrative and legal representatives. Finally, it must possess "a name that is not identical to the name of another religious organisation already recognised by the competent state management agency."

Even for officially-sanctioned organisations, government recognition does not automatically confer the right to conduct religious activities. Article 18, mirroring Article 10 of the 1999 Decree, requires religious organisations to seek approval from relevant government agencies before holding any "conferences" or "congresses". Article 11 states that religious activities that take place outside officially-sanctioned religious venues need the consent of the appropriate level of government. Article 12 stipulates that even religious activities in established religious venues must be "registered" on an annual basis. Provisions of Articles 11 and 12 echo the contents of Article 8 of the 1999 Decree.

One such activity is the provision of religious education. The 2004 Ordinance allows religious groups to provide religious education (religious education to children under the age of 18 requires only parental consent, according to the ordinance) by establishing schools and classes. But, as under the 1999 Decree, government approval, especially from the prime minister and the relevant provincial governor, is required before religious groups can open schools and classes.

As if all these control mechanisms were insufficient, Article 15 of the ordinance provides the Communist state with the right to suspend religious activities and "religious belief" if these activities and beliefs result in violations of ill-defined offences, such as the breach of "national security or seriously and negatively affect public order or the environment"; or if they "negatively affect the unity of the people or the nation's fine cultural traditions"; "cause harm to other people's lives, health, dignity, honour, and property"; and "cause other serious illegal activities".

Despite the provision protecting the individual right to religious freedom, Article 13 of the ordinance maintains a similar provision from the 1999 Decree that prohibits persons serving prison terms or administrative probation from conducting religious activities. Those who have completed their sentences require the "agreement" of the relevant "state management agency" to conduct religious activities.

In addition, the ordinance keeps the provisions in the 1999 Decree that require state approval of clerical appointments and assignments. For example, Article 23 of the ordinance is essentially an expanded version of Article 21 of the 1999 Decree, requiring the approval of local officials for clerical assignments. A subtle difference, however, does exist on the issue of appointment between the two documents. While the 1999 Decree stated that the government must approve both clerical appointment and assignment, the 2004 Ordinance requires only that appointments be in keeping with the "charters and regulations of the religious organisations". Nonetheless, candidates must still meet three vaguely-defined criteria: be a Vietnamese citizen of good moral conduct; possess the spirit of national unity and national harmony; and scrupulously observe the law.

In this spirit of control, the 2004 Ordinance continues to provide the communist state the power to manage Vietnamese religious groups' interactions with their foreign counterparts. Articles 35 and 36 stipulate that state approval is required for foreign individuals and organisations to conduct religious activities in Vietnam. Similar approval is also required for Vietnamese individuals and organisations to participate in religious activities or receive religious education outside the country.

Moreover, as was the case under the 1999 Decree, the 2004 Ordinance requires government approval of clerical appointments made by foreign individuals or groups, with one interesting difference. The 1999 Decree stipulated that such approvals were given by the prime minister, whereas under the 2004 Ordinance approval can be obtained from the central government's "religious management agency". This is unlikely to refer to the Committee on Religious Affairs since, by all accounts, this body has no enforcement power and is essentially an advisory agency to the prime minister. Therefore, this "religious management agency" is almost certainly another government or Communist Party agency.

On this note, it may be significant that the 2004 Ordinance makes particular reference to the Vietnam Fatherland Front, the Communist Party organisation that oversees non-Communist organisations - including religious organisations - and their activities. Article 7 of the ordinance states that the Front and "its member organisations" are responsible for the mobilisation of religious organisations and adherents to achieve political objectives; report "the people's comments, expectations, and petitions on religious belief and religion-related issues to the competent state agencies"; and be involved in developing and monitoring state policies on religious affairs.

Clause 2 of the article highlights the central role of the Front by stipulating that other government agencies "are to take the initiative in cooperating with" the Front in implementing government policies and laws on religious affairs. By emphasising the Front's role in executing the government's religious policies, the state is finally acknowledging publicly the Front's central role in managing religious affairs, a fact already known to those familiar with how the Vietnamese bureaucracy works.

Another notable difference between the ordinance and the 1999 Decree on the issue of foreign interactions is the absence in the ordinance of a strangely-worded clause in Article 25 of the 1999 Decree, which stated that "foreign organisations and individuals, including religious organisations and individuals, that enter Vietnam to conduct activities outside the religious domain are not allowed to organise and operate or take part in organising and operating religious activities and to propagate religion".

In the past, many have interpreted this clause to mean that foreign individuals and groups cannot conduct religious activities in Vietnam. Yet, a close examination of this clause suggests that it applies only to those intending to conduct non-religious activities.

Such groups may include Montagnard Protestants now living abroad, some of whom have been charged by the state for allegedly fomenting unrest in the Central Highlands. If so, it would be interesting to see whether foreign religious groups and individuals can indeed organise and establish religious activities in the country.

One bone of contention between Vietnam's religious groups and the government is the religious organisations' desire to recover properties confiscated by the Communist Party after 1975. Article 11 of the 1999 Decree stated directly that confiscated properties "come under the ownership of the state", thereby removing any hope that religious groups could one day recover such properties.

This provision is noticeably absent in the 2004 Ordinance. While the new ordinance refers to how existing religious properties should be used (Article 27) and how future disputes over religious properties that arise "due to the requirements of economic development projects" should be resolved (Article 31), there is no indication that the government is interested in discussing the issue of properties confiscated in the past. The absence of a provision dealing with this suggests that the state considers it a moot point.

Yet, even as the government appears unwilling to discuss this sensitive issue, the ordinance seems to have removed the onerous requirements contained in the 1999 Decree that all major and minor renovations of religious properties must be approved by the relevant local government agencies. Instead, the ordinance provides that all renovations must simply adhere to relevant laws on construction and, where appropriate, laws on the preservation of cultural and historical relics. Only a "change in the intended uses" of religious properties requires explicit government approval.

A second long-standing issue is how far religious individuals and organisations can conduct humanitarian activities. Many religious communities, such as Hoa Hao Buddhism, regard charitable activities - such as flood relief - as an integral part of their religious belief. In the past, the government has generally tried to keep some control over these activities for fear that religious groups could use the social services they provide to establish a base from which to challenge the regime. Article 17 of 1999 Decree explicitly stated that the "charity establishments sponsored by religious dignitaries, clergy, and organisations shall operate under the guidance of competent state agencies".

By contrast, the 2004 Ordinance suggests that the government is becoming - at least in words if not in deeds - more prepared to allow religious organisations and individuals to provide humanitarian services without having to obtain specific government approval. Article 33 declares that the "state encourages and creates favourable conditions for religious organisations to participate" in activities that include the care of underprivileged children, sick and disabled people, and the provision of pre-elementary education. The same article stipulates that "religious dignitaries and those of religious vocation" are "encouraged to organise educational, health, humanitarian, and charitable activities". The article does not specify whether the religious groups and individuals require explicit prior government approval, merely stating that such activities should be conducted "according to law".

Another apparently positive provision in the 2004 Ordinance is the stipulation in Article 38 that should any provisions of the ordinance conflict with stipulations in international treaties Vietnam has signed, "the regulations prescribed by the international treaties shall prevail". Moreover, religious organisations and their subsidiaries that gained state recognition and registration before the ordinance came into force will not have to re-apply for recognition or undergo re-registration.

In addition to these apparently positive provisions, the 2004 Ordinance provides more detailed definitions of key concepts such as "religious activities" and "places of worship". Article 3 defines religious activities as "ancestor worship; commemorating and honouring those who have rendered great services to the country and the community; the worship of divinities and traditional symbols as well as other folk beliefs and activities that represent fine, valuable historical, cultural, moral and social values." They also include the "preaching and practising of religious tenets, canons and rites, and the management of religious organisations".

The same article states that places of worship include "communal houses, temples, shrines, small pagodas, and family worship halls". However, not clear is whether any of these definitions apply to religious services held in individual believers' homes, such as those commonly held by Protestant Christians.

The article also introduces a term that was not in the 1999 Decree - "religious congregation", which is defined as "the assembly of believers set up by a religious organisation for the sake of carrying out religious activities". This concept is particularly interesting as it may provide legal support for religious groups such as the state-recognised Evangelical Church of Vietnam to establish affiliated churches in areas such as the Central Highlands. This is especially significant as local officials in the Central Highlands have recently refused to recognise Montagnard congregations that claim to be affiliated with the Evangelical Church of Vietnam.

Several points emerge from this systematic analysis of the ordinance. First, it appears that in crafting this legal document, the communist state has tried to lessen the pervasive perception of a government intent on direct controlling religious affairs. Hence, in comparison with the 1999 Decree, the ordinance makes fewer references to the need for direct state approval. Instead, more references are made to the need for activities to abide by law, making it appear as if the law is the supreme institution governing religious affairs in the country.

Second, more detailed definitions for key concepts that have often been the sources of disputes between government officials and religious groups may have been provided precisely to prevent future disputes emerging during implementation. On the one hand,

these definitions seem quite encompassing. On the other, the level of detail is a concern as it may imply that items not included in the definitions are automatically outlawed. This has particular relevance to the application of the definitions of "religious activities" and "places of worship".

Third, which is related to the first point, the 2004 Ordinance appears to reflect a sophistication not seen before in the government. By stating that the provisions of relevant international treaties to which Vietnam is a signatory should take precedence over Vietnamese laws and regulations, the government is clearly intent on countering its critics while attempting to broaden its network of foreign "friends" and supporters.

While scepticism is justified over how faithful the Vietnamese government will be in implementing these positive provisions, it is likely that they reflect genuine recognition among some Vietnamese political leaders that the state needs to allow greater religious freedom if for no other reason than to enhance the government's image. In this regard, some interesting "positive" developments have emerged. The Catholic news agency Zenit reported in July that, for the 2004-5 academic year, the government has permitted a higher-than-usual number of students to enter St Joseph's Major Seminary in the capital Hanoi.

Still, the major test of how far the ordinance reflects a change in the government's religious policy lies in the implementation process, which appears to be already underway. For example, the government is rumoured to be using the implementation process to overhaul the Cao Dai leadership in Tay Ninh, essentially aiming to win over former Cao Dai leaders who have refused to support the government. If so, no doubt a similar process is underway in other religious communities, particularly those that are internally divided over how they should relate to the government.

However, the government would face a monumental task indeed to reach out to older generations of religious leaders who have suffered under Communist rule and remain suspicious of government overtures. For such efforts to succeed, the government will have to enact genuine and substantive policy changes, which are not yet reflected in the new ordinance.

Another test is what government agencies and officials do in practice. On this point, the prospect is even less hopeful. Prominent religious dissidents - such as the Supreme Patriarch and the second-ranking leader of the Unified Buddhist Church of Vietnam, Catholic priest Fr Thaddeus Nguyen Van Ly, and the Reverend Nguyen Hong Quang of the unregistered house church - continue to be imprisoned, detained or held under house arrest or police surveillance.

In addition, ethnic minorities like the Montagnards and the Hmongs continue to suffer under the government's repressive policy. Pressure on ethnic minorities to renounce their faith continues unabated. The government has refused to reopen hundreds of churches in the Central Highlands that were forcibly closed during the government's repeated crackdowns against the Montagnards during the last few years (see F18News 2 February 2004 http://www.forum18.org/Archive.php?article_id=242).

Finally, the government has remained unrepentant in its rhetoric. In a commentary broadcast on 10 August, the Voice of Vietnam claimed that the "state of Vietnam has always guaranteed the freedom of belief and religion". Yet it went on to describe the religious beliefs of groups such as the Montagnards as "heresies" that "lead people into darkness, incite people to act against the law, and direct followers into wrongful paths". The radio commentary distinguished these religious groups from "religions with legitimacy and open and transparent activity".

The Voice of Vietnam commentary illustrates that no matter how far the letter of the law is improved, if the mindset of the law enforcer remains unchanged the rights of the people will remain under constant threat.

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<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=vietna>

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