

VIETNAM: Decree No. 92: Specific provisions and measures for the implementation of the Ordinance on Belief and Religion

1. Introduction

On 1 January 2013, a new Decree on religious organisations and religious activities came into effect. 'Decree No. 92/2012/ND-CP: Specific provisions and measures for the implementation of the Ordinance on Belief and Religion' was issued by Vietnamese Prime Minister Nguyen Tan Dung on 8 November 2012, and replaces 'Decree 22', which was issued in 2005. As the title suggests, Decree 92, like Decree 22, provides instructions for the implementation of the Ordinance on Belief and Religion, adopted in 2004.

Buddhist and Christian leaders, as well as lawyers and activists, have 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.

This briefing outlines potential problems which could arise from the new Decree, and summarises the parts of the text or themes running through it which produce these problems. The briefing focuses on provisions or aspects which differ from the 2005 Decree, although some of these provisions build on those present in the earlier text. The briefing ends with nine recommendations.

It is important to note that this briefing is a summary rather than a detailed analysis and should be read in conjunction with the text *Two Steps Back? Vietnam's Decree (on Religion) ND-92 Effective January 1, 2013*, which was written by a long-time trusted CSW source. This Commentary provides an excellent analysis of the new Decree and its possible implications. CSW's briefing has been prepared using the Commentary cited above, plus two other commentaries from reliable sources, cross-referenced with the original text in its unofficial English version.

2. Analysis

The following analysis focuses on the differences between Decree 22 and Decree 92. Most of the points highlighted here refer to Chapter III, which covers religious organisations (Articles 5-23), and Chapter IV, on religious activities (Articles 24-41): these are the chapters which have the potential to cause the most difficulties for religious groups and practitioners in Vietnam. This analysis should not be interpreted as an exhaustive list of differences between the two Decrees. Furthermore, the full impact of the changes in the new Decree is not yet clear since in terms of implementation much is left to the discretion of the authorities.

2.1 Registration of meetings

Article 5 of the new Decree adds a new level of activity requiring registration/permission¹ and in doing so simultaneously adds an extra stage to the process of applying for full registration/permission as an organisation conducting religious activities. Religious believers who wish to conduct 'religious

¹ The Vietnamese word *dang ky* is often translated as 'registration'; however, according to Vietnamese-speaking commentators, the use of *dang ky* in Decree 92 is more accurately translated as 'asking permission', as evidenced by the fact that the decision to grant or refuse 'registration' lies with the commune level authorities.

meetings', *sinh hoat ton giao*, must submit the name of the religion and its principles, the name(s) and address(es) of its representative(s), and the meeting's form, location, time and number of participants. In order to qualify for registration/permission, the principles, objectives and content of the meeting must not contradict Article 8, Paragraph 2², and Article 15³ of the Ordinance on Beliefs and Religions (hereafter, 'the Ordinance'), the believers must have a legal place to meet, and the representative must be a Vietnamese citizen with full civil rights, 'obeying the laws and having a spirit of national unity and reconciliation'. In the case of Christianity, religious activities which fall into this category mostly constitute the most basic public observations of the faith, such as worship and prayer.

Potential problems:

1. The condition of having a legal venue appears to be a 'catch-22': unregistered organisations cannot obtain a venue for the purposes of religious activities, but in order to register as a religious organisation, groups of believers must first register for religious meetings,
2. Representatives may be wary of registering their names and addresses with local authorities, especially in regions where officials abuse their position of power to threaten and harass believers,
3. Registration/permission for religious meetings is an additional step which must be completed before believers can apply for registration/permission for broader religious activities and recognition as an organisation. The addition of this step can only lengthen the already protracted process of applying for legal recognition as a religious organisation,
4. The addition of this step appears to reverse or override the 2005 Prime Minister's Special Instruction, introduced in response to international pressure in the run-up to Vietnam's attempt to accede to the World Trade Organisation. The Special Instruction was intended to speed up the registration of Protestant house churches. Decree 92 runs contrary to this aim by slowing down the process of registration considerably,
5. For comment on the condition 'having a spirit of national unity and reconciliation', please see section 2.4 below.

2.2 Registration of activities

Article 6 lists the conditions and requirements for registration of religious activities beyond basic meetings (the term *hoat dong ton giao* may also be translated as 'operations'). The conditions for application are: 20 years or more of religious meetings approved by the Commune People's Committee; these activities must not have violated Article 8, Paragraph 2, and Article 15 of the Ordinance; the religion must have doctrines, articles of faith, ceremonies and activities that support the nation and do not contradict its fine traditions and customs; representatives must be Vietnamese citizens, with full civil rights and prestige within the organisation, and must obey the law. In addition, the faith group must not belong to a religion already recognised by the state, must have a name that is not the same as a recognised religious organisation, famous person or national hero, and must have a legal venue.

² Article 8, Paragraph 2: It is prohibited to abuse the right of belief and religious freedom to undermine peace, national independence and unification; incite violence or propagate wars, conduct propagation in contravention of the State's laws and policies; divide people, nationalities or religions; cause public disorder, infringe upon the life, health, dignity, honour and/or property of others, or impede the exercise of civic rights and performance of civic obligations; conduct superstitious activities or other acts of law violation.

³ Article 15: Belief or religious activities shall be stopped in one of the following cases:

1. They infringe upon the national security, seriously affect the public order or environment;
2. They adversely affect the people's unity, the fine national cultural traditions;
3. They infringe upon life, health, dignity, honour or property of other persons.
4. They involve other serious law violation acts.

Potential problems:

1. Requirement of 20 years or more of religious meetings: under the earlier Decree it appeared that if an organisation had 20 years of stable operation *without registration* it could apply for permission for religious activities; under the new Decree the organisation must already be registered for religious meetings, a category which was only introduced with this Decree effective January 2013. In theory, this means it will not be possible for any organisation to register for the Article 6 category of religious activities for at least 20 years,
2. For comment on the condition ‘activities that support the nation and do not contradict fine traditions and customs’, please see section 2.4 below.

2.3 Registration as a religious organisation

Article 8 allows organisations with three years of registered operations which have not violated Article 8, Paragraph 2, and Article 15 of the Ordinance to apply for legal recognition as a religious organisation. The application must include the names of the religion, organisation and representatives, the number of believers, the scope of its operations, its structure, and its headquarters. An accompanying report must include the tenets, principles and procedures of the organisation and its charter and regulations. The next section (Articles 9-11) covers changes to the structures and formation of organisations. Articles 14-26 place restrictions and conditions upon other areas of operation, including the running of schools, the training and appointment of clergy, and the transfer and travel of religious officials.

Potential problems:

1. Under Article 8, Paragraph 4, if a religious organisation has had the required three years of religious activities but has violated Article 15 of the Ordinance, the organisation must apply again for registration of religious activities and wait a further year before applying for recognition as a religious organisation. The ‘violations’ cited in Article 15 include vaguely termed ‘infringements on national security’ and adverse effects on ‘people’s unity and [...] traditions’,
2. The restrictions and conditions stipulated in Articles 14-23 deal with the internal workings of an organisation, and as such have been described as intrusive and restrictive. These conditions make it clear that this section, and the Decree overall, aims at controlling rather than protecting religious believers and organisations.

2.4 National unity, supporting the nation

At several points in the Decree, the term ‘national unity’ is used in the context of violations by believers (in reference to Article 15 of the Ordinance on Beliefs and Religions) and as a requirement for representatives of religious organisations (Article 5: ‘the representative must [have] a spirit of national unity and reconciliation’). There is no expansion on the definition of this term at any point in the text. The term’s abstract nature therefore renders it vulnerable to misinterpretation or misuse by those implementing the Decree. This could have serious consequences for religious believers applying for permission to meet. For example, the author of *Two Steps Back?* observes that a Christian leader who teaches that worship of ancestors and national heroes is incompatible with Christian beliefs could be accused of going against ‘national unity’.

In the same way, the stipulation that an organisation’s tenets, canons and procedures must not be against the ‘fine traditions and customs’ of the country is highly subjective and open to abuse. Who can say what does and does not constitute a tradition or custom of Vietnam? Vietnamese adherents of both Buddhism and Christianity, for example, sometimes come from families or communities with

religious customs and traditions going back centuries. Yet it is these religious groups which Decree 92 aims to manage and control.

Potential problems:

1. Inclusion of vague and ambiguous terms leaves much to the discretion of local officials and could be an obstacle to the successful registration of peaceful, law-abiding religious organisations.

2.5 Religious schools and foreign believers

Articles 14-17 of the Decree cover the establishment, management and termination of schools and school activities. To open a school, an organisation must be legally recognised and must include compulsory instruction on Vietnamese history and law (Article 14). Decree 92 adds a new condition not included in the previous Decree, which requires the school directors to inform the central religious authorities of the number of students to be admitted and the conditions of admission (Article 15). Furthermore, under Article 16, if a school wishes to enrol a foreign student, they must request permission from the central religious authorities.

This is not the only new stipulation on the participation of foreigners in religious affairs: under Article 40, foreigners wishing to gather for religious activities at legal religious facilities must submit an application to the relevant Provincial People's Committee. This was not stipulated in the previous Decree.

Potential problems:

1. On one hand, the new Decree provides more detailed guidelines on requesting permission/registration for the running of schools and classes. At the same time, rather than giving schools and organisations greater religious freedom, the new stipulations increase the control the authorities have over the school by intrusively monitoring every aspect of the managing organisations' internal operations.

3. Summary

One advantage of the new Decree is that it reduces the timeframe in which the authorities must respond to applications for registration and permission (for example, the timeframe for authorities to consider an application for registration as a religious organisation has been reduced from 90 days to 45 at the central level: Article 8, Paragraph 3b). Implementing authorities are also required to issue a receipt of documentation which includes the date on which they will announce their decision. If the application is refused, the relevant authority must provide an explanation and guidance. All these measures, if properly implemented, will create a more transparent process and reduce the risk of wrongful rejection of applications.

There is also an argument that the new Decree is clearer and more detailed than Decree 22. However, the Decree as a whole is aimed at control or management rather than the protection of religious freedom. Therefore any added details will result in further intrusion into religious activities. Rather than concentrating on what is needed to secure religious freedom, the Decree focuses on monitoring, managing and controlling religious life.

Recently some observers inside Vietnam have raised concerns about the use of the law to control aspects of cultural life. Nguyen Minh Thuyet, former deputy of the National Assembly, voiced the

opinion that the implementation of laws on cultural life is both impossible and inappropriate.⁴ This opinion has particular relevance for the new Decree. Furthermore, attempting to use the law to govern cultural behaviour, including religious belief, is not only unnecessary, it is also potentially extremely harmful when such laws include vague and ill-defined terminology which can be misread and misused by officials. Recent collaborative efforts between the government and international actors in training officials and religious leaders are a very positive step: such training plays a crucial role in upholding rule of law, protecting the rights and freedoms of the people. Nevertheless, for training to effectively protect the rights of Vietnamese citizens, the law itself must have the same goal.

One potential consequence of the Decree is that religious groups could be pressured to join organisations which are already registered. At the same time, registered groups who enjoy a good relationship with the government are promising benefits to believers if they leave their unregistered group and join the registered organisation. However, some religious believers feel these registered organisations are 'too friendly' with the government, implying that they are not legitimate independent organisations.

A second potential outcome is that organisations could be forced to operate illegally while they wait for registration/permission. This would not only be bad for the religious adherents, but also for Vietnamese society, because it would mean that this Decree has turned law-abiding citizens into criminals simply because of their religious beliefs. Far from protecting citizens' right to religious freedom, Decree 92 risks making peaceful religious observance into a criminal activity.

4. Recommendations

In light of the commentaries used in this briefing, and with the aim of promoting religious freedom for all religious believers in Vietnam, it is recommended that the Government of the Socialist Republic of Vietnam take the following actions:

- Remove the lowest level of registration/permission required for religious meetings (*sinh hoạt tôn giáo*) where such meetings do not violate any law,
- Remove the condition that religious meetings have a fixed, legal venue and make it easier for religious organisations to attain venues both before and after registration/permission,
- Take steps to ensure persons named in applications for registration of meetings/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 the requirement that religious groups have 20 years of stable 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, taking into account the legal requirements in place and possible reasons for non-registration during the period in question,
- Remove vague terminology including 'infringements on national security', 'people's/national unity', 'traditions and customs', etc. Where these terms are relevant, they should include a full definition which clearly demonstrates what does and does not constitute a crime in relation to these terms,

⁴ "It is impossible to use legal documents to force the implementation of behaviors in cultural life. Only those behaviors that are harmful to the community should be within the scope of the law." In *Phap Luat*, cited in *Saigon Times* (No. 4368) 25 January 2013: <http://english.thesaigontimes.vn/Home/features/friday/27678/> (accessed Feb 2013).

- In using terms like 'fine traditions and customs', ensure that religious traditions are protected alongside cultural traditions, and that no religion or belief is singled out as being 'un-Vietnamese',
- Provide extensive and ongoing training for all government officials charged with the implementation of this Decree, along with religious leaders, lawyers, jurists, and other relevant parties,
- Provide avenues for feedback from the aforementioned parties with regards to this Decree, and actively and carefully consider comments and criticism put forward by the international community,
- Ensure that the rights of all Vietnamese citizens, including religious believers, are protected by law and by those implementing the law, including the right to freedom of religion or belief.