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China: Religion and Chinese Law

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Contents

- I. Introduction1
- II. Religions in China.....2
 - A. Buddhism, Taoism, and Folk Beliefs.....2
 - B. Islam.....3
 - C. Catholicism and Protestantism.....3
 - D. Banned Religious or Spiritual Groups3
 - E. Officially Recognized Religious Associations.....4
- III. Legal and Policy Framework.....4
 - A. Constitution.....4
 - B. Criminal and Public Security Laws on “Cults”.....5
 - C. Regulations on Religious Affairs6
 - D. Official Religious Policies6
- IV. Banned Religious or Spiritual Groups7
- V. Unregistered Religious Groups.....7
- VI. Restrictions on Religious Activities8

China: Religion and Chinese Law

Staff of the Global Legal Research Center

SUMMARY An official Chinese government statement recognizes five major religions practiced in China—Buddhism, Taoism, Islam, Catholicism, and Protestantism—as well as many folk beliefs. Most ethnic Tibetans practice a distinct form of Buddhism, Tibetan Buddhism. The Uighurs, who primarily live in the Xinjiang Autonomous Region, are predominantly Muslim. Over a dozen religious or spiritual groups are banned in China as “evil cults,” including Falun Gong and the Church of Almighty God. Seven religious associations are listed as officially recognized national religious associations.

The Chinese Constitution guarantees citizens “freedom of religious belief” and the protection of “normal religious activities.” The Constitution prohibits “making 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” and provides that “[r]eligious bodies and religious affairs are not subject to any foreign domination.”

“Organizing and using cult organizations to obstruct the enforcement of laws” is a criminal offense punishable by up to life imprisonment. Organizing or inciting others to engage in “cult” activities or using “cults” or the “guise of religion” to disturb social order or to harm others’ health is subject to public security penalties, which may include detention for up to fifteen days.

The Regulations on Religious Affairs (RRA) require religious groups to register with government authorities. Establishing religious schools or religious facilities also requires government approval and registration. Moreover, the RRA sets out restrictions on religious activities that apply to both registered and unregistered groups. Collective or large-scale religious activities held outside of registered religious facilities, for example, are strictly restricted.

I. Introduction

This report was prepared in response to a research request from the US Department of Justice concerning religions in the People’s Republic of China (PRC or China) and the enforcement of Chinese law and policies on religions that are not officially recognized.

The Chinese government officially states that all religions in China are treated equally and that the state does not exercise administrative power to promote or ban any religion.¹ Nevertheless, Chinese authorities appear to be exercising broad discretion over the religious practices of Chinese

¹ The PRC State Council Information Office, China’s Policies and Practices on Protecting Freedom of Religious Belief (Religion White Paper) (Apr. 2018), <http://www.scio.gov.cn/zfbps/32832/Document/1626734/1626734.htm>, archived at <https://perma.cc/2VGM-YZ2E>.

citizens.² The government's treatment of certain groups, such as unregistered Christian churches, Falun Gong practitioners, Tibetan Buddhists, and Uighur Muslims, has raised particular concerns.³

II. Religions in China

The Chinese government officially recognizes that major religions practiced in China include Buddhism, Taoism, Islam, Catholicism, and Protestantism, with a total of nearly two hundred million believers and more than 380,000 clerical personnel. The government also recognizes that there are many folk beliefs in China in addition to the five major religions.⁴

In April 2018, the Chinese government issued an official statement on religion, China's Policies and Practices on Protecting Freedom of Religious Belief (Religion White Paper).⁵

A. Buddhism, Taoism, and Folk Beliefs

According to the Religion White Paper, China has numerous Buddhist and Taoist believers, but accurately estimating the number of such believers is difficult because there are no set registration procedures. The White Paper does provide the numbers of clerical personnel of the two religions: around 222,000 Buddhist clerical personnel and over 40,000 Taoist clerical personnel. The White Paper also says there are a large number of people who participate in many folk beliefs, which are closely linked to local cultures, traditions, and customs.⁶

According to a report on China's religion published by the Council on Foreign Relations (CFR Report), Tibetan Buddhists face the highest levels of religious persecution in China, along with Uighur Muslims and Falun Gong practitioners. There are more than six million ethnic Tibetans living in the Tibet Autonomous Region and its adjacent provinces, most of whom practice Tibetan Buddhism, a distinct form of Buddhism.⁷ The Religion White Paper says there are 3,800 Tibetan Buddhist lameries (monasteries) in China that are officially registered religious facilities.⁸

² U.S. CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA (CECC), 2017 ANNUAL REPORT 127 (Oct. 5, 2017), <https://www.cecc.gov/sites/chinacommission.house.gov/files/2017%20Annual%20Report.pdf>, archived at <https://perma.cc/FLX9-YQCZ>.

³ U.S. DEPARTMENT OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2016: CHINA (INCLUDES TIBET, HONG KONG, AND MACAU), <https://www.state.gov/documents/organization/268966.pdf>, archived at <https://perma.cc/4HXJ-6EAN>.

⁴ Religion White Paper, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

⁷ Eleanor Albert, *Religion in China*, COUNCIL ON FOREIGN RELATIONS (last updated Mar. 15, 2018), <https://www.cfr.org/backgrounder/religion-china>, archived at <https://perma.cc/TA65-GDYG>.

⁸ Religion White Paper, *supra* note 1.

B. Islam

According to the Religion White Paper, there are ten minority ethnic groups in China with majorities that believe in Islam. The total population of the ten ethnic groups is more than twenty million, with about 57,000 clerical personnel.⁹

The Hui people, who are closely related to the majority Han population and are largely based in the Ningxia Autonomous Region and in Gansu, Qinghai, and Yunnan provinces, constitute the largest of the predominantly Muslim minority groups.¹⁰ The Uighurs, who live primarily in the Xinjiang Autonomous Region, are also predominantly Muslim.¹¹ According to the CFR Report, the religious activities of Uighur Muslims are tightly controlled by government authorities, and Hui Muslims have experienced an uptick in repression, while Muslims in the rest of the country enjoy greater religious freedom.¹²

C. Catholicism and Protestantism

According to the Religion White Paper, Catholicism has about six million believers and about eight thousand clerical personnel in China. Protestantism has over thirty-eight million followers and over 57,000 clerical personnel.¹³

There are many Christians in China worshiping in unregistered churches who may not be included in the official government statistics. A Freedom House report estimates there are six million unregistered Catholics and thirty to fifty million unregistered Protestants.¹⁴

D. Banned Religious or Spiritual Groups

Over a dozen religious or spiritual groups are banned in China as “evil cults.” Falun Gong, a spiritual movement that blends aspects of Buddhism, Daoism, and traditional qigong exercise, is one of them.¹⁵ The Church of Almighty God (also known as Eastern Lightning), a quasi-Christian group, is also officially banned.¹⁶

⁹ *Id.*

¹⁰ Albert, *supra* note 7.

¹¹ *Id.*

¹² *Id.*

¹³ Religion White Paper, *supra* note 1.

¹⁴ Sarah Cook, *The Battle for China's Spirit*, FREEDOM HOUSE (Feb. 2017), https://freedomhouse.org/sites/default/files/FH_ChinasSprit2016_FULL_FINAL_140pages_compressed.pdf, archived at <https://perma.cc/PT3D-8QPY>.

¹⁵ Albert, *supra* note 7.

¹⁶ *Id.*

E. Officially Recognized Religious Associations

There are approximately 5,500 officially recognized religious organizations throughout China, according to official government statistics.¹⁷ The following seven associations are listed in the Religion White Paper as officially recognized national religious associations:

- Buddhist Association of China
- Chinese Taoist Association
- China Islamic Association
- Chinese Catholic Patriotic Association
- Bishops' Conference of the Catholic Church in China
- National Committee of the Three-Self Patriotic Movement of the Protestant Churches in China
- China Christian Council¹⁸

III. Legal and Policy Framework

A. Constitution

The PRC Constitution guarantees citizens “freedom of religious belief” and the protection of “normal religious activities.”¹⁹ It prohibits “making 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.” It also provides that “[r]eligious bodies and religious affairs are not subject to any foreign domination.”²⁰

The United States Congressional-Executive Commission on China noted in its 2017 annual report on human rights and rule-of-law developments in China (CECC Report) that, “[w]ith essential terms such as ‘normal’ undefined, it is unclear whether China’s Constitution protects the same range of belief and outward manifestation that is recognized under international law.”²¹

As pointed out by a Chinese constitutional law scholar, freedom of religion is protected in the Chinese Constitution, but within carefully circumscribed limits. He commented on the constitutional protection of and legal restrictions on freedom of religion in China as follows:

¹⁷ Religion White Paper, *supra* note 1.

¹⁸ *Id.*

¹⁹ XIANFA art. 36 (1982, as amended in 1988, 1993, 1999, and 2004), available on the State Council of the People’s Republic of China website at http://english.gov.cn/archive/laws_regulations/2014/08/23/content_281474982_987458.htm, archived at <https://perma.cc/ZC6A-2T4H>.

²⁰ *Id.*

²¹ CECC 2017 ANNUAL REPORT, *supra* note 2, at 127.

The crux of the issue is the scope of “normal” religious activities and the extent of restrictions that the state may legitimately impose without violating the principle of religious freedom. In practice, China’s religious freedom is carefully restricted by laws and regulations that have substantially reduced the scope and effectiveness of the constitutional protection of religious freedom.²²

B. Criminal and Public Security Laws on “Cults”

According to article 300 of the PRC Criminal Law, “organizing and using cult organizations to obstruct the enforcement of laws” may constitute a criminal offense, which is punishable by up to life imprisonment according to a 2015 amendment to the Law:

Article 300 Whoever forms or uses superstitious sects or secret societies or cult organizations or uses superstition to undermine the implementation of the laws and administrative rules and regulations of the state shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and concurrently sentenced to a fine; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than seven years or life imprisonment and concurrently sentenced to a fine or confiscation of property; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights and concurrently or separately sentenced to a fine.²³

In 2017, China’s Supreme People’s Court and Supreme People’s Procuratorate jointly issued a judicial interpretation on the crime of “organizing and using cult organizations to obstruct the enforcement of laws.” “Cult organizations” are described by the judicial interpretation as follows:

[S]uch organizations are established under the disguise of religion, qigong or other names; such organizations deify or engage in advocacy propagandas of their ringleaders; and, such organizations enchant or deceive others, develop and control members, and cause social harm by producing or disseminating superstitions and heresies or by other means.²⁴

Organizing or inciting others to engage in “cult” activities or using “cults” or the “guise of religion” to disturb social order or to harm others’ health is subject to public security penalties, which includes a detention of up to fifteen days, according to article 27 of the PRC Law on Penalties for Administration of Public Security:

²² QIANFAN ZHANG, *THE CONSTITUTION OF CHINA: A CONTEXTUAL ANALYSIS* 242–43 (2012).

²³ Amendment IX to the PRC Criminal Law (adopted by the National People’s Congress Standing Committee (NPCSC) on Aug. 29, 2015) § 33, http://www.npc.gov.cn/npc/xinwen/2015-08/31/content_1945587.htm, archived at <https://perma.cc/U4QB-YKN4>, English translation available on Westlaw China (by subscription).

²⁴ Interpretations of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Organizing and Using Cult Organizations to Obstruct the Enforcement of Laws (effective Feb. 1, 2017), http://www.spp.gov.cn/zdgz/201701/t20170126_179794.shtml (in Chinese), archived at <https://perma.cc/5GB7-R6NZ>, English translation available on Westlaw China (by subscription).

Article 27 A person who commits one of the following acts shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 1,000 yuan; and if the circumstances are relatively minor, he shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan:

(1) organizing, instigating, coercing, inducing or inciting another person to engage in activities of cults, superstitious sects, or secret societies, or making use of cults, superstitious sects, secret societies, or superstitious activities to disturb social order and harm the health of another person; or

(2) disturbing social order and harming the health of another person by masquerading under the name of religion or qigong.²⁵

C. Regulations on Religious Affairs

Measures regulating religious practice are primarily provided by the Regulations on Religious Affairs (RRA), which were issued by the State Council in 2005 and recently revised in 2017. The newly revised RRA entered into effect on February 1, 2018.²⁶ The RRA, which reiterates that citizens enjoy “freedom of religious belief”²⁷ and that the state protects “normal religious activities,”²⁸ is the major Chinese legislation that sets out restrictions on religious activities.²⁹

D. Official Religious Policies

China’s religious policies are officially stated in the Religion White Paper as follows:

China adopts policies on freedom of religious belief, manages religious affairs in accordance with the law, adheres to the principle of independence and self-management, actively guides religions to adapt to the socialist society, and unites religious believers and non-believers to the greatest extent.³⁰

²⁵ PRC Law on Penalties for Administration of Public Security (adopted by the NPCSC on Aug. 28, 2005, revised Oct. 26, 2012, effective Jan. 1, 2013) arts. 2 & 10, http://www.npc.gov.cn/wxzl/gongbao/2013-02/25/content_1790854.htm (in Chinese), archived at <https://perma.cc/7TRP-JNDR>, English translation available on Westlaw China (by subscription).

²⁶ Religious Affairs Regulations (promulgated by the State Council on Nov. 30, 2004, revised June 14, 2017, effective Feb. 1, 2018) (RRA), http://www.gov.cn/zhengce/content/2017-09/07/content_5223282.htm (in Chinese), archived at <https://perma.cc/6JPZ-GNUQ> (all translations by author).

²⁷ *Id.* art. 2.

²⁸ *Id.* art. 4.

²⁹ ZHANG, *supra* note 22.

³⁰ Religion White Paper, *supra* note 1.

While declaring the protection of citizens' rights to freedom of religious belief and normal religious activities, the White Paper emphasizes in the official policy statement that the state

- bans illegal religious activities;
- prohibits the dissemination of extremist thought and engagement in extremist activities in the name of religion;
- resists the infiltration of hostile foreign forces taking advantage of religion; and
- fights against illegal and criminal activities under the guise of religion.³¹

IV. Banned Religious or Spiritual Groups

The Chinese authorities have banned religious or spiritual groups that are dubbed “evil cults.”³² The CECC Report says the authorities commonly prosecute Falun Gong practitioners under article 300 of the PRC Criminal Law.³³ The official Chinese government anti-cult website, the China Anti-cult Website, recently published information on a few cases involving cult-related crimes. In February 2018, a woman in Beijing was convicted of “using cult organizations to obstruct the enforcement of laws” under article 300 of the Criminal Law. The woman was sentenced to one and half years in prison and a fine for publically advocating “the evil cult Falun Gong.”³⁴ Previously, in 2014, a leader of the Church of Almighty God was also convicted of “using cult organizations to obstruct the enforcement of laws” and sentenced to four years in prison.³⁵

V. Unregistered Religious Groups

The RRA has adopted the policy of “independence and self-management,” providing that religions in China must maintain their independence and “no religious groups, religious schools, religious facilities, or religious affairs shall be dominated by a foreign force.”³⁶

Religious groups are required to register with government authorities.³⁷ Establishing religious schools and religious facilities also requires government approval and registration.³⁸ In practice, officials will deny the registration applications of religious groups that are not affiliated with one of the officially recognized patriotic religious associations, which poses a challenge for the registration of religious groups that refuse to join such patriotic associations, according to the

³¹ *Id.*

³² Albert, *supra* note 7.

³³ CECC 2017 ANNUAL REPORT, *supra* note 2, at 134.

³⁴ Tan Xiaozhou, *A Woman in Beijing Sentenced to Prison For Advocating Evil Cult Falun Gong*, CHINA ANTI-CULT WEBSITE (May 17, 2018), http://www.chinafxj.cn/sabx/201805/17/t20180517_9391.shtml (in Chinese), archived at <https://perma.cc/4RCU-HGZD>.

³⁵ Feng Jingsong et al., *An Almighty God Backbone Leader Sentenced to Four Years in Prison in Wuhan*, CHINA ANTI-CULT WEBSITE (May 21, 2018), http://www.chinafxj.cn/sabx/201805/21/t20180521_9582.shtml (in Chinese), archived at <https://perma.cc/QA6U-3P9E>.

³⁶ RRA art. 5.

³⁷ *Id.* art. 7.

³⁸ *Id.* arts. 12, 14, 21 & 22.

CECC Report.³⁹ The CECC Report also notes that unregistered religious and spiritual communities are vulnerable to government harassment, detention, and other abuses. On the other hand, “officials may tolerate the religious activities of unregistered groups, especially if officials believe that the activities promote social or economic development interests.”⁴⁰

The government has reportedly pushed for Chinese Catholic bishops to be selected through the patriotic religious organizations and then ordained by Chinese bishops without the involvement of the Holy See.⁴¹ The CECC Report says that government officials have detained or otherwise restricted the freedom of Catholic leaders in both the underground and official churches.⁴²

Chinese officials have also reportedly subjected Protestant Christian beliefs and practices to a wide range of restrictions. According to the CECC Report, the government pressured unregistered house churches to join the officially recognized religious organization, the Three-Self Patriotic Movement. Protestant house churches faced raids during church gatherings, eviction from meeting spaces, and official bans on worship.⁴³

VI. Restrictions on Religious Activities

Religious groups may be sanctioned regardless of their registration status when officials view them as posing a challenge to government authority or the Party’s interests, as both the CECC Report and CFR Report find.⁴⁴ In this regard, the RRA adopts the principle that “normal religious activities” are protected by the state, and prohibits illegal activities such as using religion to endanger national security or social order.⁴⁵ It also prohibits “religious extremism” or using religion to split the country or carry out terrorism activities.⁴⁶ The RRA then sets out a series of restrictions on religious activities rooted from these principles, which may be applicable to both registered and unregistered religious groups.

Collective or large-scale religious activities not held in registered religious facilities, for example, are strictly restricted. According to the RRA, collective religious activities must in principle be held in registered religious facilities.⁴⁷ Large-scale events held outside of registered facilities must be preapproved within thirty days before the event starts.⁴⁸ Religious activities organized by unregistered religious groups will be ordered to stop, and likewise those activities organized by registered groups that are held in unregistered or unapproved religious facilities or temporary

³⁹ CECC 2017 ANNUAL REPORT, *supra* note 2, at 128.

⁴⁰ *Id.*

⁴¹ *Id.* at 131.

⁴² *Id.*

⁴³ *Id.* at 132.

⁴⁴ *Id.* at 128; Albert, *supra* note 7.

⁴⁵ RRA art. 4 para. 3.

⁴⁶ *Id.* art. 4 para. 4.

⁴⁷ *Id.* art. 40.

⁴⁸ *Id.* art. 42.

venues. Organizers of such illegal religious activities may be fined or even criminally prosecuted.⁴⁹ The newly revised RRA also includes penalties for those providing facilities for such illegal religious activities.⁵⁰

⁴⁹ *Id.* art. 69.

⁵⁰ *Id.* art. 71.