Keeping the Faith:
A Study of Freedom of Thought, Conscience, and Religion in ASEAN
Vietnam

<table>
<thead>
<tr>
<th>Formal Name</th>
<th>Socialist Republic of Vietnam</th>
</tr>
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<tbody>
<tr>
<td>Capital City</td>
<td>Hanoi</td>
</tr>
<tr>
<td>Declared Relationship with Religion</td>
<td>The Constitution does not declare Vietnam as a secular state nor a state based on a particular religion</td>
</tr>
<tr>
<td>Form of Government</td>
<td>Unitary state; socialist republic with a single communist party</td>
</tr>
<tr>
<td>Regulation of Religion</td>
<td>The Ordinance on Belief and Religion requires religious organizations to be officially recognized and registered, and their activities registered or approved</td>
</tr>
<tr>
<td>Total Population</td>
<td>85,846,997 (2009 census)¹</td>
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Religious Demography: (2009 census)

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<thead>
<tr>
<th>Religion</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Non-religious</td>
<td>81.69%</td>
</tr>
<tr>
<td>Buddhism</td>
<td>7.93%</td>
</tr>
<tr>
<td>Roman Catholic</td>
<td>6.62%</td>
</tr>
<tr>
<td>Hoa Hao²</td>
<td>1.67%</td>
</tr>
<tr>
<td>Cao Dai³</td>
<td>1.01%</td>
</tr>
<tr>
<td>Others</td>
<td>0.22%</td>
</tr>
</tbody>
</table>

¹ The figure is from the last official Census in 2009, which can be found on the website of the General Statistics Office http://www.gso.gov.vn

² Hoa Hao is a Buddhist-based religion founded in 1939 by Huỳnh Phú Sớ, a native of the Mekong Delta region of southern Vietnam.

³ Cao Dai - literally “High Channel” - is a syncretist, monotheistic religion, established in 1926 in the city of Tây Ninh, southern Vietnam.
INTRODUCTION

The issue of religious freedom is highly controversial in Vietnam. While domestic commentators and officials tend to paint an optimistic picture, international observers, who are mostly Westerners, tend to offer a Stygian one, liberally employing terms such as “depression” and “harassment” to describe the situation. This report adopts the principle of charity in examining the state of religious freedom in Vietnam, arguing that it is neither paradisiacal nor Stygian. The goal is to provide a balanced and objective account based upon the available data.

The principle of charity requires us to listen to the way that a speaker from a society uses particular ideas, and interpret his or her words in their most reasonable light. This report seeks to provide the internal perspective on how social and governmental speakers from the Vietnamese society understand and use particular ideas associated with religious freedom. Most of the data in this report are from Vietnamese material, including domestic legal documents, reports, books, and articles. Reference to international reports will also be made to highlight certain reported claims and to take into account international and critical perspectives.

However, it is useful first to provide the background of the evolution of the state-religion relationship and religious freedom in Vietnam. The evolution can be divided into three periods, namely imperial, French colonial, and communist-socialist.

Ancient Vietnam had indigenous religious practices which are animistic and totemic in nature. During the millennial period of Chinese dependency (“Bắc thuộc,” 111 BC- AD 905), Confucianism was introduced in Vietnam by Chinese governors and hundreds of Han Confucian scholars, but its influence was limited. The fact that “Chinese officials occupied only the district level positions, leaving Vietnamese in village posts” allowed the local people to follow their own habits, and customs, and faiths. During the independent period, successive dynasties of Ngô (938–967), Đinh (968–980), Former Lê (980–1009), Lý (1009–1225), and Trần (1225–1400) witnessed the coexistence in harmony of Buddhism, Confucianism, and Daoism. Under the reign of Lý and Trần dynasties, Buddhism prevailed and inserted considerable influences on political and legal life, but these dynasties also promoted other traditions, especially Confucianism. Particularly, the Lý dynasty constructed the Văn Miếu (Temple of Confucius) in 1070 to honour Confucius and other major Confucians.

From the Lê dynasty in the 15th century to the Nguyễn dynasty in the 18th century, Confucianism played a dominant ideological role. Imperial governments adopted “thick modes of regulation” of religious expression, and imperial laws legalized Confucian values. Gatherings conducting religious ceremonies must be licensed by authorities. However, Confucianism, Buddhism, and Taoism continued operating in harmony under the famous tradition of “Tam giáo đồng nguyên” (Unity of Three Religions). During the 16th century, a new religious source—Catholicism—was introduced in Vietnam by Jesuit missionaries. After initial welcome, the imperial government in Vietnam began to suppress this religion because of its association with French

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7 Vũ Văn Mẫu, Cổ luật Việt Nam và Tư pháp sử Diễn giảng, Quyển Thứ nhất (The Explanation of Vietnamese Ancient Law and History of Private Law, Volume One) (Saigon: 1975), 132.

8 Trần Trọng Kim, Nho Giáo (Confucianism) (Hanoi: Culture and Information Publishing House, 2001), 724.


colonial aspirations.\textsuperscript{11}

Under French colonialism (1962-1945), Catholicism escaped the chastisement of the imperial power and spread in Vietnam. As a component of their anti-colonial campaign, the Vietnamese patriotic Confucianists criticized Catholicism as “heterodox teachings” (\textit{ta giao}) opposed to Confucianism—the “orthodox doctrine” (\textit{chinh dao}).\textsuperscript{12} Meanwhile, the Vietnamese communists contended that while the French committed to implement in Vietnam liberal ideals, including the ideal of religious freedom, colonial law's draconic implementation contradicted these lofty ideals. Consequently, French colonial regulation of religious expression was not very much different from the imperial one.\textsuperscript{13}

The August 1945 revolution under the leadership of the Indochina Communist Party (presently, Communist Party of Vietnam) brought an end to French domination in Vietnam. The Communist Leadership of the Democratic Republic of Vietnam and later Socialist Republic of Vietnam accepted Marxism-Leninism as formal ideology. Under the influence of the anti-colonial tradition and new Marxist-Leninist secularism, the communist government practiced micro-management of religious activities. However, to mobilize public support against foreign invaders in order to gain complete national independence and unification, the government also committed itself to religious freedom during the war-time. All constitutions enacted under the communist regime in 1946, 1959, 1980, 1992, and recently 2013 provide guarantees for religious freedom.

The implementation of the Renovation program (\textit{Doi moi}) initiated in 1986 by the Sixth Congress of the Communist Party of Vietnam resulted in significant changes in Vietnam. Despite its original economic focus, nearly three decades of \textit{Doi moi} have transformed the Vietnamese society comprehensively. The changes driven by \textit{Doi moi} include not only socio-economic development but also the state's micro-management and legal reforms. Additionally, more liberal concepts which often go in tandem with market economy, such as human rights and rule of law, have influenced the process of transformation in Vietnam. In the 21st century, Vietnam has deeply been integrated into the global market, and this further puts pressure on reformation of the legal system and public governance. It is in this context of internal renovation and external globalization that the legal framework and practice of religious freedom in Vietnam witness new changes, as described and discussed below.

\textsuperscript{11} Ibid, 149.

\textsuperscript{12} Mark W. McLeod, “Nationalism and Religion in Vietnam: Phan Boi Chau and the Catholic Question,” (1992) 14(4) \textit{The International History Review} 663.

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations


<table>
<thead>
<tr>
<th>International Document</th>
<th>Year of Signature</th>
<th>Year of Ratification / Accession</th>
<th>Reservations</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICCPR</td>
<td>1982</td>
<td>1982</td>
<td>26(1), 48(1)</td>
</tr>
<tr>
<td>ICESCR</td>
<td>1982</td>
<td>1982</td>
<td>17(1), 18(1), 22</td>
</tr>
<tr>
<td>ICERD</td>
<td>1981</td>
<td>1981</td>
<td>29(1)</td>
</tr>
<tr>
<td>CEDAW</td>
<td>1981</td>
<td>1982</td>
<td></td>
</tr>
<tr>
<td>CRC</td>
<td>1990</td>
<td>1991</td>
<td></td>
</tr>
</tbody>
</table>

Formally, therefore, Vietnam has committed to international standards of human rights in general and religious freedom in particular. Vietnam made a reservation upon acceding to the ICCPR, but the provisions regarding religious freedom were unaffected. In 2013, Vietnam was elected to the United Nations Human Rights Council (HRC) for a period of three years beginning on 1 January 2014.\footnote{15 “General Assembly elects 14 members to UN Human Rights Council,” \url{https://www.un.org/apps/news/story.asp?NewsID=46476&Cr=human+rights&Cr1=#U1pi2CipZUQ}, accessed 24 April 2014.}

B. Domestic Laws and Policies

The internationalization of constitutional law is a global phenomenon that has affected Vietnam. The nation has formally incorporated international human rights into its Constitution. Vietnam has had five Constitutions under the leadership of the Vietnamese Communist Party. The four previous Constitutions of 1946, 1959, 1980, and 1992 all had separate chapters on fundamental rights, including that of religious freedom.\footnote{16 Article 10, 1946 Constitution of Vietnam; Article 26, 1959 Constitution of Vietnam; Article 68, 1980 Constitution of Vietnam; Article 70, 1992 Constitution of Vietnam.}

The new Constitution of Vietnam, which was enacted in late 2013 and replaced the 1992 Constitution, also has a separate chapter on human rights and citizen’s rights that includes the right to religious freedom. The 2013 Constitution enumerates general human rights in accordance with international human rights law. However, the Constitution is presented as an autochthonous document characterised by its adoption of a communitarian and statist human rights regime, which affects the laws and policies regarding religious freedom.

The Vietnamese official position and practice of human rights are communitarian and statist in nature. This is due to the influence of Confucianism, the official ideology of the imperial government which still holds sway today, and Communism, the official ideology of the present government. Communitarian and statist thought is discernible in several party and government documents on human rights\footnote{17 Vietnamese Government. \textit{White Paper on Protection and Promotion of Human Rights in Vietnam} (2005). \url{http://tuoitre.vn/Chinh-tri-Xa-hoi/94557/toan-van-sach-trang-ve-tinh-hinh-nhan-quyen-tai-viet-nam.html}, accessed 26 April 2014.} and was recently re-affirmed in the new Constitution of 2013 in the following provisions:

\textbf{Article 14}

Human rights and citizen’s rights shall only be restricted by statutes in imperative circumstances for the reasons of national defence, national security,
social order and security, social morality, and the health of the community.

Article 15
1. Citizen's rights are inseparable from citizen's duties.
2. Every one has the duty to respect the rights of others.
3. Citizens are responsible for fulfilling their duties to the state.
4. The practice of human rights and citizen's rights cannot infringe upon national interests, and the legal and legitimate rights of others.

There are several important features of this constitutionally-entrenched, communitarian, statist human rights regime in Vietnam. First, human rights are held to be positive rights provided and regulated by the state, not natural rights which impose restraints on the state. Second, human rights must be balanced with duties to other individuals, the state, and the community. Third, communitarian and statist priorities, namely “national defence, national security, social order and security, social morality, and the health of the community,” make it possible to restrict human rights via legislative laws. These restrictions also apply to religious freedom.

1. Freedom to adopt, change or renounce a religion or belief; freedom from coercion

Article 24 of the Constitution of 2013 protects the freedom to adopt, change or renounce a religion or belief, and freedom from coercion, but also states that this freedom should not be used to “violate the laws”:

Article 24
1. Every one shall enjoy the freedom of belief and of religion; he or she can follow any religion or follow none. All religions are equal before the law.
2. The state respects and protects freedom of belief and of religion.
3. No one has the right to infringe on the freedom of belief and religion, or to take advantage of belief and religion to violate the laws.

Article 70 of the Constitution of 1992 similarly guaranteed religious freedom, but it contained a broader limitation: The provision stated that no one should take advantage of religious freedom to violate laws and “state policies.” Notably, Article 70 was criticized by the U.N. Special Rapporteur for prioritizing “state policies” over religious freedom.

The current Constitution retains the limitation whereby the practice of religious freedom may not contravene laws, but removes its application to “state policies.”

Important legal documents which regulate the practice of religious freedom in Vietnam include the Ordinance on Belief and Religion (Ordinance No. 21 of 2004 of the Standing Committee of the National Assembly) and the government's Implementing Decree 92 of 2012 on “Specific provisions and measures for the implementation of the Ordinance on Belief and Religion,” which

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replaced the former 2005 Decree. The Ordinance and the Decree reaffirm that religious freedom in Vietnam is guaranteed. Article 1 of the Ordinance states, “The state guarantees citizens’ right to belief and religious freedom. Nobody can infringe upon that right. All religions are equal before the law.” Article 2 of Decree 92 re-states this commitment in similar terms.

The Ordinance sets out the aim and ambit of the practice of religious freedom: “The state guarantees the right to conduct belief activities and religious activities according to the provisions of the law; respects cultural values and religious ethics; preserves and promotes the positive values of the tradition of ancestral worship, commemoration and honouring of persons who have been of service to the country or communities, so as to consolidate the great national unity bloc and satisfy the people’s spiritual needs.” The Ordinance prohibits the abuse of the right of belief and religious freedom as follows:

“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 in violation of the law.”

The Ordinance ensures that “believers and followers can freely show their faith, practice worship or praying rites, join ritual activities, or services and religious rites, and learn tenets of the religions that they believe in.” However, the document also states that belief or religious activities shall be suspended if they infringe upon national security; seriously affect public order or the environment; adversely affect the unity of the people and the national cultural traditions; infringe upon life, health, dignity, honour or property of other persons; and result in serious violations of the law. This is reaffirmed in Article 2 of Decree 92. The Penal Code establishes penalties for “attempting to undermine national unity” by promoting “division between religious believers and non-believers, and between religious believers and the people’s government and social organizations.”

2. Right to manifest one’s religion or belief

a. Freedom to worship

The Ordinance on Belief and Religion guarantees that “believers and followers can freely show their faiths, practice worship or praying rites, join ritual activities, or services and religious rites, and learn tenets of the religions which they believe in.” At the same time, the Ordinance requires that, in conducting belief or religious activities, believers and followers “must observe regulations of belief or religious establishments or rituals as well as village codes and communal conventions.”

b. Place of worship

The Ordinance on Belief and Religion ensures that pagodas, churches, chancels, sanctuaries, communal houses, temples, head offices, training establishments, other lawful belief or religious establishments, canons and worshipping objects

23 Article 1, Ordinance 21.
24 Article 2, Decree 92.
25 Article 5, Ordinance 21.
26 Article 8, Ordinance 21.
27 Article 9, Ordinance 21.
28 Article 15, Ordinance 21.
29 Article 2, Decree 92.
31 Article 9, Ordinance 21.
32 Article 10, Ordinance 21.
shall be protected by law.\textsuperscript{33} It provides that lawful assets belonging to belief or religious establishments shall be protected by law and strictly prohibits infringing upon such assets.\textsuperscript{34} In particular, the Ordinance ensures that religious establishments have stable and long-term use of land that they have utilized, including land on which they have constructed pagodas, churches, sanctuaries, chancels, monasteries, schools; establishments for training/professional/religious activities; and head offices of religious organizations.\textsuperscript{35}

c. Religious symbols

The Ordinance on Belief and Religion has no provision on religious symbols. In general, the use of religious symbols is not problematic in the religious places.

d. Observance of holidays and days of rest

Of six of the gazetted public holidays, two have to do with religious or belief events: the Lunar New Year holiday and the Hùng Kings’ Temple Festival. During the time of the Lunar New Year holiday, many religious and belief activities, mostly associated with indigenous popular faiths and Buddhism, are observed. The Hùng Kings’ Temple Festival is organized annually from the 8th to the 11th days of the third lunar month when the Vietnamese people pray to their ancestors Hung Kings. The main ceremony takes place on the 10\textsuperscript{th} day of the month.

e. Appointing clergy

The Ordinance on Belief and Religion stipulates that the ordainment, bestowal of orders, appointment, election or honorary nomination in religions shall be effected according to the charters or statutes of religious organizations. However, it also requires that, to be recognized by the state, the persons who are ordained, bestowed orders, appointed, elected or honourably nominated by the religious organizations must satisfy certain conditions, including: being Vietnamese citizens, having good ethical qualities, having spirit of national unity and harmony, and strictly observing the law.\textsuperscript{36} To monitor whether the persons appointed by religious organizations satisfy these conditions, the Ordinance requires organizations to register persons who have been ordained, had orders bestowed, been appointed, elected or honourably nominated, and to notify the relevant state management agencies of the dismissal or discharge of religious dignitaries.\textsuperscript{37}

f. Teaching and disseminating materials

Religious organizations may establish training institutions or start development classes for professional religious activities with the approval of the Prime Minister. Vietnamese history and Vietnamese law are compulsory subjects in the curriculum of religious schools.\textsuperscript{38} The publication of religious books and materials is managed by the Government Committee for Religious Affairs. The Committee established the Religious Publishing House to publish religious books and materials.\textsuperscript{39} Religious books and materials can also be published by other state-approved publishing houses, and can be sold freely in all bookstores. The establishment of private publishing houses, however, is not permitted in Vietnam, according to the Law on Publication.\textsuperscript{40}

\begin{itemize}
\item \textsuperscript{33} Article 4, Ordinance 21.
\item \textsuperscript{34} Article 26, Ordinance 21.
\item \textsuperscript{35} Article 27, Ordinance 21.
\item \textsuperscript{36} Article 22, Ordinance 21.
\item \textsuperscript{37} Article 22, Ordinance 21.
\item \textsuperscript{38} Article 24, Ordinance 21.
\item \textsuperscript{39} Decision on the Organization of the Government Committee for Religious Affairs, 134/2009/QĐ-TTg, 2009 (Vietnam).
\item \textsuperscript{40} Law on Publication, 19/2012/QH13, 2012 (Vietnam).
\end{itemize}
g. The right of parents to ensure the religious and moral education of their children

The Ordinance on Belief and Religion guarantees the freedom of persons to “enter into religion at religious establishments” at one’s own free will without being compelled or obstructed by any other person. Minors under 18 years old who wish to adopt a religion must however have the consent of their parents or guardians.41

h. Registration

Under the Ordinance on Belief and Religion, religious activities and organizations in Vietnam must be officially recognized and registered. Decree 92 lays out detailed procedures for applying for recognition and registering religious activities and organizations. Unrecognized organizations can conduct religious activities with the approval of the local government.

To be recognized, a religious organization must meet certain conditions, including:

- Being an organization of persons with the same belief, religious tenets, principles and rites, which do not contravene the nation’s traditions, customs and interests;
- Having a charter or statute stating the organization’s guidelines, objectives and form of religious practice, which have to be closely associated with the nation and in keeping with the law;
- Having already registered religious activities and conducting regular religious activities;
- Having a head office, organizational structure and lawful representative;
- Having an appellation not identical to that of another religious organization already recognized by the relevant state agency.42

The Prime Minister grants official recognition to religious organizations which operate in many provinces and/or centrally-run cities, while the presidents of the People’s Committees of provinces or centrally-run cities grant official recognition to religious organizations that operate mainly within a province or centrally-run city.43

Relevant state authorities must sanction the activities of recognized religious organizations, which must have their annual agendas approved by the local government. Conferences or congresses organized by grassroots religious organizations must be approved by the People’s Committees of districts where the conferences or congresses will take place; conferences or congresses organized by religious organizations at the central level or involving entire religious sects must be approved by central-level agencies in charge of state management of religions.44

Rites performed by religious organizations outside of religious establishments must be approved by relevant local governments.45

i. Communicating with individuals and communities on religious matters at the national and international level

A mention should be made of the role that the Vietnam Fatherland Front (VFF) and its socio-political member organizations have with regard to religious matters at the national level. A distinctive body in the Vietnamese political system, the VFF is defined by the Constitution as “a political alliance and a voluntary union of political organizations, socio-political organizations, social organizations and individuals.” It is the political base of the people’s government and has a particular responsibility for rallying the people, promoting greater national solidarity and enhancing social consensus.46

41 Article 21, Ordinance 21.
42 Article 16, Ordinance 21.
43 Article 16, Ordinance 21.
44 Article 18, Ordinance 21.
45 Article 25, Ordinance 21.
46 Article 9, 2013 Constitution of Vietnam.
The Ordinance on Belief and Religion states that the VFF and its member organizations are responsible for rallying people with and without beliefs or religions to build greater national unity and to construct and defend the Fatherland. They are also required to promptly report people's opinions, aspirations and requests on matters related to beliefs and religions to the relevant state agencies. It is also the responsibility of the VFF and its member organizations to propagate the legal provisions on belief and religion among dignitaries, priests, monks, followers, believers, religious organizations and people, and mobilize them to observe these provisions. The VFF and its members are to participate in the formulation and supervision of the implementation of policies and laws on belief and religion. For their part, the state agencies are to take the initiative in coordinating with the VFF Central Committee and the VFF's member organizations in propagating, mobilizing and implementing policies and laws on beliefs and religions.47

At the international level, the Ordinance on Belief and Religion states that religious organizations, followers, priests, monks and dignitaries may conduct activities that promote international relations according to the provisions of their charters, statutes or principles and in compliance with Vietnamese law. In conducting such activities, religious organizations must be “on equal footing, respect one another, and respect the independence, sovereignty and internal affairs of the countries.”48

The Ordinance requires central-level agencies that are in charge of state management of religions to approve any 1) invitations to foreign organizations or foreigners to Vietnam, or organization of activities on behalf of foreign religious organizations in Vietnam, and 2) participation in overseas religious activities or sending of persons overseas to join religious training courses.49 Foreign dignitaries, priests or monks may preach at Vietnamese religious establishments with the approval of the central-level agency in charge of state management of religions, and they must observe the regulations of Vietnamese religious organizations and Vietnamese law.50

Foreigners in Vietnam are allowed to possess religious publications and other religious articles for their personal use, according to the provisions of Vietnamese law. Like Vietnamese followers of religions, their daily religious activities can be carried out at religious establishments. Foreigners are allowed to invite Vietnamese religious dignitaries to perform religious ceremonies for them. However, the foreigners must observe the internal regulations of Vietnamese religious organizations.51 Decree 92 requires that the religious activities of foreigners be approved by provincial governments.52

j. Establishing and maintaining charitable and humanitarian institutions; soliciting and receiving funding

The Ordinance on Belief and Religion states, “belief establishments (such as communal houses, temples, small temples, small pagodas, ancestral worship altars) and religious organizations may raise funds or receive assets voluntarily donated by organizations and individuals at home and abroad, according to the provisions of the law.” Fundraising efforts by belief establishments and religious organizations must be organized openly, have clear and charitable purposes, and be made known in advance to the local governments that have jurisdiction over the fundraising venue.53 Decree 92 prohibits fundraising for individual interests or illegal purposes.54

According to the Ordinance on Belief and Religion, the state encourages dignitaries, priests or monks to organize educational, healthcare, charitable or humanitarian activities legally.55 The Ordinance

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47 Article 7, Ordinance 21.
48 Article 34, Ordinance 21.
49 Article 35, Ordinance 21.
50 Article 36, Ordinance 21.
51 Article 37, Ordinance 21.
52 Article 40, Decree 92.
53 Article 28, Ordinance 21.
54 Article 28, Decree 92.
55 Article 33, Ordinance 21.
expresses the state’s commitment to encourage and create the conditions for religious organizations to take part in raising and educating disadvantaged children, and to help develop pre-school educational institutions. Religious organizations are also encouraged to provide assistance to healthcare institutions that serve the poor, the disabled, HIV/AIDS-infected persons, lepers, mental health patients as well as to take part legally in other activities for charitable or humanitarian purposes.

k. Conscientious objection

The Constitution and the laws in Vietnam do not recognize conscientious objection. The Constitution provides that: “Citizens must fulfil their military obligation and join in the all-people national defence.” The Law on Military Obligation requires citizens between the ages of 18 and 27, regardless of religion, to be liable for military service.

3. Freedom from intolerance and discrimination

The Ordinance on Belief and Religion formally guarantees freedom from intolerance and discrimination. It states:

“Citizens must respect one another, regardless of whether they have beliefs or not, follow religions or not, and if their beliefs or religions differ from others.”

The Ordinance prohibits discrimination based on belief or religion. It requires believers and followers to “respect other people’s right to belief and religious freedom and their right to not have beliefs and to not follow any religion.” The Penal Code provides penalties for those whose actions obstruct citizens from exercising their right to freedom of belief and religion as well as their right to not follow any religion. Other laws regarding elections, civil relations, marriage, labour, and education all prohibit discrimination based on religion.

4. Rights of vulnerable groups to freedom of religion and belief

Vulnerable groups are generally free to choose and practise their religions and beliefs, and are protected from violence and discrimination inflicted in the name of religion.

a. Women

The Constitution prohibits discrimination against women based on religion.

b. Children

The Law on Protection and Care of Children prohibits discrimination against children based on religion.

c. Migrant workers

The Law on Labour prohibits discrimination against workers, including migrant workers, based on religion.

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56 Article 45, 2013 Constitution.
58 Article 1, Ordinance 21.
59 Article 8, Ordinance 21.
60 Article 9, Ordinance 21.
63 Article 5, 26, 2013 Constitution of Vietnam
65 Article 8, Law on Labour, 10/2012/QH13, 2012 (Vietnam).
d. Persons deprived of their liberty

Respect, on the part of government authorities, for the right of persons deprived of their liberty to religious freedom varies. The 2013 US Department of State report states that:

“Authorities have denied religious prisoners and detainees the right to worship, and, in principle, prisoners do not have the right to practice their religious beliefs or rites in communal prison spaces. There are, however, confirmed reports of some prisoners being allowed to read the Bible and practice their beliefs while incarcerated. Notably, Father Thaddeus Nguyen Van Ly, incarcerated because of his political activism, has been able to celebrate Mass and distribute communion to fellow prisoners.”

e. Refugees

There is no particular information regarding refugees.

f. Minorities

Vietnam has 54 nationalities with the Kinh as the majority. The Constitution recognizes that the nation of Vietnam is “the unified nation of all nationalities living on the territory of Vietnam,” and prohibits all acts of discrimination against different nationalities including minority groups.66

Diverse Appraisals

In Vietnam, government officials and official spokesmen often cite the national Constitution and specific legal documents to show that the Vietnamese legal framework fully protects freedom of religion. The official position is that the Vietnamese Constitution and laws protect religious freedom in line with international standards.67 Official reports and mainstream commentaries, however, do concede that there are certain limits in the laws and policies governing religious freedom, which need to be addressed. It has been suggested that the legal status of the religious organizations be recognized, making them “juridical persons.” This may allow them to enter contracts and even sue the authorities. In addition, it is proposed that as the petitions and disputes regarding land used for religious purposes are complex and controversial, the laws on religious freedom should provide mechanisms for mediation and dialogue as ways to handle these cases rather than simply relying on judicial litigation.

International observers, however, are more critical of Vietnam’s legal framework for protecting religious freedom, pointing out for instance that it “is filled with substantial restrictions.”68 Human Rights Watch, for instance, has criticized the Ordinance on Belief and Religion because it “bans any religious activity deemed to threaten national security, public order or national unity.”69 The critics also contend that Decree 92 “constitutes a further restriction of religious practice” because its articles “increase the number of approvals required, which will mean more local and national government involvement

68 Tu, “Extreme Policy Makeover,” 780.
69 “Human Rights Watch slams Vietnam over Religious Repression.”
in religious activities.”70

Vietnam’s legal framework for religious freedom should be understood in the context of the nation’s communitarian and statist human rights regime. Religious freedom is subject by certain laws to restrictions for communitarian and statist reasons. Vietnamese laws on religious freedom not only regulate the right of people to exercise their freedom but also allow the state to administer people’s right to exercise their religious freedom. In particular, the regulations on recognition and registration of religions, religious activities, and religious organizations represent the state’s efforts to manage the practice of religious freedom. Thus, while formally providing guarantees of freedom for many aspects of religious practice and belief, the legal administrative structure also provides for the comprehensive regulation of religious organizations and activities by subjecting them to state scrutiny and requirements for approval by officials. Apart from bureaucratic regulations and mechanisms for registration and approval, the overarching requirement of operating within certain political and ideological boundaries provides a framework for complete state control of all aspects of the exercise of organized religion.

C. Redress Mechanisms and Interpretation of Religious Freedom

Vietnam is a polity under single-party rule. There is no special institution of constitutional review to interpret the Constitution and the laws, and to check if the laws are consistent with constitutional norms. Ordinary courts in Vietnam are not allowed to interpret the Constitution and the laws. A national human rights institution is also absent in Vietnam. A potential avenue for social checks on the laws and policies on religious freedom is the Vietnam Fatherland Front, which, according to the new Constitution of 2013, is vested with the function of “social supervision and criticism.”71 Petitions by non-governmental actors, like the Fatherland Front, can help revise the law and policies on religious freedom.

Public discourse is allowed by the Constitution,72 but all media channels are state-owned or state-approved, and the creation of private media entities is not allowed.73 In this context, the legal framework for religious freedom in Vietnam is described and explained by the official media in a mostly favourable manner. In theory, popular criticisms of Vietnam’s law and policies on religious freedom may possibly be conducted in unofficial venues, but it should be noted that there are legal restrictions on speech. For instance, the Penal Code states that it is a crime to “make, store and/or circulate documents and/or cultural products with content against the Socialist Republic of Vietnam.”74


71 Article 9, 2013 Constitution of Vietnam
72 Article 28, 2013 Constitution of Vietnam. Some social-political organizations, which have close relationships with the State, can create media entities with state approval.
PART TWO. TRENDS IN RELIGIOUS FREEDOM

A. Significant changes in the law

The Vietnamese government is reviewing and revising a number of laws in order to implement the new Constitution, which was adopted in late 2013. Among other things, the new Constitution features new provisions regarding human rights.75 To put these new constitutional provisions into practice, a number of laws were reviewed,76 and proposals made to revise the Ordinance on Belief and Religion in accordance with the relevant provisions in the new Constitution. The Ministry of Internal Affairs has prepared a draft of amendments to the Ordinance, and the National Assembly’s Standing Committee is expected to approve the amendments in 2015.77

The new Constitution legitimizes the possible restriction of human rights on the basis of national security, social order, and social morality. The proposed amendments to the Ordinance on Belief and Religion are on-going and underline the prioritisation of these public goals over that of human rights. To illustrate, one of the proposed changes requires religious dignitaries, priests and monks to regularly educate their followers in patriotism, including the exercise of their civic rights, the performance of their civic obligations, and the observance of the law “so as to build a happy and stable Vietnamese nation.”

New provisions regarding “heresy” present a further prioritisation of public goals through the state management of religious activities. The definition of “heresy” in the draft of amendments to the Ordinance includes individual and organizational religious and belief activities which are illegal, threaten social security and order, oppose traditional customs, distort history, and undermine the national solidarity and good traditions of the nation. The draft of amendments to the Ordinance stipulates that activities of heresy are prohibited. According to an official report, “the supplementation of the provisions banning activities of heresy is to provide a basis for dealing with individuals and groups who misuse the party and state’s policies on freedom of religion and belief.”78

On the other hand, some proposed changes provide more space for the exercise of freedom of religion and belief. For instance, one of the proposals recognizes that local communities can organize belief activities and festivities. This proposed change reflects the reality of the diverse belief activities and festivities in local communities throughout the nation. Another proposed amendment relates to international relationships in religious activities. The draft adds that foreigners are allowed to invite foreign religious dignitaries to perform religious ceremonies for them. In the current ordinance, only Vietnamese religious dignitaries are allowed to extend such invitations to foreign dignitaries. Other proposed changes are minor or involve technicalities.

B. Significant Changes in State Enforcement

The party, the state, and the official spokesmen of Vietnam have claimed as an achievement the nation’s success in enforcing laws and policies that protect and promote the people’s right to freedom of religion and belief. The Government’s White Paper

77 The draft of amendments is available at the website of the Government at: datafile.chinhphu.vn

on the Protection and Promotion of Human Rights in Vietnam (2005) declares: “The state of Vietnam always respects and protects the rights of believers to freedom of worship and to conduct belief and religious activities.”

The paper supports this claim with quantitative evidence, namely the increase in numbers of believers, followers, and dignitaries; recognized religions and recognized religious organizations; pagodas, churches and other religious places; dignitaries participating in representative bodies; and religious schools. In addition, the paper notes that the state allows the religious activities of ethnic groups to be conducted. The paper also states that religious groups in Vietnam have extensive international networks, evident from the fact that the Roman Catholic Church of Vietnam is part of the worldwide Catholic Church and the Buddhist Sangha of Vietnam maintains close relationships with Buddhist organizations globally and regionally (Cambodia, Thailand, and China). Finally, the Paper states that petitions regarding belief and religion have been handled in a timely manner by the state.

Adopting a similar quantitative approach, the Government Committee for Religious Affairs published several reports which demonstrate Vietnam’s achievements in the field of religious freedom. Official media outlets have also published a number of similar reports and articles. Significant changes in the state’s enforcement of laws and policies regarding religious freedom are illustrated by the following quantitative examples.

The number of recognized religions and organizations has increased. Before the enactment of the Ordinance in 2004, there were 16 recognized religious organizations affiliated with six recognized religions, namely Buddhism, Catholicism, Protestantism, Hòa Hảo, Cao Đài, and Islam. The Ordinance has resulted in the increase of officially-recognized religions to a total of 13. The newly-recognized religions include Bahai Faith, Pure Land Buddhist Home Practice, the Four Debits of Gratitude, Threefold Enlightened Truth Path, Threefold Southern Tradition, Way of the Strange Fragrance From the Precious Mountain, and Brahmin. According to the 2009 census, the number of the believers of the 13 religions is as follows:

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80 Ibid.
83 The number is synthesized from the different reports and commentaries mentioned above.
More religious organizations have been recognized officially, bringing the total number of recognized religious organizations to 38. These organizations are Vietnam Buddhist Sangha, Cham Islam, Catholicism, the Southern Evangelical Church of Vietnam, the Northern Evangelical Church of Vietnam, Southern Baptists, Adventists, one branch of the Mennonites, several branches of the Cao Dai faith, Hoa Hao, Pure Land Buddhist Home Practice, the Bani Muslim sect, Threefold Enlightened Truth Path, Threefold Southern Tradition, the Bahai community, the Mysterious Fragrance from Precious Mountains, the Four Gratitude, the Vietnam Christian Fellowship, and the Assembly of God. The number of religious followers increased from 20 million in 2009 to 30 million in 2014—not counting the one million believers of popular faiths. Of the religious places, Buddhism accounts for 14,321; Catholicism, 6,003; Protestantism, around 500; Cao Dai, 1,284; Hoa Hao, 522; and Islam, 89.

Recognized religious organizations have reported being able to maintain activities relating to education, ordainment, bestowing of orders, appointment, election or honorary nomination of priests. In 2011, 669 people were ordained or bestowed with orders, 1,153 people were appointed, and 2,444 graduated or received training certifications from religious schools.

It was also reported that the implementation of the Ordinance on Belief and Religion made it easier to conduct religious activities, which became more festive, throughout the nation. Annually, 8,500 religious festivals are held at the national or local level. Most national religious festivals in Vietnam are held in Spring, including Hung Kings’ anniversary, Yên Tử church festival, Bái Đính church festival, and Hương church festival. Several international religious events have also been held in Vietnam, such as the United Nations Day of Vesak in 2008 and the Federation of Asian Bishops’ Conferences in 2012.

Religious books and materials were published more easily and in greater quantities through the Religious Publishing House. The publication of religious books is said to have increased over the years in terms of numbers and types. From 2006 to today, the Religious Publishing House issued licences for the publication of 4,725 religious books with 14,500,000 copies, and 1,118 MP3 CDs, VCDs, and VDVs containing religious works in various forms and languages. It was reported that the state supported the publication of 30,000 copies of the Bible in the languages of ethnic minorities (Ba-na, Ê-đê, and Gia-rai) of the central highlands, which led to an increase in the number of Protestants in the central highlands from 50,000 in 1975 to 500,000 in 2013. Different religions have their own newspapers, magazines, and websites.

International actors have recognized Vietnam’s achievements with regard to respecting religious freedom. In particular, the US government, which had often been critical, recognized Vietnam’s recent progress on religious freedom. In 2004 and 2005, the US Department of State designated Vietnam a Country of Particular Concern, but removed the designation in 2006. The Vietnam 2012 International Religious Freedom Report by the US Department of State notes:

“The government generally respected the religious freedom of most registered and some unregistered religious groups; however, some of these groups reported abuses... the government also showed signs of progress: it registered new congregations, permitted the expansion of charitable activities, and allowed large-scale worship services with more than 100,000 participants.”

C. Significant Changes in Religious Claims (by Non-State Actors)

There have not been any significant changes in religious claims made by non-state actors in Vietnam.

D. Significant Events of State Persecution of Religious Groups

The official position is that there is no state persecution of religious groups in Vietnam. It is claimed that some religious actors misused their freedom of religion and violated Vietnamese laws. Thus, the official point of view is that the punishment of these actors was legitimate and not representative of state persecution of religious groups. Religious dissidents and some international commentators, however, have a different perspective on this. International organizations and foreign governments have criticized Vietnam’s policies and practices, basing their claims on reports of state persecution of unrecognized religious organizations and groups.

The UK Foreign and Commonwealth Office’s 2013 Human Rights and Democracy Report stated:

“There is evidence to suggest that the Vietnamese government is allowing more space for religious expression, but taking a much harder line where members of religious groups are believed to be involved in political movements or protests.”

Human Rights Watch, in its World Report 2014: Vietnam, states:


“The government monitors, harasses, and sometimes violently cracks down on religious groups that operate outside of official, government-registered and government-controlled religious institutions. Targets in 2013 included unrecognized branches of the Cao Dai church, the Hoa Hao Buddhist church, independent Protestant and Catholic house churches in the central highlands and elsewhere, Khmer Krom Buddhist temples, and the Unified Buddhist Church of Vietnam.”

The Vietnam 2012 International Religious Freedom Report by the US Department of State notes:

“Unregistered and unrecognized religious groups were potentially vulnerable to harassment, as well as coercive and punitive actions by national and local authorities.”

The report by the US Department of State provides many examples to support this claim. One example cited in the report states: “Authorities in An Giang and Dong Thap provinces continued to harass and abuse followers of the unsanctioned Traditional Hoa Hao Buddhist Church.”

The United States Commission on International Religious Freedom (USCIRF), in its Annual Report 2013 and in the section, Countries of Particular Concern, criticizes Vietnam:

“Religious freedom conditions remain very poor despite some positive changes over the past decade in response to international attention. The Vietnamese government continues to imprison individuals for religious activity or religious freedom advocacy.”

The report lists cases involving religious prisoners: Eight Hmong Protestants sentenced in March 2012 to two years imprisonment for “partaking in a separatist ethnic movement”; Pastor Nguyen Cong Chinh sentenced in February 2012 to five years in jail for “distorting the domestic situation, criticizing the government, and the army in foreign media”; Hoa Hao activist Bui Van Tham sentenced in May 2012 to 30 months in prison for “obstructing officials in the performance of their official duties”; and 22 members of the Buddhist Council for the Laws and Public Affairs of Bia Son Mountain were sentenced in January 2013 to jail terms ranging from 12 years to life for “aiming to overthrow” the state. In these cases, the formal charges all involved political activities rather than, strictly speaking, the practice of religion. This raises the question of to what extent criminal prosecution in such cases uses rubrics of political activity to sanction religious practices and belief, and to what extent it is perceived political activities on the part of religious groups that motivate the governmental intervention. The potential for such intervention, of course, is provided by the overarching ideological framework of regulation noted above.

The USCIRF Annual Report 2013 mentions that the United Buddhist Church of Vietnam—a large, unrecognized Buddhist organization—“has faced decades of harassment and repression for seeking independence from the officially-approved Buddhist Sangha of Vietnam and for appealing to the government to respect religious freedom and related human rights.” The report mentions the authority’s restrictions on religious activities of Khmer Buddhists in the Mekong Delta, Catholics in Nghe An province, Montagnard Protestants and Ha Mon Catholics in the central highlands, and Hmong Protestants in northwest provinces.

92 Ibid.
94 Ibid.
95 Ibid.
96 Ibid.
The report also states that “The Vietnamese government continues to ban and actively discourage participation in independent factions of the Hoa Hao and Cao Dai.” 97 The Vietnamese government requires all Hoa Hao and Cao Dai groups to affiliate with the government-approved religious organizations, 98 such as the Cao Dai Governance Council and the Hoa Hao Administrative Council. Yet, there are Hoa Hao and Cao Dai groups that refuse that affiliation and choose to practice religious activities independently.

These unregistered groups are subject to “official repression,” which “includes interference with religious activities and leadership selection; loss of jobs, discrimination, and harassment of followers; and imprisonment of individuals who peacefully protest religious freedom restrictions.” 99 Especially, several leaders of the Hoa Hao community “openly criticized” the Hoa Hao Administrative Council “as being overly subservient to the government.” 100 Therefore, they created their own Hoa Hao body, named as Hoa Hao Central Buddhist Church (HHCBC). This unrecognized Hoa Hao body “face[s] significant official repression, including disbanding under the new Decree 92 or arrest under national security provisions of the legal code. HHCBC leaders and their followers have been arrested and sentenced to terms of up to four years for staging hunger strikes, distributing the writings of their founding prophet, holding ceremonies and holiday celebrations, or interfering as police tried to break up worship activities.” 101

E. Significant Events of Non-State Persecution of Religious Groups

There are no significant events of non-state persecution of religious groups to report.

F. Significant Events of Inter-Religious Conflicts

There are no significant inter-religious conflicts to report.

G. Significant Events of Terrorism and/or Terrorist Threats

There are no significant events relating to terrorism or terrorist threats to report.

H. Significant Cross-Border Incidents

Significant cross-border events have been ones involving the Khmer Krom, who are ethnic Khmer and mostly devotees of Theravada Buddhism, residing in South Vietnam. Human Rights Watch’s “On the Margins: Rights Abuses of Ethnic Khmer in Vietnam’s Mekong Delta” (2009) reported “ongoing violations of the rights,” including the right to religious freedom, of the Khmer Krom in southern Vietnam, and “abuses” against the Khmer Krom who have fled to Cambodia for refuge.

The report states: “Wary about possible Khmer Krom nationalist aspirations, Vietnam has suppressed peaceful expressions of dissent and banned Khmer Krom human rights publications. It also tightly controls the Theravada Buddhism practiced by the Khmer Krom, who see this form of Buddhism as the foundation of their distinct culture and ethnic identity.” 102 Against the backdrop of historical disputes about territory and boundaries between Vietnam and Cambodia, the issue of the Khmer Krom in Vietnam points to the complexity of the entanglement of religion with ethnicity, national identity and nationalist aspirations. What may be viewed from one perspective as an issue of religious freedom and persecution might appear to...

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97 Ibid.
98 Ibid.
99 Ibid.
101 USCIRF Annual Report 2013 - Countries of Particular Concern (Vietnam)

Vietnamese officials to instead involve legitimate repression of separatism and political activity.

The “flag incident” was the most recent event of note. The Cambodia Daily on 12 August 2014 reported that about 600 monks and nationalist protesters gathered at the Vietnamese Embassy in Phnom Penh, demanding an apology from Hanoi for a statement made by Vietnamese Embassy first counsellor Tran Van Thong on 6 June 2014, claiming that Vietnam controlled Kampuchea Krom, a region comprising much of today’s southern Vietnam, long before it was officially ceded by colonial France in 1949. The demonstration proceeded peacefully until prominent monk and protestor Seung Hai burned a Vietnamese flag, which was then stomped and spat on by monks and laymen alike. As reported by the Vietnamese media on 13 August 2014, Vietnam’s Ministry of Foreign Affairs spokesman Le Hai Binh said that the act initiated by extremists actors “intentionally offended the feelings of the Vietnamese people, and ran counter to the traditional neighbourliness between Vietnam and Cambodia.” He also said: “We demand that Cambodia try these extremists in strict accordance with the law and take effective measures to prevent similar actions from repeating in the future.”

A day after Hanoi’s statement, The Cambodia Daily reported that the group of protestors promised to organize an even more “massive demonstration” outside the Vietnamese Embassy in Phnom Penh at the start of September if its demands are not met.

I. Governmental Response

In response to international criticisms, the government of Vietnam repeatedly affirms the nation’s respect and protection of religious freedom. The government denies the violation of religious freedom, discrimination against religions, and arbitrary detention and imprisonment of religious leaders and followers. Official commentaries regard international criticism to be a distortion of the reality of religious freedom in Vietnam.

The official position states that the imprisonment of religious actors is legal and legitimate because these actors “abuse religion, and under the cloak of religion, oppose the state, instigate people to disturb public order and undermine national unity.” The government claims that such political opportunists appropriate the confidence of the people to erode social morality, take politically-motivated action against the interests of the state and the nation, and are incited by external enemies to oppose the state. These actions contravene Vietnamese laws and are therefore justifiably dealt with in accordance with the law. The sanctions are said to be “completely legitimate and legal to protect public order and state regulations and to protect the legal interests of the people, including believers.” The broad legal framework outlined above for the regulation of religion and belief within a structure of political and ideological constraints provides the formal basis for such claims of legitimate intervention on the part of the government.


107 Phùng Kim Lân. “In Vietnam, Every Religion is Equal Before the Laws.”
J. Developments in Advancing Religious Freedom, Dialogue, and Conflict Mediation

Shortly after being elected a member of the United Nations Human Rights Council, Vietnam submitted its national report to the Council for the Universal Periodic Review (UPR) on 5 February 2014. The report states: “Vietnam considers religion and belief a legitimate need of the people and has made continuous efforts to create better conditions for religious and belief activities.” Evidence shown include the increasing number of believers; the organization of major annual festivities; the renovation and new construction of places of worship; the regular organization and expansion of training activities for religious dignitaries, monks and nuns; humanitarian activities of religious organizations; and the growth in international relations of religious organizations, which saw religious leaders participating in many international fora, dialogues among religions and faiths, and exchanges of views on religious beliefs and rules at important fora, like ASEM and ASEAN. The domestic media reported that the UPR of Vietnam’s national report was successful and hailed by many nations, which indicated international recognition for Vietnam’s achievement in human rights and religious freedom.

During the interactive dialogue at the United Nations Human Rights Council, 60 delegations made statements about Vietnam’s report. Significant achievements in economic, social and cultural rights in Vietnam were highlighted. However, several countries, including Norway, Sweden, Netherlands, the United Kingdom, and the United States, proposed recommendations to improve political and civil rights, especially the rights to freedom of expression and freedom of religion. One such recommendation stated:

“While commending Viet Nam for its recent progress in terms of freedom of religion, the United Kingdom remained concerned that implementation of legislation remains patchy, particularly at the provincial level. It recommended that Viet Nam […] re-engage with the Special Rapporteur on freedom of religion.”

The US recommended that Vietnam release all prisoners of conscience, including religious activist Nguyen Van Ly; speed up the process of registering churches and religious organizations locally; allow for an equitable resolution of property disputes; recognize the United Buddhist Church of Vietnam and allow it to function independently of the Vietnamese Buddhist Sangha; and allow multiple branches of the Hoa Hao and Cao Dai faiths.

K. Analysing the Trends

The Constitution and the laws of Vietnam guarantee freedom of religion. In particular, the enactment of the Ordinance on Belief and Religion in 2004 facilitates the practise of religious freedom in Vietnam. The increasing number of followers and believers, recognized religions and recognized religious organizations, religious places, publications of religious books and materials, and the frequent and diversified religious activities held throughout the country are fair indicators of the improvement in religious freedom in Vietnam.
The improvement in religious freedom in Vietnam stemmed from both domestic pressure and international attention. The polity of Vietnam is far from totalitarian, while clearly under the sole leadership of the Communist Party. Due to internal societal pressure, three decades of economic reforms—or national “renovation” (Doi moi)—since 1986, and the impact of globalization, there has been a transition to greater openness in Vietnamese politics. In addition, as part of the global community, Vietnam is compelled to fulfil its international commitments and duties as well as its regional obligations under the ASEAN Charter and ASEAN Human Rights Declaration. It is in this context that human rights and religious freedom in Vietnam can be improved. As Vietnam seeks to integrate into the global community, it has become more receptive to international opinions; international criticism may have helped ameliorate the religious freedom situation in Vietnam.

As seen above, international actors do not condemn the state of religious freedom in Vietnam without also acknowledging the improvements that have been made. Still, international criticisms of Vietnam's religious freedom situation remain sharp, the root cause of which—among other things—is Vietnam's communitarian interpretation of religious freedom as reflected in its regulatory framework for the practice of organized religion.

PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

A. Negative Contributing Factors

1. Socio-Economic Factors

Vietnam is a developing county. According to the UNDP, Vietnam’s 2012 Human Development Index is 0.617, which is lower than the average of 0.64 for countries in the medium human development group and lower than the average of 0.683 for countries in East Asia and the Pacific.113 Poverty negatively affects the quality of the practise of religious freedom in Vietnam in several ways. Underdeveloped socio-economic conditions limit people’s ability to gain access to education and religious resources, particularly for the large number of people living in poor villages and the minority groups living in highland areas. The lack of education and the limited religious resources constrain people’s awareness of religions and the right to religious freedom.

2. Ideological Factors

Vietnam’s Constitution and laws do not have a provision that protects freedom of thought and conscience. Vietnam’s ruling party, the Communist Party, has an ideology based on Marxism-Leninism and Ho Chi Minh Thought, which is enshrined in the Constitution.114 As the only ruling party in Vietnamese society, its ideology dominates the country.

Marxism-Leninism is atheistic and highly critical of religion. As is understood in Vietnam, Karl Marx believed that certain social factors, such as economic depression, inequality and violence, give rise to religions and, more importantly, religions can be removed from future communist societies by ridding the social conditions necessary for their

existence. The belief in the possible removal of religions from social life resulted in serious consequences in Vietnam during the pre-renovation program, which was initiated in 1986. It has been recognized that in Vietnam:

“Due to incomplete cognition, we committed serious mistakes in struggling against religions. We were overhasty and extreme in dealing with religions and religious places. A number of churches, pagodas, and temples were destroyed, religious activities were prohibited, religious believers were discriminated against, and the right to freedom of belief and religion was not guaranteed.”

This mode of thinking has developed into a “more complete recognition” such that, during the transitional period to socialism, religions continued to exist because the social conditions necessary for religions still existed. It was realised that the targets in the struggle against religious problems ought not to have been every religion, religious activity and believer, but “groups of people who appropriate religions to establish superstitious careers or subvert establishments, disturb social order, and go against the interests of the state.” This marks a shift from outright attempts to repress organized religion to constraint of religious practice within political and ideological boundaries that can regulate it in ways that do not conflict with state interests.

The Marxist-Leninist government in Vietnam, thus, now realizes the indisputable existence of various religions and accepts the practice of religious freedom as a necessity due to internal demands and external attention. However, the state carefully manages and controls religious activities as they fear the diversification of religions and religious practices may make control more difficult and undermine communist ideology and the state’s socialist goals. Such management and control is to ensure that religions will help the state in achieving socialist goals and to exclude “heresy” that might be subversive to socialism. This explains why religions, religious organizations, and religious activities must be officially recognized by the state, and why religious dissidents and religious organizations that are not officially recognised are at risk of state sanctions.

Buddhism is the most popular religion in Vietnam. Rather than suppressing Buddhism in a totalitarian manner, however, the Marxist-Leninist government of Vietnam co-opts Buddhists and treats them as allies for socialist goals by recognizing, supporting, and managing Buddhists and Buddhist organizations that support the regime. The Vietnam Buddhist Sangha is the largest Buddhist organization that is officially-recognized and supported by the state, and a member of Vietnam Fatherland Front. Its motto, “The Way, the Nation, and Socialism,” illustrates its allegiance to the state’s goals. In contrast, the Unified Buddhist Sangha of Vietnam (UBSV), which was founded in 1964 during the Vietnam War, had a history of anti-communism. After the communists’ victory, most of the UBSV leaders were punished by the state. Most notably, Thích Quảng Độ, the patriarch of the UBSV, was arrested and imprisoned in 1977, 1982, and 1985 for anti-revolutionary activities and undermining national


116 Ibid.

117 Ibid. It should be noted the particular meaning of “subvert revolution” in Vietnam. “Revolution” in Vietnam does not merely refer to violent revolution but may include any actions and policies useful to building up “socialism.” So, the phrase “subvert revolution” means the resistance to socialist policies and Vietnamese socialism generally.


solidarity. Thích Huyền Quang, another patriarch of the UBSV, was similarly persecuted. UBSV is currently banned in Vietnam and operates in exile.

3. Political Factors

As elaborated above, Vietnam has a single-party political system. The Communist Party of Vietnam exercises exclusive control over the state and society of Vietnam as mandated by the Constitution. The single-party system means that the party and state have a monopoly over the management of religion. The party and state policies on religious freedom are made, executed, and interpreted from a communist perspective. Alternative perspectives of religious freedom are considered “wrong convictions” or to have a “reactionary tone.”

The state prioritises social-economic and cultural rights over political and civil rights. Vietnamese socialism tends to focus on the promotion of social welfare rights. The liberalization of the market economy (albeit socialist-oriented) and the reduction of poverty are seen as instrumental in securing the legitimacy of the socialist regime in Vietnam. The government takes a more cautious approach to political and civil rights, including the right to religious freedom, because the practice of these rights in a liberal manner would challenge the nature of the socialist regime. The rights to freedom of speech, press, and publication are guaranteed by the Constitution, but their practice is managed by the state through relevant laws. Private presses and publishers are not allowed. Mass media is controlled by the state. Under these circumstances, the mass media is hardly a means of supervising the state's policies on religious freedom and its practice.

Several political forces use religious activities as platforms for anti-communist campaigns. The party and the state in Vietnam maintain that the “enemy forces” both inside and outside Vietnam employ religions in a strategy of “peaceful evolution” to replace the communist regime in Vietnam with a Western-style democracy. This has resulted in the state’s punishment of political-religious dissidents who have subversive goals, such as Nguyễn Văn Lý.

Nguyễn Văn Lý is a Vietnamese Roman-Catholic priest and dissident. He was involved in numerous political dissident activities, for which he was imprisoned in 1977, 1983, 2001, and 2007. On 8 April 2006, he collaborated with other writers on the “Manifesto on Freedom and Democracy for Vietnam,” which calls for a multi-party state. Those who signed the Manifesto, including Lý, called themselves the “Bloc 8406,” referencing the date of the document. Lý and the group also called for a boycott of the national election in 2007. On 15 April 2006, Lý and three other Catholic priests published online the first issue of “Free Speech.” On 8 September 2006, Lý participated in the establishment of the Vietnam Progression Party.

In 2007, Lý was arrested and sentenced to jail for eight years for the crime of “Conducting propaganda against the Socialist Republic of Vietnam,” according to Article 88 of the Criminal Code of Vietnam. During his trial, Lý stated, “Đả đảo cộng sản Việt Nam” (Down with communist Vietnam). To the state, Lý’s trial was legitimate because he had departed from the religious path and misused his priesthood to participate in numerous subversive activities against the state and undermine national solidarity. The United States expressed serious concerns about Lý’s trial. After Lý’s arrest, US Congressman Christopher Smith


introduced a House Resolution to call on Vietnam to immediately and unconditionally release Lý and his co-accused. The nature of Lý’s activities and the reaction of the state again point to the difficulty in some cases of disentangling religious activities from political activism that falls outside the purview of freedom of religion and belief.

Another serious, negative political issue is religion-based separatism, which involves religion-based advocacy for the creation of an independent state of ethnic groups, separate from that of the communist state and Vietnam’s majority population, the Kinh people. A typical example of such religion-based separatism is the Protestant mobilization for the creation of a “Degar Republic” for the Degar people, the indigenous people of the central highlands of Vietnam. Ksor Kok and a group of Vietnamese exiles in the US created the religion, “Degar Protestantism,” and the Degar Republic in 2009. The view of the party and the state is that Degar Protestantism seeks “to take advantage of the low intellectual standards and naivety of the ethnic minority to induce and incite them to agitate for separatism and autonomy. It also targeted “hot spots” and took advantage of land problems, which had not been resolved satisfactorily, to cause public disorder and social disturbances and to attack political security.”

Prior to this, in February 2001, numerous followers of Degar Protestantism and authority figures of the “Degar Republic” were involved in a rebellion in the central highlands. The rebellion was quelled by the government. International observers, such as Human Rights Watch, were quite concerned with the government’s manner of dealing with the Degar Republic, calling it “repression.”

Religious activities, when combined with separatist and dissident political campaigns, challenge the nature of the socialist polity and national unity. This increases the state’s suspicion of religious freedom, which results in its stringent control and management of religious activities.

4. Legal Factors

The legal factors influencing the right to religious freedom in Vietnam are related to the government’s understanding and exercise of human rights and the role of the law. Vietnam’s Constitution has an idealized chapter on human rights, which includes rights similar to those of international human rights laws and that are found in many national constitutions. However, the state does not accept the liberal idea of human rights as natural rights which limit the powers of the state. Instead, human rights are conceptualized as positivist-statist rights, or positively created by the state and bestowed on its subjects. Human rights are thus managed and controlled by the state for public goals that it aspires to, mainly ones associated with socialism. In policy and in reality, the state establishes restrictions on the practise of human rights, and religious freedom is not exempt.

The official conception of the role of the law in Vietnam is distinctive. The Vietnamese legal system and practice is guided by the Soviet-derived “socialist legality” principle described by V.I. Lenin. At the core of this principle is the formal, strict, and unanimous application of the law. Socialist legality emphasizes that the law is an instrument the state uses to rule the people and to enforce the strict observation of the law—it is rule by law, not

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rule of law. The substantial content of the law, such as rights, are not as important to socialist legality. From a socialist legality perspective, laws are not instruments that people use to restrain the state, but instruments of the state to restrain people. This conception of the role of law legitimizes the legal restrictions of human rights.

After the period of economic reforms, known as the Renovation period that began in 1986, Vietnam introduced the concept of a “socialist rule-of-law state,” an adaption of the Soviet Union’s pravovoe gosudarstvo, which was in turn based on the German Rechtsstaat. The “socialist rule-of-law state” is a mélange of the Soviet concept of socialist legality and the Western idea of the rule of law. Under this mixed framework, the rights contained in the law are recognized, but the idea of law as an instrument of the state to govern the people and the emphasis on people’s strict obedience to the law remain intact. This results in a reality where laws on rights do not merely recognize and protect rights, but also allow for the management and control of the practise of rights in line with the state’s goals. This means that laws, while containing new rights, fail to limit state power.

The Vietnamese conception of the role of the law affects the practise of human rights in general and the right to freedom of religion in particular. People have the right to religious freedom not because of the simple fact that they are members of the human community and have inalienable natural rights, but because they are members of the nation and have certain rights positively bestowed upon them by the sovereign power. Therefore, the practise of religious freedom is recognized, regulated, managed, and controlled by the state. In cases where the practise of religious freedom exceeds the public goals endorsed by the state, the state can withdraw this freedom as seen by its sanctions of religious dissidents and unrecognized religious organizations and activities. The law legitimizes the state’s sanctions rather than limiting its function. The following statement by an official spokesman illustrates how the Vietnamese socialist concept of law affects religious freedom:

Apart from respecting and protecting the citizen’s right to freedom of religion and belief, the policies of the Party and the laws of the Vietnamese state also strictly prohibit and exclude every activity which misuses religion to undermine independence, national solidarity, and socialism, and to prevent followers from fulfilling their duties as citizens... In recent years, a number of heretical religions have been exposed, such as the Hoa vàng Way, Long Hòa Di Lạc (in the north); the Vàng chứ Way (in the northwest); The Y-Gyin Way, Hà Môn, Thành Hải vô thượng sư, Canh tân đặc sủng, Degar Protestantism (in the highlands); Hội đồng công án Bia Sòn (in Phú Yên)... The ruling is completely legitimate and legal to protect security and order.”

5. Institutional Factors

Most nations accept certain legal limits on the freedom of individuals. However, there are usually institutional checks to ensure that such legal limits are legitimate and that the state does not limit freedom in an arbitrary manner. They include the mechanism of judicial review, special national institutions of human rights protection, and judicial independence. These institutional factors do not exist in Vietnam.

In Vietnam, there is no special judicial institution, such as a constitutional court, to check the constitutionality of the state’s actions. Ordinary courts are not allowed to perform the function of constitutional review. That means there is no


independent institution to determine whether the laws and the authorities respect constitutionally-protected human rights. Under such circumstances, it is the administrators themselves (officials and the police), rather than independent institutional arbiters who decide whether the Ordinance on Belief and Religion and the administration of religious affairs respect the constitutionally-protected freedom of religion. There is also no national human rights institution in Vietnam. During the public debate on constitutional revision in the 2010s, there was a vehement call by intellectuals for the establishment of a constitutional court or council and a national committee on human rights, but the new Constitution adopted in late 2013 did not provide for the creation of such institutions. While in the ASEAN framework Vietnam participates in the ASEAN Intergovernmental Human Rights Commission (AICHR), the work of the AICHR has thus far not extended to considerations of how commitments to the rule of law and religious freedom under ASEAN instruments are concretely implemented.

There is little protection for judicial independence in Vietnam. Socialist Vietnam rejects the Western theory of the separation of powers and of judicial independence, and favours the Soviet principle of unity of power. While the Constitution encourages the courts to decide cases according to the law and prohibits external interference in the decisions of judges, the reality is far from ideal. Most judges are party members and must be accountable to the party. A commentator observed: “Courts in this region [socialist-transforming East Asia] have been subjected to an extreme form of political control.” Judicial judgments are issued under the aegis of the “party leadership” and in accordance with “government directives.” The trials of religious dissidents are no exception.

B. Positive Contributing Factors

1. The Tradition of Religious Harmony

Vietnam has a long tradition of harmonious co-existence among its various religions. In pre-modern Vietnam, three major religions, namely Confucianism, Buddhism, and Taoism, established a tradition called “Tam giáo Đồng nguyên” (Unity of Three Religions). This tradition continues today and helps prevent religion-related conflict, societal abuses and discrimination, and terrorism—positively contributing to the practice of religious freedom. It was reported that in 2013, “[t]here were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice.”

There were also some dialogues among leaders and followers of disparate religious communities. According to the US Department of State’s Vietnam 2012 International Religious Freedom Report, in October 2012, “more than 1,000 followers and dignitaries of five religions joined in an inter-religious meeting held by the HCMC Archdiocese’s Pastoral Services. The gathering of representatives from Catholicism, Protestantism, Buddhism, Cao Dai, Hoa Hao, Islam, Minh Ly Religion, and the Bahai Faith shared ideas about how to guide others to overcome hardship and misery, and called for more cooperation in charitable activities among different religious groups.”

134 Ibid., 849-52.
2. **Stronger Constitutional and Legal Protections**

Compared to earlier periods, the government has significantly eased restrictions on Buddhists, Catholics, Protestants, Hòa Hảo, Bahá'í, and Caodaists. More religions and religious organizations have been officially recognized after enactment of the Ordinance on Belief and Religion in 2004. The US Department of State’s Vietnam 2012 International Religious Freedom Report acknowledges that “much of the change came from stronger implementation of significant revisions to the legal framework governing religion instituted in 2004 and 2005.”

It is important to note that the new 2013 Constitution of Vietnam provides stronger protection of human rights in general and religious freedom in particular. In the 1992 Constitution, human rights must be exercised “according to the law.” The “law” in Vietnam consists not only of statutes by the legislative body, but also numerous legal documents by administrative bodies, which allows authorities at all governmental levels to issue legal documents that can restrict human rights. Such a human rights regime was criticized by Vietnamese legal scholars, especially during the constitutional revision process. Consequently, the 2013 Constitution adopted a new human rights regime, which states that only legislative statutes can establish legal restrictions on human rights in critical circumstances for reasons of national defence, national security, social order and security, social morality, and the health of the community. In theory, the new human rights regime prohibits the administrative organs from issuing legal documents that limit human rights. This is a positive development which can also affect the laws and the reality of religious freedom in Vietnam in the future. The hope is that religious freedom will not be restricted arbitrarily by legal documents issued by administrative bodies and local governments.

3. **Government-led or non-state actor-led initiatives to promote freedom of religion**

The government has initiated several activities to promote freedom of religion. It facilitated the construction of new places of worship, transferred land to religious groups, approved building permits, and approved small construction grants. The government also assisted in the publication of religious materials, the translation of the Bible into the languages of ethnic minorities, the on-going publication of a Vietnamese-Arabic bilingual Koran, and the translation of Buddhist classics into the Khmer language. In addition, the government facilitates the organization of religious festivals, congregations, and international religious activities.

The Vietnam Fatherland Front also initiated activities beneficial to religious freedom. It proposed that the government revise laws and policies regarding religious affairs. For example, the Standing Committee of the Vietnam Fatherland Front has submitted a petition to the state, calling for the revision of the Law on Education, the Ordinance on Belief and Religion, and the Law on Medical Career in a direction that provides more freedom for recognized religions to participate in medical, educational, and humanitarian activities.

4. **The Response of Peace Promoting Religious Leaders**

There are religious leaders who are engaged in promoting peace. One such religious leader is Thích Nhất Hạnh, a world-renowned, Vietnamese Zen Buddhist monk based in France, who is a teacher, author, poet, and peace activist. He is active in

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140 Article 14, the 2013 Constitution of Vietnam.


the peace movement and promotes non-violent solutions to conflict. In 1956, he was associated with the Unified Buddhist Church of Vietnam as editor-in-chief of its *Vietnamese Buddhism* periodical. In 1969, he founded the United Buddhist Church (Église Bouddhique Unifiée) in France, separating from the United Buddhist Church of Vietnam. Previously, the Vietnamese government did not welcome Thích Nhất Hạnh, but in 2005, after lengthy negotiations, the Vietnamese government gave him permission to return to Vietnam for a visit. In 2007, Thích Nhất Hạnh was again permitted to return to Vietnam. He travelled widely throughout the country, communicated with large Buddhist groups, and had discussions with intellectuals and political leaders, including President Nguyễn Minh Triết. He was also allowed to teach in Vietnam and his books have been published widely in Vietnamese.144

5. The Response of Authorities, Security Forces or the Police

There are reports that indicate some easing of restrictions on religious freedom on the part of government authorities. For instance, the 2013 US Department of State report noted that “[i]n some parts of the country, local authorities tacitly approved the activities of unregistered groups and did not interfere with them.” The same report indicated that the government “registered an increased number of religious groups and generally respected the religious freedom of those registered groups, to the extent the groups complied with regulations. The government also permitted the expansion of charitable activities, and allowed large-scale worship services with more than 100,000 participants.” In addition, the government had restored some properties that were previously owned by religious groups. For example, in June 2012, the government restored five acres of land to St. Peter’s Catholic chapel in Hanoi.145

6. Educational Programs Raising Awareness about Religions

There are educational programs that support religious activities. Four Vietnam Buddhist Academies in Ho Chi Minh City, Hanoi, Hue, and Can Tho offer undergraduate degree programs on Buddhism and will also offer master degree programs.146 The government supports religious education by helping build new facilities and sending students from religious academies to educational institutions overseas.147


146 See the website of the Vietnam Buddhist Academy at Hanoi: http://hvpvn.edu.vn/index.php?option=com_content&view=article&id=50&Itemid=11

PART FOUR: CONCLUSION

This report considers the law, policies, and reality of religious freedom in Vietnam using the principle of charity. It has disinterred domestic ideas informing the discourse, the law, and the reality of religious freedom in Vietnam. It has interpreted the language and the actions of the party and the government in Vietnam regarding religious freedom in their own light. Vietnam maintains its distinctive concepts of the roles of the law, human rights, and religions in society, which affects the discourse, laws, policies, and reality of religious freedom. In particular, Vietnam has its own philosophy of human rights and has developed its own regime of human rights, which is underpinned by the concern for communitarian and statist goals. This communitarian and statist human rights regime significantly affects the domain of religious freedom in Vietnam.

Vietnam is a transforming socialist nation, not a traditional socialist nation. It has become deeply integrated into the global community and has adopted several common values and institutions instrumental to its transformation, such as a market economy and the rule of law, albeit in a socialist-oriented form. It also participates actively in the ongoing process of regional developments, including in human rights, that have followed the adoption of the ASEAN Charter in 2008. Different aspects of Vietnamese society, therefore, have undergone significant changes, including religious freedom. The legal framework established in 2004 considerably contributes to the betterment of religious freedom in Vietnam, and is now under review. The new 2013 Constitution provides a basis for the control of arbitrary administrative restrictions on human rights in general and religious freedom in particular.

There are a number of positive factors contributing to the progression of religious freedom in Vietnam: the tradition of religious harmony, stronger constitutional and legal protections of religious freedom, government-led or non-state actor-led initiatives to promote freedom of religion, the response of religious leaders who promote peace, the authorities, security forces or the police in promoting or easing restrictions on religious freedom, and educational programs raising awareness about religions. On the other hand, a number of negative factors affect the practice of religious freedom in Vietnam: socio-economic factors, ideological factors, political factors, legal factors, and institutional factors. This report has made clear that from the perspective of the government of Vietnam, regulation of religious organization and practice must be constrained within a legally grounded framework of political control in order to serve the interests of the state.

This report concludes with some reflections on the prospects of religious freedom in Vietnam. Under the influences of internal social-economic development and demands as well as that of regional and global integration, the Vietnamese government may abate in its communitarian and statist vision of religious freedom, and allow new beliefs and religious practices. An international commentator stated: “As Vietnam modernizes and becomes more globally-integrated, party leaders increasingly grapple with cross-cultural problems. This compels them to expand their loyalties beyond the ethnic Kinh majority and accept diverse forms of religious worship. In the process, party leaders are incrementally assuming a cosmopolitan outlook.”148

The official recognition of the Bahai faith in 2007 and the granting of permission to Thích Nhất Hạnh to lecture on Zen Buddhism and the publication of his works in Vietnam are representative of this trend. However, the shift to a more cosmopolitan perspective, which implies that the Vietnamese government will be ready to allow a legally-enforceable right to religious freedom, is unlikely.149

This was illustrated by the rejection of the call for a constitutional court or council in the last constitution-making process. Constitutional rights and the right to religious freedom are not always

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149 Ibid., 149.
enforced through legal mechanisms. The new Constitution of Vietnam, nonetheless, holds some promise of political alternatives.

The new Constitution gives the people, together with state actors, the role of protecting the Constitution. In principle, this lets the people check the exercise of state power against constitutional rights, including the right to religious freedom. While institutional checks (constitutional review, human rights committee, and independent courts) on state power are absent or limited in Vietnam, popular checks through popular discourse and mobilization have the potential to fulfil the new constitutional commitment to permit people to protect the Constitution. Such popular checks, however, require that the relevant practice of freedom of speech, press, and association be eased.

Finally, the change to a more cosmopolitan perspective does not necessarily mean that Vietnam’s outlook will finally converge with the universal liberal outlook on religious freedom and human rights in general. Whether the liberal outlook should be universally accepted has been debated in global fora. The rise of Western communitarianism notwithstanding, Vietnam’s vision of human rights and religious freedom is not unusual when compared with that of ASEAN’s. The 2012 ASEAN Declaration of Human rights states: “The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives.” It also allows legal limitations on human rights for a wide range of public goals: “The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.”

Communitarian considerations are present in ASEAN’s path to human rights and religious freedom, which moves beyond “The end of the history”—or the triumph of Western liberal democracy—as Fukuyama imagined.

150 Art. 119 (2) of the Constitution states: “The National Assembly and its agencies, the President, the Government, People’s Courts, People’s Procuracies, other agencies of the State and all the People shall defend the Constitution. The mechanism to defend the Constitution shall be prescribed by a law.”

151 General Principles, Section 6, ASEAN Declaration of Human rights, 2012.

152 General Principles, Section 8, ASEAN Declaration of Human rights, 2012. One may argue that the ASEAN Human Rights Declaration contains contradictory provisions recognizing the universality of human rights principles on the one hand and in other provisions allowing human rights restrictions. However, the restrictions on human rights for some specified public interests are also recognized in the ICCPR (Article 22), and the ICESCR (Article 8).

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