

A COUNTRY BURNING FOR RELIGIOUS FREEDOM: THE NEW DRAFT LAW ON FREEDOM OF RELIGION IN VIETNAM

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Vietnam has continuously struggled with freedom of religion. As a communist nation, protecting the interests of the Vietnamese Communist Party is of vital importance to the government. However, the Vietnamese Communist Party has noticed problems with its laws on religious freedom and has issued multiple amendments to its constitution of Vietnam pertaining to this matter, as well as new ordinances regulating freedom of religion. Despite this, the Vietnamese Communist Party continues to have sweeping control over religious freedoms and continuously violates the International Covenant on Civil and Political Rights, as well as Vietnam's constitution. Currently, the VCP is drafting a new freedom of religion law, which is set to expand religious freedom and lessen government control. In this new law, Vietnam should curtail government restrictions by limiting the registration requirement on religions or implementing the suggested alternative, restricting the amount of government involvement and control allowed in religious freedom, and defining religion.

1. J.D. Candidate May 2018. Professor Ravitch, thank you for your guidance, commentary, and help throughout the writing process.

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I. INTRODUCTION TO RELIGIOUS FREEDOM IN VIETNAM

“Religious freedom is too sacred a right to be restricted or prohibited in any degree without convincing proof that a legitimate interest of the state is in grave danger.”

- Justice Frank Murphy²

Put on your Western lenses; now take them off. Through the eyes of a person who has been afforded many, if not unlimited, religious freedoms, religious freedom in Vietnam may appear to be unacceptable in comparison. However, viewed through the lenses of a unified Vietnam, from 1975 onwards, Vietnam has made progress with respect to religious freedom.³ Vietnam is light years ahead of other communist countries, and even countries that claim to be democratic,⁴ by recognizing issues regarding laws on freedom of religion and moving forward.

This note is limited to religious freedom in Vietnam post 1975. This note will begin with a history of religious freedom in Vietnam, which will include an overview of the different religions practiced in Vietnam. Next, this note will discuss the past amendments to freedom of religion laws. This note will then focus on the organization of the government agencies that are responsible for the regulation of religions. Then this note will discuss the Vietnamese criminal code and the realities of detainment. Following, this note will discuss Vietnam’s failure to abide by the International Covenant on Civil and Political Rights (ICCPR). Subsequently, this note will review the failings of religious freedom in Vietnam. This note will conclude by commenting on Vietnam’s new draft law and making suggestions for the new draft law.

2. Prince v. Massachusetts, 321 U.S. 158, 176 (1944) (Murphy, J., dissenting).

3. Interview with Frank Ravitch, Professor of Law, Mich. State Univ. Coll. of Law, in East Lansing, Mich. (Nov. 14, 2016).

4. *Id.*

II. ORGANIZATION OF THE GOVERNMENTAL AGENCIES THAT REGULATE RELIGION

“Vietnam is a one-party state run by the Vietnamese Communist Party.”⁵ The Vietnamese Communist Party (VCP), founded in 1930, “retains a monopoly on power and responsibility for the state.”⁶ There are four main government organizations that control laws regarding freedom of religion in Vietnam—the Government Committee for Religious Affairs (GCRA), the Vietnam Fatherland Front (VFF), the Communist Party’s Department of Mobilization and Propaganda, and the Ministry of the Interior.⁷

The GCRA’s main function is to disperse information regarding laws on religion to the Vietnamese people.⁸ Additionally, the GCRA is responsible for registering religions.⁹ There are two layers to registering a religious organization—local and national registration.¹⁰ Local registration for a religious group dictates where the religion has the ability to operate.¹¹ National registration of a religious group, as per the 2004 ordinance on Religion and Belief, requires the religious organization to operate for twenty years prior to registration and have a license from the GCRA.¹² Once a religion obtains national registration, the “religious group becomes eligible to apply for legal recognition.”¹³ Generally, these registration requirements result “in major problems for,

5. TIFFANY DANG ET AL., OFFICE OF SENATOR THANH HAI NGO, VIETNAM HUMAN RIGHTS REPORT 9 (2015).

6. *Id.*

7. VIET. COMM. ON HUMAN RIGHTS, FREEDOM OF RELIGION OR BELIEF IN VIETNAM: STATE MANAGEMENT OF RELIGIONS 8 (2016) [hereinafter STATE MANAGEMENT OF RELIGIONS].

8. *Introduction*, SOCIALIST REPUBLIC OF VIET.: THE GOV’T COMMITTEE FOR RELIGIOUS AFF., <http://religion.vn/Plus.aspx/en/102/0/> (last visited Sept. 12, 2017).

9. *See* Decree: Detailed Regulations and Enforcement Measures Ordinance on Belief and Religion, No. 92/2012/ND-CP, ch. V (2012) (Viet.).

10. *See* U.S. Embassy & Consulate in Viet., *International Religious Freedom Report for 2015*, U.S. EMBASSY (Aug. 11, 2016), <https://vn.usembassy.gov/international-religious-freedom-report-2015/>.

11. *Id.*

12. *Id.*

13. *Id.*

or outright discrimination against, certain groups.”¹⁴ Due to the restrictions set out by these four government organizations and the registration requirement, the “degree of freedom in which religious groups operate is greatly influenced by relationships between religious leaders and local authorities.”¹⁵

The VFF is another government entity that manages religious affairs.¹⁶ The VFF is responsible for the oversight of other organizations, including religious communities,¹⁷ and the representation of the citizen’s opinions.¹⁸ The VFF:

[I]s the political base of people’s power, representing and protecting lawful rights and interests of the people; gathering and bringing into play strength of national solidarity, exercising democracy and reinforcing social unanimity; participating in the construction of the Communist Party, State and people’s external relation activities making a contribution toward the construction and protection of the Fatherland.¹⁹

Furthermore, the VFF creates policies pertaining to religious matters.²⁰ Members of the VFF consist of state-recognized religions,²¹ and those members are required to make supportive government statements.²² It is important to recognize that most registered religious groups are members of the VFF.²³ The Department of Mobilization and Propaganda is responsible for creating strategies to control and limit

14. Brian J. Grim, *Rising Restrictions on Religion: A Global Overview*, 2012 BYU L. REV. 835, 855 (2012).

15. Hien Vu et al., *Engaging Vietnam and Laos on Religious Freedom*, 14 THE REV. OF FAITH & INT’L AFF. 86, 87 (2016).

16. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 8.

17. *Id.*

18. DANG ET AL., *supra* note 5, at 9.

19. Vietnamese Fatherland Front, ch. 1, art. 1 (L. No. 75/2015/QH13) (Viet.), translated in *Law No. 75/2015/QH13 Dated June 09, 2015, Vietnamese Fatherland Front*, HETHONGPHAPLUATVIETNAM.COM, <http://hethongphapluatvietnam.com/law-no-75-2015-qh13-dated-june-09-2015-vietnamese-fatherland-front.html> (last visited Sept. 12, 2017).

20. U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, REPORT ON VIETNAM 3 (2003), <http://www.usvtc.org/us-vietnam/issues/hr/USCIRF-Report2003.pdf>.

21. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 8.

22. *Id.* at 9.

23. *See id.* at 8.

Vietnamese citizens' practice of religion.²⁴ The Ministry of Interior enforces these strategies.²⁵ The Department of Mobilization and Propaganda and the Ministry of the Interior work closely together.²⁶ The dominance of these four government entities creates the power for the VCP to remain in control of religious organizations.²⁷

III. THE HISTORY OF RELIGIOUS FREEDOM IN VIETNAM

The VCP, as a communist nation, views religious freedom as a political issue, rather than a human rights issue.²⁸ Furthermore, due to Marxist influences,²⁹ religious freedom is viewed "as a threat to social and political stability."³⁰ Although some equate Marxism to atheism, that is not the case in Vietnam.³¹ While individual religious freedom was granted under the 1992 Constitution,³² one of the VCP's main concerns is the growth of organized religion.³³ Some concerns are related to the structures, national networks, and adherents of organized religion.³⁴ The main concern is due to the VCP's perception that organized religion is a threat to the country's stability.³⁵ Because of this perceived threat, the VCP maintains control over religious organizations in many different ways.³⁶ First, the VCP has ordered each religious organization to have an official "sanctioned and elected ruling body."³⁷ Second, the VCP supervises the training and education of church leadership of every

24. *Id.* at 9.

25. *Id.*

26. *See id.*

27. *Id.* at 8.

28. Vu, *supra* note 15, at 86.

29. Vietnam has a history with Marxism influencing the government's view on religion—"the Marxist view that the ruling class in the society will use religion as a tool to exploit and control the working class." *Id.* at 87.

30. *Id.*

31. CHRIS BRAZIER, VIETNAM: THE PRICE OF PEACE 48 (1992).

32. Articles 69 and 70 guarantee freedom of religion under the 1992 Constitution. ZACHARY ABUZA, RENOVATING POLITICS IN CONTEMPORARY VIETNAM 184 (2001).

33. *Id.* at 184–85.

34. *Id.*

35. *Id.* at 185.

36. *See id.* at 187–88.

37. *Id.* at 187.

religious organization.³⁸ Third, the VCP controls all estates and assets of organized religions.³⁹ Fourth, government permission is required to publish church documents, such as prayer books.⁴⁰ Thus, the VCP sees freedom of religion as an infringement on its ability to rule the country.⁴¹

Major changes to religion began in 1986 with the Sixth Congress of the VCP.⁴² This Congress introduced Doi Moi or *new thinking*, which led to a free-market economy.⁴³ Before the implementation of Doi Moi, Vietnam was a centrally-planned economy with socialist ideologies.⁴⁴ The goal of Doi Moi was to shift Vietnam's economy from "ideologically driven communist policies [to] a market-based economy."⁴⁵ Due to the implementation of Doi Moi, the popularity of religion among adherents improved.⁴⁶ The Seventh Congress further expanded on these views by acknowledging that "the majority of the people have a spiritual need for religions and beliefs."⁴⁷ The momentum of Doi Moi remained due to some major political consensuses.⁴⁸ First, the VCP wanted the government to remain stable in order to further economic development.⁴⁹ Second, in order to further economic development, Vietnam needed to be open to foreign investment and trade.⁵⁰ Third, the gradual introduction of Doi Moi allowed Vietnam to stay on the socialist path.⁵¹ While Doi Moi slowed in the late 2000s, Vietnam's economy continues to "becom[e] more open and engaged in

38. *Id.*

39. *Id.* at 188.

40. *Id.* These are only a few of the many examples of the ways that the VCP controls religious organizations. *See also id.* at 187–88.

41. *See* Vu, *supra* note 15, at 87.

42. BRAZIER, *supra* note 31, at 22.

43. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 9.

44. Quan Hoang Vuong, *Vietnam's Political Economy in Transition (1986-2016)*, STRATFOR (May 27, 2014), <https://www.stratfor.com/the-hub/vietnams-political-economy-transition-1986-2016>.

45. Lauren Saltiel, Comment, *Cultural Governance and Development in Vietnam*, 35 U. PA. J. INT'L L. 893, 901 (2014).

46. ABUZA, *supra* note 32, at 184.

47. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 9.

48. Vuong, *supra* note 44.

49. *Id.*

50. *Id.*

51. *Id.*

international affairs.”⁵² As Vietnam developed international relationships, the VCP grew concerned about its control over religious organizations due to the influence of Doi Moi.⁵³

Vietnam first recognized religious freedom in Article 70 of the 1992 Constitution, which states that citizens “have the right to freedom of belief and religion, and may [practice] or not [practice] any religion. All religions are equal before the law.”⁵⁴ Article 70 continues and states that “[n]o one has the right to infringe on the freedom of faith and religion or to take advantage of the latter to violate State laws and policies.”⁵⁵ This article is contradictory because there is only religious freedom as long as adherents follow the political policy on religion as established by the VCP.⁵⁶ Note that only *citizens* have the right to freedom of belief; foreigners have to go through a different registration process, and the VCP has more stringent controls over foreigners.⁵⁷ The articles discussed above are also outlined in the new draft law.⁵⁸

Despite being a communist state, Vietnam is ripe with religious diversity.⁵⁹ In July 2013, the estimated population of Vietnam was 92.5

52. *Id.*

53. ABUZA, *supra* note 32, at 184.

54. CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM Apr. 15, 1992, art. 70 (as amended on Dec. 25, 2001), *translated in* VIET. L., [http://www.vietnamlaws.com/freelaws/Constitution92\(aa01\).pdf](http://www.vietnamlaws.com/freelaws/Constitution92(aa01).pdf) (last visited Oct. 17, 2017).

55. *Id.*

56. DANG ET AL., *supra* note 4, at 54.

57. *See generally* FUND FOR RECONCILIATION & DEV., FOREIGN RELIGIOUS ORGANIZATIONS IN VIETNAM: LAW AND PRACTICE 2–3 (2004), <http://ffrd.org/Foreign%20Religious%20Organizations%20in%20Vietnam.pdf>. *See also* discussion *infra* Section VII. Some commentators noted that since non-nationals were not included in this provision, foreigners could not be governed by the Constitution. FUND FOR RECONCILIATION & DEV., *supra*, at 2. Under the 2004 Ordinance on Belief and Religion, the VCP added Article 37, which specifically sets out religious rights granted to foreigners. *Id.* at 3.

58. Law on Religion and Beliefs, art. 23 (L. No. /2016/QH13) (Viet.), *translated in* DEMOCRATIC VOICE OF VIET., <http://dvov.org/wp-content/uploads/2015/10/LawReligion-40thSess-2015-10-09d.pdf> (last visited Sept. 12, 2017) [hereinafter New Draft Law].

59. *See* U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, 2016 ANNUAL REPORT 133 (2016), <http://www.uscirf.gov/sites/default/files/USCIRF%202016%20Annual%20Report.pdf> [hereinafter USCIRF REPORT].

million.⁶⁰ Over half of the population is Buddhist,⁶¹ and Buddhism has been Vietnam's central religion since the twelfth century.⁶² Catholicism is practiced by 7% of the population, and Cao Dai is practiced by 2.5–4% of the population.⁶³ Other practicing religions include Hoa Hao, Protestantism, Khmer Krom Buddhism, Baha'i, Mormonism, Falun Gong, and multiple rural religions.⁶⁴ There are multiple smaller religiously ethnic groups that make up less than 0.1% of the population.⁶⁵ This includes the ethnic Cham, Muslims, and Jews.⁶⁶ While there is religious diversity in Vietnam, the VCP is very strict on the freedom of religion.⁶⁷

Catholicism, in particular, has continued to struggle with the VCP.⁶⁸ The VCP controls the Catholic Church under the guise of protecting freedom of religion through vague wording in the Constitution.⁶⁹ However, “[i]n order to receive this protection, all religious organizations must agree to the subjection of their activities, including ordinations, to state approval and control.”⁷⁰ An example of this state control is Bishop appointment, which must be approved by the VCP.⁷¹ If the VCP does not approve of the Bishop, the VCP can veto the appointment.⁷² In order to practice its religion, the Catholic Church faces

60. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Vietnam 2013 International Religious Freedom Report 2 (2013), <https://www.state.gov/documents/organization/222393.pdf>.

61. *Id.*

62. BRAZIER, *supra* note 31, at 48.

63. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *supra* note 59, at 1.

64. USCIRF REPORT, *supra* note 59, at 133.

65. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *supra* note 59, at 2.

66. *Id.*

67. This new trend began in May 2009. INT'L FEDERATION FOR HUMAN RIGHTS & VIET. COMM. ON HUMAN RIGHTS, UNIVERSAL PERIODIC REVIEW OF VIETNAM ¶ 2 (2013), https://www.fidh.org/IMG/pdf/joint_upr_submission_on_vietnam_final_version.pdf [hereinafter UNIVERSAL PERIODIC REVIEW].

68. See Lan T. Chu, *Catholicism vs. Communism, Continued: The Catholic Church in Vietnam*, 3 J. OF VIETNAMESE STUD. 151, 154 (2008).

69. *Id.*

70. *Id.*

71. *Id.*

72. See ABUZA, *supra* note 32, at 200.

administrative obstacles.⁷³ Furthermore, the VCP established the Catholic Patriotic Association, a “government-controlled policymaking [body],” in order to control the Catholic Church.⁷⁴ The Catholic Church is not allowed to open schools, orphanages, or other social services.⁷⁵ This is due to the VCP’s fear that these social services may “threaten the monopoly” of the VCP.⁷⁶ Additionally, “Catholics are . . . not allowed to become party members” of the VFF,⁷⁷ which is problematic because members of the VFF have political influence over the VCP.⁷⁸ This has caused relations between the Vatican and the VCP to stall.⁷⁹ Generally, the Vatican provides resources to any Catholic church; however, due to the strained relationship between the Vatican and the VCP, this monetary aid is absent in Vietnam.⁸⁰ Furthermore, Catholic parishes in remote areas of Vietnam face difficulty in registering their congregation.⁸¹ Despite these restrictions, in August 2015, the VCP allowed the Catholic Church to establish the Vietnamese Catholic Institute.⁸² This institute is the “first faith based, degree granting educational institution in Vietnam.”⁸³ The Vietnamese Catholic Institute opened in September 2016,⁸⁴ enrolling twenty-three students⁸⁵ who will study Biblical and

73. CHRISTIAN SOLIDARITY WORLDWIDE, FREEDOM OF RELIGION OR BELIEF IN VIETNAM: THE ALTERNATIVE REPORT 20 (2014), <http://www.cswusa.org/filerequest/3325.pdf> [hereinafter THE ALTERNATIVE REPORT].

74. U.S. DEP’T OF STATE, 100TH CONG., COUNTRY REP. ON HUMAN RIGHTS PRACTICES FOR 1987 832 (Joint Comm. Print 1987).

75. ABUZA, *supra* note 32, at 202.

76. *Id.*

77. BRAZIER, *supra* note 31, at 49.

78. *See* STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 9.

79. *See* ABUZA, *supra* note 32, at 200.

80. Chu, *supra* note 68, at 153.

81. U.S. Embassy & Consulate in Viet., *supra* note 9.

82. *Id.*

83. *Id.*

84. *Lessons at the New Catholic Institute of Vietnam Begin*, NEWS.VA, <http://www.news.va/en/news/asiavietnam-lessons-at-the-new-catholic-institute-> (last visited Sept. 12, 2017).

85. *Vietnam: Catholic University Inaugurated*, SISTERS OF CHARITY OF SAINT JEANNE-ANTIDE THOURET, http://www.suoredellacarita.org/index.php?option=com_k2&view=item&id=1381:vietna-m-la-prima-università-cattolica&Itemid=149&lang=en (last updated Sept. 24, 2016).

dogmatic theology.⁸⁶ Even though the VCP imposes limitations, the Catholic Church continues to flourish.⁸⁷

Cao Dai⁸⁸ is another religion that has struggled under the overbearing control of the VCP.⁸⁹ Caodaism is a mixture of Buddhism, Confucianism, Christianity, and Taoism.⁹⁰ Caodaism, founded in southern Vietnam, practices spirit séances.⁹¹ In 1978, the VCP labeled Caodaism “anti-revolutionary.”⁹² In order to further control the adherents of Caodaism, in 1975, the VCP replaced the leadership of the religion with the new Cao Dai Administrative Council.⁹³ This Council reports directly to the VFF.⁹⁴ Since these new leaders were put into power by the VCP, most adherents do not recognize these leaders as legitimate.⁹⁵ Furthermore, those adherents who do not follow the replaced Cao Dai Administrative Council’s organization practice their religion illegally.⁹⁶ Thus, adherents who do not follow the state recognized branches of Caodaism are subjected to harsh punishments.⁹⁷ Currently, the practice of Caodaism outside of the government-approved sect is forbidden.⁹⁸

Buddhism⁹⁹ is Vietnam’s prominent religion.¹⁰⁰ Buddhism in Vietnam is “closely tied to politics and national” identity.¹⁰¹ There are two branches of Buddhism in Vietnam—the Unified Buddhist Church of

86. *Lessons at the New Catholic Institute of Vietnam Begin*, *supra* note 84.

87. Chu, *supra* note 68, at 153.

88. Cao Dai is also referred to as Caodaism. DANG ET AL., *supra* note 4, at 65.

89. See THE ALTERNATIVE REPORT, *supra* note 73, at 16.

90. ABUZA, *supra* note 32, at 203.

91. DANG ET AL., *supra* note 4, at 65.

92. THE ALTERNATIVE REPORT, *supra* note 73, at 16.

93. ABUZA, *supra* note 32, at 203.

94. *Id.*

95. THE ALTERNATIVE REPORT, *supra* note 73, at 16.

96. *Id.*

97. See *Vietnamese Authorities Raid Temple of ‘Unofficial’ Cao Dai Group*, RADIO FREE ASIA (July 3, 2013), <http://www.rfa.org/english/news/vietnam/raid-07032013155349.html/>.

98. DANG ET AL., *supra* note 4, at 65.

99. Buddhism is classified as both a religion and a philosophy. See Sompong Sucharitkul, *Section I: Thai Law and Buddhist Law*, 46 Am. J. Comp. L. 69, 69 (1998).

100. *Vietnam: The Suppression of the Unified Buddhist Church*, HUMAN RIGHTS WATCH (Mar. 1995), <https://www.hrw.org/reports/1995/Vietnam.htm>.

101. *Id.*

Vietnam (UBCV) and the Vietnam Buddhist Church (VBC).¹⁰² The VCP began to suppress the UBCV shortly after 1975¹⁰³ by confiscating the UBCV's properties and institutions.¹⁰⁴ This incited "protests and demonstrations by church members."¹⁰⁵ During these protests, "[t]hirteen monks and nuns sacrificed themselves in protest against the communist government's restrictions on church activity and confiscation of church property."¹⁰⁶ These monks and nuns sacrificed themselves by self-immolation, which is the act of setting oneself on fire.¹⁰⁷ In 1980, during the Eighth Congress, the remaining UBCV leaders met with the VFF.¹⁰⁸ At this conference, the VCP declared that the UBCV would merge with the state-sponsored VBC.¹⁰⁹ UBCV leaders protested this decision and were accused of "[sabotaging] the unity effort" and openly defying the VCP and the VFF.¹¹⁰ This confrontation led to the banning of the UBCV in 1981.¹¹¹ Despite being banned, leaders of the UBCV still push for freedom and democracy.¹¹² Over the next ten years, UBCV followers were arrested without just cause and no judicial process,¹¹³ essentially causing the UBCV to become dormant.¹¹⁴

With the introduction of Doi Moi, the UBCV, which is independent from the VCP, started to gain momentum.¹¹⁵ While the VCP has

102. See *id.* The VBC is also called the Vietnam Buddhist Sangha. See VIET. BUDDHIST SANGHA EXEC. COUNCIL, RESULT REPORT: ENSURE AND PROMOTE THE RIGHTS OF RELIGIOUS FREEDOM IN VIETNAM THROUGH THE ACTUAL ACTIONS OF VIETNAM BUDDHIST SANGHA (2013).

103. *Vietnam: The Suppression of the Unified Buddhist Church*, *supra* note 100.

104. ABUZA, *supra* note 32, at 192.

105. *Vietnam: The Suppression of the Unified Buddhist Church*, *supra* note 100.

106. ABUZA, *supra* note 32, at 192.

107. See Josh Sanburn, *A Brief History of Self-Immolation*, TIME (Jan. 20, 2011), <http://content.time.com/time/world/article/0,8599,2043123,00.html>.

108. ABUZA, *supra* note 32, at 192.

109. *Id.*

110. *Id.*

111. *Id.*; see also UNIVERSAL PERIODIC REVIEW, *supra* note 67, ¶ 28.

112. See Kay Johnson, *Postcard From Hanoi: The Fighting Monks of Vietnam*, TIME (Mar. 2, 2007), <http://content.time.com/time/world/article/0,8599,1595721,00.html>; see also *Monk of Banned Buddhist Church Reaffirms Commitment to Democracy in Vietnam*, THE BUDDHIST CHANNEL (Nov. 19, 2015), <http://www.buddhistchannel.tv/index.php?id=55,12561,0,0,1,0#.WLMirGZPVp>.

113. *Vietnam: The Suppression of the Unified Buddhist Church*, *supra* note 100.

114. ABUZA, *supra* note 32, at 193.

115. *Id.*

attempted to improve its relationship with the UBCV,¹¹⁶ the VCP's repression of the UBCV has not slowed down.¹¹⁷ Even today, the UBCV is not registered with the state and "continues its peaceful activities for the right to freedom of religion or belief."¹¹⁸ Since the UBCV is not a registered religion, the state-sponsored VBC became the prominent religious organization for Buddhists.¹¹⁹ In 2013, the VBC consisted of "47,000 monks and nuns [and had] . . . tens of millions of Buddhist followers."¹²⁰ The VBC was established in November 1981,¹²¹ and the VBC immediately became affiliated with the VFF.¹²² At its inception, prominent monks of the UBCV who refused to join the VBC were arrested and imprisoned.¹²³ The VBC's "charter defined [the VBC] as the sole representative of Vietnamese Buddhism in all of its relations both within and outside the country."¹²⁴ As the VBC is a member of the VFF,¹²⁵ its leaders must make supportive statements about the VCP.¹²⁶ Therefore, not only does the VBC provide religious and spiritual guidance, it also promotes the VCP's "political and economic ideology."¹²⁷ Many monks and nuns find this entanglement with the VCP inappropriate.¹²⁸ Furthermore, many who follow the UBCV believe that the VBC is designed to "bring Buddhist religious activities under government control."¹²⁹ The VCP feels threatened by the UBCV's former and current strength¹³⁰ and has continued to suppress and prevent the growth of the UBCV.¹³¹

116. *Id.* at 197.

117. *Id.* at 198.

118. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 5.

119. ABUZA, *supra* note 32, at 192.

120. *See* VIET. BUDDHIST SANGHA EXEC. COUNCIL, *supra* note 102, at 1.

121. *Id.*

122. *Vietnam: The Suppression of the Unified Buddhist Church*, *supra* note 100.

123. *Id.*

124. *Id.*; *see also* VIET. BUDDHIST SANGHA EXEC. COUNCIL, *supra* note 102.

125. *Vietnam: The Suppression of the Unified Buddhist Church*, *supra* note 100.

126. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 8.

127. THE ALTERNATIVE REPORT, *supra* note 73, at 12.

128. *Id.*

129. *Id.*

130. *See* ABUZA, *supra* note 32, at 192–93.

131. *See id.* at 198.

Aside from the mainstream religions in Vietnam, there are fifty-four ethnic religious groups that make up 14% of the population.¹³² These statistics make Vietnam “one of the most ethnically diverse populations in Asia.”¹³³ Four of the major ethnic religious groups are Khmer Krom, Montagnards, H’mong, and Hoa Hao.¹³⁴ The Khmer Krom have approximately one million adherents, making this ethnic religious group one of the largest minorities.¹³⁵ Many of the Khmer Krom reside in the Mekong Delta, which is where they settled prior to the eighteenth century.¹³⁶ The Montagnards are the “indigenous people of Vietnam.”¹³⁷ The Montagnards, which is French for “mountain dwellers,” are comprised of fifty tribes and make up 10% of Vietnam’s population.¹³⁸ In the past, the Montagnards inhabited the coast, but currently they reside in the Central Highlands.¹³⁹ The Montagnards “are a village-centric society, whose way of life [centers] on preserving nature, one’s family, and the village.”¹⁴⁰ However, their religion, a form of Protestantism, is not recognized by the VCP.¹⁴¹ Since October 2014, up to 300 Montagnards fled Vietnam due to religious persecution.¹⁴²

The H’mong migrated to Vietnam during the nineteenth century from southern China.¹⁴³ The VCP claims that the H’mong practice is “Evil Way religion” and thus adherents suffer persecution.¹⁴⁴ For example, seven adherents built funeral homes for their deceased in order for their families to visit them.¹⁴⁵ The VCP ruled this an “evil practice” and “destroyed the funeral homes and beat and arrested those who objected.”¹⁴⁶ Lastly, the Hoa Hao, followers of a form of Buddhism,¹⁴⁷

132. DANG ET AL., *supra* note 5, at 56.

133. *Id.*

134. *See id.* at 56, 66–68.

135. *Id.* at 66.

136. *Id.*

137. *Id.* at 67.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. USCIRF REPORT, *supra* note 59, at 135.

143. DANG ET AL., *supra* note 5, at 68.

144. *See* STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 17.

145. *Id.*

146. *Id.*

147. ABUZA, *supra* note 32, at 204.

mostly reside in the southern region of Vietnam, and there are over 900,000 adherents.¹⁴⁸ The Hoa Hao migrated from China and were originally treated fairly well due to Vietnam's belief that their treatment would strengthen relations with China.¹⁴⁹ However, this changed after the Hoa Hao created an army during the Vietnam War and were later disarmed by the VCP.¹⁵⁰ While the VCP suppresses the Hoa Hao, this suppression is not due to their religion but instead deals with their organizational structure and ties to anti-communist groups.¹⁵¹ The VCP's religious persecution is not tied to one specific religion but impacts both major and minor religions in Vietnam.¹⁵²

IV. PRIOR AMENDMENTS TO VIETNAM'S FREEDOM OF RELIGION LAWS

Since 1975 there have been three amendments to the freedom of religion laws in Vietnam,¹⁵³ with the draft in 2017 marking the fourth amendment. The first three amendments were in 2004, 2005, and 2013.¹⁵⁴ The 2004 Ordinance on Belief and Religion (the 2004 Ordinance) was the first law defining freedom of religion and religious activities¹⁵⁵ and serves "as the primary document[] governing religious practice."¹⁵⁶ The GCRA implemented the 2004 Ordinance, which "stipulates that local government authorities must approve the leadership, activities, and the establishment of seminaries or religious classes."¹⁵⁷

The next amendment, effective in 2005, was criticized by Buddhist, Catholic, and Protestant leaders "for being harsher than its predecessor, for its use of vague and ambiguous terminology, and for introducing new

148. DANG ET AL., *supra* note 5, at 68.

149. *Id.*

150. ABUZA, *supra* note 32, at 204.

151. *Id.*

152. *See generally* DANG ET AL., *supra* note 5, at 53–59 (such as Buddhism and the ethnic Hoa Hao, respectively).

153. *See id.* at 54.

154. *See id.*

155. FUND FOR RECONCILIATION & DEV., *supra* note 56, at 3 (2004), <http://ffrd.org/Foreign%20Religious%20Organizations%20in%20Vietnam.pdf>.

156. U.S. Embassy & Consulate in Viet., *supra* note 9.

157. *Id.*

bureaucratic obstacles.”¹⁵⁸ The 2005 amendment established the requirements of becoming a registered religion.¹⁵⁹ At the same time, the 2005 amendment makes an effort to register unrecognized religions, which would allow adherents to openly and legally worship.¹⁶⁰ However, many unrecognized religious groups refuse to register with the VCP as “they believe that registration will enable the authorities to increase their control over their activities.”¹⁶¹ This belief makes adherents of unrecognized religions go from law-abiding citizens to criminals due to their religious beliefs.¹⁶² The 2005 amendment also requires approval from the VCP in order for religious groups to publish religious texts.¹⁶³ In 2015, approved books consisted of the Bible and “works pertaining to ancestry worship, Buddhism, Christianity, Islam, and Cao Dai.”¹⁶⁴

The most recent enacted amendment to laws regarding freedom of religion was in 2013,¹⁶⁵ which superseded the prior constitution.¹⁶⁶ The creation of this amendment was influenced by the Bilateral Trade Agreement, which was entered into between Vietnam and the United States.¹⁶⁷ The 2013 Constitution is very similar to its predecessor,¹⁶⁸ as it only serves to reaffirm the VCP’s power.¹⁶⁹ The VCP implemented a new procedure when drafting the 2013 Constitution that is critical to the drafting process because it creates a dialogue between the VCP and the public.¹⁷⁰ The VCP consulted with the public in order to garner their

158. THE ALTERNATIVE REPORT, *supra* note 73, at 7.

159. DANG ET AL., *supra* note 5, at 54.

160. U.S. Embassy & Consulate in Viet., *supra* note 9.

161. THE ALTERNATIVE REPORT, *supra* note 73, at 32.

162. *Id.*

163. U.S. Embassy & Consulate in Viet., *supra* note 9.

164. *Id.*

165. See CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM Nov. 28, 2013, translated in INT’L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, http://www.globaldisabilityrightsnow.org/sites/default/files/related-files/272/Constitution_English.pdf (last visited Oct. 17, 2017).

166. DANG ET AL., *supra* note 5, at 12.

167. Kevin V. Tu, *Extreme Policy Makeover: Re-Evaluating Current U.S.-Vietnam Relations Under the International Religious Freedom Act*, 14 PAC. RIM L. & POL’Y J. 771, 775 (2005).

168. DANG ET AL., *supra* note 5, at 12.

169. *Id.*

170. *Id.* at 12–13.

opinion and input, which it had not done in previous years.¹⁷¹ Opinions were sought from academics, veterans, and former high-ranking party officials.¹⁷² This group offered seven goals for the 2013 Constitution.¹⁷³ These goals included limiting the VCP's power, having the new constitution approved by referendum, and extending the time period for the public to consult on the new constitution.¹⁷⁴ However, no public recommendations were taken into account when drafting the 2013 Constitution.¹⁷⁵

Article 24 of the 2013 Constitution states:

1. Every one [sic] shall enjoy freedom of belief and 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.¹⁷⁶

However, Article 14, Section 2 limits this power: “Human rights and citizens’ rights shall only be restricted when prescribed by law in imperative circumstances for the reasons of national [defense], national security, social order and security, social morality and community well-being.”¹⁷⁷ The 2013 Constitution added Chapter 2 pertaining to human and fundamental rights,¹⁷⁸ which was not present in prior laws.¹⁷⁹ However, the 2013 Constitution gives the VCP “broad leeway to

171. *Id.* at 12.

172. *Id.* at 13.

173. *See id.*

174. *Id.*

175. *Id.* at 12–13.

176. CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM Nov. 28, 2013, art. 24, translated in INT’L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, *supra* note 164.

177. *Id.* art. 14.

178. *Id.* ch. 2.

179. Heiner Bielefeldt (Special Rapporteur on Freedom of Religion or Belief), *Rep. of the Special Rapporteur on Freedom of Religion or Belief*, ¶ 12, U.N. Doc. A/HRC/28/66 (Jan. 30, 2015).

regulate, limit, restrict or forbid the exercise of freedom of religion or belief.”¹⁸⁰ Moreover, citizens are able to obtain legal recourse under Article 30 of the 2013 Constitution;¹⁸¹ however, there have been no successful cases on government infringement on individual’s freedom of religion and belief.¹⁸² Despite these multiple restrictions, the VCP has loosened its control on religious freedom in the past ten years.¹⁸³ This was accomplished through training government and public security officials on laws about freedom of religion and human rights.¹⁸⁴ Additionally, the VCP reached out to foreign governments and non-governmental organizations to “convene seminars on the positive role of religion in society.”¹⁸⁵ The VCP reached out both internally and externally to improve the freedom of religion in Vietnam.¹⁸⁶ Freedom of religion is an enduring narrative in Vietnam, and as the VCP continues to pass amendments to these laws, this story will linger with the enactment of the 2017 draft amendment.

V. CRIMINAL PROCEDURE CODE AND POLICE ACTIONS

Vietnam’s Penal Code criminalizes freedom of religion because of concerns over national security,¹⁸⁷ and essentially invalidates Article 14 of the 2013 Constitution.¹⁸⁸ The material provision states that “[t]hose who abuse the rights to . . . freedom of belief . . . to infringe upon the interests of the State, . . . shall be subject to warning, non-custodial reform for up to three years or a prison term of between six months and

180. *Id.* ¶ 22.

181. *Id.* ¶ 36.

182. *Id.* ¶ 37.

183. *See* Vu, *supra* note 15, at 88.

184. *Id.*

185. *Id.*

186. *See id.*

187. *See* STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 12; *see also* UNIVERSAL PERIODIC REVIEW, *supra* note 67, ¶ 8.

188. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 12. Article 14 states that the VCP respects citizens’ rights. CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM Nov. 28, 2013, art. 14.1, *translated in* INT’L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, *supra* note 164.

three years.”¹⁸⁹ Additionally, courts further enforce this idea of national security having supremacy over freedom of religion,¹⁹⁰ as their role is to protect the socialist legislation and the socialist system.¹⁹¹ This leads to unfair trials as the court system is not independent from the VCP.¹⁹² Furthermore, the VCP, the National Assembly, and the VFF meticulously monitor elections of judges, thereby controlling who can become a judge.¹⁹³

From 2009 to 2013, “160 human rights defenders and peaceful activists [were] condemned to a total of 1,052 years in prison.”¹⁹⁴ Amongst these activists were people who peacefully protested freedom of expression and rights in the ICCPR.¹⁹⁵ While detained, prisoners are both physically and emotionally abused and tortured.¹⁹⁶ These abuses start at arrest and continue throughout imprisonment.¹⁹⁷ However, “the harshest [of] abuses tak[e] place during pre-trial detention,”¹⁹⁸ which can last up to sixteen months.¹⁹⁹ The majority of the torture takes place before the detainee obtains access to legal counsel.²⁰⁰

Propaganda against the VCP is criminally punishable.²⁰¹ This crime is typically used to punish religious followers.²⁰² For example, in 2007, a

189. Penal Code, art. 258 (L. No. 15/1999/QH10) (Viet.), *translated in Penal Code*, ORG. FOR ECON. CO-OPERATION & DEV., <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46817423.pdf> (last visited Sept. 12, 2017).

190. See UNIVERSAL PERIODIC REVIEW, *supra* note 67, ¶ 11.

191. CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM Apr. 15, 1992, art. 126 (as amended on Dec. 25, 2001), *translated in VIET. L.*, *supra* note 53.

192. See UNIVERSAL PERIODIC REVIEW, *supra* note 67, ¶ 11.

193. *Id.*

194. *Id.* ¶ 2.

195. *Id.*

196. See CAMPAIGN TO ABOLISH TORTURE IN VIETNAM, VIETNAM: TORTURE AND ABUSE OF POLITICAL AND RELIGIOUS PRISONERS (2014). Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.” G.A. Res. 39/46, ¶ 1 (Dec. 10, 1984).

197. CAMPAIGN TO ABOLISH TORTURE IN VIETNAM, *supra* note 195, at 7.

198. *Id.*

199. DANG ET AL., *supra* note 5, at 15.

200. CAMPAIGN TO ABOLISH TORTURE IN VIETNAM, *supra* note 195, at 7.

201. Penal Code (No. 15/1999/QH10) art. 88 (Viet.), *translated in Penal Code*, ORG. FOR ECON. CO-OPERATION & DEV., <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46817423.pdf> (last visited Sept. 12, 2017).

202. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 12.

“Montagnard Christian of the Ede minority group died . . . after being detained and beaten by police for not renouncing his religion.”²⁰³ Even those participating in peaceful protests held by the Montagnard Christians are arrested and “accused of advancing separatist policies.”²⁰⁴ Another example is Hai,²⁰⁵ a Montagnard Christian who was arrested “without any judicial process or notification to his family” after participating in a protest for freedom of religion.²⁰⁶ After a year of not knowing Hai’s whereabouts, his family presumed him dead.²⁰⁷ These are only a few examples of many adherents of religious and ethnic minorities who were abused while in prison.²⁰⁸ Furthermore, the Vietnamese police and government officials have taken part in multiple forced defrockings²⁰⁹ of Buddhist monks.²¹⁰ Being defrocked by a person outside of the Buddhist community is against the Buddhist monastic code.²¹¹ A monk being defrocked carries “very serious social consequences,” as the process is degrading and “implies a very serious moral transgression.”²¹²

Previously, Vietnam accepted recommendations from Australia and Turkey to edit its criminal code in order to become compliant with the ICCPR.²¹³ However, the VCP has not reformed its criminal code, as suggested by Australia and Turkey.²¹⁴ Instead, these broadly worded national security offenses still “carry prison sentences of up to life imprisonment or the death penalty.”²¹⁵ The purpose behind the systematic abuse and torture of religious detainees by law enforcement is to punish

203. CAMPAIGN TO ABOLISH TORTURE IN VIETNAM, *supra* note 195, at 26.

204. *Id.* at 77.

205. “Hai” is a pseudonym. *Id.* at 86 n.212.

206. *Id.* at 85–86.

207. *Id.* at 86.

208. *See id.*

209. Defrocking is “to deprive (as a priest) of the right to exercise the functions of office; to remove from a position of honor or privilege.” *Defrock*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2014).

210. CAMPAIGN TO ABOLISH TORTURE IN VIETNAM, *supra* note 195, at 36.

211. *Id.*

212. HUMAN RIGHTS WATCH, ON THE MARGINS: RIGHTS ABUSES OF ETHNIC KHMER IN VIETNAM’S MEKONG DELTA 7 (2009), https://www.hrw.org/sites/default/files/reports/vietnam0109webwcover_1.pdf.

213. UNIVERSAL PERIODIC REVIEW, *supra* note 67, at 6.

214. *See id.* ¶ 16.

215. *Id.*

or intimidate the detainee from participating in further religious activities.²¹⁶

VI. VIETNAM'S VIOLATIONS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The ICCPR²¹⁷ grew out of the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations in 1948.²¹⁸ While there are other laws that influence international human rights, the UDHR is the most influential in the development of laws on human rights.²¹⁹ However, the UDHR “is not legally binding but [it] carries moral weight because it is adopted by the international community.”²²⁰ While the United Nations adopted the ICCPR in 1966, it took ten years for it to be enforced.²²¹ Vietnam ascended the ICCPR on September 24, 1982.²²² In international law, accession is a “method by which a country that is not among a treaty’s original signatories becomes a party to it.”²²³ It is essentially the same as ratifying²²⁴ a treaty, except the country is not an original party to the treaty. As such, Vietnam is required to participate in the procedures that the ICCPR establishes.

216. CAMPAIGN TO ABOLISH TORTURE IN VIETNAM, *supra* note 196, at 8–9.

217. The ICCPR has been ascended or ratified by 132 States, as of September 1995. *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*, OFF. OF THE HIGH COMMISSIONER FOR HUM. RTS. (June 1996), <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>.

218. See *Fact Sheet 5: The International Bill of Rights*, AUSTRALIAN HUM. RTS. COMMISSION (2009), https://www.humanrights.gov.au/sites/default/files/content/education/hr_explained/download/FS5_International.pdf.

219. *Id.*

220. *Id.*

221. *FAQ: The International Covenant on Civil & Political Rights (ICCPR)*, ACLU, <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr> (last updated Apr. 2014).

222. *International Covenant on Civil and Political Rights: Declarations and Reservations*, U.N. TREATY COLLECTION, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf> (last visited Sept. 12, 2017).

223. *Accession*, BLACK’S LAW DICTIONARY (10th ed. 2014).

224. Ratification is the adoption or enactment of an act. See *Ratification*, BLACK’S LAW DICTIONARY (10th ed. 2014).

There are multiple procedures in place to verify that the signatories of the ICCPR abide by this treaty.²²⁵ Every four years, a country that has ratified or ascended the ICCPR is obligated to report to the Human Rights Committee (HRC).²²⁶ “The [HRC] was established to monitor the implementation of the ICCPR. It is composed of [eighteen] independent experts with recognized competence in the field of human rights.”²²⁷ In order for the HRC to take action, ten member states²²⁸ of the ICCPR must report violations about the country to the HRC.²²⁹ The reported country will then have an opportunity to explain the situation to the HRC.²³⁰ The reported country must then come into compliance with the ICCPR within six months.²³¹ If the issues are not resolved to the concerned parties satisfaction, the HRC can appoint an ad hoc conciliation commission.²³² The ad hoc conciliation commission considers the matter and submits a report to the Chairman of the conciliation committee.²³³ The HRC then submits a report to the complainant and the violating country regarding the issues that must be resolved.²³⁴

Moreover, the HRC may request a signatory to submit a report regarding that country’s implementation of the ICCPR.²³⁵ The HRC assesses these reports.²³⁶ The HRC then issues observations about the signatory’s report and “any remedial action[s] the [HRC] recommends.”²³⁷ During Vietnam’s June 2014 periodic review, the HRC

225. See International Covenant on Civil and Political Rights, art. 18, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

226. *FAQ: The International Covenant on Civil & Political Rights (ICCPR)*, *supra* note 221.

227. *Id.*

228. Member states are signatories to the ICCPR. See generally ICCPR, *supra* note 225.

229. *Id.* art. 41.2.

230. *Id.* art. 41.1(a).

231. *Id.* art. 41.1(b).

232. *Id.* art. 42.1(a).

233. *Id.* art. 42.7.

234. *Id.*

235. *Id.* art. 40; see also *International Covenant on Civil and Political Rights*, WORLD HEALTH ORG., http://www.who.int/hhr/Civil_political_rights.pdf (last visited Sept. 12, 2017).

236. *The International Covenant on Civil and Political Rights*, *supra* note 235.

237. *Id.*

made 227 recommendations to Vietnam on human rights issues.²³⁸ Of these 227 recommendations, Vietnam accepted 182, thereby rejecting crucial recommendations.²³⁹

Article 18 of the ICCPR is the main provision that defines freedom of religion.²⁴⁰ Article 18 states in part,

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.²⁴¹

Freedom of religion consists of eight normative values.²⁴² These values are inner freedom, external freedom, no compulsion/coercion, non-discrimination, rights of parents and guardians, corporate freedom and legal status, legitimate limitations, and exceptions to freedom of religion.²⁴³ Inner freedom consists of the ability for a person to freely choose his religion, whereas external freedom is a person's "right to manifest and express" his religion.²⁴⁴ Neither a government nor another person can force another to have or change his beliefs.²⁴⁵ Additionally, a person is entitled to practice his religion free of discrimination.²⁴⁶ Moreover, parents and guardians have the right to raise their children "in accordance with their own religion," and corporations have the right to be "recognized as a formal body."²⁴⁷ Finally, "[i]n special circumstances, a government can make exceptions to some human rights," as per Article 4 of the ICCPR.²⁴⁸ As these normative values are indicative of the values

238. *World Report 2015: Events of 2014*, HUM. RTS. WATCH, https://www.hrw.org/sites/default/files/world_report_download/wr2015_web.pdf (last visited Sept. 12, 2017).

239. *Id.*

240. *See* ICCPR, *supra* note 225, art. 18.

241. *Id.* art. 18.1.

242. DANG ET AL., *supra* note 4, at 53.

243. *Id.*

244. *Id.*

245. *See id.*

246. *Id.*

247. *Id.*

248. *Id.*; *see also* ICCPR, *supra* note 225, art. 4.

that the ICCPR establishes, Vietnam has, in essence, also adopted these values.

Although Vietnam ascended the ICCPR, it continues to violate this treaty. Each ratified state must issue a report every four years.²⁴⁹ However, Vietnam has not issued a report since 2004.²⁵⁰

Additionally, in May 2009 “Vietnam launched one of the most intensive crackdowns on freedom of . . . religion.”²⁵¹ The HRC attempted to increase its efforts to ensure that Vietnam implemented all provisions related to freedom of religion by making recommendations.²⁵² However, these recommendations are not legally binding but may instead place pressure on Vietnam.²⁵³ While these recommendations are not legally binding, the International Court of Justice (ICJ) can give an advisory opinion at the request of the United Nations pertaining to the VCP’s violations of the ICCPR.²⁵⁴ The ICJ is a world court and has jurisdiction over international law.²⁵⁵ However, the ICJ has no precedential value over lower courts,²⁵⁶ as it is not a court of last resort.²⁵⁷ In practice, the VCP continues to violate the freedom of religion clause in the ICCPR.²⁵⁸

VII. FAILINGS OF RELIGIOUS FREEDOM IN VIETNAM

While the 2013 Constitution purports that Vietnam has freedom of religion, in practice, it is much different,²⁵⁹ as this freedom only extends

249. *FAQ: The International Covenant on Civil & Political Rights (ICCPR)*, *supra* note 221, at 2.

250. UNIVERSAL PERIODIC REVIEW, *supra* note 67, ¶ 8.

251. *Id.* ¶ 1.

252. *See id.* at 9.

253. *See FAQ: The International Covenant on Civil & Political Rights (ICCPR)*, *supra* note 221, at 3.

254. *See Jurisdiction*, INT’L CT. OF JUST., <http://www.icj-cij.org/en/advisory-jurisdiction> (last visited Sept. 12, 2017 9:50 PM).

255. *Id.*

256. Judge Peter Tomka, President of the Int’l Court of Justice, *The Rule of Law and the Role of the International Court of Justice in World Affairs* 7 (Dec. 2, 2013), <http://www.icj-cij.org/presscom/files/9/17849.pdf>.

257. *Frequently Asked Questions*, INT’L CT. OF JUST., <http://www.icj-cij.org/en/frequently-asked-questions> (last visited Sept. 12, 2017 9:37 PM).

258. *See DANG ET AL.*, *supra* note 5, at 53.

259. *See Christy Cutbill McCormick*, Comment, *Exporting the First Amendment: America’s Response to Religious Persecution Abroad*, 4 J. INT’L LEGAL STUD. 283, 297-

to registered religions.²⁶⁰ The VCP believes that unregistered religions are a threat to the “social order” of the absolute power of the VCP.²⁶¹ Thus, unregistered religious groups are subject to attacks and raids by police.²⁶² There are reported violations against religious communities, which “range from harassment, intimidation and intrusive monitoring, to arrest, imprisonment, torture and extra-judicial killing[s].”²⁶³ In 2015, government officials harassed several unregistered religious organizations’ members.²⁶⁴ This harassment included “physical assault, short term detention, prosecutions, monitoring, restrictions on travel, and denials of registration and/or other permissions.”²⁶⁵ Furthermore, unregistered religious groups continue to be persecuted by local government authorities who do not allow these unregistered religious organizations to practice freely.²⁶⁶ However, in some areas of Vietnam, local authorities allow unregistered religious organizations to host social welfare activities.²⁶⁷ Because of the unregistered status of many religious organizations, these groups cannot operate openly as they do not have the VCP’s approval of its “places of worship, its clerics, and its activities.”²⁶⁸

In 2015, the VCP interfered with numerous unregistered religious groups, including Caodaism, Hoa Hao, Protestants, and Catholicism.²⁶⁹ As Caodaism is illegal outside of the Cao Dai Administrative Council,²⁷⁰ the VCP continually harasses followers when they attempt to practice their religion.²⁷¹ Furthermore, members in communities of independent Buddhists are subjected to heavy repressions and some are not allowed to

98 (1998); *see also* HUMAN RIGHTS WATCH, *supra* note 212; *see also* Grim, *supra* note 14, at 861.

260. *See* DANG ET AL., *supra* note 5, at 54.

261. UN Expert: Vietnam ‘Failing to Respect’ Freedom of Belief, DEUTSCHE WELLE (Aug. 8, 2014), <http://www.dw.com/en/un-expert-vietnam-failing-to-respect-freedom-of-belief/a-17830729>.

262. USCIRF REPORT, *supra* note 59, at 135.

263. THE ALTERNATIVE REPORT, *supra* note 73, at 4.

264. U.S. Embassy & Consulate in Viet., *supra* note 9.

265. *Id.*

266. *Id.*

267. *Id.*

268. *See id.*

269. Vietnam: Events of 2015, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2016/country-chapters/vietnam> (last visited Sept. 12, 2017, 9:36 PM).

270. ABUZA, *supra* note 32, at 203; *see also* Bielefeldt, *supra* note 178, ¶ 68.

271. Bielefeldt, *supra* note 179, ¶ 68.

practice their beliefs openly.²⁷² Other religious communities, such as the H'mongs are "subjected to arbitrary detentions and imprisonment, beatings, torture, constant monitoring, and pressure to renounce their faith."²⁷³ Furthermore, the Cham, a religiously ethnic minority,²⁷⁴ are constantly threatened with losing their land.²⁷⁵ The Evangelical Mennonite Church also faces severe consequences due to its religious beliefs.²⁷⁶ A few of these consequences are police raids, torture during detainment, pressure for followers to renounce their faith, and "the destruction of places of worship."²⁷⁷ In 2015, Mennonite pastors were abused by police and local authorities.²⁷⁸ This abuse went as far as physically attacking church leaders and members.²⁷⁹ The VCP continues this abuse through arbitrary arrests and "disproportionately long prison sentences given to individuals from different religious or belief backgrounds for the advocacy of their religious freedom."²⁸⁰

The adherents of unregistered religions are severely punished by "repeated or long-term imprisonment."²⁸¹ For example, Mai Thi Dung, a Hoa Hao Buddhist, was arrested in August 2005 and sentenced to eleven years in prison.²⁸² Dung was imprisoned for protesting the suppression of her religious beliefs.²⁸³ During her imprisonment, Dung spent more than two years in solitary confinement.²⁸⁴ Furthermore, Dung was denied medical treatment until September 2013.²⁸⁵ When Dung "was finally allowed a medical examination, [she] was diagnosed with, amongst others, heart failure and gallstones."²⁸⁶ Despite this diagnosis, she was

272. *Id.* ¶ 47.

273. *Id.* ¶ 71.

274. U.S. Dep't of State, *supra* note 60, at 2.

275. Bielefeldt, *supra* note 179, ¶ 72.

276. *See id.* ¶ 74.

277. *Id.*

278. *See International Religious Freedom Report for 2015, supra* note 9.

279. *Id.*

280. Bielefeldt, *supra* note 179, ¶ 73.

281. *See id.* ¶ 66.

282. Human Rights Council, Comm'n's Rep. of Special Procedures on its Twenty-eighth Session, U.N. Doc. A/HRC/28/85, at 117 (Feb. 19, 2015).

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.*

“denied the necessary medical treatment outside of prison.”²⁸⁷ Furthermore, prior to this new draft law, it was prohibited for inmates to possess religious materials.²⁸⁸ In the past, prisoners confirmed the harsh and unfair treatment they received while in prison, including the lack of religious freedom.²⁸⁹ However, the VCP has a different take on this, and it says that prisoners are allowed religious texts and are able to practice their religion in prison.²⁹⁰ Whether or not this will change with the passing of Article 4.3 of the 2017 new draft law remains to be seen.²⁹¹

These religious freedom violations have not gone unnoticed.²⁹² The United States Commission on International Religious Freedom has designated Vietnam as a “country of particular concern” (CPC) every year since 2001; Vietnam was again designated a CPC in 2016.²⁹³ Even though Vietnam remains a CPC,²⁹⁴ the VCP has taken strides to improve freedom of religion laws over the last ten years.²⁹⁵ These “improvements have mostly been at [the] central government level.”²⁹⁶ In 2015–2016, many religious groups “faced little to no interference” from the VCP during religious events.²⁹⁷ Moreover, the relationship between the Vatican and the VCP has improved.²⁹⁸ In January 2013, Pope Benedict XVI met with the secretary general of the VCP.²⁹⁹ Then, in 2016, “Pope Francis met with Vietnamese President Tran Dai Quang . . . [a]fter a

287. *Id.*

288. Campaign to Abolish Torture in Vietnam, *supra* note 196, at 46, 51; *see also* THE ALTERNATIVE REPORT, *supra* note 73, at 5; *see also* discussion *infra* Part VIII. New Draft Law, *supra* note 58, art. 4.3 (this prohibition will be repealed in the new draft law, as Article 4.3 allows for the use of prayer books for those either permanently or temporarily detained in prison).

289. Bielefeldt, *supra* note 179, ¶ 60.

290. *See id.* ¶ 59.

291. *See* New Draft Law, *supra* note 58, art. 4.3.

292. *See* USCIRF REPORT, *supra* note 59, at 133–35.

293. *Id.* at 133.

294. *Id.*

295. THE ALTERNATIVE REPORT, *supra* note 73, at 4.

296. *Id.*

297. USCIRF REPORT, *supra* note 59, at 134.

298. *Id.*

299. *Vietnamese Communist Leader Meets Pope for First Time*, CATH. NEWS AGENCY (Jan. 22, 2013, 1:03 PM), <http://www.catholicnewsagency.com/news/vietnamese-communist-leader-meets-pope-for-first-time/>.

[forty-one] year hiatus.”³⁰⁰ Heiner Bielefeldt, the United Nations Special Rapporteur who visited Vietnam in 2014, stated that religious freedom “is possible in Vietnam, but only within the confines of a rather restrictive legal framework.”³⁰¹ Vietnam will retain its absolute communist power; however, within this communist nation, freedom of religion is still possible.³⁰²

VIII. THE NEW DRAFT LAW

In September 2016, the National Assembly met in Ha Noi to discuss a new draft law on freedom of religion.³⁰³ The goal of the new draft law is to “consolidate the constitutional right of all citizens as well as foreigners to believe or not believe in religions.”³⁰⁴ Deputies of the National Assembly believe that this new draft law will aid in realizing this goal by “making domestic laws compatible with international agreements and treaties that [Vietnam] is a signatory to.”³⁰⁵ Despite this goal, the new draft law has multiple Articles that are incompatible with freedom of religion under the ICCPR.³⁰⁶

The drafting process of the new law was more open than the previous drafts in 2004, 2005, and 2012.³⁰⁷ The GCRA allowed religious groups thirteen days to make comments on the fourth version of the new draft law.³⁰⁸ The majority of these comments were negative.³⁰⁹ These comments stated that the new draft “was badly worded, ambiguous, incompatible with international standards, and would increase the already overly-heavy state intrusion into religious affairs.”³¹⁰ An example

300. Elise Harris, *Pope Tries to Move the Ball on Relations with Vietnam*, CRUX (Nov. 25, 2016), <https://cruxnow.com/cna/2016/11/25/pope-tries-move-ball-relations-vietnam/>.

301. *UN Expert: Vietnam ‘Failing to Respect’ Freedom of Belief*, *supra* note 261.

302. *See id.*

303. *See NA Debates Draft Laws on Religion, Associations*, VIET. NEWS, <http://vietnamnews.vn/politics-laws/342519/na-debates-draft-laws-on-religion-associations.html#RAXbH663y2FHpyk.97> (last updated Sept. 9, 2016).

304. *Id.*

305. *Id.*

306. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 15.

307. Vu, *supra* note 15, at 87.

308. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 15.

309. *See id.*

310. *Id.*

of this ambiguity is that the fifth draft law does not define religion.³¹¹ However, the draft law does define religious activities, which is “worshipping or making offerings; prayers; and expression of religious beliefs.”³¹² But the freedom to worship may not translate to freedom of religion,³¹³ as the draft law places many restrictions on this freedom.³¹⁴ Because of this lack of definition of religion, the draft law would “‘increase state management of religious affairs’ rather than increase protection of religious freedom.”³¹⁵ Several civil society organizations suggested the definition of religion in the draft law should be based on Article 18 of the ICCPR.³¹⁶ The GCRA did not take these comments into account when drafting the fifth version of the draft law.³¹⁷

One restriction of the fifth draft law is that a religious organization must be registered with the VCP to worship legally.³¹⁸ Currently, there are only thirty-eight registered religious groups in Vietnam.³¹⁹ This registration restriction confines the practice of religion to what the VCP deems to not be a threat to its absolute power.³²⁰ In order for a religious organization to register with the VCP, it needs to have “maintained stable religious operation during [ten] consecutive years.”³²¹ This is a decline from the previous requirement in the 2013 Constitution, which required twenty consecutive years of maintaining a religions operation.³²² Additionally, to register, the religious group must be stable, have a charter, and have a legal office and representatives.³²³ Thus, unregistered religions or religions with no organization or structure are “left in a legal

311. See New Draft Law, *supra* note 58, art. 2.

312. *Id.* art 2.7.

313. See STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 6.

314. See New Draft Law, *supra* note 58, art 1.

315. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 6.

316. See *Open Letter to the National Assembly President on the Draft Law on Belief and Religion*, FIDH (June 10, 2016), <https://www.fidh.org/en/region/asia/vietnam/open-letter-to-the-national-assembly-president-on-the-draft-law-on>.

317. See STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 15.

318. See New Draft Law, *supra* note 58, art. 12–15.

319. Bielefeldt, *supra* note 179, ¶ 6.

320. See ABUZA, *supra* note 32, at 206.

321. New Draft Law, *supra* note 58, art. 16.1.

322. Decree: Detailed Regulations and Enforcement Measures Ordinance on Belief and Religion, *supra* note 9, art. 6.

323. New Draft Law, *supra* note 58, art. 16.

limbo, with no legal safeguards or guarantees as to whether or how they may conduct religious activities.”³²⁴

Even if a religion is registered it cannot “[t]ake advantage of the freedom of religion and belief to [h]arm national defense and security, public order, and morality.”³²⁵ The draft law includes a criminalizing provision for those who use religious freedom for their personal gain.³²⁶ Article 64 of the new draft law states that those who “use religion and beliefs as a cover for illegal activities may be subject to administrative actions or criminal trials, depending on the severity of the violation; and, where applicable, are liable for damages as prescribed by law.”³²⁷ However, these illegal activities are not defined anywhere in the draft law, which means that the VCP can later define and interpret on a case-by-case basis what classifies as an illegal activity.³²⁸ There is more ambiguous language in Article 2.5 of the fifth draft law.³²⁹ This vague language states that religious practices and activities “must reflect beautifully [the Vietnamese] traditional, historical, cultural, and ethical values of Vietnamese communities.”³³⁰ Since the fifth draft law does not define what these values are, they are again left for the VCP to later define or to manipulate.³³¹

While the new draft still has limitations, there have been some improvements to the draft law as compared to prior freedom of religion laws in Vietnam. One improvement addresses religious practice by foreigners.³³² Article 54 of the fifth draft law states that the VCP “respects and protects the freedom of religion and belief of foreigners who reside legally in Vietnam: they may conduct religious activities.”³³³ This article gives foreigners the basic rights to freedom of religion that

324. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 16.

325. New Draft Law, *supra* note 58, art. 5.5–5.5(a).

326. *See id.* art. 64.

327. *Id.*

328. *See* STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 16.

329. *See* New Draft Law, *supra* note 58, art. 2.5.

330. *Id.*

331. *See* STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 16.

332. *See* Hong Van, *Draft Law on Religion and Belief: Milestone in Vietnam’s Religious Policy*, VOV WORLD (Oct. 28, 2016), <http://vovworld.vn/en-us/Current-Affairs/Draft-Law-on-Religion-and-Belief-milestone-in-Vietnams-religious-policy/482453.vov>.

333. New Draft Law, *supra* note 58, art. 54.

Vietnamese citizens have.³³⁴ Another improvement to the fifth draft law is that inmates are allowed to “use prayer books, bibles, and express their spiritual belief or religious faith” while in prison.³³⁵ The draft law also has a provision that regulates how “religious [organizations] . . . join social, education and healthcare activities.”³³⁶ The majority of the National Assembly deputies agree with this regulation.³³⁷ However, these improvements have not satisfied the public.³³⁸

Public opinion on this new reformation is not hopeful. According to Vo Tran Nhat, the Executive Secretary on the Vietnam Committee on Human Rights, “[t]his law is not a law on religion; it’s just a law on how to manage the control of religion.”³³⁹ The fifth draft law is said to “codify[] existing bad policies and intensify[] the [VCP’s] micro-management of religion.”³⁴⁰ Many claim that the reasoning behind this new law is to control and circumscribe freedom of religion.³⁴¹ Others claim that the fifth draft law would have overly broad control on religious freedom.³⁴² Several deputies at the National Assembly agreed, opposing the text of the draft law, as it would interfere with the daily operations of religious groups.³⁴³ On the other hand, some religious groups, such as the VBC, have praised the new draft law.³⁴⁴ The Deputy

334. Van, *supra* note 332.

335. New Draft Law, *supra* note 58, art. 5.3; *see also* discussion *supra* Part VII (explaining that prior to this new draft, inmates were not allowed to have prayer books).

336. *Legislators Mull Tourism, Religion Laws*, VIET. NEWS (Sept. 20, 2016), <http://vietnamnews.vn/politics-laws/343086/legislators-mull-tourism-religion-laws.html>.

337. *Id.*

338. *See* Vishal Arora, *Vietnam’s Religion Law ‘Created to Repress, Control’*, WORLD WATCH MONITOR (Apr. 27, 2016), <https://www.worldwatchmonitor.org/2016/04/4432099/>; *see also* STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 15–16; *see also* Reg Reimer, *Vietnam’s Religion Law: Analysis: The ‘Great National Unity’ Requires a Great Big Bureaucracy*, WORLD WATCH MONITOR (May 8, 2015), <https://www.worldwatchmonitor.org/2015/05/3844615>.

339. Arora, *supra* note 338.

340. USCIRF REPORT, *supra* note 59, at 136.

341. Elliot Abrams, Former U.S. Assistant Sec’y of State for Human Rights, *Religious Freedom in Viet.: Its Importance for Reg’l and Glob. Sec.* (Sept. 12, 2016), https://www.queme.net/eng/docs_detail.php?numb=2746.

342. *Joint Statement of Concern on Vietnam’s Draft Law on Religion*, FREEDOM HOUSE (Nov. 9, 2015), <https://freedomhouse.org/article/joint-statement-concern-vietnam-s-draft-law-religion>.

343. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 15.

344. *See* Van, *supra* note 332.

Chairman of the Executive Council of the VBC said that the draft law “clearly defines the responsibilities of the state to help religious organizations . . . thereby building trust between religious followers and the state.”³⁴⁵ There are mixed opinions on the new draft law,³⁴⁶ as improvements have been made, but barriers remain. Despite the negative public opinion, the National Assembly approved the draft law on November 18, 2016.³⁴⁷ This law goes into effect on January 1, 2018.³⁴⁸

IX. PROPOSED MODIFICATIONS TO THE NEW DRAFT LAW

There are multiple concerns for the new draft law. Some of these concerns include the process of registering religions, having no definition of religion, and the VCP’s micro-management of religion.³⁴⁹ Vietnam should shorten the waiting period for the registration requirement or implement the suggested alternative, limit its control over religious organizations, define religion in the draft law, and make a good faith effort when deciding whether to allow a religious group to host a festival.

The new draft law shortens the registration period to ten years,³⁵⁰ however, despite this shortening of the waiting period, organizations still wish to do away completely with the registration requirement.³⁵¹ Furthermore, there are other restrictive registration requirements.³⁵² By having the registration period in the 2017 amendment, it makes it impossible for a religion to register if the government opposes it.³⁵³ The

345. *Id.*

346. *See id.*; *see also Joint Statement of Concern on Vietnam’s Draft Law on Religion*, *supra* note 342.

347. U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, 2017 ANNUAL REPORT 114 (2007), <http://www.uscirf.gov/sites/default/files/2017.USCIRFAnnualReport.pdf>.

348. *Id.*

349. *See* discussion *supra* Part VIII.

350. New Draft Law, *supra* note 58, art. 16.1.

351. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 25; *see also Joint Statement of Concern on Vietnam’s Draft Law on Religion*, *supra* note 342.

352. *See* discussion *supra* Part VIII. Article 11 of the new draft law states that for a religious organization to register with the VCP, the group must comply with Article 5.5 and Article 5.6. New Draft Law, *supra* note 58, art. 11. These articles vaguely state that religious organizations are not allowed to use their registered status to harm national defense or “conduct illegal activities.” *Id.* arts. 5.5–5.6.

353. *See* STATE MANAGEMENT OF RELIGIONS, *supra* note 6, at 16. Religious organizations that negatively affect the VCP are banned. *Id.*

VCP should shorten the registration waiting period to five to seven years, which would allow the VCP to still retain some control but not make it entirely impossible for a religious group to become registered. Furthermore, a good faith³⁵⁴ provision should be added that would limit the VCP's choice in registering different religious groups. This provision should be added to Article 16³⁵⁵ of the new draft law and state that the VCP needs to decide the aforementioned requirements, in this Article, in good faith. By adding these provisions, the VCP will actually have to examine the religion itself, and not whether the religion may, in the future, be a danger to the VCP's absolute control. An alternative, which would allow for a religious organization to have a legal personality status,³⁵⁶ would be to allow religious organizations to register as a business entity under the Law on Enterprises.³⁵⁷ According to Article 7, enterprises have the right to "freely conduct business" that is not prohibited by the VCP and to "select forms and methods of raising, allocating and utilizing capital."³⁵⁸ This would allow for religious organizations to have the option to participate in "important community functions such as buying real estate, employing staff, operating charities, and educating youth."³⁵⁹ Furthermore, all religions should be able to register with the VCP. If the VCP decides to adopt this proposal, it would actually raise its control over religious groups, as the VCP would be able to oversee religious groups that it currently cannot.³⁶⁰ By allowing religious organizations to register as business entities, the religions currently on the outskirts of society would have a place in the

354. In order to act in good faith, one must "behave[e] honestly and frankly, without any intent to defraud or to seek an unconscionable advantage." *Acting in Good Faith*, Black's Law Dictionary (10th ed. 2014).

355. See New Draft Law, *supra* note 57, art. 16 (discussing registration requirements).

356. See DANG ET AL., *supra* note 5, at 59.

357. See Law on Enterprises, (L. No. 68-2014-QH13) (Viet.), *translated in* MINISTRY OF FOREIGN AFF. OF THE CZECH, http://www.mzv.cz/public/6f/5/6b/1810642_1462220_Law_on_Enterprise_No_68_2014_English.pdf (last visited Sept. 12, 2017).

358. *Id.* art. 7.

359. DANG ET AL., *supra* note 5, at 59.

360. See THE ALTERNATIVE REPORT, *supra* note 73, at 7. Some religious groups recognize this and refuse to register their religious organization with the VCP, as they believe that it will make it easier for the VCP to control their group. *Id.*

religious community and the ability to be recognized by other religions and the legal community of the VCP. While the registration of religious groups serves the purpose of monitoring and controlling religious organizations, it also provides the VCP a sense of maintaining control.³⁶¹ The registration period can remain; however, the VCP's choice on what organizations are able to register should be limited.

The fifth draft law creates ambiguity by not defining religion.³⁶² Thus, the new draft law should define religion. Several civil society organizations suggested that the VCP should adopt the definition of religion in the ICCPR.³⁶³ The ICCPR defines religious freedom as the "freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."³⁶⁴ Since the VCP routinely provides individual rights to religious freedom,³⁶⁵ but struggles with religious freedom for organized religions,³⁶⁶ this definition would allow for the VCP to progress to allowing more organized and registered religious groups. Additionally, the new draft law should establish how much regulation the VCP can have over religious organizations. Instead of allowing the VCP to have broad sweeping control over religions,³⁶⁷ it should be limited in the new draft law. The VCP should also place some limits on how involved the government can be in religion. "It should be clear that the right of an individual or group to their freedom of religion or belief can never be 'created' by any administrative procedures. Rather, it is the other way around: registration should serve this human right, which itself must be respected as preceding any registration."³⁶⁸ Thus, in order to have actual freedom of religion, the VCP needs to impose limits on its control over religious organizations.³⁶⁹

361. See ABUZA, *supra* note 32, at 185.

362. See New Draft Law, *supra* note 58, art. 2.

363. See *Open Letter to the National Assembly President on the Draft Law on Belief and Religion*, *supra* note 315.

364. ICCPR, *supra* note 225, art. 18.

365. ABUZA, *supra* note 32, at 184.

366. *Id.* at 184–85.

367. See STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 14.

368. Bielefeldt, *supra* note 179, ¶ 32.

369. See *id.*

The VCP should still be allowed to regulate whether a religion may host religious festivals,³⁷⁰ but this restriction should have parameters. The VCP should act in good faith³⁷¹ when deciding whether to allow a religion to have a ceremony or festival. This restriction is completely acceptable; however, if it continues to be used to persecute religious minorities, then the VCP will continue to violate the ICCPR.³⁷² Overall, the fifth draft law is an improvement from previous amendments.³⁷³ The VCP needs to continue to take strides towards improving citizens' religious freedoms by only restricting and limiting religious activities that are truly a threat³⁷⁴ to the VCP's leadership.

X. CONCLUSION

Some propose that the VCP should withdraw the fifth draft law and allow for complete religious freedom.³⁷⁵ But this is not feasible.³⁷⁶ The reason why the VCP has implemented these types of restrictions is in order to keep absolute control over the communist nation of Vietnam.³⁷⁷ Instead of comparing Vietnam to a democratic country afforded unlimited religious freedoms, these organizations should instead compare Vietnam to Vietnam and take into account the large steps towards religious freedom that Vietnam has already made.³⁷⁸ “[Vietnam has] to change bit by bit. But it will arrive in the end in our own Vietnamese way—which usually means waiting a very, very long time for what you want.”³⁷⁹ Vietnam will eventually make its way toward full religious

370. New Draft Law, *supra* note 58, art. 6.1.

371. *See Acting in Good Faith*, *supra* note 354.

372. Bielefeldt, *supra* note 179, ¶ 17 (explaining that these broad limitations blur the lines on freedom of religion).

373. *See* discussion *supra* Part III.

374. A true threat is an “intentional statement that expresses a sincere intent to commit an act of unlawful violence against a particular . . . group.” *True Threat*, BLACK’S LAW DICTIONARY (10th ed. 2014). Here, that threat would be against the VCP.

375. STATE MANAGEMENT OF RELIGIONS, *supra* note 7, at 25.

376. *See UN Expert: Vietnam ‘Failing to Respect’ Freedom of Belief*, *supra* note 261 (explaining that religious freedom in Vietnam can be attained; however, it is only possible “within narrowly circumscribed confines” set out by the VCP).

377. *See* ABUZA, *supra* note 32, at 185.

378. *See* USCIRF REPORT, note 59, at 134.

379. ABUZA, *supra* note 32, at 203.

freedom, and, eventually, the VCP will become more lenient and allow its citizens to have complete religious freedom.