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VIETNAM'S LEGAL FRAMEWORK ON RELIGION

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Vietnam’s Legal Framework on Religion

by Vo Quoc Hung Think

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“Dharma, Nation, Socialism”

The motto of Buddhist Sangha of Vietnam

There is no secrecy that Marxism despises religion. According to Marx's proposition, religion is a form of erroneous consciousness, supporting the notion that human religiosity is the disavowed exteriorization of a world that the human being is alienated from. As ubiquitously quoted by countless Marxist – Leninist textbooks in Vietnam: *‘Religion is the sign of the oppressed creature, the heart of a heartless world, and the soul of soulless conditions. It is the opium of the people’*.¹

Therefore, it is understandable that Marx's intellectual heirs were and still are extremely hostile anywhere religion is concerned, including the Socialist Republic of Vietnam. The Communist regime of Vietnam has a well-recorded history of oppressing any form of religion or belief. Whilst officially recognizing freedom of religion right after taking over the civilian government of Hanoi from the hand of the French in 1954 with Presidential Directive 234 (Sắc Lệnh 234/SL), signed on 14 June 1955; the Party side of the new State continued to use their de facto power to terror and harass any intractable deviant.

Expropriation or confiscation of land and property, external interference in the structure and activities of religious organisations, banning ‘ancestor worship’ and other indigenous religions regarded as ‘superstition’ ... to name a few, are the tactics of the regime to make sure that Marxism shall be the only belief of the land. And they did succeed, for a while.

¹ English translation from Marx K (1970) Marx's critique of Hegel's philosophy of right. O'Malley J (ed.), trans. Jolin A and O'Malley J. Cambridge: Cambridge University Press

By 1975, the Catholic Church in the North was decimated,² most folk culture was discontinued (at least in public spaces) and Buddhism slowly turned itself into a State's propaganda mechanism. This era was famously known as the Cultural Breakdown,³ where cultural and religious practices have been interrupted and suppressed for so long that principles faded, ceremonies vanished and it is claimed that the population eventually lost its understanding of true religions.

Yet, such a clear-cut age is long gone. Nowadays, tourists unfamiliar with the contemporary politics of Vietnam could be overwhelmed by fiestas of religious events and celebrations that sometimes turn chaotic, an absurd amount of newly created religious institutions, and overly enthusiastic participants.

Then, what happened? It is not that the regime has eased its restrictions on religion, but they are now willing to take an active role in controlling religions in Vietnam. Some of the aforementioned activities are re-invented practices sponsored by the State, some are the State's own creations, and other are by-products of globalization. But overall, the philosophy of the Communist regime regarding religion remains unchanged – religions need to be tamed.

I. Party's Resolutions and other documents

There is no disputing the fact that Vietnam's legislations and government's policies on general and specific religious issues do not reflect the will of the people, but the will of the Party. As we usually call it the '*No resolution (from the Communist Party), No legislation (of the State)*' doctrine, this

² Peter C. Phan, Christianity in Vietnam today (1975–2013): contemporary challenges and opportunities, *International journal for the Study of the Christian Church* 14:1, 3-21, DOI: 10.1080/1474225X.2014.882706

³ 'Đứt gãy Văn hóa'. See more at: <https://www.tienphong.vn/van-nghe/loan-chuan-cau-cung-996243.tpo>

mode of governance is not unique to only religion management in Vietnam. Joining the WTO, amending the Constitution, etc..., all of which were initiated and authorised first and foremost by political entities within the Communist Party, not by working groups in the National Assembly.

Hence, it is important to go through the documents to see how a very social and communal aspect of a society could be subject to such fierce political and legal scrutiny from these un-elected organs. It will also help us to understand the power and the political capacity of the Communist Party in dictating religious developments in Vietnam.

Document	Influenced Legislations	Substance
<p>Political Report presented to the 4th National Congress Of Vietnam Communist Party, by Central Executive Committee (1976)</p>	<p>Resolution 297/CP concerning policy on religion – Issued by the Council of State</p>	<ul style="list-style-type: none"> ● Recognizing freedom of religion and guaranteeing equality before the law. ● Yet, emphasizing that religions shall not be ‘exploited’ to bring harm to the Socialist State. ● In the ‘liberated’ South, believers shall be educated to ensure the spirit of socialist patriotism. ● ‘Reactionary’ elements hiding inside religions shall be eradicated.

<p>Resolution 40 - NQ/TW on religion management in the new situation, issued by the Party's Secretariat, dated 01 October 1981 (The document is intentionally omitted from Party's official records. But its fragment can be found in several scholarly works)</p>	<p>Acted with its own authority</p>	<ul style="list-style-type: none"> • Directly attacking several religious organizations in Southern Vietnam. • Regarding Southern Catholic Church: <i>'The level of Socialist Enlightenment'</i> among followers is low; still vulnerable to anti-communist propaganda. • Regarding Buddhism, especially Unified Buddhist Sangha of Vietnam (UBSV; Phật Giáo Ấn Quang - to differentiate with <i>Buddhist Sangha of Vietnam</i>, BSV the state-sponsored organization: The leadership has been <i>re-educated</i> to a certain extent. However, the government still needs to abolish UBSV and unify Buddhism in Vietnam, under the supervision of the Communist Party.
<p>Resolution 25 - NQ/TW of the National Central</p>	<p>Acted with its own authority and</p>	<ul style="list-style-type: none"> • Drafted in the post Doi Moi era and when the Communist Party was seeking to join the WTO, the

<p>Committee on religion management (2003)</p>	<p>influenced most legislations managing religions from 2000 until now.</p>	<p>language of Resolution 25 is not as aggressive as its predecessor.</p> <ul style="list-style-type: none"> ● However, its core principles remained intact. The resolution asserted that any religion must be recognised by the State and religious activities shall be subject to State’s regulations and supervision. ● Moreover, religion also continues to be considered the battlefield for influence. The resolution notes that there are still “reactionary” elements among religious institutions and the government shall prepare to defeat any of them. This hostile approach explain why religions and religious activities in Vietnam always suffer serious intervention from the state.
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II. Legislations and detailing documents concerning Religions

The contemporary principal document that dictates most religious conduct, management and operation in Vietnam is the *Law on Religions and Beliefs* 02/2016/QH14 passed by the National Assembly on November 18, 2016 (“LRB”), further elaborated by Governmental Decree 162/2017/ND-CP dated December 30, 2017. Moreover, violators of the State religion management policy will face either administrative measures or criminal punishments under Governmental Decree 167/2013/ND-CP dated November 12, 2013 and Penal Code 100/2015/QH2013 passed by the National Assembly on November 27, 2015.

A. Direct interventions

(1) Intervention into the formation of religion: Double-doors registration

Unlike most legal systems where religions and beliefs can be formed and practised as long as it does not cause direct harm to the legal order and society, any religion will be outlawed in Vietnam if they fail to follow the registration procedures as set out in the LRB; such procedures are also extremely complicated and demanding (see: Chapter IV and Chapter V of the LRB).

Firstly, to be legally engaged in religious activities, an organisation is required to obtain a certificate of religion operation, subject to the following requirements, among others (see Articles 16 - 20): (1) having complete religious dogma and rituals; (2) having purposes, objectives and code of conduct in accordance with Vietnamese law; (3) having preserved

a lawful location for its headquarters; (4) the religious inspirations being not considered prohibited by the authorities. For instance, the concept of conscientious objection to military service is unlawful in Vietnam.⁴ If an organization successfully obtains this certificate, they can be considered a religious group.

However, the control on freedom of religions does not stop here. After five years of obtaining the certificate of religion operation, such a group has to apply again to be finally recognised as a religious organisation (or a formal religion) (see Article 21 and 22). Religious organisation is a non-commercial legal person according to Vietnamese law and can participate in a wider range of transactions and agreements compared to the religious group that can only participate in limited religious activities.

While the abovementioned sounds reasonable on paper, they create a bureaucratic framework that is easily abused by the authorities so as to make sure that no unwanted elements could appear within the state-guided religious system. Religions and their followers that do not act in line with these rules will easily be outlawed.

The case of An Dan Dai Dao (ADDD) is exemplary in this regard. ADDD is a religious sect of Buddhism founded in 1969 and that operated legally under the Republic of Vietnam. At its peak, ADDD had a network of 14 temples and thousands of followers. Yet, not being a large religious institution with international influence, it quickly became the victim after the Communist take-over in 1975. By accusing its leadership working for CIA, with intentions to “rebel” against the people’s regime, the religious

⁴ This is because according to the Law on Conscription (Military Service) No.78/2015/QH13 dated June 19 2015, military service is considered a citizen’s obligation. And Article 5 - LRB specifies that religious practice shall not interfere with citizen’s obligation.

sect did not comply with the registration procedures, and ADDD was turned into a criminal group solely for preaching and practising their beliefs. Their properties have been expropriated, while followers were forced into hiding. Phan Van Thu, the religious leader of the group had spent most of his life time after 1975 in re-education camps and prisons.

In 2003, the reform policy and economic openness made ADDD followers believe that their religion could be recognised in the near future. Phan Van Thu and his followers decided to go back to their homeland in Phu Yen to re-establish the roots of ADDD. The intention was to build an eco-tourism park named Da Bia, but it would also be a pilgrimage and religious destination for the believers and followers of ADDD. They were not involved in any political activities.

Nevertheless, after discovering that ADDD members are trying to preach and practise their belief again, all ADDD leadership were arrested by the police. In a closed trial in 2013, Phan Van Thu was given a life sentence, and 21 other leaders were sentenced to a collective total of 299 years in prison and 105 years of house arrest, which was at the time and still is the highest sentence ever imposed in a political-religious cases.

This is a very firm example which illustrates the so-called “freedom of religion” in Vietnam, and how believers could be treated when the ruling party does not tolerate the existence of a particular religion.

(2) Intervention into religious practices: Surveillance system

However, even if the religion is granted the “lawful” status under Vietnamese law, it does not mean that they are in any way free to peacefully practise their belief. There are many registration and notification procedures, as set out in Chapter VI of the LBR, that the

religious group or religious organisation needs to follow to make sure that their activities would not be considered illegal.

First and foremost, there is a [procedure](#) for “concentrated religious activities” applied for both religious groups, and affiliated units of religious organisations yet to be recognised as a fully legal entity (see Article 16). In short, believers of not established faiths who would like to assemble for religious purposes or to attend a worship event will have to ask for the local authority’s permission in advance.

Religious organisations, however, face even more obligatory formalities.

Their first obligation is the Annual list of religious activities (see Article 43). The related organisations will have to schedule their events and activities and notify the competent authority every year. Unplanned events shall be accompanied by separate permission or will be unlawful and could be dismissed at the discretion of the competent authorities.

The second one is about religious conferences (see Article 44). Any religious conference will have to be permitted upon the information provided (including time, place, reason, agenda, number of participants or even who are the participants of the conference). Also, if a religious organisation intends to organise a congress, there is another procedure outlining similar information as to the above, plus a “report” of its annual activities and a copy of the amended Charter, if any.

Interestingly, in Article 46, any activity outside of the registered concentrated religious location, whether a ceremony or a sermon, would also require the approval of local authority. This means not only that the authority becomes the supervisor of all religious activities, but they also

reserve the right to intervene and prohibit activities they deem “suspicious” and “unsuitable” for Vietnam's political climate.

(3) Intervention into the structure of religious organisations: “red” and “religious”

Structural intervention is one of the most serious and excessive ways the communist regime utilise to ensure their domination over the religious sphere. As stipulated in Section 2 of Chapter V, the appointment, election, proclamation or even transference of high-ranking religious officials or contemplatives require registration at the competent authorities within a period of 20 days (see Article 32 - 33). But more importantly, such authority also has the right reject such appointments and request the concerned religious organisation to replace another person for the position.

Their power extends in case of the appointment, election, proclamation or transference involving foreign elements. It is required that the appointed or elected religious officials to be educated in a domestic religious institution and “adhere to Vietnamese law” - an extremely vague and subjective requirement. Furthermore, in instances where a foreigner is appointed, the religious organization must receive prior state approval.

One of the most archetypal cases in this regard is that of Cao Dai’s “identity thief”, where the state-controlled Cao Dai institution (or Cao Dai Tay Ninh) took over the original Cao Dai religion. After 1975, Cao Dai and its leadership were accused of treason and “reactionary conducts” by “[Cao Dai Judgment](#).” The Cao Dai Judgment was a document that was issued and circulated by the Vietnam Fatherland Front, a new form of the infamous National Liberation Front in Southern Vietnam. The document

did not define what “reactionary conducts” entailed and Cao Dai high-ranking religious officials or contemplatives were forced into hiding and most of their religious activities suspended. In 1997, after many unsuccessful attempts to destroy the grassroots support of Cao Dai, the Vietnam Fatherland Front decided to create another religious organisation and took the identity of original Cao Dai - Cao Dai Tay Ninh.

Members of the various working groups, including the “Administrative Council” (Hội đồng Chưởng quản) and the “Divine Council” (Hội Thánh) consist of defected members of the original Cao Dai and also government officers and members of Communist Party. The aim is to co-opt representation of the Cao Dai and alter its identity. The new organization intervenes into the traditional method of appointing and electing the religious officials. They routinely reject any position elected by remaining independent Cao Dai churches.

B. Other administrative controls

(1) Religious lands: Lots and quotas

State intervention into the establishment and operation of religions shows another aspect in its land management. In Vietnam, land ownership belongs to the “entire people”, under the regime’s management; individuals and organisations only reserve the land use right, recognised by the State by its issuance of the Land Use Right Certificate (LURC). According to Article 102 of [Law on Land 45/2013/QH13 passed by the National Assembly on November 29, 2013 \(as amended by Law 35/2018/QH14 passed by the National Assembly on November 20, 2018 and other relevant laws\)](#) (“Land Law 2013”), land obtained by ordinary channels such as civil

transaction and donation cannot be recognised and used for religious purposes.

Instead, the competent authorities consider the general religious policy and local land-use planning, then allocate certain areas for religious land and constructions. This is a fancy interpretation of a complete state control over religious lands, dictating the question of who can and where to construct religious presence. Overall, the regulation means that without the endorsement of the Communist Party (or at least local authorities), even existing established religions cannot extend their physical reach to the population.

Any religious building on non-religious land will be demolished and subject to fine in accordance with Article 15 of Governmental [Decree 139/2017/ND-CP dated November 27, 2017](#). Unlawful transactions on religious lands is also subject to administrative fine, according to Article 27 of Governmental Decree 91/2019/ND-CP dated November 19, 2019.

On the other hand, land owned by religious organisations that is used for any other agricultural and commercial purposes, will be treated the same as land owned by any individual, company or organization.

(2) Construction and restoration

The construction and restoration of religious buildings in Vietnam is also strictly controlled.

The LRB and [Construction Law 50/2014/QH13 passed by the National Assembly on June 18, 2014 \(as amended by various laws\)](#) (“Construction Law 2014”) are two major legislations concerning the issue (*including several detailed regulations such as Governmental [Decree 59/2015/ND-CP](#)*

[dated June 18, 2015, amended by Decree 42/2017/NĐ-CP](#)). These state that the construction and restoration of religious buildings are generally under the scrutiny of two different agencies: the local department of internal affairs; and the local department of construction (not to mention the complex procedures for religious buildings already recognised as cultural or historical heritage).

For new religious constructions, the concerned religious organisations will firstly have to consult and obtain the approval of the department of internal affairs on the necessity and scale of the project (see Article 95, Construction Law 2014). On several occasions, depending on the size of the allocated land for the project, national agencies and the provincial People's Committee could also be involved. Still, the procedure has proved extremely lucrative and can be subject to cronyism over time. Most of the recent mega “religious projects” recently approved across the country were not pursued by religious organisations, but rather large quasi-religious corporations. These projects include Lung Cu pagoda, Trang An pagoda and the Bai Dinh pagoda to name a few.

Once approval is obtained, applicants will have to prepare another dossier called the Construction Investment Economic-Technical Report (CIET Report). This will go to the local department of construction for further review and revision if required (see Article 5, Decree 59). The final result of the procedure is the construction permit. Changes and restorations to religious buildings, or the construction of certain types of pavilions do not require a CIET Report. However, such plans will still require approval from the local department of internal affairs to the permit of the local department of construction.

(3) Financial obligations: Taxes, fees and charges

- Land-Use Fee

The Land-Use fee is one of the basic financial obligations of any individual or organisation in Vietnam. As per article 54 of [Land Law 2013](#), religious organisations are exempted from paying land-use fees. However, the exemption does not include land leased from the government to certain economic organisations for “commercial-religious projects” as we discussed above. The legal framework creates a very unique reality in Vietnam, where religious buildings do not necessarily operate entirely for religious purposes, despite the endorsement of such religion and local authority.

Similarly, land used by the religious organisations for purposes other than for religious purposes is subject to ordinary financial obligations.

- Taxes:

Like other countries, Vietnamese tax system is quite complex with direct and indirect taxes, and therefore a vast source of legislation must be considered.

For income tax, religious organisations, and even quasi-religious entities (which result from corporations endorsed by religious organizations), are not subject to income tax. Donations, offerings and other types of gift given to these organisations are tax-free. The philosophy here is to avoid double-taxation since individuals and enterprises who contribute have already paid taxes on their income in accordance with [Law on Corporate Income Tax 14/2008/QH12 passed by the National Assembly on June 3,](#)

[2008 \(as amended\)](#) and [Law on Personal Income Tax 04/2007/QH12 passed by the National Assembly on November 21, 2017 \(as amended\)](#).

For indirect taxes, we have [Value-added tax](#), [Special consumption tax](#) and [Import tax](#). Value-added tax is included in the price of goods and services purchased by religious organisations. The current law does not specifically mention any special treatment for religious organizations. Nor are there any provisions related to religious activities. However, general exceptions are noted. In Article 5 of the Law on Value-added tax 13/2008/QH12 [passed by the National Assembly on June 3, 2008](#), goods and services in the form of foreign aids and humanitarian aids; such as books, journals and magazines; and other cultural products, etc. ... are not the targets of the tax. Therefore, religious organisations will have to pay value-added tax as any other actors in the market, unless the products consumed by religious organisations fall into specific categories provided. Similarly, there are no special treatment for religious organisations concerning special consumption tax and import tax.



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