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.
I. INTRODUCTION TO RELIGIOUS FREEDOM IN VIETNAM......................... 161
II. ORGANIZATION OF THE GOVERNMENTAL AGENCIES THAT REGULATE
    RELIGION ............................................................................................... 162
III. THE HISTORY OF RELIGIOUS FREEDOM IN VIETNAM ......................... 164
IV. PRIOR AMENDMENTS TO VIETNAM’S FREEDOM OF RELIGION LAWS . 173
V. CRIMINAL PROCEDURE CODE AND POLICE ACTIONS.......................... 176
VI. VIETNAM’S VIOLATIONS UNDER THE INTERNATIONAL COVENANT
    ON CIVIL AND POLITICAL RIGHTS ......................................................... 179
VII. FAILINGS OF RELIGIOUS FREEDOM IN VIETNAM .............................. 182
VIII. THE NEW DRAFT LAW ...................................................................... 186
IX. PROPOSED MODIFICATIONS TO THE NEW DRAFT LAW ...................... 190
X. CONCLUSION ......................................................................................... 193
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 Murphy

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. Vietnam is light years ahead of other communist countries, and even countries that claim to be democratic, 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 detention. 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.

---

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,
or outright discrimination against, certain groups.”

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.”

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

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

16. STATE MANAGEMENT OF RELIGIONS, supra note 7, at 8.
17. Id.
18. DANG ET AL., supra note 5, at 9.
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.
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.
32. Articles 69 and 70 guarantee freedom of religion under the 1992 Constitution.
33. Id. at 184–85.
34. Id.
35. Id. at 185.
37. Id. at 187.
religious organization. Third, the VCP controls all estates and assets of organized religions. Fourth, government permission is required to publish church documents, such as prayer books. Thus, the VCP sees freedom of religion as an infringement on its ability to rule the country.

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

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

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.” 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.” 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. 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. The articles discussed above are also outlined in the new draft law.

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

---

52. Id.
53. Abuza, supra note 32, at 184.
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.
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

61. Id.
62. BRAZIER, supra note 31, at 48.
64. USCIRF REPORT, supra note 59, at 133.
66. Id.
69. Id.
70. Id.
71. Id.
72. See ABUZA, supra note 32, at 200.
administrative obstacles. Furthermore, the VCP established the Catholic Patriotic Association, a “government-controlled policymaking [body],” in order to control the Catholic Church. The Catholic Church is not allowed to open schools, orphanages, or other social services. This is due to the VCP’s fear that these social services may “threaten the monopoly” of the VCP. Additionally, “Catholics are . . . not allowed to become party members” of the VFF, which is problematic because members of the VFF have political influence over the VCP. This has caused relations between the Vatican and the VCP to stall. 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. Furthermore, Catholic parishes in remote areas of Vietnam face difficulty in registering their congregation. Despite these restrictions, in August 2015, the VCP allowed the Catholic Church to establish the Vietnamese Catholic Institute. This institute is the “first faith based, degree granting educational institution in Vietnam.” The Vietnamese Catholic Institute opened in September 2016, enrolling twenty-three students who will study Biblical and


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.


82. Id.

83. Id.


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

Cao Dai\textsuperscript{88} is another religion that has struggled under the overbearing control of the VCP.\textsuperscript{89} Caodaism is a mixture of Buddhism, Confucianism, Christianity, and Taoism.\textsuperscript{90} Caodaism, founded in southern Vietnam, practices spirit séances.\textsuperscript{91} In 1978, the VCP labeled Caodaism “anti-revolutionary.”\textsuperscript{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.\textsuperscript{93} This Council reports directly to the VFF.\textsuperscript{94} Since these new leaders were put into power by the VCP, most adherents do not recognize these leaders as legitimate.\textsuperscript{95} Furthermore, those adherents who do not follow the replaced Cao Dai Administrative Council’s organization practice their religion illegally.\textsuperscript{96} Thus, adherents who do not follow the state recognized branches of Caodaism are subjected to harsh punishments.\textsuperscript{97} Currently, the practice of Caodaism outside of the government-approved sect is forbidden.\textsuperscript{98}

Buddhism\textsuperscript{99} is Vietnam’s prominent religion.\textsuperscript{100} Buddhism in Vietnam is “closely tied to politics and national” identity.\textsuperscript{101} There are two branches of Buddhism in Vietnam—the Unified Buddhist Church of

\begin{thebibliography}{99}
\bibitem{Lessons} Lessons at the New Catholic Institute of Vietnam Begin, supra note 84.
\bibitem{Chu} Chu, supra note 68, at 153.
\bibitem{Caodaism} Cao Dai is also referred to as Caodaism. DANG ET AL., supra note 4, at 65.
\bibitem{Caodaism See} See THE ALTERNATIVE REPORT, supra note 73, at 16.
\bibitem{Caodaism Branches} ABUZA, supra note 32, at 203.
\bibitem{Caodaism Branches 2} Id.
\bibitem{Caodaism Branches 3} T HE ALTERNATIVE REPORT, supra note 73, at 16.
\bibitem{Caodaism Branches 4} ABUZA, supra note 32, at 203.
\bibitem{Caodaism Branches 5} Id.
\bibitem{Caodaism Branches 6} T HE ALTERNATIVE REPORT, supra note 73, at 16.
\bibitem{Caodaism Branches 7} Id.
\bibitem{Caodaism Branches 9} DANG ET AL., supra note 4, at 65.
\bibitem{Caodaism Branches 10} 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).
\bibitem{Caodaism Branches 12} Id.
\end{thebibliography}
Vietnam (UBCV) and the Vietnam Buddhist Church (VBC).\textsuperscript{102} The VCP began to suppress the UBCV shortly after 1975\textsuperscript{103} by confiscating the UBCV’s properties and institutions.\textsuperscript{104} This incited “protests and demonstrations by church members.”\textsuperscript{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.”\textsuperscript{106} These monks and nuns sacrificed themselves by self-immolation, which is the act of setting oneself on fire.\textsuperscript{107} In 1980, during the Eighth Congress, the remaining UBCV leaders met with the VFF.\textsuperscript{108} At this conference, the VCP declared that the UBCV would merge with the state-sponsored VBC.\textsuperscript{109} UBCV leaders protested this decision and were accused of “[sabotaging] the unity effort” and openly defying the VCP and the VFF.\textsuperscript{110} This confrontation led to the banning of the UBCV in 1981.\textsuperscript{111} Despite being banned, leaders of the UBCV still push for freedom and democracy.\textsuperscript{112} Over the next ten years, UBCV followers were arrested without just cause and no judicial process,\textsuperscript{113} essentially causing the UBCV to become dormant.\textsuperscript{114}

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

\hspace{1cm} 102. \textit{See id.} The VBC is also called the Vietnam Buddhist Sangha. \textit{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).

\hspace{1cm} 103. \textit{Vietnam: The Suppression of the Unified Buddhist Church, supra} note 100.

\hspace{1cm} 104. \textit{ABUZA, supra} note 32, at 192.

\hspace{1cm} 105. \textit{Vietnam: The Suppression of the Unified Buddhist Church, supra} note 100.

\hspace{1cm} 106. \textit{ABUZA, supra} note 32, at 192.

\hspace{1cm} 107. \textit{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.

\hspace{1cm} 108. \textit{ABUZA, supra} note 32, at 192.

\hspace{1cm} 109. \textit{Id.}

\hspace{1cm} 110. \textit{Id.}

\hspace{1cm} 111. \textit{Id.; see also UNIVERSAL PERIODIC REVIEW, supra} note 67, ¶ 28.


\hspace{1cm} 113. \textit{Vietnam: The Suppression of the Unified Buddhist Church, supra} note 100.

\hspace{1cm} 114. \textit{ABUZA, supra} note 32, at 193.

\hspace{1cm} 115. \textit{Id.}
attempted to improve its relationship with the UBCV, the VCP’s repression of the UBCV has not slowed down. Even today, the UBCV is not registered with the state and “continues its peaceful activities for the right to freedom of religion or belief.” Since the UBCV is not a registered religion, the state-sponsored VBC became the prominent religious organization for Buddhists. In 2013, the VBC consisted of “47,000 monks and nuns [and had] . . . tens of millions of Buddhist followers.” The VBC was established in November 1981, and the VBC immediately became affiliated with the VFF. At its inception, prominent monks of the UBCV who refused to join the VBC were arrested and imprisoned. 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.” As the VBC is a member of the VFF, its leaders must make supportive statements about the VCP. Therefore, not only does the VBC provide religious and spiritual guidance, it also promotes the VCP’s “political and economic ideology.” Many monks and nuns find this entanglement with the VCP inappropriate. Furthermore, many who follow the UBCV believe that the VBC is designed to “bring Buddhist religious activities under government control.” The VCP feels threatened by the UBCV’s former and current strength and has continued to suppress and prevent the growth of the UBCV.

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

The H’mong migrated to Vietnam during the nineteenth century from southern China. The VCP claims that the H’mong practice is “Evil Way religion” and thus adherents suffer persecution. For example, seven adherents built funeral homes for their deceased in order for their families to visit them. The VCP ruled this an “evil practice” and “destroyed the funeral homes and beat and arrested those who objected.” Lastly, the Hoa Hao, followers of a form of Buddhism,
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 activities 155 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.
157. Id.
bureaucratic obstacles." The 2005 amendment established the requirements of becoming a registered religion. At the same time, the 2005 amendment makes an effort to register unrecognized religions, which would allow adherents to openly and legally worship. 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." This belief makes adherents of unrecognized religions go from law-abiding citizens to criminals due to their religious beliefs. The 2005 amendment also requires approval from the VCP in order for religious groups to publish religious texts. In 2015, approved books consisted of the Bible and "works pertaining to ancestry worship, Buddhism, Christianity, Islam, and Cao Dai." The most recent enacted amendment to laws regarding freedom of religion was in 2013, which superseded the prior constitution. The creation of this amendment was influenced by the Bilateral Trade Agreement, which was entered into between Vietnam and the United States. The 2013 Constitution is very similar to its predecessor, as it only serves to reaffirm the VCP’s power. 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. 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.
161. The Alternative Report, supra note 73, at 32.
162. Id.
164. Id.
166. Dang et al., supra note 5, at 12.
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.\footnote{Id. at 12.} Opinions were sought from academics, veterans, and former high-ranking party officials.\footnote{Id. at 13.} This group offered seven goals for the 2013 Constitution.\footnote{See id.} 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.\footnote{Id. at 13.} However, no public recommendations were taken into account when drafting the 2013 Constitution.\footnote{Id. at 12–13.}

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.\footnote{Id. art. 14.}

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.”\footnote{Id. ch. 2.} The 2013 Constitution added Chapter 2 pertaining to human and fundamental rights,\footnote{Id. art. 24, translated in INT’L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, supra note 164.} which was not present in prior laws.\footnote{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).} However, the 2013 Constitution gives the VCP “broad leeway to
regulate, limit, restrict or forbid the exercise of freedom of religion or belief.”\textsuperscript{180} Moreover, citizens are able to obtain legal recourse under Article 30 of the 2013 Constitution;\textsuperscript{181} however, there have been no successful cases on government infringement on individual’s freedom of religion and belief.\textsuperscript{182} Despite these multiple restrictions, the VCP has loosened its control on religious freedom in the past ten years.\textsuperscript{183} This was accomplished through training government and public security officials on laws about freedom of religion and human rights.\textsuperscript{184} Additionally, the VCP reached out to foreign governments and non-governmental organizations to “convene seminars on the positive role of religion in society.”\textsuperscript{185} The VCP reached out both internally and externally to improve the freedom of religion in Vietnam.\textsuperscript{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,\textsuperscript{187} and essentially invalidates Article 14 of the 2013 Constitution.\textsuperscript{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

\begin{itemize}
  \item \textsuperscript{180} Id. ¶ 22.
  \item \textsuperscript{181} Id. ¶ 36.
  \item \textsuperscript{182} Id. ¶ 37.
  \item \textsuperscript{183} See Vu, supra note 15, at 88.
  \item \textsuperscript{184} Id.
  \item \textsuperscript{185} Id.
  \item \textsuperscript{186} See id.
  \item \textsuperscript{187} See State Management of Religions, supra note 7, at 12; see also Universal Periodic Review, supra note 67, ¶ 8.
\end{itemize}
three years.” Additionally, courts further enforce this idea of national security having supremacy over freedom of religion, as their role is to protect the socialist legislation and the socialist system. This leads to unfair trials as the court system is not independent from the VCP. Furthermore, the VCP, the National Assembly, and the VFF meticulously monitor elections of judges, thereby controlling who can become a judge.

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

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

---

190. See UNIVERSAL PERIODIC REVIEW, supra note 67, ¶ 11.
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: TORMURE 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.
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 defrockings 209 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

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).
211. Id.
214. See id. ¶ 16.
215. Id.
or intimidate the detainee from participating in further religious activities.\textsuperscript{216}

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

The ICCPR\textsuperscript{217} grew out of the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations in 1948.\textsuperscript{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.\textsuperscript{219} However, the UDHR “is not legally binding but [it] carries moral weight because it is adopted by the international community.”\textsuperscript{220} While the United Nations adopted the ICCPR in 1966, it took ten years for it to be enforced.\textsuperscript{221} Vietnam ascended the ICCPR on September 24, 1982.\textsuperscript{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.”\textsuperscript{223} It is essentially the same as ratifying\textsuperscript{224} 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.

\textsuperscript{216} Campaign to Abolish Torture in Vietnam, \textit{supra} note 196, at 8–9.
\textsuperscript{217} The ICCPR has been ascended or ratified by 132 States, as of September 1995. \textit{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.
\textsuperscript{219} Id.
\textsuperscript{220} Id.
\textsuperscript{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).
\textsuperscript{223} Accession, BLA CK’S LAW DICTIONARY (10th ed. 2014).
\textsuperscript{224} Ratification is the adoption or enactment of an act. \textit{See Ratification}, BLA CK’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

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. Of these 227 recommendations, Vietnam accepted 182, thereby rejecting crucial recommendations.

Article 18 of the ICCPR is the main provision that defines freedom of religion. 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.

Freedom of religion consists of eight normative values. 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. 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. Neither a government nor another person can force another to have or change his beliefs. Additionally, a person is entitled to practice his religion free of discrimination. 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.” Finally, “[i]n special circumstances, a government can make exceptions to some human rights,” as per Article 4 of the ICCPR. As these normative values are indicative of the values

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.
251. Id. ¶ 1.
252. See id. at 9.
253. See FAQ: The International Covenant on Civil & Political Rights (ICCPR), supra note 221, at 3.
255. Id.
258. See DANG ET AL., supra note 5, at 53.
259. See Christy Cuthill McCormick, Comment, Exporting the First Amendment: America’s Response to Religious Persecution Abroad, 4 J. Int’l Legal Stud. 283, 297-
to registered religions. The VCP believes that unregistered religions are a threat to the “social order” of the absolute power of the VCP. Thus, unregistered religious groups are subject to attacks and raids by police. There are reported violations against religious communities, which “range from harassment, intimidation and intrusive monitoring, to arrest, imprisonment, torture and extra-judicial killing[s].” In 2015, government officials harassed several unregistered religious organizations’ members. This harassment included “physical assault, short term detention, prosecutions, monitoring, restrictions on travel, and denials of registration and/or other permissions.” Furthermore, unregistered religious groups continue to be persecuted by local government authorities who do not allow these unregistered religious organizations to practice freely. However, in some areas of Vietnam, local authorities allow unregistered religious organizations to host social welfare activities. 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.”

In 2015, the VCP interfered with numerous unregistered religious groups, including Caodaism, Hoa Hao, Protestants, and Catholicism. As Caodaism is illegal outside of the Cao Dai Administrative Council, the VCP continually harasses followers when they attempt to practice their religion. 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.
262. USCIRF REPORT, supra note 59, at 135.
263. THE ALTERNATIVE REPORT, supra note 73, at 4.
265. Id.
266. Id.
267. Id.
268. See id.
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’mong 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.” 278

The adherents of unregistered religions are severely punished by “repeated or long-term imprisonment.” 278 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.
279. Id.
280. Bielefeldt, supra note 179, ¶ 73.
281. See id. ¶ 66.
283. Id.
284. Id.
285. Id.
286. Id.
“denied the necessary medical treatment outside of prison.”

Furthermore, prior to this new draft law, it was prohibited for inmates to possess religious materials. In the past, prisoners confirmed the harsh and unfair treatment they received while in prison, including the lack of religious freedom. 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. Whether or not this will change with the passing of Article 4.3 of the 2017 new draft law remains to be seen.

These religious freedom violations have not gone unnoticed. 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. Even though Vietnam remains a CPC, the VCP has taken strides to improve freedom of religion laws over the last ten years. These “improvements have mostly been at [the] central government level.” In 2015–2016, many religious groups “faced little to no interference” from the VCP during religious events. Moreover, the relationship between the Vatican and the VCP has improved. In January 2013, Pope Benedict XVI met with the secretary general of the VCP. Then, in 2016, “Pope Francis met with Vietnamese President Tran Dai Quang . . .”

---

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.
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. 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.” 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.” Despite this goal, the new draft law has multiple Articles that are incompatible with freedom of religion under the ICCPR.

The drafting process of the new law was more open than the previous drafts in 2004, 2005, and 2012. The GCRA allowed religious groups thirteen days to make comments on the fourth version of the new draft law. The majority of these comments were negative. 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.” An example


302. *Id.*


304. *Id.*

305. *Id.*


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. However, the draft law does define religious activities, which is “worshipping or making offerings; prayers; and expression of religious beliefs.” But the freedom to worship may not translate to freedom of religion, as the draft law places many restrictions on this freedom. 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. Several civil society organizations suggested the definition of religion in the draft law should be based on Article 18 of the ICCPR. The GCRA did not take these comments into account when drafting the fifth version of the draft law.

One restriction of the fifth draft law is that a religious organization must be registered with the VCP to worship legally. Currently, there are only thirty-eight registered religious groups in Vietnam. This registration restriction confines the practice of religion to what the VCP deems to not be a threat to its absolute power. In order for a religious organization to register with the VCP, it needs to have “maintained stable religious operation during [ten] consecutive years.” This is a decline from the previous requirement in the 2013 Constitution, which required twenty consecutive years of maintaining a religions operation. Additionally, to register, the religious group must be stable, have a charter, and have a legal office and representatives. 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.
317. See STATE MANAGEMENT OF RELIGIONS, supra note 7, at 15.
318. See New Draft Law, supra note 58, art. 12–15.
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.’’

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.’’ The draft law includes a criminalizing provision for those who use religious freedom for their personal gain. 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.’’ 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. There is more ambiguous language in Article 2.5 of the fifth draft law. This vague language states that religious practices and activities ‘‘must reflect beautifully [the Vietnamese] traditional, historical, cultural, and ethical values of Vietnamese communities.’’ 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.

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. 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.’’ 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.
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

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).
337. Id.
339. Arora, supra note 338.
340. USCIRF REPORT, supra note 59, at 136.
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.” There are mixed opinions on the new draft law, as improvements have been made, but barriers remain. Despite the negative public opinion, the National Assembly approved the draft law on November 18, 2016. This law goes into effect on January 1, 2018.

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. 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; however, despite this shortening of the waiting period, organizations still wish to do away completely with the registration requirement. Furthermore, there are other restrictive registration requirements. By having the registration period in the 2017 amendment, it makes it impossible for a religion to register if the government opposes it.

345. Id.
346. See id.; see also Joint Statement of Concern on Vietnam’s Draft Law on Religion, supra note 342.
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 faith provision should be added that would limit the VCP’s choice in registering different religious groups. This provision should be added to Article 16 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, would be to allow religious organizations to register as a business entity under the Law on Enterprises. 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.” 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.” 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. 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.


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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{364} Since the VCP routinely provides individual rights to religious freedom,\textsuperscript{365} but struggles with religious freedom for organized religions,\textsuperscript{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,\textsuperscript{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.”\textsuperscript{368} Thus, in order to have actual freedom of religion, the VCP needs to impose limits on its control over religious organizations.\textsuperscript{369}

\begin{itemize}
\item \textsuperscript{361} See ABUZA, supra note 32, at 185.
\item \textsuperscript{362} See New Draft Law, supra note 58, art. 2.
\item \textsuperscript{363} See Open Letter to the National Assembly President on the Draft Law on Belief and Religion, supra note 315.
\item \textsuperscript{364} ICCPR, supra note 225, art. 18.
\item \textsuperscript{365} ABUZA, supra note 32, at 184.
\item \textsuperscript{366} Id. at 184–85.
\item \textsuperscript{367} See STATE MANAGEMENT OF RELIGIONS, supra note 7, at 14.
\item \textsuperscript{368} Bielefeldt, supra note 179, ¶ 32.
\item \textsuperscript{369} See id.
\end{itemize}
The VCP should still be allowed to regulate whether a religion may host religious festivals, but this restriction should have parameters. The VCP should act in good faith 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. Overall, the fifth draft law is an improvement from previous amendments. The VCP needs to continue to take strides towards improving citizens’ religious freedoms by only restricting and limiting religious activities that are truly a threat to the VCP’s leadership.

X. CONCLUSION

Some propose that the VCP should withdraw the fifth draft law and allow for complete religious freedom. But this is not feasible. The reason why the VCP has implemented these types of restrictions is in order to keep absolute control over the communist nation of Vietnam. 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. “[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.” 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.