

Universal Periodic Review – 18th Session
CSW – Stakeholder Submission
VIETNAM

Introduction

1. Christian Solidarity Worldwide (CSW) wishes to draw attention to Vietnam's domestic human rights situation, and specifically the situation of freedom of religion or belief, over the period 2009-2013 with respect to Vietnam's international obligations.
2. The treatment of religious groups and individuals in Vietnam varies considerably. In some areas, local authorities recognise the valuable social work done by Christians, for example. At the same time, CSW has received reports of discrimination, deprivation of access to education, harassment, death threats, and severe beatings and torture sometimes resulting in death. These grave violations suggest a weakness in the application of the law.
3. In recent years, the government has made welcome efforts to work with international organisations to bring together religious leaders and those charged with implementing religious law. However, a new "Decree" on religious organisations and religious activities which came into effect in 2013 adds new obstacles to the process of registration for religious organisations and includes vague references to "national unity" which creates opportunities for officials to arbitrarily reject applications.

Scope of International Obligations

4. Vietnam is party to a number of international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), which includes protection for freedom of religion or belief.
5. Vietnam has not acceded to the Rome Statute of the International Criminal Court. In July 2012, the Vietnamese Ministry of Justice in collaboration with the Delegation of the European Union to Vietnam conducted a two-day seminar on "Practical Operation of the International Criminal Court and experience of some ASEAN countries in ratifying and acceding to the Rome Statute" in Hanoi. The Vietnamese government is currently considering accession to the ICC.
6. Vietnam has not signed the Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention for the Protection of All Persons from Enforced Disappearance, or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Recommendations:

7. **That Vietnam ratifies the Rome Statute of the International Criminal Court;**
8. **That Vietnam ratifies the Optional Protocol to the International Covenant on Civil and Political Rights;**
9. **That Vietnam ratifies the International Convention for the Protection of All Persons from Enforced Disappearance;**
10. **That Vietnam ratifies the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

Constitutional and Legislative Framework

11. Article 70 of the Constitution of Vietnam provides 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. Public places of religious worship are protected by law. No 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”. In addition, Article 69 protects the right to “freedom of speech and freedom of the press; they have the right to receive information and the right of assembly, association and demonstration in accordance with the law”.
12. The legislative framework for the religious activities and organisations is set out in the “Ordinance Regarding Religious Beliefs and Religious Organisations” (21/2004/PL-UBTVQH11), which came into effect on 15 November 2004. Article 1 of the Ordinance guarantees citizens’ “right to belief and religious freedom”, and Article 8(1) prohibits discrimination on the basis of religious beliefs. The following chapters sets out provisions for “belief activities of believers” and clergy, (Chapter 2) religious organisations (Chapter 3), assets or religious establishments and social activities (Chapter 4), and international relationships (Chapter 5).
13. However, the Ordinance also contains ill-defined caveats which go beyond the limitations stipulated in international protections for freedom of religion. Article 8(2) prohibits the “abuse” of religion to undermine national unity, to divide the people or to conduct “superstitious practices”. Religious activities may be suspended if they “negatively affect the unity of the people or the nation’s fine cultural traditions” (Article 15); organisations may not contradict “the nation’s fine traditions” (Article 16). In order to be recognised by the state, religious leaders must “possess the spirit of national unity and national harmony” (Article 22).
14. On 1 January 2013, a new Decree on religious organisations and religious activities came into effect. “Decree No. 92/2012/ND-CP: Specific provisions and measures for the implementation of the Ordinance on Belief and Religion” replaces “Decree 22” (22/2005/ND-CP). The decree provides instructions for the implementation of the Ordinance on Belief and Religion. Like the Ordinance, Decree 92 refers to “national unity” in the context of violations by believers and as a requirement for representatives of religious organisations (Article 5: “the representative must [have] a spirit of national unity and reconciliation”). There is no expansion on the definition of this term at any point in the text, rendering it vulnerable to misinterpretation or misuse by those implementing the Decree.
15. Furthermore, Article 5 of Decree 92 adds a new level of activity, “religious meetings” (*sinh hoat ton giao*), requiring registration/permission and in doing so simultaneously adds an extra stage to the process of applying for full registration/permission as an organisation conducting religious activities. The addition of this step appears to reverse or override the 2005 Prime Minister’s Special Instruction, introduced in response to international pressure in the run-up to Vietnam’s attempt to accede to the World Trade Organisation. The Special Instruction was intended to speed up the registration of Protestant house churches. Decree 92 runs contrary to this aim by slowing down the process of registration considerably.
16. The new Decree also requires an organisation to have 20 years or more of religious meetings: under the earlier Decree it appeared that if an organisation had 20 years of stable operation *without registration* it could apply for permission for religious activities. Under the new Decree the organisation must already be registered for religious meetings, a category which was only introduced with this Decree effective January 2013. In theory, this means it will not be possible for any organisation to register for the Article 6 category of religious activities for at least 20 years.

17. Decree 92 further adds new conditions for the running of religious schools. Under the new Decree, the school directors must inform the central religious authorities of the number of students to be admitted and the conditions of admission (Article 15), and under Article 16, if a school wishes to enrol a foreign student, they must request permission from the central religious authorities. Under Article 40, foreigners wishing to gather for religious activities at legal religious facilities must submit an application to the relevant Provincial People's Committee. This was not stipulated in the previous Decree.

Recommendations:

18. **That Vietnam amend the 2004 Ordinance and Decree 92 to conform to international norms regarding freedom of religion or belief;**
19. **That Vietnam remove obstacles to full registration of religious organisations under Decree 92, including registration requirements for religious meetings (*sinh hoạt tôn giáo*), the condition that religious meetings have a fixed, legal venue, and the requirement that religious groups have 20 years of stable operations before applying for permission for activities;**
20. **That Vietnam remove vague terminology including “infringements on national security”, “people’s/national unity”, “traditions and customs”, etc. Where these terms are relevant, they should include a full definition which clearly demonstrates what does and does not constitute a crime in relation to these terms;**
21. **That in using terms like “fine traditions and customs”, Vietnam ensures that religious traditions are protected alongside cultural traditions, and that no religion or belief is singled out as being “un-Vietnamese”;**
22. **That Vietnam ensures that the rights of all Vietnamese citizens, including religious believers, are protected by law and by those implementing the law, including the right to freedom of religion or belief.**

Institutional and Human Rights Infrastructure

23. The implementation section of Decree 92 charges “Ministers, Head of Ministry-level agencies, Head of governmental agencies, Chairpersons of provinces and cities belong to the Central Government” with the responsibility of implementing the Decree (although in most cases applications for religious activities and so on are received by the Commune or Provincial People's Committee). In addition, the Viet Nam Fatherland Front plays an important role as an oversight mechanism concerning complaints and petitions.
24. In practice, the procedure for seeking redress or remedy for abuses committed by authorities is far from straightforward. A Vietnamese citizen who wishes to complain about a human rights violation by the authorities or an individual official must go through a complicated system of petitioning and referral. In addition, all levels of the justice system are affected by corruption and political or party influence. There is also a lack of lawyers with the experience and expertise to take on these kinds of cases.
25. In practice, CSW has found that most petitions for redress relating to religious freedom violations are dealt with, or dismissed, in a personal capacity, without judicial oversight. For example, one Christian organisation petitioned the provincial authorities when ethnic minority Christian children were refused admission to their school. The petitioner threatened to communicate the case to the international media: the children were allowed to attend school and those responsible for barring their access were instructed to apologise to the parents. In many other cases, however, individual complaints are dismissed or simply not acknowledged by the authorities.

26. CSW has also received reports describing the use of “thugs” apparently hired by the police to harass, intimidate and beat religious congregations and clergy. For example, in 2012 several Catholic priests were severely beaten by thugs or plainclothes police. Lawyer Le Quoc Quan, who has supported Catholics attempting to recover church property, was severely beaten by unidentified “thugs” and was later arrested.

Recommendations:

27. **That Vietnam should establish a national human rights mechanism for receiving complaints regarding human rights violations by police and officials;**
28. **That Vietnam investigates allegations of harassment, discrimination and human rights violations by police and officials against those exercising the right to freedom of religion or belief, and prosecute those found to be responsible;**
29. **That Vietnam provides extensive and ongoing training for all government officials charged with the implementation of Decree 92, along with religious leaders, lawyers, jurists, and other relevant parties;**
30. **That Vietnam provides avenues for feedback from the aforementioned parties with regards to the Ordinance and Decree cited above, and actively and carefully considers comments and criticism put forward by the international community;**
31. **That Vietnam abolishes “national security” provisions in the criminal code which may be used to detain advocates for religious freedom and human rights;**
32. **That Vietnam invests in training new lawyers specialising in human rights.**

Interaction with International Human Rights Mechanisms

33. Vietnam is now a party to over 20 international human rights treaties, and has conducted human rights dialogues with Australia, Norway, Switzerland, the US and the European Union. Human rights are also included in the Strategic Partnership Agreement between the UK and Vietnam. At the 17th US-Vietnam Human Rights Dialogue, US Deputy Assistant Secretary of State for Democracy, Human Rights and Labor, Dan Baer was prevented from meeting with activists Nguyen Van Dai and Dr. Pham Hong Son as planned.
34. Vietnam is a member of the Association of Southeast Asian Nations (ASEAN), and the ASEAN Intergovernmental Commission on Human Rights (AICHR). In August 2013 Vietnam will host a special meeting of the AICHR.
35. Vietnam initially responded positively to a visit request from the Special Rapporteur (SR) on freedom of religion or belief, for the year 2013. However, no date has been set for the visit and it is unclear whether this visit will go ahead this year, next year or at all. Vietnam has not yet responded to visit requests from the SR on torture (2013), the SR on the situation of human rights defenders (2012), and the SR on cultural rights (2011).

Recommendations:

36. **That Vietnam re-confirms and set a date for the visit of the United Nations Special Rapporteur on freedom of religion or belief;**
37. **That Vietnam responds to all other outstanding visit requests from the Special Procedures;**
38. **That Vietnam allows human rights dialogue delegates to meet Vietnamese citizens of their choosing, including activists.**

Right to Freedom of Religion or Belief

39. Freedom of religion or belief is far from a reality in Vietnam. In recent years, the government has made welcome efforts to work with international organisations to bring together religious leaders and those charged with implementing religious law. In addition, the new Decree 92,

which aims to provide guidance on the implementation of the Ordinance issued in 2004 (see above), makes some attempt to improve transparency and accountability in the process of registration, for example by requiring that the authorities provide an explanation for rejecting a request for registration by a religious organisation. However, the Decree simultaneously lengthens the process of registration and makes it more difficult by adding a new level of religious meetings for which registration is required, and by including the condition that religious organisations demonstrate 20 years of “stable operation” under the new category of registration. Other problems arising from this Decree are described above.

40. In some senses, implementation is a more serious obstacle to religious freedom than legislation. CSW’s research indicates that there is only limited awareness of Vietnam’s legal provisions regarding religious activities and organisations, both amongst religious leaders and officials. In 2012-2013, CSW found cases of discrimination in the provision of public services and access to education against Catholic and Protestant Christians. In addition, CSW received several reports of severe harassment and physical attacks on Catholic clergy and lay followers. CSW also notes the prolonged detention of Catholic priest and rights activist Father Nguyen Van Ly and Buddhist Patriarch Thich Quang Do (currently under house arrest).
41. For Protestant Christians, the most troubled areas are the Central Highlands and the Northeast and Northwest of the country. In the Northwest in particular, CSW received reports of severe beatings and torture of young Christians from ethnic minority groups. In some cases, the victims were made to take up stress positions for long periods of time while they were questioned by police. Some young men also had their faces smashed into the wall of the interrogation room.
42. In the southern part of the Central Highlands, a Vietnamese church leader died in police custody in March 2013. His body showed signs of violent beating and possible torture. The police did not present or refer to any arrest warrant or temporary detention order at the time of his arrest. Christians living in the area have long since suffered physical attacks, intimidation and harassment by the local authorities. The leader who died in custody had previously resisted attempts by the authorities to close his church, and had refused to take bribes.
43. In other areas of the country, the local authorities acknowledge the important social work done by Christian and Buddhist organisations, and in some cases even work with religious groups by pointing them in the direction of families and individuals in needs of assistance. The differences in the treatment of religious groups in different parts of the country demonstrate a weakness in the application of the law. In order to address these problems, the Vietnamese government must not only revise legislation on religious activities and organisation, it must also invest in the training of those charged with implementing these laws, and further provide a mechanism for redress in the case of human rights violations against religious minorities.

Recommendations:

44. **That Vietnam release all prisoners of conscience from detention or house arrest;**
45. **That Vietnam fully investigate violations against the right to freedom of religion or belief and hold perpetrators to account;**
46. **That Vietnam open a full and impartial investigation into the death of Hmong church elder Hoang Van Ngai in police custody in March 2013, including the eye-witness testimonies of those detained with him, and photographic evidence of severe torture in detention;**
47. **Revise laws and regulations relating to religious organizations and activities as described above, to ensure that the focus of such legislation is the protection, rather than the control, of peaceful religious activities.**