



## Compatibility of Vietnamese law on freedom of belief and religion with International Law

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### Abstract

**Summary:** The right to freedom of belief and religion is one of the basic human rights recognized in international human rights law as well as in the laws of many countries around the world. Vietnam is a country with many types of beliefs and religions, so ensuring everyone's right to freedom of belief and religion has always been highly valued by the Vietnamese government. From the 1946 Constitution to the 2013 Constitution and other legal documents, all affirm that freedom of belief and religion is one of the basic, natural, inherent rights of humans and the State of Vietnam always respects, protects and ensures that everyone can fully enjoy it. In this article, the author wants to introduce the similarities of Vietnamese law with international law on freedom of belief and religion.

**Keywords:** Human rights, freedom of belief and religion, International Law, Vietnamese law, warrant, fit, standards

### Introduction

#### Basic content of freedom of belief and religion in international legal documents

Belief and religion are one of the basic and essential needs of humans. John Locke once believed that religion was a matter of the individual rather than of society. The famous French Declaration of Human and Civil Rights dated August 26, 1789 spoke of personal freedom, freedom of thought, and freedom of religion: "No one has to worry about their opinions, including religious opinions, as long as their expression does not affect public order protected by law"<sup>[1]</sup>. However, freedom of belief and religion has only been truly guaranteed as a basic human right and freedom in the group of civil and political rights only since the United Nations adopted documents such as the United Nations Charter, the International Convention on Civil and Political Rights, etc. Up to now, the right to freedom of belief and religion has been recognized in many documents of international human rights law. Specifically:

#### United Nations Charter 1945

Although it is a non-legally binding document, the United Nations Charter is important in determining the principles and ethical and political orientations of human rights in general and freedom of belief and religion in particular. The United Nations Charter does not have a separate, specific and detailed provision on freedom of belief and religion. Instead, the Charter establishes the general principle of promoting and respecting human rights, which includes freedom of conscience and religion as an integral part of human rights and fundamental freedoms for all. Clause 3, Article 1 of the United Nations Charter: "encourage the development of respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion"<sup>[2]</sup>.

#### Universal Declaration of Human Rights, 1948

The 1948 United Nations Universal Declaration of Human Rights is the first international document recognizing the right to freedom of thought, belief and religion, affirming that everyone has the right to freedom of thought, belief and religion, including the freedom to change their belief or

religion, and the freedom to express their belief or religion in such forms as preaching, practicing, worshiping and observing rituals, individually or collectively, in public places. public or private place. UDHR inherited and developed the idea of "religious freedom" in the American Declaration of Independence in 1776 and the French Declaration of Human and Civil Rights in 1789<sup>[1]</sup>. The development point here is that UDHR stipulates the right to freedom of belief and religion more specifically and strictly. To exercise human rights, including the right to freedom of belief and religion, the UDHR has outlined the conditions that ensure these rights, such as respecting and implementing the most important principles in protecting human rights: "All human beings are born free and equal in dignity and rights"; "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. All are equal before the law and are entitled without any discrimination to equal protection of the law. Everyone has the right to equal protection against any discrimination in violation of this Declaration, and against any incitement to such discrimination"<sup>[3]</sup>.

In addition, the UDHR also addresses the limitations in the exercise of human rights in general, including the right to freedom of belief and religion in particular, by its nature allowing member states to impose certain conditions on the exercise or enjoyment of certain human rights. Accordingly, the right to freedom of belief and religion is not an absolute right, but a right that can be limited, specifically: Everyone has duties to the community, which is the only place where their personal character can develop freely and fully. In enjoying their rights and freedoms, people are only required to observe the limitations prescribed by law, with the aim of ensuring proper recognition and respect for the rights and freedoms of others, as well as meeting the legitimate requirements of morality, public order, and the general welfare in a democratic society. In all cases, the exercise of these freedoms must not be contrary to the purposes and principles of the United Nations.

### **International Covenant on Civil and Political Rights, 1966 (ICCPR)**

The right to freedom of thought, conscience, and religion is stipulated in Clause 1, Article 18 with four specific contents, according to which: "Everyone has the right to freedom of thought, conscience, and religion. This right includes the freedom to have or follow a religion or belief of one's choice and the freedom to express one's belief or religion alone or in community with others, publicly or privately, in forms such as worship, prayer, practice, and teaching <sup>[4]</sup>."

In addition, in the ICCPR, the right to freedom of belief and religion is further supplemented with three elements, making the concept of this right clearer and more complete, which are: No one shall be compelled to do things that harm their right to freedom of choice or to follow their religion or beliefs"; Unlike the right to freedom of thought, conscience, religion, and belief, which are absolute rights and cannot be restricted, according to the ICCPR, the expression or manifestation of religion and belief can be limited. "The freedom to manifest one's religion or beliefs may only be limited by law and when such limitation is necessary to protect public safety, order, health, or morals, or to protect the fundamental rights and freedoms of others." Paragraph 3 of Article 18 mentioned above includes all the usual reasons that countries can invoke to limit rights, except for national security; the right of parents to guide their children in matters of belief, faith, and religion, as it stipulates: "States Parties to the Convention shall respect the liberty of parents and, where applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions." Therefore, due to the limited cognitive capacity of children, the ICCPR stipulates that parents or guardians have full authority to ensure religious and moral education for their children in accordance with their own wishes.

The four aspects of the right to freedom of thought, conscience, and religion set out in Article 18 of the ICCPR are closely interconnected, reflecting both the universality of the right to freedom of thought, conscience, and religion, and allowing for countries with specific characteristics to implement it. Therefore, its practical feasibility is very high. Some aspects related to the content of Article 18 of the International Covenant on Civil and Political Rights were later further clarified by the United Nations Human Rights Committee (HRC) in General Comment No. 22, adopted at the Committee's 48th session in 1993. Accordingly: The rights to freedom of thought, conscience, and religion are not restricted or taken away under any circumstances, including in cases of national emergency; the right to practice religion or belief can be exercised individually or together with the community, in public or in private; it is manifested in actions such as worship, participating in religious festivals, observing, practicing, and teaching about religion; The right to believe in or follow a religion or belief includes the freedom to choose a religion or belief to believe in or follow, including the right to change one's belief from one religion or belief to another, or to change belief from atheism to theism and from theism to atheism; Activities of a religious or belief nature with the purpose or character of promoting war or hatred toward nations, religions, or inciting racial discrimination, hostility, or violence are strictly prohibited. Member states are obliged to use the law to prevent such actions;...

Overall, international human rights law addresses the following prominent issues regarding freedom of belief and religion:

Firstly, declare the existence of the right to freedom of belief and religion;

Second, everyone has the right to practice their beliefs and religion publicly, whether alone or in the community;

Third, discrimination on the grounds of belief or religion is strictly prohibited.

However, international human rights law also affirms that the right to freedom of belief and religion is not an absolute right, and that states may impose certain restrictions on the exercise of this right if deemed necessary for the purpose of protecting national security, public order, or public morals, or to protect the fundamental rights and freedoms of others. When imposing restrictions on this right in law, member states must comply with the relevant principles set out in Article 5 of the ICCPR, according to which any restrictions imposed must not damage the essence of the rights; there must be proportionality between such restrictions and the protection of the relevant rights, between norms and exceptions; and such restrictions must correspond to the interests being protected.

The restrictions on the exercise of freedom of belief and religion, as stipulated in international human rights law, have been thoroughly implemented by member states in their national legislation. Accordingly, types of religious organizations or religious activities that affect national security, public order, violate social ethics, or infringe upon the rights and freedoms of others,... are not allowed to operate.

### **Ensure the freedom of belief and religion in Vietnam through a legal system that aligns with international human rights standards.**

As a member of the International Covenant on Civil and Political Rights, Vietnam has committed to adhering to the principle: "Each State Party to this Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in this Covenant, without distinction of race, color, sex, language, religion, political or other opinions, national or social origin." Vietnam has enacted a legal system and developed mechanisms to increasingly protect human rights, in line with the content of international treaties to which it is a party. The Constitution and several important laws of Vietnam have been issued that essentially recognize most fundamental human rights, including the freedom of belief and religion as stated in the 1948 Universal Declaration of Human Rights and in the two 1966 International Covenants on Human Rights.

**Constitution:** An important legal basis that recognizes the freedom of belief and religion in Vietnam in accordance with international legal standards

From the very inception of the Democratic Republic of Vietnam, President Ho Chi Minh affirmed in the 1945 Declaration of Independence: "All men are born equal. They are endowed by their Creator with certain inalienable rights; among these are life, liberty, and the pursuit of happiness." In order to institutionalize and recognize freedom, including the freedom of belief and religion, the first Constitution of the Democratic Republic of Vietnam, adopted by the

National Assembly in 1946, stipulated: "Vietnamese citizens have the right to freedom of belief."

Following the 1946 Constitution and the 1959 Constitution, Article 26 continued to recognize: 'Citizens of the Democratic Republic of Vietnam have the right to freedom of belief, whether following a religion or not.' The 1980 Constitution, in Article 68, retained the content of Article 26 of the 1959 Constitution and additionally stated: 'No one shall take advantage of religion to violate the law and policies of the State.' Notably, in the 2013 Constitution, the right to freedom of belief and religion was affirmed more clearly: Belief and religion are an important part of Chapter II - Human Rights, rights, and obligations of citizens; the right to freedom of belief and religion is a right of everyone (not just a citizen as before); the State respects and protects the right to freedom of belief and religion (not just ensures it as before). This is the foundational constitutional basis for the complete regulation of laws regarding belief and religion.

Thus, throughout the constitutions of Vietnam, the right to freedom of belief and religion of individuals has always been highly valued, showing that the Vietnamese State is highly determined to incorporate the fundamental principles recognized in the international human rights conventions that Vietnam has signed into the country's supreme legal document. During the process of drafting the Constitution, the right to freedom of belief and religion has become increasingly clear, comprehensive, and progressively perfected in both breadth and depth, being guaranteed through more effective mechanisms and measures. It can be observed that, in each subsequent Constitution, the right to freedom of belief and religion of every individual is not merely a repetition of the provisions of previous constitutions, but rather an inheritance and development according to the country's circumstances, with the scope and content of the right to freedom of belief and religion becoming increasingly broader and more specific.

In addition to the Constitution, in different periods, the right to freedom of belief and religion has also been recognized in many other important legal documents. The legal system regarding belief and religion has been continuously supplemented, amended, and improved, in accordance with the international treaties that Vietnam has participated in. Legal documents directly regulating the field of belief and religion have not only increased in number but have also become richer and more diverse in form. The content of legal documents is always amended, supplemented, and perfected to suit practical situations. Specifically: From the time the country was newly established, President Ho Chi Minh signed Decree No. 234-SL on June 14, 1955, clearly stating: "Freedom of belief and religious practice is a right of the people. The authorities of the democratic republic always respect this right and assist the people in exercising it." Some circulars guiding the implementation of this Decree were later issued, including: Circular No. 593-TTg (1957) and Circular No. 60-TTg (June 11, 1964), which provide detailed regulations on the implementation of religious policies, ... After the liberation of the South and the reunification of the country, on November 11, 1977, the Government issued Resolution No. 297-CP on "Some Policies on Religion," which outlined five principles regarding religious freedom. Entering the era of renewal, the issue of freedom of belief, religion, and the protection of this right continued to be addressed in numerous legal

documents, including: Decree No. 69-HĐBT dated March 21, 1991, promulgating the "Regulations on Religious Activities"; Decree No. 26/1999/ND-CP dated April 19, 1999, regulating religious activities; followed by the Ordinance on Beliefs and Religions in 2014; Decree No. 22/2005/ND-CP, dated March 1, 2005, of the Government guiding the implementation of some articles of the Ordinance on Beliefs and Religions; Directive No. 01/2005/CT-TTg dated February 4, 2005, of the Prime Minister regarding certain tasks related to the Protestant religion; Directive No. 1940/CT-TTg, dated December 31, 2008, of the Prime Minister regarding houses and land related to religion. Decree No. 92/2012/ND-CP dated November 8, 2012, of the Government provides detailed regulations and measures for implementing the Ordinance on Belief and Religion,... In addition to the provisions in the Constitution and specialized legal documents, the right to freedom of belief and religion is also concretely specified in many other important laws of the Vietnamese State, such as: the Penal Code, the Criminal Procedure Code, the Civil Procedure Code, the Law on Education, the Land Law, the Law on Residence, the Law on Marriage and Family, ...

**Law on Belief and Religion:** An important legal document demonstrating the compatibility of Vietnamese law with international law on the right to freedom of belief and religion

The Law on Belief and Religion was passed by the National Assembly of the Socialist Republic of Vietnam, 14th tenure, 2nd session, on November 18, 2016, and took effect on January 1, 2018. This is the legal document with the highest legal value currently regulating the field of belief and religion, and it is also one of the first laws specifically issued to implement human rights according to the 2013 Constitution, deeply "domesticating" the basic principles in the exercise of freedom of belief and religion under the International Covenant on Civil and Political Rights, which Vietnam acceded to in 1982.

In accordance with international legal regulations, the Law on Belief and Religion has introduced fundamental new points regarding the right to freedom of belief and religion. A significant new point is the expansion of the subjects entitled to this right from 'citizens' to 'everyone,' accurately reflecting the nature of freedom of belief and religion as a human right in the spirit of the 2013 Constitution. Notably, the Law dedicates Chapter II to stipulate the right to freedom of belief and religion, clearly reflecting the scope of the Law's regulation as well as fundamentally expressing the State's policy of respecting and protecting everyone's right to freedom of belief and religion. In addition to affirming that "Everyone has the right to freedom of belief and religion, to follow or not follow any religion. Each person has the right to express their religious beliefs; to practice religious rites; to participate in festivals; to study and practice religious doctrines and laws"[8], the Law also stipulates that "every person has the right to enter religious institutions to study, attend training classes of religious organizations." The performance of religious rites, preaching, and proselytizing by clergy, religious officials, and monks is conducted at religious institutions or at other legal locations (outside of religious institutions). In particular, for the first time in the history of laws on beliefs and religions in our country, it is stipulated that 'Persons who are temporarily detained or held in custody in

accordance with the law on temporary detention and custody; persons serving prison sentences; persons undergoing measures of being sent to reformatory schools, compulsory educational facilities, or compulsory rehabilitation centers have the right to use religious scriptures and express their religious beliefs and convictions.' Thus, the right to freedom of belief and religion is guaranteed and protected by the State even for offenders who are serving a penalty under a legally effective court verdict. This is the fullest expression of the right to freedom of belief and religion, first and foremost a human right, which is natural, inherent, and must be ensured even when a person is deprived of their civil rights.

In addition, the Law also stipulates the rights of religious organizations and subordinate religious organizations. Accordingly, a religious organization has the right to operate, organize religious activities according to its charter and regulations; to publish religious texts and publications, produce, export, and import cultural and religious items; to renovate, upgrade, and build new religious facilities, as well as to receive lawful assets voluntarily donated by organizations and individuals both domestically and abroad. Thus, the essential conditions to maintain and develop the religious activities of religious organizations have been comprehensively and fully ensured legally.

For foreigners legally residing in Vietnam, the Law on Belief and Religion also has a specific provision regarding the right to freedom of belief and religion of foreigners legally residing in Vietnam, affirming that "Foreigners legally residing in Vietnam are respected and protected by the State of Vietnam in their right to freedom of belief and religion." In principle, foreigners legally residing in Vietnam are respected and protected in their right to freedom of belief and religion and have religious rights similar to Vietnamese citizens. Specifically, "foreigners legally residing in Vietnam have the right to: practice religion, participate in belief activities, and engage in religious activities; use legal venues for collective religious activities; invite Vietnamese religious dignitaries, officials, and clergy to perform religious ceremonies and preach; invite foreign dignitaries and clergy to preach; enter religious establishments, study at religious training institutions, and attend religious training classes organized by religious organizations in Vietnam; bring religious publications and religious items to serve the needs of religious activities in accordance with Vietnamese law"; For 'clerics or religious practitioners, a foreign national legally residing in Vietnam is allowed to preach at a religious facility or other legal location in Vietnam.' With comprehensive regulations and the progress of the Law on Belief and Religion regarding the human right to freedom of belief and religion, it is certain that religious activities will be preserved and promoted, religious practices will be maintained and developed to meet the spiritual needs of the people, and will continue to play an important role in the cause of building and protecting the country.

### Conclusion

Since the establishment of the Democratic Republic of Vietnam, Vietnam has demonstrated its viewpoints, policies, and laws to respect and ensure, as well as create conditions for everyone to have increasingly equal opportunities and conditions in exercising and enjoying the right to freedom of belief and religion. The development of a national legal

system compatible with international legal instruments in the field of human rights in general, and the right to freedom of belief and religion in particular, demonstrates that the Vietnamese State always respects and fully fulfills its international commitments. The progress of Vietnam's legal system regarding the right to freedom of belief and religion has been recognized and highly appreciated by the international community for its efforts to ensure human rights, including the protection of the right to freedom of belief and religion in practice. It is believed that, based on the correct viewpoints, policies, and laws of the Vietnamese State regarding the right to freedom of belief and religion, everyone has, is, and will increasingly enjoy this right more fully, thereby making practical contributions to the overall development of society.

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