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**Socialist Republic of Vietnam**  
Independence - Liberty - Happiness

Xa Doai, May 3<sup>rd</sup>, 2015

**Ref: Observations and Input Related to  
The Fourth Draft of the Law on Religion and Belief of Vietnam**

To: Office of Religion of the Department of Interior, Socialist Republic of Vietnam

This will acknowledge receipt of your official letter No. 40/TGCP-PCTT regarding your request for input on the 4<sup>th</sup> draft of the law on religion and belief (from here on abbreviated as "Draft 4").

We realized that legalization of the social relationship related to religion in place of a legislative Ordinance as currently promulgated is an improvement. However, we are very surprised to see that the requirements of the Draft 4 returned to the format "you request, we may grant"; several items in the Draft were steps backward from those required in the legislative Ordinance on Religion, Belief of 2004; they are not in compliance with the international laws on religion nor the Constitution of the Socialist Republic of Vietnam.

The input to the Draft 4 is an important matter, but the official letter No. 40/TGCP-PCTT only gave us such a short time to review and comment during a period of time with several days off; thus the inputs provided hereby are not considered as complete.

The Law on Religion and Belief shall be based on the principles of Article 18 of the International Covenant on Civil and Political Rights (ICCPR) of the United Nations, which the government of Vietnam has signed on to participate and observe. On this ground, we would like to offer the following inputs:

**1. General Requirements**

**a. Article 2, item 2:** Draft 4 stipulates that "individuals who have beliefs and religious members of a church have the rights to express their faiths; **to practice their religion in their homes and at legal worshipping places**; participate in all religious activities, observe religious celebrations, religious rites and study religious theologies."

Please be advised that item1 of Article 18 of the ICCPR states that: "the rights to express one's faith or belief through worshipping, practicing religion, rites or teaching, either in private or with others, in the public or at individual home", while item2 of Article 2 of the Draft 4 which places restrictions on "practicing religion at home and at legal worshipping places" constitutes restriction on the right of people of faith to express their religious beliefs and does not comply with Article 18 of ICCPR.

Therefore, we request that revision of item2 of Article 2 be made as follows:

**Revised Item 2: “A faithful or member of a religion has the rights to express his/her religion or belief by his/her worshipping, practicing religion, rites or teaching either in private, or with others, in the public or at individual home.”**

**b. Article 3, item 10:** Draft 4 proposes: “A religious organization is the gathering of people who believe in the same system of religious tenets, rules, rites and organized according to a certain structure **recognized by the State.**”

We note that this item (item 10, Article 3), along with item 1, Article 3: “a faithful is an individual who believes in a religious organization and the organization recognizes him/her as a member” imposes two levels of conditionality for a person to be a recognized member of a religion. A religious organization must be recognized by the State and a person of faith must be recognized by a religious organization. Thus, to be considered a religious person, h/she has to be indirectly recognized by the State. Thus, the phrase “recognized by the State,” skillfully placed in item 10, Article 3, places restrictions on the right of citizens to religious freedom, and violates international conventions on religion.

Therefore, we request that revision of item10 of Article 3 be made as follows:

**Revised Item 3: “A religious organization is the gathering of people who believe in the same system of religious tenets, rules, rites and are organized according to a certain structure”**

**c. Item 3, Article 4:** Draft 4 stipulates that: “The access to the belief or religion of a person, who is being incarcerated or detained, shall be satisfied in accordance with the rules of Laws **and the internal rules of the place of detention**”

We believe that the religious rights of detainees must be guaranteed to comply with the provisions of international conventions and laws. The inclusion of the phrase "and the internal rules of the place of detention ", which is parallel to and equally effective with the law is unreasonable. Thus, this clause shall be removed. Proposal to amend item 3, Article 4 as follows:

**Revised item 3: “The access to the belief or religion of a person who is being incarcerated or detained shall be satisfied”**

**d. Article 6:** This Article carries several important stipulations, which other Articles would be based on to apply sanctions. However, we found that several items of Article 6 are not appropriate:

- **Item 3, Article 6:** “infringement upon the belief, and the faith of members of religious organizations which **have been recognized by the State**”

The phrase "have been recognized by the State" has put many people with a belief or religion outside the protection of the law, and at the same time it limits the religious rights of citizens. Again it was mentioned above, religion is an unalienable human right in itself and inviolable. Therefore, its inner meaning includes no recognition by any one individual or organization, including the State. Any action that violates belief or religion is also a violation of human rights. Therefore, we propose to amend item 3 of Article 6 as follows:

Revised item 3 of Article 6: “infringement upon the belief, the faith of a member of a religion”

- **Sub-item c of item 5, Article 6:** “Infringement of national security, order, social security, social morality, public health of the community.”

The limitation of expression of religious rights of the ICCPR does not include the acts considered as “violations of national security.” Item 3, Article 18, ICCPR stipulates that: *“Freedom to manifest one’s religion or beliefs may only be restricted by law when it is necessary to protect public safety, public order, public health, or morals or the fundamental freedoms of others ”.*

Thus, penalties for “infringing upon national security” should not be part of the Law on religion and belief. Further more, the concept of “infringing upon national security” in this clause is very vague and open to abuse. The Criminal Code already prescribes severe punishment for harming national security. Thus, it should not be included in the Law on religion and beliefs.

Therefore, we propose to amend this sub-item c, item 5, Article 6 as follows:

**Sub-item c of item 5, Article 6: “infringement of public safety, public order, public health, morals, or the rights and fundamental freedoms of others”.**

- **Sub-item d, Item 5, Article 6:** *“Sully the image of national heroes and notables”*

We found that this language is quite ambiguous and amenable to subjective valuation. It is necessary to distinguish between “sully the image of”, “critique”, “observations”. Otherwise, it could be abused to prevent the exercise of the freedom of expression. The current clause belongs more to the realm of ethics than social expression of religion, and can cause misinterpretation of the law. Also, sub-item c of Item 5, of Article 6 already addresses this and we have suggested above that a revision should be made.

**Therefore, we propose to remove this sub-item d from the Draft.**

- **Item 6, Article 6:** “Leading over religious ceremonies, propagating the religion, preaching, managing religious organizations and presiding over religious ceremonies while serving their prison sentences or are on probation in accordance with the law”.

We consider that a person, when sentenced to imprisonment or placed under probation is partially deprived of certain civil rights (freedom of movement) but is not deprived of the right to manifest freedom of religion. Item 3, Article 18 of ICCPR, quoted above, also does not allow this application.

On the other hand, a person serving a prison sentence or probation is governed by the Criminal Code; if this item applies, then this must be seen as an additional penalty on top of the Penal Code, and shall be clearly specified in the judgment when hearing is conducted, and must be based on international conventions to which Vietnam has acceded.

This provision (item 6, Article 6) has in fact violated item 3, Article 18 of ICCPR, the Vietnam's Constitution and the provisions of the Penal Code. **Therefore, we propose this provision in the Draft be removed.**

**2. "The provisions in Chapters III, IV and V (the" Registration of religious activities ", "Registration of religious operations", "Religious organizations" and "religious activity"**

We believe that one should distinguish between religious rights and the rights of religious organizations. The current text of regulations in these sections blurs this distinction.

Religious rights are unalienable rights of the human beings; such rights include the right to religious practices (such as worship, religious practices, adhere to ritual, canon law) and the right to religious evangelism. Thus, when a person follows a certain religion, he/she has the above rights to religious practices, regardless whether the religious organization has been recognized or not by the State.

The registration of religious activities, registration of religious operations or the establishment of a religious organization only comes when people of the same religious group saw such a need; they would voluntarily do this to advance their religious rights. **The registration of religious activities, registration of religious operations, establishment of religious institutions must be seen as an offer rather than a form of requirement when one wants to practice religious rights.**

**On the other hand, there should be clear regulations on the legal status of religious organizations and its equal treatment relative to other social organizations.**

The phrase "recognized by State" has been used several times throughout these chapters (III, IV and V) as a necessary condition for recognition of the religious rights of citizens; it is inappropriate to do so. **Therefore, we propose to revise the provisions specified in these chapters to clarify this subject matter.**

The term "recognized by the government" appears many times in these sections as if government approval is a pre-condition for the government to respect citizens' freedom of religion. This is inappropriate.

Therefore, we propose that modifications to these sections be made in view of the above considerations.

**3. Administrative procedures**

Draft 4 introduces an excessive number of procedures on religious organizations and affiliates, involving government at higher levels such as provinces or the central government (whereas the Ordinance on belief and religion prescribes only district-level procedures). This escalation will cause innumerable difficulties to believers and religious organizations in their religious operations and activities (e.g., Item 1 of Article 11, Item 1 of Article 12, Article 14, etc.). We consider this to be a step backward with respect to administrative reforms. Therefore, please revise clauses covering administrative

procedures to achieve streamlining and efficiency to ensure the people's freedom of religion.

#### **4. Ordination, promotion, appointment, election, nomination, or transfer of clergy members, other employees, and people with vowed lives:**

We believe that these are strictly religious activities, and consequently, as the need arises and subject to religious organizations' rules and religious laws, religious organizations may ordain, promote, appoint, elect, nominate, or transfer clergy members, other employees, and people with vowed lives. Clauses in section 2, Chapter V of Draft 4 reflect excessive administrative interference in religious organizations' autonomy. Therefore, we propose that **all requirements for government approval** be removed and replaced with the stipulation that **religious organizations shall notify the responsible government agency** when they ordain, promote, appoint, elect, nominate, or transfer clergy members, other employees, and people living vowed lives.

#### **5. People living vowed lives in religious facilities**

The government has already in place a system to control citizens through personal information records, household registration, temporary residency registration, and temporary absence registration. People living vowed lives shall meet the law's requirements if they comply with these processes. Religious facilities that take in people who took a vow must follow all civil and administrative regulations. **Article 43** of Draft 4 would impose on religious organizations that admit people with monastic vows and those people additional and unnecessary administrative procedures. These procedures would re-establish the mechanism of "you request, we may grant". Consequently, we propose that **Item 2 of Article 43 be removed**.

#### **6. Religious formation and health care**

##### **- Sub-Item c, item 1 of Article 23:**

Subsection 2 of Section IV regulates religious formation facilities. It covers the establishment process, including submission of the curricular contents and operating plans of the formation facilities. *Item 1c of Article 23 prescribes: "Curriculum and training materials, with the provision that **Vietnamese history and Vietnamese law being the main subjects**".*

In comparison to Item 4 of Article 22 of Draft 4 states: "*Religious formation facilities are not part of the national education system*", Sub-Item c of item 1 is not reasonable. Vietnamese history and Vietnamese law are part of the curricula of the national education system and do not fit with the mission and capabilities of religious formation facilities. The national education system is responsible for teaching these two subjects. Furthermore, students attending religious formation facilities will have studied these

subjects in college and pre-college educational institutions, and should not be forced to study these materials again.

Article 30 stipulates that the penalty for not complying with sub-item c of Item 1 of Article 23 is the suspension of a formation facility's operation and potentially its closure pursuant to Item 2 of Article 31. This unreasonable clause can result in a severe consequence for religious formation facilities. Consequently, we propose that **sub-Item c of Item 1 of Article 23** be modified as:

**“c) Curriculum and training materials”.**

- **Item 1, Article 52:** *“Religious organizations and affiliates may conduct activities related to education, vocational training, health care, and social services as prescribed by law”.*

To comply with the Constitution and international covenants, the government must recognize that religious organizations are equal to other social organizations in terms of rights and the choice of their scope of social services, particularly education and health care. Therefore, the Law on religion and belief should include more substantive clauses to allow religious organizations to provide these services. The current text of **Item 1 of Article 52** is too sketchy. At the same time, laws on education and health care should be revised so that religious organizations may engage in these fields and contribute to the enhancement of human values and social and economic development of our nation.

- **Item 2 of Article 52** states: *“No one may proselytize or perform religious rites on the site of facilities used for education or vocational training established or managed by religious organizations or affiliates”.*

We believe that this violates Item 3 of Article 18 of ICCPR. If in such facilities there are people sharing the same religious faith and the need to express their faith, and if such expression does not infringe upon *“public safety, order, health, or morals or the fundamental rights and freedoms of others”* (Item 3 of Article 18 of ICCPR), the government should ensure this right. Therefore, this illogical clause should be removed.

## **7. Real properties, religious facilities**

Draft 4 uses the terms **“legal religious facilities”**, **“legal locations”** in regulating religious organizations' real property. Particularly, this will be a prerequisite for registering religious activities or religious operations (Articles 12 and 13).

However, the current laws and regulations on real properties feature many restrictions that apply to the granting of the right to use as religious facilities. The Real Properties Law forbids religious organizations from receiving a transfer or gift of the right to use. The only way to have a “legal location” or a “legal religious facility” is through the government's granting the right to use a real property. In practice, it has been extremely difficult to obtain this right.

We believe that, in concert with the Real Properties Law's unreasonable and unfair clauses, Draft 4's related clauses will severely restrict believers' exercise of religious rights. Consequently, **these clauses in Draft 4 should be removed, and concurrently**

**its policy on religious real property of the Real Properties Law and related legal documents should be amended** to put religious organizations on the same footing as other social organizations. This will ensure the people's freedom of religion.

**Conclusion:**

As Item 2 of Article 5 of Draft 4 stipulates that **"If an international covenant to which the Socialist of Republic of Vietnam is a party has clauses that differ from this Law, the international covenant's clauses take precedence"**.

We have pointed out materials that are not just unreasonable, but also incompatible with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) of the UN to which Vietnam is a signatory, and clauses in the current Constitution. Therefore, during this development phase of the law, we hope that the government carefully considers our input and revise the draft appropriately.

Thankfully!

FOR THE DIOCESE OF VINH

ASSISTANT BISHOP

Phero Nguyen Van Vien (signed and sealed)

**Addresses:**

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- Copy to office files