

Through classification of state secrets, Vietnam's Prime Minister increasingly restricts freedom of religion

- **Vietnam's law on protecting state secrets and Decision No. 960 severely violate Article 18 of the ICCPR**

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Vietnam's Law on Protecting State Secrets (Law No. 29/2018/QH14) prescribing the handling, use, and protection of state secrets became effective on July 1, 2020. On February 28, 2020, the Central Government issued Decree No. 26/2020/NĐ-CP, which became effective on July 1, to elaborate on certain provisions of this law.

On July 7, 2020, the Prime Minister signed Decision 960/QĐ-TTg, pursuant to the input from the Minister of Home Affairs and Minister of Public Security, designating categories of state secrets. Parts of the law and the Prime Minister's Decision No. 960/QĐ-Ttg severely violate the Vietnamese people's freedom of religion.

For example, Clause 1.c, Article 7 of the Law on Protecting State Secrets, specifies that "Strategy and projects related to the people, religion, and undertakings related to the people or religion aiming to protect national security and ensure public order and security," are state secrets. Furthermore, Article 9 of this law specifies that the Prime Minister has the responsibility for issuing the list of state secrets based on lists proposed by a number of individuals, agencies and organizations.

Decision No. 960/QĐ-Ttg formalizes a list of state secrets at different security classification levels, for domestic applications. The following provisions directly affect the freedom to religion or belief and may derogate Article 18 of the International Covenant on Civil and Political Rights.

State secrets at ultra secret level:

(Article 1, Clauses 1 and 2)

- Not yet released action plans for approaches, strategies, objectives, policies, countermeasures, and processes to address complex, national level issues related to belief and religion
- Documents related to those who use the cover of belief or religion to conduct activities aiming to overthrow the government or undermine national independence, sovereignty, unity, territorial integrity, and the socialist system of government and the Socialist Republic of Vietnam.

State secrets at top secret level:

(Article 2, Clauses 1 and 4)

- Proposals, plans, action plans, guidance, notifications of guidance, conclusions and decisions of heads of ministries, committees and organizations of the central government; the legislative branch (People's Council) and executive branch (People's Committee) of provinces; cities under the authority of the central government; and the executive branch of districts, cities, towns under the authority of provinces when a proposal, plan, decision, etc. is related to an assessment of the effects on politics and national security, of the operation of a religious organization or belief-based establishment;
- Information and documents related to belief and religion, including:

- + Programs, plans, reports/minutes of meetings, reports on results, notices on the outcomes of discussions by senior officials of ministries, committees, government agencies, Party secretaries of provinces and cities, the legislative branch and executive branch of governments of provinces and cities under the authority of the central government with clergy members, functionaries, monastics, dignitaries in important positions in their religious organizations or subordinate organizations; foreign-based organizations and individuals in important positions in their religious organizations or subordinate organizations;
- + Plans, reports, guidance, and documents requesting information on official positions with respect to complex situations involving religious or belief-based activities impacting national security, politics, and foreign relations;
- + Documents related to comments on and evaluation of personnel of religious or belief-based organizations, the activities of such organizations, the activities of entities with a political agenda, and activities of individuals in religious organizations and their subordinate organizations which affect national security;
- + Reports containing comments or evaluation of those using religious or belief-based activities to undermine national security, public order and security.

State secrets at the secret level:

(Article 3, Clauses 8 and 9.a)

- Information and documents related to belief and religion, including:

- + Not yet released documents and correspondence related to the resolution of complex issues involving belief and religion;
 - + Not yet released action plans, guidance, proposals, or requests for input pertaining to resolving complex issues involving belief and religion;
 - + Documents and information related to the activities of members of religious organizations and their subordinate organizations when competent government officials have selected and placed them in their positions, or have struggled against them;
 - + Not yet released reports on government activities targeting belief and religion which can cause political and socio-economic impacts;
 - + Not yet released proposals, project plans and plans related to long-term positions, policy and approaches for managing activities targeting belief and religion when such materials can cause socio-economic impacts;
 - + Notifications and reports related to belief and religion containing assessments of adherents, religious and belief-based organizations, religious individuals; assessments of the landscape of belief and religion; and top-level directions on how the government should deal with the belief and religion sector;
 - + Government expenditures on countermeasures targeting members of religious organizations and their subordinate organizations.
- Databases containing materials related to religion and belief or related to public administration matters which have not yet been made public, when such databases are kept at national records repositories and records repositories of provinces and cities under the authority of the central government.

The above-mentioned provisions would have dire consequences on three aspects of freedom of religion.

First, freedom of religion is a basic human right. This has been affirmed in Article 18 of the International Covenant on Civil and Political Rights. Vietnam has codified this in Article 24 of the 2013 Constitution and Article 6 of the 2016 Law on Belief and Religion. Consequently, documents which have the effect of regulating or prescribing compliance with laws related to this right must contain language aiming to protect the right instead of conveying the intent to direct from the top, restrict, or ban the exercise of this right. The Law on Protecting State Secrets paved the way for Decision 960 to use security classification to put religion-related issues out of the people's reach.

Second, the Law on Protecting State Secrets and Decision 960 set forth a series of measures to grossly and visibly intervene in the religious sphere in a coercive and manipulative way. The ruling party is authorized to set forth its "policy and stance with respect to religion" and then unilaterally ban access thereto, including denying the opportunity to suggest modifications, in view of the ultra-secret classification. This indicates that the Vietnamese government still affirms its total opposition to religion and considers religion to be a mortal enemy which it must fight instead of cooperatively seeking a path to co-existence.

Third, Article 2.4 of Decision 960 is particularly troubling in light of the government's favorable treatment of religious organizations operating under its umbrella, including: (1) those created by the government for use as instruments to repress independent churches that the government has outlawed; (2) those co-opted by the government in return for being registered or recognized. Anyone exposing these organizations' collaboration with the government could be prosecuted for possessing and/or disclosing top state secrets. On the other hand, members of religious organizations targeted by the government would not be able to defend themselves if information used against them is treated as top state secret and therefore not accessible to them or their lawyer. The ramification of this decision is not hard to imagine considering that a number of recent arrests have been reportedly made based on charges of unauthorized possession or dissemination of state secrets. Decision 960/QĐ-TTg would only aggravate the already negative impacts of the Law on Belief and Religion on followers of religions that are outlawed, religious groups that are not recognized by the government, and religious freedom advocates.

In addition, the two documents authorize the ruling party to use the national budget to buy or manipulate influential clerics. This is very unconscionable because, as a result of Oriental culture, Vietnamese religious adherents still look up to their spiritual leaders to varying degrees. Thus, the government needs only to corrupt clerics to achieve its goal of subjugating religious organizations. In Decision 960, funds earmarked for influencing or co-opting clerics are publicly called "expenditures on countermeasures targeting members of religious organizations".

The Law on Protecting State Secrets and Decision 960 are real threats to freedom of religion and warrant scrutiny by UN mandate holders and the international community in general.

References:

Original text of Decision 960:

<https://thuvienphapluat.vn/van-ban/bo-may-hanh-chinh/Quyet-dinh-960-QD-TTg-2020-Danh-muc-bi-mat-nha-nuoc-linh-vuc-Noi-vu-446809.aspx>

English translation:

https://dvov.org/wp-content/uploads/2020/10/PM-Decision-Secrets_En-960_QD-TTg.pdf