



Università
Ca' Foscari
Venezia

Master's Degree programme – Second
Cycle in International Relations

Final Thesis

Alleged violations of the
human right to religious
freedom in Vietnam.

A case study on Montagnards'
minority group.

Supervisor

Ch. Prof. Sara De Vido

Co-supervisor

Ch. Prof. Nguyen Quy Binh

Graduand

Elisa Fattore

Matricola 815570

Academic Year

2014 / 2015

“In nome della religione, si tortura, si perseguita, si costruiscono pire. Sotto il manto delle ideologie, si massacra, si tortura e si uccide. In nome della giustizia si punisce. In nome dell'amore per il proprio Paese o per la propria razza si odiano altri Paesi, li si disprezza, li si massacra. In nome dell'uguaglianza e della fratellanza si sopprime e si tortura. Fini e mezzi non hanno nulla in comune, i mezzi vanno ben oltre i fini. Ideologie e religione, sono gli alibi dei malvagi.”

Eugène Ionesco

Index

| | |
|---|-----------|
| Abstract | I |
| Introduction | 1 |
| | |
| CHAPTER I | |
| The right of freedom of religion in Vietnam | 4 |
| | |
| 1.1 Freedom of religion in the international system of human rights | 4 |
| 1.2 Introduction: religious movements in Vietnam | 8 |
| 1.2.1 Religions in history of Vietnam | 8 |
| 1.2.2 Religious nationalistic movements | 12 |
| 1.2.3 Religion today and related controversies | 16 |
| 1.3 Vietnamese law and policy on religions and beliefs | 20 |
| 1.3.1 The theme of religion inside the state | 20 |
| 1.3.2 Laws on beliefs and religions | 23 |
| 1.3.3 Policies on religion of the Communist Party of Vietnam (CPV) | 28 |
| 1.3.4 Results | 31 |
| | |
| CHAPTER II | |
| Human rights: international, ASEAN and Vietnam perspectives | 37 |
| | |
| 2.1 The origin and international framework of human rights | 37 |
| 2.1.1 Historic development of human rights | 37 |
| 2.1.2 UDHR: Universal Declaration of Human Rights | 45 |
| 2.1.3 International Covenants: ICCPR and ICESCR | 49 |
| 2.2 ASEAN dealing with human rights | 50 |
| 2.2.1 The origin of ASEAN: the Association of Southeast Asian Nations | 50 |
| 2.2.2 ASEAN's approach to human rights | 54 |
| 2.2.3 Vietnam into ASEAN | 62 |

| | |
|--|------------|
| 2.3 Vietnam policy and human rights | 66 |
| 2.3.1 VN national and international laws | 66 |
| 2.3.2 Human rights in Vietnamese laws | 76 |
| | |
| CHAPTER III | |
| The case study of Montagnards in Vietnam | 86 |
| | |
| 3.1 Protection of minorities in the international states | 86 |
| 3.2 Ethnic minority groups in North Vietnam | 97 |
| 3.2.1 Who are the Montagnards and Hmong? | 97 |
| 3.2.2 Problems of conversions against modernity | 104 |
| 3.3 Alleged violations of the right of freedom of religion | 112 |
| 3.3.1 Violations to the fundamental human right | 112 |
| 3.3.2 International reports analyses | 117 |
| | |
| Conclusion | 135 |
| | |
| Bibliography | 138 |
| | |
| Websites | 141 |

Abstract

Questo lavoro nasce dalla necessità di sviluppare un argomento spesso celato, privo di approfondimenti e a volte poco discusso in ambito internazionale. Il tema della tutela e della libertà di religione nei paesi del sud-est asiatico sembra avere ancora molte lacune e disattenzioni. L'ASEAN, in altre parole l'Associazione delle nazioni del Sudest Asiatico, sta lavorando duramente per sostenere e difendere la libertà di religione come diritto fondamentale. Come si può facilmente immaginare però, la concretizzazione di un sistema regionale per la creazione di una realtà non discriminatoria (nella quale non si trovano differenze per etnia, identità indigene, cittadinanza, sesso e disabilità) è ancora molto arretrato. Per questo motivo ho deciso di passare tre mesi nella capitale del vecchio Vietnam del Nord, ad Hanoi, per rendermi conto personalmente dei limiti, degli sforzi e delle problematiche che concretamente il paese affronta.

La definizione di libertà religiosa si trova nella facoltà di cambiare religione e di manifestarla nell'insegnamento, nella pratica e nell'osservanza, senza alcuna limitazione o ritorsione da parte delle autorità governative; si comprende quindi anche il diritto dei gruppi religiosi che per questo non devono essere oggetto di persecuzioni. Le Nazioni Unite hanno tutelato espressamente la libertà religiosa a livello internazionale, con l'articolo 18 della Dichiarazione Universale dei Diritti Umani che esprime: "Ogni individuo ha il diritto alla libertà di pensiero, coscienza e di religione; tale diritto include la libertà di cambiare religione o credo, e la libertà di manifestare, isolatamente o in comune, sia in pubblico che in privato, la propria religione o il proprio credo nell'insegnamento, nelle pratiche, nel culto e nell'osservanza dei riti."

Lo scopo del mio lavoro è di analizzare e confrontare le convenzioni e gli strumenti internazionali, prendendo quindi in considerazione svariati reports delle Nazioni Unite, di Human Rights Watch e di U.S. Department of State (dai primi anni del 2000 fino ad oggi) riguardo alla condizione e alla tutela della libertà di culto e di religione nei paesi del sud-est asiatico, per metterli in relazione con un caso specifico, quello

dello stato del Vietnam. In particolare, ho studiato le iniziative, le leggi e le dichiarazioni emesse dal governo e dalle istituzioni dello stato, oltre che dalle organizzazioni internazionali operanti riguardo alla protezione e allo sviluppo di tale diritto. Inoltre, in seguito ad un meeting organizzato dall'*Asian Forum for Human Rights*, il relatore speciale ONU sulla libertà religiosa, Heiner Bielefeldt, ha di recente affermato riguardo alla situazione del sud-est asiatico: "La politicizzazione della religione mina la libertà di religione, non solo a scapito delle minoranze, ma anche a danno dei seguaci delle religioni di maggioranza che vedono la loro fede trasformata in uno strumento di potere politico".

La mia ricerca si è svolta presso la "*Đại học Hà Nội*" ovvero la "Hanoi University of Foreign Studies" della Hanu University, in Vietnam, grazie ad un progetto di ricerca presentato autonomamente alla facoltà di Relazioni Internazionali. Ho scelto il Vietnam poiché è stato negli ultimi anni al centro di svariate discussioni in ambito di libertà religiosa. In particolare, questo stato ha visto un peggioramento della situazione dei diritti umani ed è stato caratterizzato da gravi e crescenti repressioni nei confronti degli oppositori del governo e di altri attivisti della società civile. Parlare di libertà di religione è difficile, proprio perché l'atteggiamento delle autorità su tale questione è tuttora severo e proibizionista. L'analisi di questo specifico caso in tutti i suoi aspetti rappresenterà una sfida interessante allo sviluppo del diritto internazionale in questo campo.

Questo elaborato vuole presentare la situazione contemporanea in Vietnam del sistema dei diritti umani, in particolare focalizzando l'attenzione su alcuni avvenimenti recentemente accaduti che vedono violare uno dei diritti fondamentali dell'uomo. Continua lo scontro fra governo e vertici delle principali organizzazioni religiose e di culto attorno alla nuova legge sulle religioni e le fedi che il parlamento dovrebbe approvare nel 2016. Una norma che già negli anni e nei mesi scorsi aveva sollevato parecchie proteste; i rappresentanti delle varie fedi, infatti, affermano che la legge è piena di condizionamenti sulla registrazione dei luoghi per il culto, sulle attività e sui programmi che devono essere presentati un anno prima per l'approvazione del governo; tutto ciò renderebbe di fatto impossibile ogni azione in tema di fede.

Il primo capitolo introdurrà il tema della libertà di religione nel sistema internazionale per i diritti umani, in particolare esaminerà i movimenti religiosi presenti in Vietnam, dalle antiche dottrine comparse nel paese per arrivare ai giorni nostri e alla situazione legale e politica con cui il governo affronta la situazione legata a questo tema. Si noterà in particolare come la presenza di un forte movimento nazionalista all'interno degli animi della popolazione, sia strettamente collegato con le scelte politiche e viceversa. Infatti, secondo un'analisi della situazione attuale e passata della nazione, è facile intuire come la religione e la politica siano strettamente interconnesse. Basti pensare al culto di alcune personalità che hanno segnato la storia del paese, come Hồ Chí Minh che continua a essere una figura portante per le ideologie e le scelte governative. Il capitolo approfondirà inoltre le leggi in materia di religione che regolamentano le politiche statali, frutto anche del principale Partito Comunista del Vietnam.

Il secondo capitolo inizia con una presentazione del progresso storico in ambito dei diritti umani e il successivo sviluppo di un sistema internazionale di protezione, analizzando i trattati e le convenzioni che obbligano gli stati (e di conseguenza anche il Vietnam) a seguire determinate obbligazioni. Si sono pertanto presentate e analizzate alcune convenzioni e strumenti internazionali relativi la tutela dei diritti umani, quali la Dichiarazione Universale dei Diritti dell'Uomo e le due Convenzioni Internazionali sui Diritti Civili e Politici ed Economici, Sociali e Culturali, per meglio comprendere la nascita di questa struttura che include la protezione del diritto alla libertà religiosa. Questo studio è stato successivamente utile per comprendere le falle e le mancanze nel sistema legislativo asiatico in termini di protezione dei diritti umani in materia religiosa. La seconda parte approfondirà, infatti, la posizione nello specifico del sistema asiatico (denominato ASEAN) e della politica nazionale del Vietnam per la tutela dei diritti umani correlata alle leggi interne.

Questo lavoro vuole principalmente presentare lo studio di come il diritto fondamentale alla libertà religiosa sia stato spesso violato dalle autorità governative, prendendo di mira alcune minoranze etniche che tutt'oggi vivono in Vietnam. Ecco perché, l'intero terzo capitolo è dedicato allo studio di alcune minoranze chiamate Montagnards, che abitano gli altopiani settentrionali e centrali del paese. Il caso in

esame è diventato negli ultimi decenni un esempio importante per i dibattiti contemporanei sulla libertà religiosa per la nazione e per la regione sud-est asiatica. Per stabilire l'analisi, si è diviso argomenti e questioni riguardanti la legislazione e la cultura, al fine di comprendere i punti di forza e le mancanze che riguardano la protezione della cultura delle minoranze. Ciò che si è rivelato è un diffuso sentimento discriminatorio che si riflette sulle regolamentazioni, sulle istituzioni e nella vita di ogni giorno. In generale, è chiaro che l'opinione pubblica ha accettato delle restrizioni alle libertà fondamentali nel nome della sicurezza nazionale, evidenziando così il forte legame che unisce lo stato come potenza imperante con la paura che la religione possa minare questo potere. Sarà inizialmente sviluppato un paragrafo riguardante la tutela internazionale delle minoranze e del loro diritto alla libertà religiosa, per poi esaminare nel dettaglio l'identità di questi gruppi e le presunte violazioni alla loro libertà fondamentale di professare, manifestare, osservare e cambiare religione senza dover subire limitazioni o, peggio ancora, persecuzioni.

Quali provvedimenti si stanno impiegando per esercitare pressioni sul governo vietnamita di Hanoi affinché adempia i suoi obblighi in materia di diritti umani? Qual è la posizione politica che adotta il sistema ASEAN? Quali misure si adoperano per sostenere i diritti umani in Vietnam che sono esposti alle persecuzioni da parte delle autorità? In che modo il governo tutela la libertà di religione e quali sono i casi in cui, invece, interviene considerando una circostanza pericolosa e illegale? Queste sono alcune delle domande e degli interrogativi ai quali si cercherà di dare una risposta con questo elaborato. Il modo in cui si è deciso di strutturare la qui presente riflessione vuole essere il più completo possibile al fine di fornire al lettore un quadro generale e verosimilmente esaustivo. Si segnala qui che le conclusioni che verranno tratte sono frutto di considerazioni meramente personali, sulle quali si è riflettuto alla luce della ricerca intrapresa. Non devono dunque interpretarsi come risultati dal valore assoluto, ma certamente saranno avvalorati da uno studio approfondito.

Ai fini della stesura di tale elaborato sono stati utilizzati materiali di diverso genere: manuali e libri di critica ed analisi storica, compendi di relazioni internazionali, enciclopedie cartacee e online, articoli di giornale e comunicati stampa. Inoltre, grazie alla possibilità che ho avuto di poter frequentare per tre mesi le lezioni sui diritti

umani nelle classi vietnamite, ho potuto anche approfondire il mio argomento con i professori di relazioni internazionali che mi hanno aiutato e seguito in questo progetto: il prof. Correlatore di questa tesi Nguyen Quy Binh e il prof. Le Van Hai. La rete rimane comunque lo strumento principale di ricerca: attraverso siti web dalla comprovata affidabilità è stato possibile reperire soprattutto documenti e pubblicazioni provenienti da archivi fisicamente inaccessibili al pubblico. E' particolarmente grazie a queste due fonti che l'intera tesi acquista la particolarità di non risultare di tipo compilativo, trasformandosi in una vera e propria esperienza di approfondimento e ricerca che credo possa significativamente risultare utile ad eventuali progetti successivi.

Introduction

Thirty tribes of indigenous peoples, also known as Montagnards or Degar, live in Northern and Central Highlands of Vietnam. One of them is a minority group called Hmong that faced many and various changes concerning the issue of religion. As a matter of fact, during the last twenty years, these groups have encountered particular problems dealing with their right of freedom of religion. Thousands of them have joined political protests against the confiscation of their lands from the state authorities and against the religion controls of the government across the territory. In these circumstances, representatives of the minority groups have affirmed that with the contestations they were fighting for their fundamental human rights. By the way, the government continues in many cases to create abuse of its powers, because lots of situations reported extreme persecution from local authorities. They tried to justify their actions saying that those people were involved in national security crimes and also Hanoi central forces linked them to foreign separatists groups.

The aim of this work is to analyse and compare some basic international tools concerning the protection of human rights; in particular there are the Universal Declaration of Human Rights and the two main Covenants dealing with civil, political, economic, social and cultural rights of people. In addition, there will be a deeper investigation on reports of United Nations and other international organizations (such as Human Rights Watch and the U.S. Department of State) about the right of freedom of religion. Specifically, the reports that I choose face this problem in the Southeast Asian region with a focus on Vietnam and its conditions over the last twenty years.

In most cases, the spirituality is related to the contemporary changes of Vietnamese society. The first chapter will introduce the theme of religion in the international system of human rights and it will examine more in detail its impact in the culture of the country. With a brief explanation of the religious movements in Vietnam, from the ancient creeds up to the current condition of believers, it is possible to understand also the political and legal structure of the official administration. This study shows how much religion in Vietnam is strong and important than ever; for instance

religious nationalistic movements are deeply rooted in the lives of people, which are strictly linked to political and governmental choices of the state. One of the most striking matters is in fact that the cult of personality around some historical figures (as Hồ Chí Minh) is still a reference point behind many aspects. How can we explain the persistence of religious practices such as ancestor worship, or the cult of heroes, in these social and cultural relations? How important is for Vietnamese people to safeguard the national culture and how much does it influence the spiritual sphere?

With the purpose of contributing to the comparative analysis about contemporary religious experiences, this thesis provides a case study on the right of freedom of religion, in a country where the modernity of religious practices not always has been appreciated. It aims to enrich the comparative understanding of religion in the modern world, by examining the multiple forms of religious expressions in Vietnam, in the context of particular histories and socio-cultural affairs. After a description dealing with the Vietnamese laws and policies on religions and beliefs, the second chapter compares the international protection of fundamental freedoms with the present-day Southeast Asian situation. As a matter of fact ASEAN, the Association of Southeast Asian Nations, is working hard to sustain and defend the freedom of religion as a fundamental human right, by the way compared to other regional systems (such as the European or the American ones) its reality is not adequately developed yet. In a recent meeting organized by the *Asian Forum for Human Rights*, the United Nations Special Rapporteur on Freedom of Religion, Heiner Bielefeldt has said about Southeast Asian situation: “The politicization of religion undermines freedom of religion or belief, not only to the detriment of minorities, but also of followers of majority religions who do not wish to see their faith be turned into a tool of political power gambling”.¹

The third and last chapter develops the discourse on the alleged violations of freedom of religion in Vietnam, considering a group of ethnic minority that registered many cases of conversion to Christianity and Protestantism. The case study focuses its attention on the protection of minorities in the international system, to better

¹ Conference Declaration on Freedom of Religion or Belief in Southeast Asia held the 1st October 2015 in Bangkok.

understand the difficulties that these groups face inside a political sphere. The main question is: does the Vietnamese state's ideology is antithetical to religion? I choose Vietnam because it has been in the very last few years the centre of many political debates concerning freedom of religion. This personal report aims at presenting the contemporary situation of the state around the topic of a new law on religions and beliefs that should be approved in 2016. This final part tries to give a complete overview on what could be the causes of these persecutions at national and local levels. I decided to spend three months in Hanoi and my research has been developed at the Hanu University of Foreign Studies. Thanks to this experience I could work with the professor of foreign policy Mr. Le Van Hai and the professor of human rights Mr. Nguyen Quy Binh who is also the co-supervisor of this thesis. This detailed study is mainly validated by the possibility that I had to visit a village of Hmong ethnic minority in the North of Vietnam.



Photo of the author: me with a Hmong woman in the Northern Highlands of Vietnam.

CHAPTER I

THE RIGHT OF FREEDOM OF RELIGION IN VIETNAM

1.1 Freedom of religion in the international system of human rights

In the beginning of the modernity, even before the foundation of the United Nations, freedom of religion has been one of the first rights to be recognized in declarations and treaties. We could think about the Edict of Nantes (1598), the Peace of Westphalia (1648), the Toleration Act (1689) and the article 22 in the Covenant of the League of Nations (1919-20). At a later time, the Universal Declaration in 1948 declared: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."² The right to freedom of religion is central in the system of the human rights, even if none constitution of the States delineates the notion of what is intended to be a religion.

Totalitarianism models of the 20^o century have posed a threat to freedom of religion with the aim of oppressing it without compassion. This kind of politics characterized by aggressive approach of nationalisms and fundamentalisms has outstretched the importance for the right of tolerance, which is not the same as the right of freedom of religion. In the complex relation between religions and human rights these difficulties lead to some questions: in which way the fact to follow a religion could help or impede the recognition of human rights in the modern world? How the freedom of

² Art. 18 of the Universal Declaration of Human Rights, General Assembly Resolution 217A.

religion is understood in eastern and western countries? Is there a clear identification of personal, collective and institutional dimensions of it?

Nowadays, there is an intensification of the problem regarding a lack of respect for the right of freedom of religion. Recent reports sustain that in more than 60 countries the right of freedom of religion is even denied or strictly limited. This lack of respect for freedom of religion is a global emergency as strong as other events, which also concerns the public opinion. It's hard for the system of human rights to become aware of the importance that has the freedom of religion, in terms also as a quality prove of a just political system and of democracies. In reality the legal protection of human right and, in particular, of this kind of freedom is not one of the focal point on government's agendas of many nations, most of all in Asian and African countries. In many situations there are positions or issues that require a careful consideration. The concept itself of freedom of religion embodies three different meanings: the first one concerns the relationship between the person as citizen and the State as institution of a political society, where the ideal of religious freedom takes the shape of the equivalent human right; in the second meaning the idea of freedom is linked to the inevitable relativity of each single religion's truth; in the end the conceit deals with the philosophy of what is transcendental depending on types of religions and sort of theologies.

The most common sense of religious freedom examines the first concept corresponding to the personal and civil rights of this freedom. This last includes the civil liberty from imposition of a creed and the personal right to change religion. At this point, it's the interpretation itself of the right to freedom of religion that shows different opinions depending on political systems as well as on their interpretative aspects adopted from ancient documents. The last but not least important question is about the philosophical justification and rational orientation used to sketch the structure of the fundamentals human rights. In this context there is the *ius naturale* school of thought where the natural law is a philosophy in which certain rights or values are inherent by virtue of human nature and universally cognizable through

human reason.³ Historically, natural law refers to the use of reason in analysing both social and personal human nature to deduce binding rules of moral behaviour. The law of nature, being determined by nature, is universal. That's why the jusnaturalistic tradition characterizes the basis of this justification with the natural law, where it also takes place the anthropological and cultural development of the dialectical method to brave the moral distinction between duties and responsibilities.

The problem of freedom of religion as a fundamental human right refers to the Universal Declaration. This issue brings to a negative evaluation on the current situation of the respect for human rights in the world. The entire system of rights is still nowadays at risk and the human beings with it; its protection represents a main value only in some parts of the globe, while in others it's completely absent or seriously damaged. A tragic contrast between those dimensions catches the attention; limited areas of the planet belong to people whom awareness of their rights is strong and put into practice with value, others wider and vaster are populated by masses who don't believe to have any kind of right. Those who have an urgent need to protect their own rights have to be informed at the same time that those rights exist and belong also to them. They need most of all institutions to safeguard and supervise various circumstances, to act with sanctions and legal tools.

Freedom of religion or freedom of belief is a principle that supports in private, or in public, the freedom of an individual or of a community, to manifest religion or belief in teaching, worship, practice and observance. This concept in addition includes the freedom to change religion or not to follow any religion, the freedom to leave a religious group or to discontinue membership in a religion, also called "apostasy". Freedom of religion is considered by many people and nations to be a fundamental human right. In a country with a state religion, freedom of religion is generally considered to mean that the government permits religious practices of other sects beside the state religion and it does not persecute believers of other faiths.

³ G. FILORAMO, "Individualismo mistico e radici della dignità umana. Alcune considerazioni comparative", in *Humanitas*, LXIII, 2008, n. 3, p. 478.

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. This statement on article 1 of the Universal Declaration of Human Rights contains much more than it seems, it suggests that the universal ideal of human dignity is not only a moral answer to inequality, but also a way to find out practical sanctions by means of a judicial system. The aim at the recognition of human rights like individual rights is due to reinforce a new conception of subjectivity regarding persons in their spiritual and physical entities, a subjectivity that is acknowledged and protected under the law.⁴

If religion is not a simple concept to define, freedom of religion is not a simple right to determine. Indeed, there is a clear distinction between the institutional and regulatory framework of the human rights' system; nevertheless it's not so easy to propose a similar method when it concerns freedom of religion. This right in particular, expressing both individual and community dimensions, is collocated among others types of intellectual freedoms but it also creates a connection with cultural rights, in addition to those civil and political. Moreover, there are different aptitudes depending on orders' States in approaching the “religious phenomenon” on a global perspective, because of political choices made for various interests, which affect national regulations.

The right of freedom of religion, covered by Article 18 of United Nations' 1948 Universal Declaration of Human Rights, is considered a parameter to evaluate the level of protection of others fundamentals rights taken into consideration by the States; this is what emerges from international acts and debates. Thanks to this approach, the process for human rights' fulfilment has characterized the history of the last centuries with a positive understanding of what a human being is, with its rights focused on political considerations and actions. These reflections have come to light how fundamentals rights remain the best instrument to guarantee that unity between the material and spiritual dimension of a person, marking the union between the believer and the citizen role, from the individualism to the community.

⁴ M. WEBER, *Economia e società*, Comunità, Milano, 1995, vol. 4, p. 326.

International law parameters of human rights confirm that a coherent legal protection of the fundamentals rights cannot permit the rights' fragmentation of the natural owner, because the indivisibility of rights is an insurmountable prerequisite.

On 25th November 1981, the United Nations General Assembly passed the "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief". This declaration recognizes freedom of religion as a fundamental human right in accordance with several other instruments of international law, but the international community has not passed any binding legal instruments that guarantee the right to freedom of religion. In its 2011 annual report, the *United States Commission on International Religious Freedom* designated fourteen nations as "countries of particular concern". The commission chairman commented that these are nations whose conduct marks them as the world's worst religious freedom violators and human rights abusers. Article 18 of the UN International Covenant on Civil and Political Rights limits restrictions on freedom to manifest one's religion or beliefs to those necessary to protect public safety, order, health or the fundamental rights and freedoms of others. Freedom of religion as a legal concept is related to, but not identical with, religious toleration, separation of church and state or secular state.

1.2 Introduction: religious movements in Vietnam

1.2.1 Religions in history of Vietnam

The main topic of the next paragraphs faces the theme of religion and his current situation in Vietnam, analysed behind many aspects. The earliest forms of religious practices in the country were animistic and totemic in nature.⁵ The basic core of Animism is the belief that spirits can help to create good or danger with troubles.

⁵ Hue-Tam Ho Tai, *Religion in Vietnam: A World of Gods and Spirits*, Asia Society, p. 30.

Decorations of figures in Đông Sơn drums⁶ were typical for ceremonies and a lot of symbols always had religious values; bats represents happiness, pomegranates bring fertility, a deer symbolizes wealth and red is the colour for the luck.



Photo of the author: Đông Sơn drums in the National Museum of Vietnamese history in Hanoi.

In addition to this, according to a popular legend, the people of Vietnam descend from a dragon, which is still the most important and sacred symbol. The flying dragon represents royalty, wisdom, luck and health. As it's easy to imagine, the contact with Chinese civilization added an ethical and a moral dimension to the indigenous Vietnamese religions. Vietnam has always been a country characterized by the strong presence of an imperial power, its Confucian tradition centralized the figure of the

⁶ "It is generally agreed that Đông Sơn drums were used for ceremonial purposes and it could be argued that they were produced within a particular religious context, so we might talk about Dong Son religion, in the sense we talk about the Buddhist religion, as a cultural production but one which we know little about specifically." Bowdler, Sandra; Bacus, Elisabeth A.; Glover, Ian; Pigott, Vincent C.; *Uncovering Southeast Asia's past: selected papers from the 10th International Conference of the European Association of Southeast Asian Archaeologists*, p. 357.

emperor with his following officials. Confucianism was firmly implanted during the thousand years of its occupation by China, when principles for education and authority defined the structure of a hierarchy society⁷. In 1070 was built in Hanoi the Temple of Literature (also known as *Văn Miếu*) dedicated to Confucius, a construction that marked the birth of the first national university and the emergence of Confucianism as a cult.

Over the centuries, life of the Vietnamese people has been influenced by two other religions: the Taoism and the Buddhism. In particular, Buddhism reached the Vietnam close to the 3^o century AC due to the fact that it was an opposition to the dominant Confucianism imposed from the Chinese ruling class⁸. During the Ly dynasty was established a Buddhist ruling tradition, closely related to other Southeast Asian Buddhist kingdoms of that period. These three main cults created a sort of syncretism with Chinese popular beliefs and the ancient animist tradition of the country; here, in this historical background there has been the formation of *Tam Giáo*, in other words “triple religion”.

Christianity was introduced in the late 16^o century, because of the invasive presence of foreigners’ colonization. Roman Catholicism first entered the country through Portuguese missionaries, but the most notable one was Alexandre de Rhodes who developed an alphabet for the Vietnamese language, based on the Latin scripts.⁹ That’s why the national language is written without ideograms. Actually there were a lot of French Catholics missionaries, but their religion was in strong contrast with the local traditions; for instance, Catholicism practiced equality of all human beings in front of God and it refused ancestor worship. On the other hand, Confucianism was characterized by the cult of ancestors as one of the cornerstones of its customs.¹⁰ Even a Canadian missionary, in central Vietnam, introduced Protestantism to Da Nang in 1911. The growth of this faith has been most significant among minority peoples

⁷ Chen Yong, *Confucianism as Religion: Controversies and Consequences*, BRILL, 2012, p. 66.

⁸ Creel Herrlee G., *Confucius and the Chinese Way*, New York: Harper Torchbooks, 1960, p. 103.

⁹ Nhung Tuyet Tran and Anthony Reid, *Viet Nam: Borderless Histories*, The University of Wisconsin Press, p. 222.

¹⁰ Monterosso F., *Vietnam, un secolo di storia*, Milano, 2002, p.18.

such as Montagnards, as a matter of fact two-third of all Christians and Protestants are members of ethnic minorities.

With the arrival of the colonists in Vietnam, some particular religions started to grow: Đạo Mẫu, Cao Đài and Hòa Hảo. The term *Đạo Mẫu* refers to the worship of mother goddesses¹¹, it developed in 19^o century near Cambodian borders; as it promised the release of the state, a lot of believers opposed resistance against foreign invaders. It is interesting to notice that all these religious movements were not only bonds among the citizens of the nation, but they also represented a sense of national unity. They actually intervened in political and doctrinal sectors. French for instance were afraid of those movements, because they realized that there was a hidden plot behind their revolutionary structures.

The Caodaism or *Đạo Cao Đài* is a sect and monotheistic religion officially established in 1926 in the south of the country.¹² Literally it means “the great faith” or “the highest Lord” and its symbol is the left eye of God; this kind of faith emerged as a mass movement who recognized itself into a national religion and combines philosophical and religious principles together (both of eastern and western cultures). It also brought together underground sects into a new national religion and its nationalist spirit was oriented towards universal salvation. During Indochina Wars, members of Cao Đài were actives in political and military struggles against French. When the Cao Đài appeared in 1920s, it was announced by its founders as a new religious amnesty, whose creative combination of Vietnamese spirit beliefs and elements from all the major world religions was professed to be a possible answer to the problems of the modern world.

The last one, the Hòa Hảo, is a religious tradition founded in 1939, in southern Vietnam near Mekong Delta. It is based on Buddhism, but with the aim of protecting the nation. Huỳnh Phú Sổ was the leader of this movement and his ideas of religion

¹¹ Asian Ethnology, *Mother goddess religion (Đạo Mẫu)*, volumes 67-68 2008, p- 305.

¹² Oliver Victor L., *Caodai Spiritism: A Study of Religion in Vietnamese Society*, BRILL, 1976, p. 7.

were in large part nationalistic.¹³ The Hòa Hảo, along with the syncretic religious group Cao Đài, was one of the first groups to initiate armed hostilities against the French and later the Japanese colonialists, as a matter of fact the movement grew rapidly during the latter occupation in Second World War. After the war, it continued as an independent force in Vietnamese politics, opposing both the French colonialists and the Viet Minh nationalist movement of Hồ Chí Minh. Though many Hòa Hảo adherents joined the communist National Liberation Front in the late 1960s, the movement remained a powerful independent force in South Vietnamese politics until the final victory of the communists in 1975. Although Hòa Hảo Buddhism is an officially recognized religion in Vietnam, many members refuse the strong governmental membership that needs an official recognition and an unknown number of religious leaders have been detained for this reason.

Anyway, from each of all these religions, the Vietnamese population has learned distinguishing features for its culture; ancestors worship educates how to remain faithful to values and how to consider deceased as part of the family, whose spirits still have the power to intervene in people's lives. Buddhism underlines the importance of some essential virtues like patience, tolerance, non-violence and compassion. Confucianism is an ethical philosophy that can be practiced by all members of the society, with the aim to create a harmonious community¹⁴ in the respect of a social order. The Taoism influenced moreover with its basic distinction in nature, symbolized by *yin* and *yang*, that sees the metaphor of the balance as a pillar. Last but not least, Christianity brought his doctrines about equality, love and fraternity among men.

¹³ The founders of this tradition are regarded by Hòa Hảo followers as living Buddhas, they are destined to save mankind from suffering and to protect the Vietnamese nation. The creed claims approximately two million followers throughout the country.

¹⁴ Robert Eno, *The Confucian Creation of Heaven: Philosophy and the Defence of Ritual Mastery*, SUNY Press, p. 7.

1.2.2 Religious nationalistic movements

Before dealing with the alleged violations of the right to freedom of religion regarding several cases in Vietnam, it seems essential to analyse the relationship between religion and politics inside the state. Religious patriotism is the relationship between the nationalism and a particular belief, religion or creed. This relationship can be differentiated in two aspects: the politicization of religion and the influence of religion on politics.¹⁵ Yet in the second half of the 19^o century, and also in the following decades, Vietnam saw a lot of religious movements becoming very popular both in the rural districts and inner colonial administrations. Their diffusion and official viewpoint on people was due to the fact that these confessions were proposed as a means of restoration for men with sky and earth.¹⁶ It's important to remember that, in the context of a foreign occupation, the inhabitants always face a deep crisis of traditional values, without having hope in the future.

Nationalistic ideology in Vietnam turned out to be conventional in the first years of the 20^o century, as a result of some intellectuals who became conscious of the necessity to elaborate a political thought; it had to be based no more on the loyalty to the king, but on the construction of a modern, westernized and national state. The diffusion of a nationalistic flow in Vietnam must be considered in a wider global context, but it is necessary to say that the Asian nationalistic ideology was much more different than the western one. For instance, some bad European examples are useful to demonstrate how the exasperation of such a sentiment could lead, in extreme cases, to deplorable episodes like Nazism, racism and social hate.

In Vietnam, nationalism and being patriotic is a claim of a state tradition instead. There has been, therefore, a transformation of the traditional values in the minds of people belonging to a country occupied by French. Two young men have been the firsts nationalists who influenced the following generations of intellectuals; Phan Bội Châu wrote political tracts calling for the independence from French colonization, he was in favour of the use of force to combat the enemies and invaders, as he

¹⁵ Ilia Xypolia, *Cypriot Muslims among Ottomans, Turks and British*, Bogazici Journals, p. 109-120.

¹⁶ Fitzgerald F., *Il lago in fiamme. Storia della guerra in Vietnam*, Torino, 1974, p. 57.

considered the fight more important than the modernization of the country.¹⁷ Phan Chu Trinh, also known as Phan Châu Trinh, was another Vietnamese nationalist, but he believed in educating the population to French democratic principles because he looked at the revolution of the society with a modern sense for the liberation of the state.

Another third generation of nationalism born after the First World War, inside this new movement there was a moderate part just asking for social reforms and a more representative policy. However, there was also a radical part that laid the foundations to the *Việt Nam Quốc Dân Đảng* (VNQDDĐ) or Vietnamese Nationalist Party. The VNQDDĐ, the Vietnamese Nationalist Party or the Vietnamese Kuomintang, is a separatist and moderate socialist political party that sought independence from French colonial rule in Vietnam during the early 20^o century. Its origins lie in the 1920s, when a group of young intellectuals in Hanoi began publishing revolutionary materials. It was the first socialist political party, modelling itself on the Republic of China's Kuomintang¹⁸, to fight against French colonial rule also by means of violent methods. His leader was a young man called Nguyễn Thái Học, captured and executed by the French colonial authorities after an uprising. During the 1930s, Ho Chi Minh's Indochinese Communist Party (ICP) eclipsed the Vietnamese Nationalist Party.

The ICP was a political party, which was transformed from the old Vietnamese Communist Party in October 1930; this one was founded in February of the same year, but in an administrative resolution the party criticized its own regulations and name saying: "When naming the party 'Vietnamese Communist Party' it implies that Cambodia and Laos are not concerned. Excluding these countries is a wrong thing because Annam, Cambodia and Laos should closely contact each other in terms of politics and economics even though they not share a language, custom and ethic". The resolution requires: "to give up the name 'Vietnamese Communist Party' and to take the new name 'Indochinese Communist Party'".¹⁹ Various mass organizations

¹⁷ He also considered every cultural compromise of the Vietnamese population with French colonisers a betrayal of Confucian values, typical of the Asian tradition.

¹⁸ It was a Chinese political party based on a nationalistic ideology.

¹⁹

http://www.cpv.org.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30063&cn_id=159696#

including unions, peasants and women's associations were to be organized under the new party. Hồ Chí Minh drew up a program of party objectives which were approved by another conference. The main points included the establishment of Vietnamese independence, the overthrow of French colonization, the organization of a workers' armed force, the elimination of public debts, the suppression of taxes and the establishment of education for all.

It must be underlined that the most important exponent of nationalism in Vietnam is still Nguyễn Sinh Cung, known as Hồ Chí Minh, a Vietnamese communist revolutionary leader who was, from 1945 until his death, prime minister and president of the Democratic Republic of Vietnam. His name is strictly linked with the fight for independence of the Vietnamese state; he wrote the Proclamation of Independence of the Democratic Republic of Vietnam and the 2nd September 1945 he announced it, during a public meeting in front of thousands of people at Ba Đình Square in Hanoi.



Photo of Alessandro Orlandi: portrait of Hồ Chí Minh and political flags in a street of Hanoi.

Today in Vietnam, portraits of Hồ Chí Minh appear everywhere in public buildings, classrooms and families' altars. Around his figure there is a strong cult of personality, furthermore opinions or publications that are critical about him are banned. His personality had become a household name not only in North and South Vietnam, but also in the United States, in Europe and in the rest of Asia. Although frequently portrayed as a Vietnamese Gandhi, Hồ believed firmly in the use of violence to achieve political ends, but his concerns were about primarily the liberation and unification of the country. It's not surprising why the Party wants to promote his image as the benevolent patriarch. This cult of personality plays a central role in the relationship between the Party and the people. An influential message was also given in 1987 with a General Conference of UNESCO which considered "the important and many-sided contribution of President Hồ Chí Minh in the fields of culture, education and arts" who "devoted his whole life to the national liberation of the Vietnamese people, contributing to the common struggle of peoples for peace, national independence, democracy and social progress."²⁰ The capital of the old South Vietnam took his name in 1976.

1.2.3 Religion today and related controversies

As explained in the previous paragraphs, in the early decades of the twentieth century, a variety of popular movements emerged in Vietnam that aimed to reform society and tradition in order to deal effectively with the colonization of the country by the French.²¹ The communist ideology only later was transformed into a mass organization, while several new religious movements also became prominent around this time. People continued to perform ancestral rituals, take part in life-cycle ceremonies and attend pagodas during the socialist period. As a matter of fact, it must be underlined that the state is accommodating towards the religious sphere, insofar as its interests are maintained. By the way, it doesn't exist a religion in Vietnam that at the same time could advance the agenda of the state. The Constitution of the

²⁰ UNESCO. Records of the General Conference, 24th session, Paris, 20 October to 20 November 1987, v. 1: Resolutions, 1988.

²¹ Taylor, *Modernity and Re-enchantment*, 2007, p. 21.

Socialist Republic of Vietnam formally allows religious freedom²², however government restrictions remain on organized activities of many religious associations and it maintains a prominent role in supervising officially recognized religions.

Religion in Vietnam has been thriving in recent years. Churches, pagodas and pilgrimage sites are crowded with devotees, offering signs of enthusiastic faith and distinctive religious vitality. Nowadays, according to official statistics from the government, the majority of the population (73,2%) is non-religious or follow folk belief, in the second position there is Buddhism (with 12,2% of Vietnamese believers), around 6,8% are Christians (mostly Catholics), 4,8% are Caodaists, 1,5% are Protestants, 1,4% are Hoahoaists and the rest belongs to other religions such as Islam, Bahá'í Faith and Hindu.²³ Such variety in religious experiences is likely to inform the different ways in which people constantly attempt to see the world. Religion prevails on a large part of the material resources of this increasingly flourishing society. Until the end of the U.S./Vietnam war, the most saw Vietnam through the lens of the country's disruptive wars of decolonization, with the struggles of political alternatives in colonial and post-colonial eras, up until the rise of the Communist Party.²⁴ In this context, new religious movements were seen as a transitory phenomenon often in conflict with the state. However, the Socialist Republic of Vietnam is an atheist state as declared by its communist government.²⁵

Recent surveys show that the cult of ancestors is not fading away, ancestral altars can be found in most houses of the Viet ethnic majority. The cult of the spirits is often described as animism and spirit worship is a characteristic Southeast Asian cultural substrate. Ancestor veneration draws on a sentiment that connects people with their homeland, furthermore this worship has been enthusiastically embraced by the state leaders who comment on it and solemnly support rituals of shared origins.²⁶ Twice a

²² "Constitution Chapter Five: Fundamental Rights and Duties of the Citizen", Embassy of the Socialist republic of Vietnam in the United States of America, see article 70.

²³ Quoting United Nations "Press Statement on the visit to the Socialist Republic of Viet Nam by the Special Rapporteur on freedom of religion or belief", December 2014.

²⁴ Taylor Philip, *Modernity and Re-enchantment: Religion in Post-revolutionary Vietnam*, ISEAS, 2007, p. 5.

²⁵ Jan Dodd, Mark Lewis, Ron Emmons, *The Rough Guide to Vietnam*, Vol. 4, 2003, p. 509.

²⁶ Jamieson Neil, *Understanding Vietnam*, Berkley: University of California Press, 1993, p. 58.

month, sacrifices are made to the nature spirits that inhabit mountains, coasts, trees and caves; altars are everywhere to offer devotion to the sky, the earth and the animals. Lots of pilgrims go on journeys to pay their debts to the spirits and millions of offers are given to ancestors. This attitude could be associated to a contemporary cultural practice, called “di-vê nationalism” aiming at the wealth of the population and the strength of the nation.²⁷



Photo of the author: ancestral altars inside a shop in Cần Thơ, South Vietnam.

On similar ground, also the cult of heroes is alive and today even modern revolutionary leaders have been added to official pantheon, for instance the contemporary cult to Hồ Chí Minh is an example of this kind of devotion. This tradition of governance has been taken to explain why the worship of ancestors and spirits gains greater official approval than religions like Christianity, Protestantism or

²⁷ *Đại Nam thực lục* Vol. 2, p. 166. This translation is provided by Thien Do (2003, p. 58).

Buddhism.²⁸ Nevertheless, the transformation of the closest regions of Southeast Asia by state development projects and capitalist relations has induced among many animist believers a sense of deep spiritual crisis, which has led many to convert to Protestantism.²⁹ The frontier of the Vietnamese highlands is changing very fast and its development bring many ethnic minorities to convert themselves; that's why "world religions" such as Christianity, Islam and other philosophies (such as Marxism) have found fertile ground in Asia.³⁰

A critical approach to this religious choice would imply that much of Vietnam's contemporary scene is an expression of resistance to state power. For instance, ethnic minority peoples who have been marginalized by state policies have chosen religion as a way to obtain re-integration, autonomy and emancipation. As a matter of fact, marginalized groups among ethnic minorities have preferred "world religions" as a form of opposition to the state. When people go out from their local microcosms (in this case composed of tribes and villages) and join the contemporary structure of social networks, it is normal to be more inclined to monotheism as universal creed. Furthermore, as the sense of ritual has destroyed social relations among people, it has been replaced by new doctrines that are the consequence of a rationalistic orientation.

An alternative approach could see instead the growth of religion as a form of traditional folk culture and as an expression of the nation's identity, because in most cases the creed is bound up with the big transformation of Vietnamese society. This point of view also helps to explain the many tensions and disputes about this topic, in which various Vietnamese parties have not found harmony or a common language yet. Sadly, States' representatives exclude from the public life inopportune activities; moreover, some religious interpretations that are not conform to their perspectives

²⁸ Templer Robert, *Shadows and Wind: A View of Modern Vietnam*, New York: Penguin, 1999, p. 165.

²⁹ Keyes, Charles F., "Being Protestant Christians in Southeast Asian Worlds", *Journal of Southeast Asian Studies*, 1996, p. 280-292.

³⁰ Lewis, James. "The Evangelical Religious Movement among the Hmong of Northern Vietnam and the Government's Response: 1989-2000", *Crossroads: An Interdisciplinary Journal of Southeast Asian Studies*, no.2, 2002, p. 79-112.

are banned and official records are re-edited to censure practices that are not in agreement with the state policy.

The religion in present day Vietnam could represent the revival of tradition, resistance and state co-optation, for a view of the state and society as mutual resurrection. Ethnographic studies show the communist state's efforts to restructure rituals and they also reveal that the religious and the political fields are inter-dependant domains.³¹ In fact, the Vietnamese state employs the discourse of "returning to the origins" to support local rituals as symbols of a common national identity. The coexistence today of a strong centralized bureaucratic state and a vibrant religious scene would also indicate, however, that the realms of religion and politics are not reducible to each other, just as they are not necessarily in competition with each other.³²

1.3 Vietnamese law and policy on religions and beliefs

1.3.1 The theme of religion inside the state

Vietnamese ethnic groups have their own traditional and cultural identity; beliefs and religions are in different customs such as folk credence of worshiping ancestors or as persons who made great contributions to the nation with their cult of personality.³³ In Vietnam, some religions are indigenous, some are introduced in the country from abroad, some have existed for thousands of years and some others are new. All religions have normal and different religious practices associated with the economic, cultural and social conditions. As we have seen, in Vietnam there are many religions including Buddhism, Catholicism, Protestantism, Cao Đài, Islam, Hòa Hảo Buddhism, Baha'i and some religious organizations, while it all takes place in accordance with

³¹ Endres, Kirsten W., "Spirit Performance and the Ritual Construction of Personal Identity in Modern Vietnam" in *Possessed by the Spirits: Mediumship in Contemporary Vietnamese Communities*, Ithaca, New York, 2006, p. 77-94.

³² Taylor, *Modernity and Re-enchantment*, 2007, p. 15.

³³ Đặng Nghiêm Vạn, *The Cult of Ancestors as a Religion*, Vietnamese Studies, 1996, p. 35-64.

the law.³⁴ There are almost 20 million religious believers with 80.000 dignitaries and ministers, plus 25.000 worship places and schools of religious organizations.³⁵ This theme has been described more in detail in the previous paragraph, while in the next one it will be clarified the political viewpoint of Vietnamese approach towards this topic.

The Constitution of Vietnam formally allows religious freedom and accepts various types of religions. It says: "Every citizen can freely follow no, one, or more religions, practice his or her religion without violating the law, be treated equally regardless of his or her religion, be protected from being violated his or her religious freedom, but however is prohibited to use religion to violate the law".³⁶ Throughout different revolutionary periods, the State of Vietnam has always recognized great importance to religious affairs. During the national democratic insurrection, the policy of "religious freedom, uniting religious and non-religious people" has significantly contributed to the revolution, with the concepts of national unity and independence. The "Đổi Mới" period has been a crucial event for the destiny of the nation, as a matter of fact the State has asserted: "Religion is a long, persistent matter. Belief and religion are spiritual needs of some groups of people. Religious ethics have much in accordance with the building of a new society." After 25 years dealing with the accomplishment of the "Đổi Mới" policy, Vietnam has reached many developments inside the spiritual sphere linked to the political one. Nationalistic activities have contributed to the construction of a national unity among the population; in this sense many believers have made strong efforts for a national identity and defence. The State's authorities have progressively employed the policies on socio-economic growth; they try to safeguard political security in religious areas, in fighting and preventing activities that take benefit on freedom of beliefs and religions for other reasons.³⁷

³⁴ Mai Thành Hải, *Religion in the World and in Vietnam*, 1998, p. 61-63, 69-71.

³⁵ There is also overseas Cao Đài and Hòa Hảo (Buddhist) and Islamic activity in Vietnam, but at a smaller level than the three large religious groups. Cao Đài and Hòa Hảo practice follows similar patterns to those of overseas Vietnamese Buddhists.

³⁶ "Constitution Chapter Five: Fundamental Rights and Duties of the Citizen", Embassy of the Socialist republic of Vietnam in the United States of America, see Article 70.

³⁷ Endres Kirsten W., "Culturalizing Politics: *Đổi Mới* and the Restructuring of Ritual in Contemporary Rural Vietnam", in *Vietnamese Villages in Transition: Background and Consequences of Reform Politics in Rural Vietnam*, edited by Bernard Dahm and Vincent J. Houben, Passau Germany: Passau University Southeast Asian Studies Centre, 1999, p. 197.

Vietnam has co-existing creeds with a lot of ministries, followers and spiritual activities. The religious organizations recognized by the State are authorized to operate under the law and are protected by law: “to conduct religious activities, to open training schools for dignitaries and monks, to publish religious books and to maintain and repair their worship places.”³⁸ Religious meeting and ministers must comply with the Constitution and laws of the state and all believers are free to practice their religions at home and in legal worship places prescribed by law. Religions in Vietnam have always existed in correlation with the nation, making great contributions to the formation and preservation of national cultural identities. The ethics of beliefs have values that can help to build a new society and the fact of safeguarding religious autonomy is a progressive development and a major policy of many countries around the world. The freedom of beliefs and religions, and the freedom to follow or not to follow one of them, is not only one of the fundamental human rights but also a supporting principle in the relation between the state of Vietnam and religious organizations. The respect of these facts is one of the most important factors to promote the strength of a great national unity.

Moreover, the core of religious affairs is inside the aspect of people’s union. The great national unity, with the collective objective of becoming a strong and democratic country in a civilized society, draws followers of different religions together for a common good. Each citizen has both the right and the obligation to build and protect the homeland. Religious affairs should in this sense encourage the people to defend their patriotic spirit and to protect national independence and unity with determination. Implementation of socio-economic policies, public security and national defence activities must ensure material and spiritual needs of the people (including followers of religions). Great national unity is the goal of all the population, the source of power, the major motivation and decisive factor to ensure the sustainable success of the cause of national construction and defence. A strong nation and a democratic society are regarded as the common goal to firmly maintain national independence and unity for the purposes of a successful community.

³⁸ Article on “Vietnamese law and policy on religion and belief”: <http://vietnamlawmagazine.vn/vietnamese-law-and-policy-on-religion-and-belief-3491.html>

Promoting the similarities concerning the common goal of national renewal will raise the potential strength of religious people, to consolidate the great national unity, implement socio-economic tasks and manage religious practices for the interest of the nation. These are the connections between the culture or ethics of beliefs with religions or national culture. Most religious people have patriotic spirit and have contributed to the process of national construction and to oppose resistance on wars against foreign invaders. For the common goal, it is necessary to combine the development of the country and the specific interests of religious people in both material and spiritual lives, especially the religious one.

1.3.2 Laws on beliefs and religions

Freedom of religion is a right of human beings. Struggling for national independence and happiness of the people is a sacred ideal of everyone and also the right and obligation of citizens. Each religion has its humanity values like compassion of Buddhism, human sense of Cao Dai, charity of Catholicism, the Vietnamese national tradition of worshipping ancestors that fosters the national pride. Legal documents regulating some matters of religious activities include the Constitution, the Civil Code, the Penal Code, the law on marriage and family, the law on residence, the land law and the law on construction. Legal papers clearly identify the responsibilities of state's authorities in charge of religious affairs and rights and obligations of religious organizations in Vietnam.

There is a consistent implementation of the national policy to respect and guarantee the people right to freedom of belief, the right to follow or not to follow any religion and the right to take part in normal religious activities in accordance with law. By the way, all religious activities must be in accordance with the legal framework, because all religions are equal before the law. The state of Vietnam consistently implements the policy of a national unity, in promoting the unity of followers of different religions and the cooperation between believers and non-believers. The positive values in the tradition of worshipping ancestors should be maintained and developed. Discrimination against citizens for their belief or religion is prohibited. At the same

time, the State prohibits to take advantage from religions with superstitious activities that are contrary to the State's law and policy, or in activities that encourage division among the people or between ethnic groups, disturbing the public order or infringing national security. Vietnamese law guarantees some religious rights for foreign organizations and individuals, while placing restrictions on particular activities.

The relative amount of freedom to operate has increased, while still subjected to state regulation and permission. Since foreigners residing in Vietnam are subjected to the constitution and Vietnamese law (Art. 81), these provisions are also applied to them. The principles of the law on belief and religion are the overall guidelines of the State on beliefs, religions and religious affairs, which are preserved in Article 70 of the 1992 Constitution and the Ordinance on Beliefs and Religions as follows³⁹:

- Citizens have the right to freedom of belief and religion, and may follow or not follow any religion;
- The State respects and guarantees citizens' right to belief and religious freedom;
- Religious dignitaries, priests, monks and people are entitled to all civic rights and have to perform civic obligations;
- Citizens, whether they have beliefs or follow religions or not, as well as citizens who have different beliefs or follow different religions must respect one another;
- All religions are equal before law;
- Lawful worship places, prayer books and worshipping assets for religious activities are protected by law;
- The State guarantees citizens' right to belief and religious freedom, respects and promotes positive values of the tradition of ancestral worship, commemoration and honouring of the persons with great contributions to the country or communities;
- It is prohibited to practice discrimination based on belief or religion, to force people to follow or not to follow religion, infringing the freedom of religion of citizens; to take advantage of the freedom of religion for activities contrary to religious purposes, undermining the great national unity.

³⁹ <http://vietnamlawmagazine.vn/vietnamese-law-and-policy-on-religion-and-belief-3491.html>

Other ambiguously expressed provisions of law limit and restrict the manifestation of religion in certain circumstances. One of these is found in Art. 74 of the Constitution which says: “All act violating the interests of the State, the rights and legitimate interests of collectives and citizens shall be dealt with severely in time”. Vietnamese law is quite extensive in its prohibitions of activities that are determined to be anti-state, including “using religion as a pretext to carry out other activities that are against the people’s interest”.⁴⁰

Specific legal instruments relating to religion in post-war and unified Vietnam were promulgated in 1977, 1991, 1999 and 2004. The highest and most recent of these is the Ordinance on Beliefs and Religions, called in the original language *Pháp lệnh Tín ngưỡng, Tôn giáo 2004*, passed by the Standing Committee of the National Assembly on June 18th, which took effect on 15th November 2004. The Ordinance on Beliefs and Religions institutionalizes the State’s guidelines and policies on beliefs and religions, serving as a legal basis for citizens to exercise the right to freedom of belief and religion, while contributing to improve the state administration of religious affairs. Particularly, the Ordinance specifies what kind of belief activities of believers and religious activities of followers, priests, monks and dignitaries can be carried out; in addition, it indicates the legal religious organizations and their operations and assets. The Ordinance has some new points compared to the previous regulations on religious activities, such as recognition of religious organizations to ensure the right to religious activities under the law; division, separation, consolidation of affiliate religious organizations, conversion of citizens, internal activities of the religions, activities of religious associations, monasteries and other religious organizations, religious activities of foreign dignitaries, priests and monks and religious activities of foreigners in Vietnam.

Following this Ordinance⁴¹, the Government issued Decree No. 22/2005/ND-CP guiding its implementation. Later, the Prime Minister issued Directive No.

⁴⁰ Interview with officials of the Government Committee on Religious Affairs, Hanoi, April 2004.

⁴¹ An unofficial English translation of the ordinance, somewhat clearer than the official translation published in Vietnam, is posted at

01/2005/CT-TTg on a number of tasks related to Protestantism and Directive No. 1940/CT-TTg on land and housing related to religion. Most of the ordinances, like the preceding decrees, outline rights and responsibilities of Vietnamese religious organizations. The above-mentioned documents are related directly to religious practices, they express the consistent policy of the State regarding the field of religion and they also create a legal basis to ensure freedom of religion. Regarding foreigners, the law distinguishes between activities of individuals and activities of organizations. Decree No 22/2005/ND-CP was issued on 1st March 2005, guiding the realization of a number of articles of the Ordinances on Beliefs and Religions. The decree details the Ordinance's provisions on belief festivals and religious organizations. Regarding religious organizations, it specifies the "registration, establishment, division, separation, merger or consolidation of affiliate religious organizations; registration of operations of religious orders, monasteries and other collective religious practice organizations; establishment and consolidation of religious schools for religious professionals, ordainment, bestowal of orders, appointment, election or honorary nomination or change of areas of operation of religious dignitaries, priests or monks".

The Prime Minister issued directive No. 01/2005/CT-TTg on some commissions related to Protestantism on 4th February 2008. This document clarifies the position of the State about part of the population who try to follow a new religion, for instance its efforts deal with the standardization of Protestantism among some groups inside Central Highlands' provinces, Binh Phuoc and other northern provinces. Issued on 31st December 2008, Directive No. 1940/CT-TTg on land and housing related to religion that affirms the Vietnamese law to ensure religious freedom and to safeguard requests of religious organizations and believers about land and housing for valid reasons.

http://www.freedomhouse.org/religion/country/vietnam/Vietnam_Ordinance.htm, along with several critical commentaries by Vietnamese religious leaders. A more nuanced analysis can be found at http://www.forum18.org/Archive.php?article_id=415.

1.3.3 Policies on religion of the Communist Party of Vietnam (CPV)

During its leadership the Communist Party of Vietnam (CPV) has paid consistent attention to religion and has adopted policies on beliefs and religions that have been sound and appropriate for each stage of the revolution. In 1986, Vietnam began to implement its renewal *Đổi Mới* Policy. On 16th October 1990, the Politburo that had been elected from the VI National Congress of the CPV renovated its policies regarding religion through Resolution No. 24-NQ/TW on strengthening religious affairs in the new situation. On 12th March 2003, after thirteen years of implementing that policy on religion and after reviewing newly changing issues that had recently emerged in both the domestic and international contexts, the Politburo of the IX National Congress passed Resolution No. 25-NQ/TW on religious affairs. This became the policy for the Party and the State of Vietnam regarding religion for the renewal period.⁴²

The ideas of Resolution No. 25 can be summarized as follows. Religious activities and religious affairs in this new period should: strengthen unity among followers of different religions within the context of great national unity; develop the general strength of all ethnic groups; contribute to successful implementation of the country's industrialization and modernization; build and defend the stability of the Homeland. Beliefs and religions are spiritual needs of a big part of the population. Those needs currently exist and will continue to co-exist with the nation during the process of building socialism in Vietnam. Followers of different religions are an integral part of Vietnam's great national unity.

The Party and the State of Vietnam consistently implement a policy of great national unity. They do not discriminate in treatment on the grounds of belief and religion. They promote the unity of followers of different religions and unity between believers and non-believers. Great national unity has the goal of a prosperous society, a strong nation and a democratic culture that want to put followers of religions

⁴² Jean Camaroff, "Defying Disenchantment. Reflections on Ritual, Power and History". In *Asian Visions of Authority*. In *Religion and the Modern State of East and Southeast Asia*, edited by Charles Keyes, Laurell Kendall and Helen Hardacre, Honolulu: University of Hawaii Press, 1994, p. 301-314.

together for a common cause. Both the CPV and the State encourage people to uphold their patriotic spirit and determination to protect the independence and unity of the nation, because each citizen has the right and the responsibility to build and protect it. The positive values of the tradition in worshipping ancestors, and in honouring those who have made great contributions to the nation, should be maintained and developed. Discrimination in treatment of citizens on the grounds of beliefs or religions is prohibited.

Each follower has the right to practice religion at home within the family and in legitimate places of worship as stipulated by law. Religious organizations officially recognized by the State are entitled to conduct lawful activities and are protected by law. These activities include: opening schools to train religious leaders and members of religious communities; publishing religious documents and books; maintaining, repairing and building places of religious worship in accordance with regulations. Those engaged in religious evangelization, along with every other religious activity, must abide by the Constitution and law; it is forbidden to use the cover of religion to promote obscurantist sects or superstition, and it is forbidden to force people to follow a religion or to abandon a religion.

Documents from the X National Congress of the Communist Party of Vietnam affirm: "Followers of different religions are an integral part of Vietnam's great national unity. The Party consistently implements policies of respect and guarantees the people right to freedom of belief, the right of citizens to follow or not to follow a religion, and the right to take part in normal religious activities according to the law. The Party promotes unity of followers from different religions and the unity of followers of religion with non-followers. It encourages development of cultural values and strong ethics of religions and encourages religious followers and religious leaders to live 'For better secular and religious life'. Lawful religious organisations must abide by law and are protected by law. Socio-economic development programs should be implemented to improve the material and cultural lives of religious followers; training and upgrading of cadres dealing with religious affairs should be enhanced; superstitious activities and behaviours that take advantage of belief and religion in order to harm the common welfare of the country or to violate the citizens' freedom

of religion should be prevented.”

The Political Report of the Communist Party of Vietnam Central Committee at the XI National Congress (in January 2011) reaffirmed: “Continue to improve policies and laws on belief and religion in accordance with the Party’s viewpoints. To promote cultural values and good morals of religions, encourage religious organizations, dignitaries and believers to adopt a good religion and good life and positively contribute to the national construction and defence. The State takes care and creates favourable conditions for activities of religious organizations in accordance with their charters recognized by the State and as prescribed by law. Actively prevent and resolutely fight acts of taking advantage of the freedom of belief and religion to fascinate and divide people or to undermine the great national unity.”

1.3.4 Results

Especially in the early 21st century the situation in Vietnam dealing with religion has seen positive changes. The State has recognized activities of some religious organizations such as Cao Đài, Hòa Hảo Buddhism, Catholicism and Protestantism, and it allowed religious movements to open schools and proclaim ministries. In particular, the diplomatic relationship between the State of Vietnam and Vatican has advanced positively.⁴³ A lot of changes have been realized during the nearly 20 years of applying the renewal policy on religious affairs. The Vietnamese Confederation of Evangelical Churches, the Vietnamese Catholic Church and the Vietnamese Buddhist Saṃgha (or saṅgha) have been recognized by the State. The law has also considered other religious organizations, such as: Representative Committee of Muslims of Ho Chi Minh City in 1992, Nine Cao Đài Churches during the period from 1995 to 2000, Hòa Hảo Buddhist Church in 1998, Vietnamese General Confederation of Evangelical Churches (Southern Church) in 2001, Representative Committee of Muslims of An Giang province in 2004. In September 2006: Tứ Ân Hiếu Nghĩa, Tịnh độ cư sĩ Phật hội and the Missionary Christian Church, were registered like religious activities

⁴³ Đặng Nghiêm Vạn, *Ethnological and Religious Problems in Vietnam*, Hanoi: Social Sciences Publishing House, 2001.

according to the provisions of the law.

The State of Vietnam has carried out many socio-economic development programs in order to improve the material and spiritual life of the people, especially those living in remote and mountainous areas and ethnic minority people, including those who follow religions.⁴⁴ The State also guarantees and creates favourable conditions for religious activities of religious followers to regularize their movements in many areas.⁴⁵ Especially important religious ceremonies such as Buddha's Birthday for Buddhists⁴⁶, Christmas and Easter for Catholics and Protestants, ceremonies for the foundation anniversaries of the Cao Đài religion and Hòa Hảo Buddhism, and Ramadan for Muslims, are organized with religious rites.

Bibles, religious books and religious documents have been commonly published. Magazines and newspapers published by religious organizations currently include: *Nghien cuu Phat hoc* (Buddhist Studies Magazine) and *Giac Ngo* (Enlightenment Newspaper) by the Vietnamese Buddhist Sangha; *Hiep Thong, Nguoi Cong giao Viet Nam* (The Vietnamese Catholic Newspaper), and *C6ng gido va Dan toc* (Catholicism and the Nation) by the Catholic Church; *Huong Sen* (Fragrant lotus Magazine) by the Hòa Hảo Buddhist Congregation; and *Muc Vu* (Serving Pastors Bulletin) and *Thong Cong* (Spiritual Communion Bulletin) by the Vietnamese General Confederation of Evangelical Churches (Southern Church). During five years (from 1999 to 2004), the Religious Publishing House published 719 publications with 4,2 million copies (more than 500.000 of which were Bibles) at the request of religious individuals and organizations. In 2005, the Religious Publishing House licensed 450 Bible titles (with more than one million copies) and 60 other titles. During the first six months of 2006, the Religious Publishing House printed 130 religious titles. Bibles have also been printed in Ba Na, Ede, and Gia Rai ethnic minority languages to facilitate religious practice among followers in these ethnic groups.

⁴⁴ Đặng Nghiêm Vạn, Chu Thai Sơn and Lưu Hùng, *Ethnic Minorities in Vietnam*, Hanoi: The Gioi Publishers, 1993, p. 57.

⁴⁵ <http://vietnamlawmagazine.vn/party-policies-on-belief-and-religion-3395.html>

⁴⁶ "Thousands Gather across Country to Celebrate Buddha's Birthday", *Viet Nam News*, 25th May 2005.

However, religious activities still have some limitations. To overcome the restrictions in religious work, especially in the context of international integration, Vietnam's policies in the field of religion have seen major changes. Firstly, beliefs and religions are spiritual needs of a big portion of the population. Those above-mentioned needs currently exist and will continue to co-exist with the nation during the process of building socialism in Vietnam. Followers of different religions are an integral part of Vietnam's great national unity. Despite the official position, *Freedom House* states that, although the conditions had improved in recent years "freedom of religion and expression are again under attack in Vietnam" and "that the country's recent economic liberalization is not equally matched by necessary improvements in political rights and civil liberties." All religious groups must join a party controlled supervisory body, furthermore religions must obtain authorizations to build or repair houses of worship and some religious ministries rare still in prison or under serious state repression.

The Human Rights Committee has also expressed concern about freedom of religion in Vietnam, particularly in respect of the repression of certain religious practices. It noticed, for example, in respect of the repression of certain religious treatment of the indigenous Montagnards (also called Degar) and their right to enjoy their cultural traditions, including their religion, language and agricultural activities. The Government's restrictions on the freedom of association (especially in respect of political parties and other activist groups) were seen by the Committee to not follow the State's obligations under the Covenants. Moreover the resistance of the state to international NGOs and UN Special Rapporteurs, trying to investigate allegations of human rights violations in Vietnam, is in strong contradiction with its policies. This particular theme will be developed in the last chapter of this thesis, taking the example of those minority ethnic groups who have suffered of those alleged violations.

CHAPTER II
HUMAN RIGHTS: INTERNATIONAL, ASEAN AND VIETNAM
PERSPECTIVES

2.1 The origin and international framework of human rights

2.1.1 Historic development of human rights

Ideas of rights and liberty have existed in many forms for much of human history, but they do not resemble the modern conception that now the world has about this issue, in fact the earliest signs of human rights can be accorded to Asiatic continent. The Cyrus Cylinder, written in 539 BC during the reign of King Cyrus of Persia in Iraq (thousands of years before the Universal Declaration of Human Rights), has been said to contain the first expressions on human rights.⁴⁷ The decrees Cyrus made on human rights were inscribed in the Akkadian language as the world's first charter about human rights. It is translated into all six official languages of the United Nations and its provisions parallel the first four articles of the UDHR. The Constitution of Medina in 622 AC is probably the first constitution or treaty, which entertained diverse human rights. By the way, the basis of most modern legal interpretations of human rights can be traced back to recent European history thanks to the Statute of Kalisz in 1264, giving privileges to the Jewish minority in the Kingdom of Poland such as

⁴⁷ The Cylinder gained new prominence in the late 1960s, when the last Shah of Iran called it "the world's first charter of human rights". The cylinder was a key symbol of his political ideology and is still regarded by some scholars as a charter of human rights, despite the disagreement of some historians.

protection from discrimination and hate speech.⁴⁸ Moreover, the “Twelve Articles” were part of the peasants’ demand raised towards the Swabian League during 1525 war in Germany, those articles are considered to be another record of human rights in Europe.⁴⁹ Finally Britain, with the Bill of Rights in 1689, marked a new human rights step that made illegal a range of oppressive governmental actions. Two major revolutions occurred then in the United States (1776) and in French (1789), leading to the adoption of the *United States Declaration of Independence* and the *French Declaration of the Rights of Man and of the Citizen* respectively, both of which established certain legal rights for the first time.

As time passed, human rights became a central concern over the issue of enslavement. A number of reformers worked towards the abolition of slavery and this cause was achieved in the British Empire by the Slave Trade Act in 1807 and the Slavery Abolition Act in 1833. In the United States, all the northern states abolished the institution of slavery between 1777 and 1804. The first ten amendments, to the Constitution of the United States of America, came into effect in 1791 limiting the powers of the federal government and protecting the rights of all citizens, residents and visitors in American territory. Many groups and movements have achieved profound social changes over the course of the 20th century in the name of human rights; in Europe and North America, labour unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labour. The women’s rights movement succeeded in gaining for many women the right to vote. National liberation movements in many countries also succeeded in driving out colonial powers; movements by long-oppressed racial and religious minorities succeeded in many parts of the world, in addition the Asiatic and the African continents have also expanded the human rights’ contents.⁵⁰

⁴⁸ Lewin Isaac, *The Jewish community in Poland*, Philosophical Library, the University of Michigan, 1985, p. 19.

⁴⁹ Engels Friedrich, *The Peasant War in Germany*, Marx & Engels Collected Works, New York: International Publishers, p. 59-62 and p. 402-405.

⁵⁰ Identity politics are political arguments that focus upon the interest and perspectives of groups, including the ways in which people’s politics shape various aspects of their identity. The term identity politics can be found in many social organizations correlated with movements such as: class movements, feminist movements, gay, lesbian and bisexual movements, disability movements, ethnic and post-colonial movements.

The League of Nations was established in 1919 at the negotiations over the Treaty of Versailles, following the end of World War I; the League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiations and diplomacy, and improving global welfare. Enshrined in its charter was a mandate to promote many of the rights later included in the Universal Declaration of Human Rights in 1948. The Second World War, with the huge losses of life and gross abuses of human rights that took place during it, has been a driving force behind the development of modern international human rights' instruments. In the aftermath of the atrocities of the World Wars there was increased concern in the social and legal protection of human rights as fundamental freedoms.⁵¹ At the 1945 Yalta Conference, the Allied Powers agreed to create a new body to supplant the League's role; this was to be the United Nations. Since then, the United Nations and its members have developed much of the discourse and the bodies of law that now make up international human rights law and international humanitarian law.

Human psychology and emotion stated that human beings couldn't close their minds and hearts to suffering of other human beings, because this mistreatment violates a common morality or a so-called natural law.⁵² Therefore, all human beings are morally obligated to do something about such suffering, individually and through their political and social institutions, at an international level through international institutions that will take account of them also in their relations with other states. The rights considered to be fundamental include not only limitations precluding government from invading civil and political rights, but positive obligations for governments to promote economic and social well-being. The topic of international human rights underlines that human rights are a subject of international law and politics, not just about individual rights in national societies under national legal systems. That's why having moral principles as basis bring awareness to people under the constitutional legal system of their society. The international law of human

⁵¹ Hoffmann Stefan-Ludwig, *Human Rights in the Twentieth Century*, Cambridge University Press, p. 22.

⁵² Morton E. Winston, *The philosophy of Human Rights*, Wadsworth Publishing Company, 1989, p. 12-15.

rights derives principally from contemporary international agreements in which states undertake to recognize, respect and promote specific rights for the inhabitants of their countries. Governments accept the concept of human rights and cooperate to define them, in doing international obligations to respect them and submit to some international scrutiny as regards compliance with these obligations.⁵³ Those who built international human rights accepted individual rights as “natural” in a contemporary sense, because they correspond to the nature of man and of society, psychology and sociology.⁵⁴

The ancient world did not possess the concept of universal human rights, because ancient societies only had “systems of duties”.⁵⁵ The modern concept of human rights has been developed during the early modern period, alongside the European secularization of Christian ethics. The origin of human rights’ discourse was the concept of natural rights, which appeared as part of the medieval natural law tradition that became prominent during the Enlightenment period with philosophers such as John Locke, Francis Hutcheson, Thomas Hobbes and Jean-Jacques Rousseau, in the political discourse of the French and American Revolutions.⁵⁶ Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law.⁵⁷ Human rights standards have become increasingly well defined in recent years. The term “international human rights law” is often used as a category to describe these systems, but this can also be a source of confusion as there is no separate entity as international human rights law, binding international treaties, domestic law, international organizations and political bodies.

Human rights education has been a focal point of the UN since its establishment. Prior to 1948, this issue was exclusively a concern of domestic legal and education systems,

⁵³ Jeremy Waldron, *Theories of Rights*, Oxford: Oxford University Press, 1984, chapters by Ronald Dworkin, Alan Gewirth and H.L.A.Hart.

⁵⁴ Ethna Regan, *Theology and the Boundary Discourse of Human Rights*, Washington D.C.: Georgetown University Press, 2010, p. 18-19.

⁵⁵ Jack Donnelly, *Universal Human Rights in Theory and Practice*, Ithaca: Cornell University Press, 1989, p. 17.

⁵⁶ John Finnis, *Natural Law and Natural Rights*, Oxford: Clarendon Press, 1980, p. 33-35.

⁵⁷ Michael Freeman, *Human Rights: An Interdisciplinary Approach*, Cambridge: Polity, 2002, p. 18.

as human rights were not considered to be an appropriate subject matter for international law.⁵⁸ However, the development of the United Nations and the adoption of the UDHR changed this situation. Up to now, there are five initiatives of the UN to mandate and encourage greater education of human rights by States: UDHR, ICESCR, CROC, UN Decade for Human Rights Education (1995-2004), World Programme for Human Rights Education (2005-ongoing). In the year 1995, the UN declared the Decade for Human Rights education and offered a comprehensive Plan of Action. The objectives of the plan included the building and strengthening of human rights' education programmes within the community as well as within schools, universities and institutions in the world. During this decade, nations are called upon to promote and implement human rights education in all sectors of their society.

Similarly, the UN Human Rights Council also monitors States' human rights' education efforts as part of that body's Universal Periodic Review process. At the same time, practical and financial assistance is needed to enable many States to provide training for teachers, develop human rights' curriculum and create appropriate resources for students. UNESCO⁵⁹, the international aid and development community have a role to play in this area. Human rights' education is all learning that develops the knowledge, skills and values on this topic. Understanding human rights forms the basic foundation for effective protection and promotion of them and this is proclaimed as a fundamental human right in the UDHR itself, being also a responsibility of the society and the government. The UDHR Preamble calls on "every individual and every organ of the society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance" (Para. 8).

⁵⁸ James Nickel, *Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights*, Berkeley: University of California Press, 1987.

⁵⁹ UNESCO is called upon "to play a central role in the design, implementation and evaluation of projects under the Plan of Action of the UN Decade for Human Rights Education", considering the Organization's "long experience in education, educational methodology and human rights and through its network of UNESCO schools, clubs, human rights Chairs and National Commissions".

This kind of education helps people to feel the importance of human rights, internalize their values and integrate them into the way they live. Awareness also gives people a sense of responsibility for respecting and defending rights of others and empowers them, through learned skills, to take appropriate actions.⁶⁰ An important outcome of human rights' education is the empowerment, a process through which people and communities increase their control of their own lives on decisions that affect them.⁶¹ This is one of the best ways of ensuring social security, peace and development for a state. Thus, it embodies by definition a diverse range of contents and interpretations as well as specific programmes and country needs. Rights bring also responsibilities, then the role of education (in protecting these rights and in identifying those responsibilities) must be to teach about the world in which we live and the people with whom we share the world. Within that broad framework more specific issues can be addressed by human rights' education.⁶²

Human rights' education is defined by the UN High Commissioner on Human Rights as those efforts that aim at building a universal culture of human rights.⁶³ As indicated in the plan of action by the UN, for the realization of this goal, it is essential that the training focus on particular skills, which are: the acquisition of knowledge and building of attitudes that would strengthen the respect for human rights and fundamental freedoms, promote understanding, respect, gender equality and friendship among nations, declare equality of racial and ethnic groups, and expand the activities of the United Nations for the maintenance of world peace.⁶⁴ To assist States with preparing and implementing national plans of action, the Office of the High Commissioner for Human Rights (OHCHR) drafted guidelines that included a set of principles for the development of these plans in human rights' education. States were requested to advise the OHCHR of the identity of their focal point and report on efforts to implement the plan of action for the first phase of the World Programme.

⁶⁰ Alan Gewirth, *Human Rights: Essays on Justification and Applications*, Chicago: University of Chicago Press, 1982, p. 55.

⁶¹ Thomas Paine, *The Rights of Man*, New York: Penguin Books, 1985, p. 68.

⁶² <http://www.humanrightseducation.info>

⁶³ Heater D., *Human rights education in schools: concepts, attitude and skills*, Strasbourg, France: Council of Europe, 1984.

⁶⁴ Alan Gewirth, *Human Rights: Essays on Justification and Applications*, Chicago: University of Chicago Press, 1982, p. 57.

The United Nations have played an important role in the development of international human rights law since its creation.⁶⁵ The UN have created a global structure for protecting human rights, based largely on its Charter, non-binding declarations, legally binding treaties and on various activities aimed at advancing democracy throughout the world.⁶⁶ The provisions of the United Nations Charter provided the starting basis for a comprehensive system of international law and practice for the protection of human rights.⁶⁷ The preamble of the Charter provides that the members “reaffirm faith in fundamental human rights, in the equal rights of men and women” and Article 1(3) of the United Nations Charter states that one of the purposes of the UN is “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinctions as to race, sex, language or religion”.⁶⁸ Article 55 provides that the United Nations shall promote:

- Higher standards of living, full employment and conditions of economic and social progress and development;
- Solutions of international economic, social, health and related problems;
- International cultural and educational cooperation;
- Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Of particular importance is Article 56 of the charter that says: “All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55”.⁶⁹ This is a binding treaty provision applicable to both the Organization and its members and has been taken to constitute a legal obligation for the members of the United Nations.⁷⁰ The importance of human rights on the global stage can be traced to the discourse of human rights

⁶⁵ F. J. Curits, *Introduction to international human rights law*, Cd Publishing, 2006.

⁶⁶ Jack Donnelly, *Universal human rights in theory and practice*, 2nd ed., Ithaca: Cornell University Press, 2003.

⁶⁷ Rhona K.M. Smith, *Text books on International Human Rights*, p. 164-171.

⁶⁸ United Nations Charter Article 1(3).

⁶⁹ United Nations Charter Article 56.

⁷⁰ Brownlie Ian, *Principles of Public International Law*, 8th edition, Oxford: Oxford University Press, 2012, p. 532.

within the UN framework. The rights adopted in the UN charter were later codified and defined in the International Bill of Human Rights, composing the Universal Declaration of Human Rights, the two Covenants of 1966 and in many other international instruments adopted recently in the field of human rights.⁷¹ The UN Charter can be seen as the starting point for the development of a broad array of declarations, treaties, implementation and enforcement mechanisms, UN organs, committees and reports on the protection of human rights. It will be explained more in details in the next paragraph.

2.1.2 UDHR: Universal Declaration of Human Rights

When the Universal Declaration of Human Rights (UDHR) was proclaimed in 1948, it articulated the notion that human rights were universal and based on civil, political, economic, social and cultural rights. The Universal Declaration of Human Rights included economic, social and cultural rights with civil and political rights; this is because it was based on the principle that different rights could only successfully exist in combination.⁷² In the preamble of the document there's the ideal of free human beings enjoying civil and political freedom from fear and it can only be achieved if conditions are created whereby everyone may enjoy these rights. The UDHR is one of the first international documents to be based on the idea that rights are guaranteed to each human being. Most previous international declarations and treaties were based on the idea of positivism, whereby rights are only recognized once they have been set out in national legislation.⁷³

Deciding which norms should be counted as human rights is a matter of some difficulty and there is continuing pressure to expand lists of human rights to include new issues (e.g. environment rights). Many political movements would like to see their main concerns categorized as matters of human rights, since this would publicize, promote and legitimize their concerns at the international level. A possible

⁷¹ F. J. Curtis, *Introduction to international human rights law*, Cd Publishing, 2006.

⁷² Jack Donnelly, *Universal human rights in theory and practice*, 2nd ed., 2003, Ithaca: Cornell University Press, p. 136.

⁷³ Jeremy Waldron, *Theories of Rights*, Oxford: Oxford University Press, 1984.

result of this is a human rights' inflation. However, it should be noted that not every question of social justice or wise governance is a human rights' issue. For example, a country could have too high-income inequality or inadequate provision for higher education, but without violating any human rights' agreement.

The UDHR sets out a list of over two dozen specific human rights that countries should respect and protect. These specific rights can be divided into six or more families: security rights that protect people against crimes such as murder, massacre, torture and rape; due process rights that protect against abuses of the legal system such as imprisonment without fair trial, secret trials and excessive punishments; liberty rights that protect freedoms in areas such as belief, expression, religion, association, assembly and movements; political rights that protect the liberty to participate in politics through actions such as communicating, assembling, protesting, voting and serving in public office; equality rights that guarantee equal citizenship, equality before the law and non-discrimination; social (or "welfare") rights that require provision of education to all children and protections against severe rights.⁷⁴ The Universal Declaration does not include group rights, but subsequent treaties do. As it will be explained in the next chapter group rights include protection of ethnic groups against genocide and the ownership by countries of their national territories and resources.

The most obvious way in which human rights exist is as norms of national and international law created by enactment and judicial decisions. At the international level, human rights norms exist because of treaties that have turned them into international law. At the national level, human rights norms exist because they are constituted through legislative enactment, judicial decision or because custom become part of a country's law. When rights are embedded in international law they are considered as human rights, but when they are enacted in national law they are described as civil or constitutional rights.⁷⁵ As this paragraph illustrates, it is possible for a right to exist within more than one normative system at the same time.

⁷⁴ Andrew Fagan, *Human Rights*, Internet Encyclopaedia of Philosophy, retrieved the 20th November 2010.

⁷⁵ Morton E. Winston, *The philosophy of Human Rights*, Wadsworth Publishing Company, 1989, p. 45-50.

Enactment in national and international law is one of the ways in which human rights exist, but this is not the only way. If human rights exist only because of these reasons above-mentioned, their availability would be contingent on domestic and international political developments. Many people have sought to find a way to support the idea that human rights have roots that are deeper and less subject to human decisions than legal enactment. One version of this idea is that people are born with rights, that human rights are somehow innate or inherent in human beings.

In defining the features of human rights, the goal here is to answer the question of what human rights are with a general description of the contemporary concept rather than a list of specific rights. Human rights are political norms dealing mainly with how people should be treated by their governments and institutions. They are not ordinary moral norms applying mainly to interpersonal conduct. They forbid governments to discriminate in their actions and policies and they impose duties on governments to prohibit and discourage both private and public forms of discrimination. The international instruments deal with the states' obligations and they are designated as rights of individuals, which find reference in every article.

The UDHR is generally viewed as the preeminent proclamation of international rights. Although the Declaration is a non-binding resolution, it is now considered by some to have acquired the force of international customary law that may be invoked in appropriate circumstances by national or other tribunals. The UDHR drives member nations to promote a number of human, civil, economic and social rights, asserting these rights as part of the "foundation of freedom, justice and peace in the world". It has been the first international legal effort to limit the behaviour of states and press upon them duties to their citizens. Fundamental human rights of the Declaration are international norms covering all countries and all people living today, while international law plays a crucial role in giving human rights a global influence. To mark the end of the Cold War ideological division on this issue, that uphold the civil and political rights to the detriment of economic, social and cultural ones, the World Conference on Human Rights in 1993 in Vienna reaffirmed the universality and interdependence of rights embodied in the 1948 Universal Declaration of Human Rights and subsequent conventions. Moreover, human rights are high-priority norms,

this does not mean that they are absolute; the high-priority just needs support from possible relations with fundamental human interests. As a matter of fact, they require justifications to be of a high-priority level and universally applied, without this characteristic they cannot bear cultural diversity and national sovereignty.

2.1.3 International Covenants: ICCPR and ICESCR

The major instruments for the international protection of human rights are the *International Covenant on Civil and Political Rights* (1966) and the *International Covenant on Economic, Social and Cultural Rights* (1966). These treaties spell out not only specific rights to which citizens ought to be entitled, but also specific conditions in which a government may be justified in derogating or limiting certain rights and specific mechanisms for enforcing compliance.⁷⁶ Among the rights protected by the first Covenant there are the right to life, the right not to be subjected to torture or to cruel, inhuman, degrading treatment or punishment, the right not to be held in slavery, the right against arbitrary arrest, the right to travel and the rights of freedom of conscience and religion, of speech and association. The second Covenant protects among other rights, the right to work, the right to fair wages, the right to form unions, the right to paid maternity leave, the right to an adequate standard of living, the right to free education, the right to take part in social life and to enjoy the benefits of scientific progress.

Although there are historical and cultural circumstances that can differentiate points of views on the subject, the various conceptions of human rights actually reflect different economic and political values of societies. Many people believe that secular and philosophical justifications for the belief in human dignity and human rights are supported by religious teachings that ground the existence of human rights on the sacredness of human life and other moral doctrines and major faiths.⁷⁷ Many rights are now formally recognized and protected under international law, but there is still

⁷⁶ John O'Manique, "Universal and Inalienable Human Rights: A Search for Foundations", *Human Rights Quarterly*, p. 465-485.

⁷⁷ Olivia Ball, Paul Gready, *The no-nonsense guide to human rights*, New Internationalist (Oxford), 2006.

not a universal interpretation of what signing and ratifying such Covenants commits a nation to. Such agreements create rights and obligations among nations in which national governments are obligated to other national governments to behave as they have promised; moreover, treaties give individuals rights under international law, in signing and ratifying these treaties the state parties create human rights and give them values. National governments function as the primary addressees of human rights, but all persons have the duty to protect human rights. In cases where the responsible government doesn't act to protect rights, the responsibility of others devolves on individuals, nongovernmental human rights organizations and under international law.

The international law of human rights is contained principally in these two Covenants, which together legislate essentially what the Universal Declaration had declared. In the Covenant on Civil and Political Rights, states undertake to respect and insure rights to life and personal integrity, to due process of law and a humane penal system, freedom to travel within as well as outside one's country, freedom of expression, religion and conscience, cultural and linguistic rights for minority groups, the rights to participate in government, the right to marry and found a family, the right to equality and freedom from discrimination. Most rights are subjected to derogation or limitation by law, as necessary to protect national security, public order or the rights and freedoms of others. Civil and political rights refer to a class of rights based upon birth rights into a polity of human rights. They ensure a citizen's ability to fully participate in the civil and political life of the state without discrimination or repression and protect the freedom of classes, of persons and individuals from unwarranted infringement into those rights by governments, private organizations and other entities. Civil and political rights form the original and main part of international human rights; political rights include natural justice in law, while civil rights include the ensuring of people's physical and mental integrity, life and safety.

The ICCPR was adopted by the UN General Assembly in 1966, but only entered into force 10 years later. The Covenant echoed many of the Universal Declaration's original provisions, along with the Covenant on Economic, Social and Cultural Rights (ICESCR) that came into force at the same time, they constitute together a detailed

codification of human rights behind many aspects. Member states have a legal obligation to respect, protect and fulfil all the rights expressed in the Covenants and are expected to take “progressive action” towards their realization. There are also important, political and practical differences between the two sets of rights, especially economic-social rights tend to be collective and to depend on national planning and policies. The two Covenants use a language of obligation, not merely of aspiration or hope. In the ICESCR, states accept to implement some specific rights; moreover in this Covenant equality and non-discrimination are pervasive themes. Derogations and limitations by law are permitted if they are compatible with the nature of these rights and are for the purpose of promoting the general welfare in a democratic society.⁷⁸ Some rights, for instance trade union freedom, are subjected only to limitations “necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedom of others”.

The second Covenant recognizes and protects equality for women in the economic and social area (Articles 2 and 3), the right to work and to have favourable working conditions (Articles 6 and 7), the right to social unions and to take collective labour action (Article 8), the right to social security (Article 9), the right to protection of the family including for mothers and children (Article 10), the right to an adequate standard of living including the right to food and the right to housing (Article 11 and 25), the right to health (Article 12), the right to education (Article 13), the right to participate in cultural life and the right to benefits of science and culture (Article 15). The ICESCR also recognizes and protects a number of core economic, social and cultural rights, including the right to social security in Article 22, the right to work in Article 23, the right to rest and leisure in Article 24, the right to education in Article 26, the right to benefits of science and culture, the right of ethnic, religious or linguistic minorities to engage in their culture, practice their religion and use their language (Article 27).

International human rights derive of course from national rights theories and systems, harking back through English, American and French constitutionalism to

⁷⁸ Michael Ignatieff, *Human rights as politics*, 3rd ed., Princeton: Princeton University Press, 2001.

John Locke and earlier natural rights and natural law theories. Or from other thinkers such as Kant, Kierkegaard, Nietzsche, Mill and Marx who hold that criteria for having rights are determined by reason, religion, power, utility and economic class history. A notable development in the international protection of human rights has been the emergence in recent years of nongovernmental human rights monitoring organizations whose role is to alert world public opinion to human rights abuses, so that individuals and governments can act more effectively to ensure that human rights are protected by all governments of the world. Although these nongovernmental organizations cannot impose any sanctions against offending governments (other than moral condemnation), they play an active role in alerting world public opinion to the existence of human rights abuses.

The UN treaty system definitively establishes the legitimacy of international interest in the protection of human rights. It is undisputed that sovereignty is limited with respect to human rights. International supervision is valid and states are accountable to international authorities for domestic acts affecting this topic. The treaty standards are the benchmark for assessment and concern. Over the last decade ratifications in the treaty system and acceptance of communication procedures have risen exponentially. What began, as an assertion of a few, is now a global proclamation of entitlements of the victims of human rights' abuse. Furthermore, this participation by states has been voluntary, the obligations of the human rights treaties have been freely assumed. It is the legal character of these rights, which places them at the core of the international system of human rights' protection. For these rights generate corresponding legal duties upon states actors, to protect against, prevent and remedy human rights' violations.

2.2 ASEAN dealing with human rights

2.2.1 The origin of ASEAN: the Association of Southeast Asian Nations

The topic of human rights in Asia seems to be less developed than western countries' situation. Actually, the Southeast Asia subcontinent is becoming in recent years more sensitive about lots of themes relating to the humanitarian sphere and with the establishment of an association to be known as ASEAN many countries could work together and face an important evolution. The aim of the association is to protect peace and stability, while accelerating economic growth, social progress and sociocultural evolution among its members.⁷⁹

The Association of Southeast Asian Nations was established in the context of the Cold War, while two big political blocs divided the world into communist and liberal-capitalist areas. ASEAN was formed on 8th August 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand, as a political and economic organization of ten Southeast Asian countries; its expansion included later Brunei, Cambodia, Laos, Myanmar and Vietnam. The five Foreign Ministers who signed it were Adam Malik of Indonesia, Narciso R. Ramos of the Philippines, Tun Abdul Razak of Malaysia, S. Rajaratnam of Singapore and Thanat Khoman of Thailand; they would subsequently be hailed as the Founding Fathers of probably the most successful inter-governmental organization in the developing world today.⁸⁰ It covers the 3% of the total land of the Earth and the members' countries have a combined population of 625 million people. Recently, on 15th December 2008, the members of ASEAN met in Jakarta to launch a charter with the aim of moving closer to a EU-style community.

The original ASEAN logo was composed by five brown shaves of rice, each one representing a founding member; beneath the shaves there is the name of the association in blue and it is set on a field of yellow encircled by a blue border. These colours have a significant meaning, brown stands for strength and stability, yellow for

⁷⁹ Long Simon, "Asia: Safety in Numbers", *The Economist*, retrieved the 8th February 2015.

⁸⁰ Thanat Khoman, "ASEAN Conception and Evolution", in the ASEAN Reader, Institute of Southeast Asian Studies, Singapore, 1992.

prosperity and blue for the spirit of cordiality in which ASEAN affairs are conducted. In 1997, with the 30th Anniversary the shades on the logo became ten, to represent all the countries taking part into the association.

The document that they signed would be known as the ASEAN Declaration⁸¹ (or Bangkok Declaration), it was a short document containing just five articles; it declared the establishment of an Association for Regional Cooperation among the Countries of Southeast Asia to be known as ASEAN and spelled out the aims of that political organization. These purposes were about cooperation in the economic, social, cultural, technical, educational and other fields with the promotion of regional peace and stability through abiding respect for justice and the rule of law following the principles of the United Nations Charter. Moreover, the association would be open for participation by all states of the region.⁸²

When we talk about the “ASEAN way” it refers to a methodology or approach to solving issues that respect the cultural norms of Southeast Asia. It could be described as “a working process or style that is informal and personal. Policymakers constantly utilise compromise, consensus and consultation in the informal decision-making process. (...) Quiet diplomacy allows ASEAN leaders to communicate without bringing the discussion into the public view. Members avoid embarrassment that may lead to further conflict”.⁸³ In recent years, the leaders of each country felt the need to integrate the region and in 2006 an observer status was given to ASEAN at the UN General Assembly⁸⁴ and the organization awarded also the status of “dialogue partner” to the UN.⁸⁵

⁸¹ The founding document is the 1967 ASEAN Declaration, *ASEAN Declaration*, ASEAN, 8th August 1967, <http://www.asean.org/new/item/the-asean-declaration-bangkok-declaration>

⁸² Rajaratnam S., “ASEAN: The Way Ahead”, in *The ASEAN Reader*, Institute of Southeast Asian Studies, Singapore, 1992.

⁸³ Masilamani Logan and Peterson Jimmy, *The “ASEAN Way”: The Structural Underpinnings of Constructive Engagement*, *Foreign Policy Journal*, retrieved 12th May 2015.

⁸⁴ RP resolution for observer status in UN assembly, *Philippine Daily Inquirer*, 13th March 2007.

⁸⁵ “Philippines to Represent ASEAN in UN Meetings in NY, Geneva” *Yahoo News*, 7th March 2007.

ASEAN's planned integration of its ten member nations has challenged its citizens to include a regional identity. This important theme delivers a challenge to construct dynamic institutions and promote sufficient amounts of social capital. The creation of a regional identity is of special interest to the association, because it could bring ASEAN into a different social atmosphere. The ASEAN Vision 2020, adopted by the ASEAN Leaders on the 30th Anniversary, agreed on a shared vision of ASEAN as a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies. The intent of the 2020 Vision policy document was to affirm again the belief in a regional framework related to human development and civic empowerment. As a matter of fact, these assumptions will be the basis for recommendations and strategies to the development of a stronger regional identity.⁸⁶

The ASEAN Community is composed of three pillars, namely the ASEAN Political-Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Community. The organization holds meetings called ASEAN Summits in which the leaders of governments of each member state meet to discuss and resolve regional issues, as well as to conduct other meetings with countries outside the association in order to promote also external relations. Now the Summit is held twice a year, because of the coming into force of the ASEAN Charter with this provision, in December 2008. The Charter is a constituent instrument providing legal status, with a dozens of principles and objectives; it codifies ASEAN norms, rules and values, sets clear targets, presents accountability and compliance. All the norms discussed at this regional level are strictly linked with the international framework build in the last century.

The global financial crisis was identified as a threat to the goals planned by the charter. The most controversial part of it was to propose a human rights body, because the body taken in consideration would not have the power to impose sanctions or punish countries that violate citizens' rights and would therefore be

⁸⁶ Jones Michael E., *Forging an ASEAN Identity: The Challenge to Construct a Shared Destiny*, Contemporary Southeast Asia, 2004, p. 140-154.

limited in effectiveness.⁸⁷ For these reasons, ASEAN has also attracted a lot of criticisms; critics think that its approach is too soft in promoting human rights and democracy. It is also far from being economically integrated as a region, even if it has made Southeast Asia's impressive economic growth possible.

2.2.2 ASEAN's approach to human rights

ASEAN's gradual adoption of human rights language and instruments is documented by a series of treaties and covenants that helped the regional development on this issue. At the moment, only two cores of UN human rights treaties have been ratified by all ASEAN Member States: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

On the 18th November 2012 heads of state of the Association of Southeast Asian Nations met in Phnom Penh (the capital of Cambodia) to adopt the ASEAN Human Rights Declaration.⁸⁸ This step represents an important stage in the development of the human rights system in the Southeast Asian area. As a matter of fact, regional human rights systems have been encouraged by the United Nations since the adoption in 1977 of the General Assembly Resolution 32/127⁸⁹, because these systems play an important role in the international protection and promotion of human rights rather than the structures inside national, regional and global institutions. The ASEAN system is the fourth regional human rights system adopted in the world, after the establishment of the European, Inter-American and African ones. From 1993 to 2007 the system has developed slowly, but since the adoption of the ASEAN Charter in 2007 the pace has picked up significantly.

⁸⁷ "ASEAN charter comes into force", *International Herald Tribune*, 15th December 2008.

⁸⁸ *ASEAN Human Rights Declaration*, Association of Southeast Asian Nations, 18th November 2012, <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>

⁸⁹ Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics and Morals*, Henry J. Steiner ed., 2007, p. 68.

As in other multi-lateral organizations, the diplomacy of ASEAN refers to three distinct blocs or institutional layers.⁹⁰ The first covers the government and inter-governmental bodies; the second regards non-governmental bodies (autonomous from the government) and the third includes civil society organizations and independent bodies which interact with ASEAN organs. The main inter-governmental organs are the AICHR (ASEAN Inter-Governmental Commission on Human Rights), the ACWC (ASEAN Commission on the Promotion and Protection of the Rights of Women and Children), the ACMW (ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrants Workers) and the ASEAN Secretariat.⁹¹

ASEAN's composition, as a varied group of countries, creates distinct political challenges in the development of a human right system; as a matter of fact the member states are very different in terms of democracy, population, political systems, levels of economic and social well-being. As ASEAN General Secretary Surin Pitsuwan explains: "In ASEAN, we are committed to the principles of democracy and human rights. But we have found out that different states have different ways of interpreting and promoting both ideals. Some are doing better than others while some are still going through a debate about how to translate these ideals in the ASEAN Charter into their laws and institutions."⁹² In general, ASEAN member states subscribe to universal human rights standards and they are all party to both the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women, while eight of the ten have signed and/or ratified the 2006 Convention on the Rights of Persons with Disabilities. This suggests a meaningful support for the principles of universal human rights standards. By the way, only four member states are party to the International Covenant on Civil and

⁹⁰ Multi-track diplomacy is an established approach or perspective in international relations. See generally Louise Diamond & John McDonald, *Multi-track Diplomacy: A Systems Approach to Peace*, 1993.

⁹¹ The system, however, is not limited to these institutions. For instance, AICHR reports to the bi-annual ASEAN Foreign Minister Meeting, while ACWC and ACMW report to the Committee of Permanent Representatives to ASEAN.

⁹² Dr. Surin Pitsuwan, Keynote Speech at the Second International Conference on Human Rights and Peace & Conflict in Southeast Asia, 17th October 2012.

Political Rights and only three to the Convention Against Torture⁹³, with a distinct legacy of authoritarian models of rule in both cases. Despite these differences between member states, the ASEAN Charter adopted in 2007 put together the common intentions of each country, providing the legal supports for the activities of the organs. One of the most distinctive features of the Charter is the provision for a human rights body⁹⁴ and this initiative was officially considered already in 1993.⁹⁵ Progress in the elaboration of a new mechanism was worthy of mention and the establishment of the ASEAN human rights body in 2007 was a significant step.

ASEAN Human Rights Declaration represents an important component for the entire system and it is developed in three parts. First, it consists of politics changing political conditions in ASEAN (including the sphere of human rights), trying to provide an environment for the development of the system; secondly, it consists of a process that create influences across interests and third, it consists of a product that is the Declaration itself.⁹⁶ In addition, the Declaration underlines the evolutionary nature of the system; its normative variety is clear in the field of human rights and other instruments from which it draws most of its provisions: the UN Charter (1945), the Universal Declaration of Human Rights (UDRH-1948), the UN Declaration on the Right to Development (DRD-1986), the Vienna Declaration and Programme of Action (VDPOA-1993), the Bangkok Declaration (1993), the Joint Communiqué from the ASEAN Ministerial Meeting of July 23-24 (JCAMM-1993) and the ASEAN Charter (2007).

The first nine articles of the Declaration covering general principles are the most controversial; five articles affirm that “human rights belong to every person” specifically emphasizing in the Art. 5 that they belong to “women, children, the

⁹³ All ASEAN member states are prohibited from engaging in acts of torture under customary international law.

⁹⁴ Art. 14 (ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting). The Charter states “ASEAN shall establish an ASEAN human rights body, with terms of reference to be decided by the Foreign Ministers of ASEAN”.

⁹⁵ *Joint Communiqué of the Twenty-Sixth ASEAN Ministerial Meeting, Singapore, 23-24 July 1993*, <http://www.asean.org/communities/asean-political-security-community/item/joint-communicue-of-the-twenty-sixth-asean-ministerial-meeting-singapore-23-24-july-1993>

⁹⁶ Shelton Dinah, *The Promise of Regional Human Rights Systems*, in *The Future of International Human Rights*, ed. Burns H. Weston & Stephen P. Marks, 1999, p. 351-356.

elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups”. Art. 10 directly affirms “all the civil and political rights in the Universal Declaration of Human Rights” and all the rights are described in detail from Art. 11 to Art. 25 of the Declaration. “All economic, social and cultural rights in the Universal Declaration of Human Rights” are affirmed with the Art. 26 and these rights are described from Art. 27 to Art. 34. The ASEAN Human Rights Declaration also explicates in Art. 28 the “right to safe drinking water and sanitation, the right to a safe, clean and sustainable environment”, in addition it affirms the protection from discrimination in treatment for “people suffering from communicable diseases, including HIV/AIDS” are described in Art. 29. The right to peace in Art. 30 and the “right to development, aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment” in Art. 36.⁹⁷

While article 10-25 and 26-34 regarding first and second generation rights, articles 35-38 set out a third generation rights. The “third generation” rights is also known as group or solidarity rights and is distinctive from individual human rights; they include collective rights for development and peace, but the Declaration does not set out a collective right to self-determination, nor identify distinct threats such as neo-colonialism. First generation rights date to the 18^o century; it covers traditional civil liberties also known as negative rights. Second generation rights date to the early 20^o century and it covers rights such as education or an adequate living standard; they are also known as positive rights, because they oblige the state to provide for public goods and services. Third generation rights move beyond the first and the second generation, to promote collective rights such as the right to peace. The Declaration champions many norms embedded in international human rights instruments, for instance it includes the promotion and fulfilment of human rights and freedoms, but it also contains the duties that ASEAN member states have to respect. A lot of provisions are echoing articles of the UDHR and this fact generated controversy prior to the adoption of the Declaration, because regional and international human rights CSOs sought to change some of them.⁹⁸ The final part of the Declaration (till the art.

⁹⁷ ASEAN Human Rights Declaration, retrieved on 17th January 2013.

⁹⁸ *Civil Groups Reject ‘Flawed’ Human Rights Declaration Draft*, Bangkok Post, <http://www.bangkokpost.com/news/local/313856/civil-groups-reject-flawed-human-rights-declaration-draft>

39) provides for cooperation among ASEAN member states in the promotion of human rights with other national, regional and international entities, in accordance with the ASEAN Charter.

The Commission and the Declaration have been criticized for the lack of transparency and failure to consult with ASEAN civil society, international human rights organizations such as Amnesty International⁹⁹, Human Rights Watch¹⁰⁰, the U.S. Department of State¹⁰¹ and the UN High Commissioner for Human Rights¹⁰². Human Rights Watch described it as a “declaration of government powers disguised as a declaration of human rights” and civil societies noted “the Declaration fails to include several key basic rights and fundamental freedoms, including the right to freedom of association and the right to be free from enforced disappearance”. Furthermore, other clauses contained in the Declaration could be used to undermine human rights, for instance Art. 7 and Art. 8 which write that “the realization of human rights must be considered in the regional and national context” and “human rights might be limited to preserve national security or public morality”.¹⁰³ These comments provoked criticism from other groups dealing with the rights of gay, lesbian, bisexual and transgender people representatives saying that “issues dealing with public morality are still problematic in almost all ASEAN countries”¹⁰⁴ and this explains the absence of reference to such rights. Criticism of the ASEAN human rights system from academics and human rights organizations also implies it is a fixed and static product.

An ASEAN view on the same human rights issue (ASEAN HRs Declaration, Monday, 19th November 2012) declare as follows:

“(7) All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair

⁹⁹ Amnesty International, “Civil society rejects flawed ASEAN Human Rights Declaration”, 2013.

¹⁰⁰ Human Rights Watch, “Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration”, 2013.

¹⁰¹ U.S. Department of State, “ASEAN Declaration on Human Rights”, 2013.

¹⁰² UN High Commissioner for Human Rights, “UN official welcomes ASEAN commitment to human rights, but concerned over declaration wording”, 2013.

¹⁰³ “ASEAN Approves Controversial Human Rights Declaration”, Voice of America, 2013.

¹⁰⁴ Bagus BT Saragih, *AHRD Won't Be Perfect, Says Marty*, The Jakarta Post, 2012, <http://www.thejakartapost.com/news/2012/09/20/ahrd-won-t-be-perfect-says-marty.html>

and equal manner, on the same footing and with the same emphasis. At the same time, the realization of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds”;

“(8) The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society”;

“(9) In the realization of the human rights and freedoms contained in this Declaration, the principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation and avoidance of double standards and politicization, should always be upheld. The process of such realization shall take into account peoples’ participation, inclusivity and the need for accountability.”

On the other side, the Declaration was welcomed by the U.S. Department of State and the United Nations High Commissioner for Human Rights, but with substantive reservations. The U.S. State Department issued a statement of support for “ASEAN’s efforts to develop a regional human rights declaration”, but at the same time it expressed concern for “the use of the concept of *cultural relativism*, stipulating that domestic laws can trump universal human rights, incomplete descriptions that are mentioned elsewhere, introducing novel limits to rights and language that could be read to suggest that individual rights are subject to group veto”.¹⁰⁵ The U.N. High Commissioner for Human Rights “welcomed the renewed commitment by leaders of the Association of Southeast Asian Nations to universal human rights norms” noting that “other regions have shown how regional human rights systems can evolve and improve over time” and that “it is essential that ASEAN ensures that any language

¹⁰⁵ U.S. Department of State, “ASEAN Declaration on Human Rights”, 2013.

inconsistent with international human rights standards does not become a part of any binding regional human rights convention.”¹⁰⁶

This ASEAN human rights system is the fourth regional human rights system, after the European, Inter-America and African systems, it is also the first established in Asia. It's a system normatively distinctive and institutionally weak, but the last Declaration adopted in 2012 has reinforced the primacy of human rights, promoting even the third generation rights explained above. By the way, the system still has a cultural-relativist position, in opposition to the universalistic norms of international human rights law. The Declaration tries to balance these differences between norms' natures (universalistic and relative to cultures), but debates and political contestations are inevitable. Moreover, the Declaration represents a regional support for international human rights law, with its reaffirmation of the UDHRs' main provisions.

An outside view on the human rights topic for Asia from Joanne Bauer in Carnegie Council said: “The World Conference reaffirmed the universality and interdependence of rights embodied in the 1948 Universal Declaration of Human Rights and subsequent conventions. But there was considerable resistance from a number of nations insisting upon a much more flexible, culturally sensitive translation and application of human rights principles. The most intense challenge came from Asia, where a majority of governments argued that the rights of an individual are not absolute. They maintained that human rights must be placed in the context of different economic and social realities and the distinctive value system of each country. The assertiveness of Asian governments reflects a rising economic self-confidence of the region and consequent growing nationalism. Citing a distinct set of Asian values—such as stability, consensus, and respect for authority—some prominent government officials are claiming an Asian concept of human rights. They continue to resent Western lecturing on human rights, holding out their records of robust economic growth as evidence that a different development strategy works for Asia. As the subject of human rights grows more prominent in the region, a series of

¹⁰⁶ UN High Commissioner for Human Rights, “UN official welcomes ASEAN commitment to human rights, but concerned over declaration wording”, 2013.

unanswered questions lends urgency to a dialogue: What is the appropriate place of human rights in interstate relations? Are human rights universal or culturally determined? What are the relationships between human rights, democratization and economic development? Do human rights undermine economic prosperity and political stability? What is the relationship between human rights and the principle of state sovereignty?"¹⁰⁷

The view expressed by the Office of the United Nations High Commissioner on Human Rights on this point is good for reference:

"International human rights are universally recognized regardless of cultural differences, but their practical implementation does demand sensitivity to culture". Moreover, "The international human rights framework itself acknowledges cultural diversity by limiting the ambit of international human rights to a range of standards on which international consensus is possible. However, "culture" is neither static nor sacrosanct, but rather evolves according to external and internal stimuli. There is much in every culture that societies quite naturally outgrow and reject. In any case, culture is no excuse not to ensure the enjoyment of human rights. For instance, harmful traditional practices, such as female genital mutilation, even if embedded in long-standing cultural customs, need to change if they are in conflict with international human rights standards. United Nations-supported development efforts should assist the full realization of international human rights standards whatever the country concerned".¹⁰⁸

The adoption of this Declaration represents a significant milestone in the development of the Southeast Asian human rights system and underlines its future possibilities. In this case, the product is less important than the process and the political context that have led to it. It's important to remember that regional human rights systems are not fixed products, but they are rather works in progress, evolving over time and significant progress is already evident in its short life. In this sense, the ASEAN system is on a road similar to that of others regional situations, starting out as a political project, but evolving along the path to becoming an authoritative law-

¹⁰⁷ https://www.carnegiecouncil.org/publications/archive/dialogue/1_01/articles/503.html

¹⁰⁸ UNOHCHR, HR/PUB/06/8, New York & Geneva 2006.

making and law-enforcing body. Asian leaders set out an important principle in the elaboration of regional human rights systems in the Bangkok Declaration of 1993, “we recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of norm-setting, bearing in mind the significance of national and regional particularities and the various historical, cultural and religious backgrounds.”¹⁰⁹ The ASEAN Human Rights Declaration of 2012 represents a practical expression of this principle. Almost twenty years after the Bangkok Declaration, it symbolizes an important continuity in the thinking of Asian leaders and a fertile ground for more future changes, in promoting an protecting the rights of 570 million of people in Southeast Asia.

2.2.3 Vietnam into ASEAN

ASEAN achieved greater cohesion in the mid-1970s, after the end of the Vietnam War, following the changed balance of power in a renewed Southeast Asia. With the organization, small member countries can align their interests and at the same time supplement their relationships with major countries. In 1988 the 13th National Congress of the Communist Party of Vietnam adopted a resolution to have “more friends and fewer enemies”. So it was not surprising when the state expressed interest in joining ASEAN as early as 1992. As a matter of fact, Vietnam became an official member of the Association on 28th July 1995; this decision demonstrated the economic cooperation in the region and the will of Vietnam to open up its economy and to trade liberalization. It has been the first Indochinese country to join ASEAN and this lead to start a useful political confrontation. Vietnam recognized that by working with ASEAN it could have a greater impact on regional and global events rather than by just acting alone.

As an ASEAN member, Vietnam worked hard to secure reconciliation and peace among nations of Southeast Asia that have been deeply divided by war for many years. A lot of implications followed this political change at different levels; social, political, economic and security improvements involved the membership’s

¹⁰⁹ Bangkok Declaration, at §8.

integration with Southeast Asia.¹¹⁰ In particular, there was a favourable ground for economic development and this Vietnam's entire raised its global image, leading to increased cooperation with multiple players in the region. Soon after becoming a member, Vietnam signed the Treaty of the Southeast Asian Nuclear-Weapon-Free Zone¹¹¹ and it was also one of the founding members of the Regional Forum.

Vietnam's interests in ASEAN were not limited to security issues; its leadership drives efforts toward the Economic Community. The country became involved in the organization's economic activities from the very beginning, for instance the sixth Summit (held in 1998 in Hanoi) proposed various solutions to the region's vulnerable economic conditions. In this context ASEAN passed the Hanoi Plan of Action that contained Vietnam's ideas and proposals to narrow the development gap in the sub-region.¹¹² There is an impressive growth in the country testifying the vigorous drive toward reforming its economy. As a member nation that has made significant contributions to the community, Vietnam continues to participate in every aspect of the cooperation, making effective efforts and fulfilling its commitments.

Vietnam state has adopted the following five priorities:

- First, work actively to achieve 2015 ASEAN Community, executing programs and plans on building the 2015 ASEAN Community, examining domestic regulations in the context of Vietnam's commitments within ASEAN and aligning them where needed, and boosting promotion of the ASEAN Community to raise public awareness of ASEAN and Vietnam's role within the bloc.
- Second, help develop the Post-2015 ASEAN Community Vision as well as the Master Plans to implement the Vision in all three pillars.

¹¹⁰ McLean John, *Will ASEAN's New Charter Bring Greater Cooperation?*, Asian Development Bank, July 2011, p. 35.

¹¹¹ SEANWFZ was signed in 1995 and it is a nuclear weapons moratorium treaty between the Southeast Asian member states. The Zone is the area comprising the territories of the states and their respective continental shelves and Exclusive Economic Zones.

¹¹² HPA is the first in a series of plans of action building up to the realisation of the goals in order to implement the long-term vision. The period of the HPA covered six years from 1999 to 2004. In recognition of the need to address the current economic situation in the region, ASEAN's measures reaffirmed a closer regional integration in order to consolidate and strengthen the economic fundamentals of the Member Countries.

- Third, strengthen solidarity, unity and ASEAN's central role in maintaining peace, stability, security and cooperation in the region.
- Fourth, help to foster ASEAN's external relations with a focus on fulfilling its role as coordinator for ASEAN-EU relations, while preparing for and then assuming a role as coordinator for ASEAN-India relations.
- Fifth, strengthen the apparatus and mechanisms for collaboration among Vietnamese authorities to take part in ASEAN cooperation and prepare for the establishment of the ASEAN Community and its subsequent development.

The year 2015 marks the 20th anniversary of Vietnam's accession to ASEAN; the country has not only demonstrated its responsibility and fulfilled its duties, it has also made significant contributions to the development of ASEAN itself. Its efforts to encourage solidarity and unity have contributed to address major regional issues and have helped advance the enforcement of the Declaration on the Conduct of Parties in the South China Sea and the creation of the Code of Conduct.¹¹³

A lot of external efforts have been made towards the establishment of an ASEAN Economic Community by 2015; Vietnam has also planned domestic changes to integrate itself with the organization. As a matter of fact, the country has restructured its administrative bureaucracy to fit into the market economy. The success of these efforts can be seen in the growth of ASEAN-Vietnam trade. As Louis Taylor (CEO of the Standard Chartered Bank in Vietnam, Laos and Cambodia) asserts: "ASEAN is the third-largest export market for Vietnam, accounting for more than 10 per cent of the country's total exports and the second-largest supplier to the country, accounting for 20 per cent of the nation's total imports". Vietnam begins to integrate further and with greater efforts in the global community and the cooperation with ASEAN will always be an important pillar in its domestic and foreign policy. Today, the most important theme in Vietnam's foreign policy is international integration, because the state was used to reinforce only domestic growth in the field of economy. In this

¹¹³ The genesis of ASEAN's 2012 draft COC may be traced back to 1995 when China occupied Mischief Reef, a maritime feature claimed by the Philippines. The Mischief Reef incident marked a turning point. ASEAN foreign minister issued a statement expressing their "serious concern" and urgency "to refrain from taking actions that de-stabilize the situation". In late 1999 ASEAN members finally reached agreement on a Code of Conduct.

sense, ASEAN represents a connection across the world and also a safety network, when the country faces both regional and global difficulties. Vietnam has already achieved the majority of its Millennium Development Goals earlier than the 2015 deadline, most notably in eradicating poverty, extreme hunger and in reducing child and maternal mortality rates, the country is also set to meet universal education targets by the end of 2016.

Vietnamese Deputy Foreign Minister Pham Quang Vinh, who is also Vietnam's current ASEAN Senior Official's Meeting (SOM) leader, thinks and explains that it is strategically influential to realize a community that employs its dynamism toward creating a shared peace, prosperity and security on the region and beyond. Vietnam's population of approximately 90 million¹¹⁴ is the main driver of growth in the retail industry. It is also the third largest country in the organization, with approximately 70% of the population between 15 and 60 years old. ASEAN needs Vietnam and vice versa, because this interaction could increase the two entities' destinies and these identities together achieve faster mutual benefits.

The success of Vietnam in the field of economy and in its development is certainly due in part to its ASEAN membership, but at the same time the state has also actively contributed with many positive collaborations to the strength of ASEAN as a formal institution. As it is explained above, economy in Vietnam is in a period of transition from a central organized system based on agriculture to a socialist market expansion. In 1986, the state also embraced an economic reform called *Đổi Mới*, an important process that paved the way for Vietnam as it is today; thanks to these influential changes, it has increased in value, evolving to the status of a lower middle income economy. In many countries there are codes of private international law, but in Vietnam cases and relations of private international law are discussed by national legal norms that are clustered in various legal documents of different law branches.

¹¹⁴ Economist Intelligence Unit.

2.3 Vietnam policy and human rights

2.3.1 VN national and international laws¹¹⁵

Up until now, Vietnam has established diplomatic relations with more than 100 countries. International conventions and treaties are sources for Vietnam private international law (in correlation with other countries, particularly those in Southeast Asia area); they have played an important role onward and upward, most of all on the practical side. As a matter of fact, the state has concluded and acceded to bilateral or multilateral agreements in various fields, in addition Vietnam has recognized international practices as a source of private international law. There are codes of conduct that have been established for a long time, regularly applied and recognized by many states, but international customs have legal values binding on nations only when the governments acknowledge these practices and have accepted them. So far, Vietnam has accepted many international practices and private international law regulates nowadays civil and political relations, which are characterized by many implications of some external elements in a wider sense; here, private international law is understood as a set of legal norms regulating civil, commercial, labour, marriage and family relations as well as civil procedures. Under Vietnamese law, the sources of international private law include the national law, international treaties and practices.

A case of law is not considered in Vietnam as a source for jurisprudence (in general) and for domestic law (in particular), this is because of the fact that Vietnamese courts comply with law just in case of legal judgement and, as a consequence, they don't have any power to issue legal documents. However, the idea of a formal and legal identification has appeared in Vietnam in the recent past, now the state is politically inclined to accept as true a case of law, as a source for national jurisprudence as well as for private international law. On the connections between the national law and international law, Vietnam's Civil Code has laid down the law in Article 759 the

¹¹⁵ According to The Law on Signing, Accession and Implementation of International treaties, adopted in 2005, Vietnam's international treaty obligations must be given priority to national laws where there is conflict; see Art. 6 entitled *International treaties and regulations of domestic law*.

following principle: “The provisions of the civil law of the Socialist Republic of Vietnam apply to civil relations involving foreign elements, unless otherwise provided for by this Code. In case a treaty to which the Socialist Republic of Vietnam has signed or acceded to contains provisions different from the provisions of this Code, the provisions of such treaty prevail”.

For each particular relation on international law, Vietnamese law has made *ad hoc* provisions on the final dispositions dealing with conflicts between national and international law. In conclusion, private international law has been taken into great consideration in Vietnam during the recent years; along with national laws, international conventions and practices have been observed like essential sources of jurisprudence, conforming to the process of Vietnam’s international integration. Domestic law has been developed since the nation started the national renewal, in other words “*Đổi Mới*”. The name is given to the economic reforms started in 1986 with the goal of creating a market economy facing socialist ideology. A great importance has been connected to private international law, in changing to a market economy and in implementing the open-door policy. The term itself is a general term with a broad use in Vietnamese language, however the *Đổi Mới* Policy refers specifically to these reforms. Essentially, the reform included plans that were directed at developing a multi-sectorial market, reforming the legal, banking, fiscal and monetary systems and creating a better environment to attract investments (especially foreign direct investments). These remarkable transformations in Vietnam’s economy and in its political institutions are seen as results from the strategic implementation of *Đổi Mới*, along with the realization of a series of policies aiming at safeguarding the political, social and economical wellbeing of the population. Vietnam’s transition, from a market-based economy to an open society, moves toward a state governed and regulated by the law; this situation gradually improved both political and economic opportunities for the people and the government can also achieve a significant human rights development. That’s why this reform has been quite successful, even if the Constitution remains the main tool dealing with domestic law.

The Constitution is the most important source of domestic law in Vietnam. Unlike the previous one, the 1992 Constitution has written many fundamental principles and norms laying the foundations for private international law. It aims to develop international collaboration in many sides, to implement Vietnam's foreign policy of multilateral trade and to diversify international relations for a more intense integration and cooperation. According to the 1992 Constitution, the Vietnamese State "pursues a policy of peace, friendship and expanded international relations and cooperation with all countries in the world, irrespective of their political and social systems, on the basis of respect for each other's independence, sovereignty and territorial integrity, non-interference in each other's internal affairs, equality and mutual benefit" (Art. 14). Moreover, the Vietnamese State "uniformly manages and expands external economic activities and assumes their unified administration, expands different forms of economic relations with all countries and international organisations on the principle of respect for each other's independence, sovereignty and mutual benefit, aiming at the protection for domestic production" (Art. 24). The Vietnamese State also "encourages foreign organisations and individuals to invest capital and technologies in Vietnam in accordance with Vietnamese law and with international law and practice" (Art. 25). It "protects the legitimate rights and interests of overseas Vietnamese" (Art. 75) and "foreigners residing in Vietnam shall obey the Constitution and laws of Vietnam and have their lives, property and legitimate rights and interests protected by the Vietnamese State under Vietnamese law" (Art. 81).

On the basis of the constitutional principles, the relationship and interaction between international law and national law are written in different legal documents. They include the Civil Code (part VII), the commercial law, the investment law, the customs law, the law on nationality, the law on marriage and family, the law on export and import duties, the maritime law and the law on civil aviation. These codes, laws and ordinances were updated to be appropriate for the process of expanding many goals inside the field of international relations. The Vietnamese Government has promulgated various decrees and different regulations aiming to specify and guide the fulfilment of ordinances and laws in the settlement of topics related to the legal

status of foreigners dealing with family relations and marriage, management of foreign currencies, payment, credit and foreign trade of foreigners in Vietnam.

At an international level, Vietnam is a party of the most important UN conventions on human rights; it has acceded to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights on 24th September 1982. However, Vietnam has not made a declaration under Art. 41 of the ICCPR recognizing the competence of the Committee to receive communications from other States and it is not a party of the First Optional Protocol, which makes available individual communications. Neither is Vietnam a party of the Second Optional Protocol to the ICCPR on the death penalty. Vietnam acceded to the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) on 9th June 1982, though it has not made a declaration under Art. 14 recognising the competence of the CERD Committee to receive individual communications. Vietnam ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) on 17th February 1982, but it is not a party to the Optional Protocol providing for individual communications. On 29th February 1990, it ratified the Convention on the Rights of the Child and on 20th December 2001 it ratified the two Optional Protocols on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography.¹¹⁶ Vietnam is also party to the International Convention on the Suppression and Punishment of the Crime of Apartheid, to which it acceded on 9th June 1981 and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, to which it acceded on 6th May 1983. In the end, Vietnam signed the Convention on the Rights of Persons with Disabilities on 22nd October 2007. It must be underlined that Vietnam is not a party to three of the core UN human rights instruments: the Convention Against Torture, the International Convention on the Protection of the Rights of All Migrant Workers and the International Convention for the Protection of All Persons from Enforced Disappearance.

¹¹⁶ Vietnam has made reservations to Art. 5 (1-2-3-4) of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, concerning certain extraditable offences. Subsequently, Vietnam amended Art. 343 of its Criminal Procedure Code, bringing it in line with the provisions of Art. 5 of the Optional Protocol and as such the Government has indicated that the reservation will be withdrawn.

The fact of becoming a member of the WTO on 11th January 2007 brought both challenges and opportunities for Vietnam in the field of human rights. In terms of law and policy, this is a direct cause of the fact that now the government must follow its human rights obligations under both international and domestic law. Thus, for example, its human rights obligations defended by the Constitution must moderate and control the State's economic policy, as it can be seen in the Constitution: "to make the people rich and the country strong" by various means including "expanding intercourse with world markets".¹¹⁷ However, it seems that Vietnam is conscious in particular of the degree to which international pressure might be brought to support this statement, as a matter of fact it proclaims in its White Paper¹¹⁸ on Human Rights "no country has the right to use human rights as a means or pretext to interfere into another country's internal affairs, create confrontation and political pressures, even use force or impose conditionality in economic and trade relations with others".¹¹⁹ There are at least three different approaches of human rights opportunities: first, it is a chance for Vietnam to integrate the state into the global market economy by entering into the system of international goods and services equally and obtaining dependable access to export markets. The economic growth, in the view of the government, shall create conditions for the promotion of human rights, including the right to development, right to suitable standard of living and others. Secondly, the enhancement of the domestic legal system and the improvement of the institutions as a condition of joining the WTO shall promote a more encouraging reality for Vietnam to improve human rights with the establishment of judicial, legislative and administrative measures. Furthermore, the opening of the economy will help Vietnam to take additional steps for the integration in the field of human rights, especially through the greater depth of opportunities for interaction and dialogue within the international community that WTO membership will bring.

¹¹⁷ Art. 16 of the 1992 Constitution.

¹¹⁸ A white paper is an authoritative guide or report that informs about complex topics and presents the issuing body's philosophy on the matter. It helps the readers to understand an issue or solve a problem. White papers are a tool of democracy, which try to present government policies while at the same time giving opinion upon them.

¹¹⁹ White Paper on Human Rights, op cit. p. 4-5.

Business failures¹²⁰, of course, will have an influent consequence on employment and rights that are directly and significantly relied on occupation for their success, for instance the adequate standard of living, housing, nourishment and health care. Then, the collective influences attached to inadequate allocation of benefits and the broadening break between rich and poor, both within and between Vietnam and the rest of the world, may put certain sectors including farming, manufacturing and private business at risk, moreover in making more vulnerable certain groups of people like children, women and ethnic minorities.

However, the poverty incidence rate in Vietnam is still considerably high, in particular for people living in the uplands and midlands, while ethnic minority families live in the highlands where 70-80% of them are poor and many are surviving in chronic poverty. The fulfilment of the right to food includes the right to an adequate nutrition; it is therefore mandatory for the Government to regulate the market in indispensable goods such as to guarantee the availability and supply of essential nutritional needs, particularly those of young children. Despite the quite positive efforts of the government to fight malnutrition in recent years, infant and child undernourishment rate is still high among ethnic minority groups in the midlands and Northern highlands of the state. For sure, any possibility to incentivize the elimination for certain products and programs would negatively impact on children's rights to an adequate nutrition. By the way, the union between state poverty decrease and programs to eliminate hunger, affected radical changes in land policy shifting the distribution of agricultural land to rural households, in addition the general condition of the national economy have brought meaningful developments for Vietnam in the assurance and protection of the right to have food. Vietnam has now changed from a country with a chronic lack of food to one of the world's first largest exporters and producers of rice.

¹²⁰ The effects of increased competition and the drive for efficiency have already been felt in the privatisation of State Owned Enterprises (SOEs), which collectively shed more than 100.000 workers between 2000 and 2005. World Bank, *Viet Nam Development Report 2006: Business, Joint Donor Report to the Viet Nam Consultative Group Meeting*, Hanoi, December 2005, p. 159. Further, in their conversations with the authors, participants at the workshop on "Human Rights Implications of Viet Nam's Accession to the WTO", held in Hanoi in May 2007, stressed their particular concerns as to the ability of local Vietnamese business to compete with their more efficient foreign counterparts.

A fundamental characteristic of Vietnam's socio-economic development approach is to advance the standards of (and access to) health care for its population. On recent statistics only 38% of families have health protection or rights of access to free health care.¹²¹ The removal of restrictions inside the health sector will definitely have an effect on the availability and accessibility of health care services.¹²² The fear is that, at least in the short term, the opening up of an extremely centralized control activity will be disadvantageous for a global provision of health services, especially for the rural poor condition. This fear is founded on Vietnam's earlier experience of legalizing private health services, with the introduction of user charges at public hospitals. The consequence of this policy was that the families were obliged to pay for their health care services, without the assistance of the state anymore; health care costs mean especially hospital costs that constitute a serious burden on low-income households. This measure also intensified the gap between rich and poor concerning access to (and the quality of) health services. Those in the richest 20% of the population have admission to provincial or central hospital 4,5 times more often than those in the poorest condition, that is 20%. A large number of low-income families are customers of Commune Health Stations, places that provide a primary level health services where the quality is generally observed to be inferior than that provided by public hospitals or private clinics.¹²³ Vietnam, like all poor countries, faces intrinsic problems in guaranteeing affordable access to medicines and cures for its population. Vietnam's obligations under the Trade Related Agreement on Intellectual Property Rights to recognize and implement manifest rights may underline this struggle. The issue is of particular importance in respect of the protection of the right to health of people living with HIV/AIDS.¹²⁴

¹²¹ Vietnamese Academy of Social Sciences, *Viet Nam Poverty Update Report 2006, op cit*, p. 24.

¹²² In its Schedule of Specific Commitments in Services, Viet Nam impose no special limitations on market access or natural treatment in the health and related social services sector (hospital, medical and dental services) and permits foreign service suppliers to establish 100% foreign-invested hospitals, provided that the minimum investment capital for a hospital is USD 20 million. See: WTO Working Party on the Accession of Viet Nam, Schedule of Specific Commitments in Services and List of Article II MFN Exemptions, WT/ACC/VNM/48/Add.2, 27th October 2006, p. 43.

¹²³ United Nations Country Team Viet Nam, *User Fees, Financial Autonomy and Access to Social Services in Viet Nam*, Discussion Paper No. 6, Hanoi, August 2005, p. 3-9.

¹²⁴ UNAIDS Viet Nam, "Summary of the HIV Epidemic in Viet Nam", September 2006, available at: http://www.unaids.org.vn/facts/docs/key_messages_sep_2006_e.pdf

When compared to other states with a similar situation of growth and development, Vietnam has a quite strong position in the role of performer on gender equality improvement. In 2010, the Children's Women Index, which measures the collective health, instruction, political and social status of women, placed Vietnam at 24^o place out of 77 countries creating the second phase of the United Nations' development groups (less developed nations). The government indeed has gradually established a legal framework for gender equality, which is also sustained by institutions and programmes to support improvement for women's condition, especially with the implementation of laws on gender equality and concerning domestic violence. In the field of instruction, the literacy rate of adult women is relatively high, without a gender gap in primary or secondary education, while an estimated 20% of ethnic minority girls finish to go to school earlier. The participation of women in the labour force is considerable and the political representation of Vietnamese women in the National Assembly is at 26% (among the highest in whole Asia), even if in general women continue to be significantly under-represented in the rest of the governmental system.

The economic growth in Vietnam is due to the transition to a market economy, which also had a negative influence on the implementation of the cultural, social and economic rights of children, for example with the increase of financial pressure on families concerning health and education services. Vietnam signed the General Agreement on Trade in Services (GATS) to liberalize eleven distinctive sectors, including education. Moreover, it has already opened its tertiary sector concerning instruction and education, particularly regarding topics such as economics, international law, languages, business management, technical and natural sciences. It is clear that the access to education in the countryside for children is strongly linked to the commercial sustainability of the agricultural segment, for both rich and poor families there is the same situation. The challenge in education is to be for all, without being part of services inside a local market economy.

The combination between the low-based infrastructures from which Vietnam developed its industrial sector¹²⁵ and this latter has pressured the government and the corporations to focus on issues such as labour and workplace interactions, to take care of health and safety standards for peoples and employees. Vietnam significantly revised its Labour Code in 2002 to add the different ILO (International Labour Organisation) standards, although gaps and difficulties remain, which will be intensified by the requests of additional commercial expansion and trade liberalization.¹²⁶ One issue that is of particular concern is about how to combat factory conditions, as it's clear in the working circumstances of many private companies.¹²⁷ In 2006 around Hồ Chí Minh City, unofficial strikes involved thousands of workers protesting against inadequate salary and bad working conditions, demanding from the Government a 40% increase in the minimum wage, for workers in external corporations (up to US\$54 per month). There are also particular human rights concerns regarding women in the work force, as highlighted in the increasing clothing industry and regarding 'internal migrant' workers.¹²⁸

Analysis of statistics about women working in the clothing industry show that they are often very young, from 20 to 30 years old, in general without children and single. The majority of female workforce in this sector has moved from the countryside to the city, because in the rural areas there are higher levels of poverty and unemployment. Most of the people living in the rural regions and working with agriculture, try to find an employment in the city for a better salary. However, workforce conditions in the clothing industry are not always satisfactory, that's why most of them do not stay more than two or three years in the industry. Despite these risk, internal migration from rural areas has permitted many people to find a job,

¹²⁵ Based on the period from 2000-2004, 20% of employed men and 13% of employed women worked in the industrial sector. World bank, *World Development Indicators*, 2006, at: http://devdata.worldbank.org/wdi2006/contents/Table2_3.htm

¹²⁶ As the Government itself notes "labour is a decisive factor of the competitiveness of each enterprise and each economy". Ministry of Labour, Invalid and Social Affairs (MoLISA), *Labour and Social Issues Emerging from Viet Nam's Accession to the Viet Nam to the WTO*, Paper 18, 2004, p. 2.

¹²⁷ Michael Marine, the outgoing US Ambassador to Viet Nam nominated these issues as likely topics for the first working sessions to be held under the TIFA in late 2008, see: http://www.bilaterals.org/article.php3?id_article=9337, posted 14/08/2007.

¹²⁸ Human Rights Watch, World Report 2007 - Vietnam, at: <http://hrw.org/englishwr2k7/docs/2007/01/11/vietna14858.htm>

especially in the manufacturing industries. A lot of internal migrants send some money back to their families and many studies show that this has played a critical role in poverty reduction in rural areas.¹²⁹

Vietnam's current development strategy involves comprehensive reforms across all policy areas, so as to guarantee business advance, preserve social inclusion, manage natural resources and strength the governance. However, reforms have not progressed at the same pace across all areas. Despite Vietnam's progress in poverty eradication, relative poverty will emerge as a more important phenomenon than absolute poverty in the coming decade. The system of social service provision still has significant weaknesses. It is also clear, that Vietnam's current education system is still inadequate to the country's current and future needs. While the government continues to promote equity and quality of education (especially primary education), significant gaps remain, most notably between the majority of the population and minority ethnic groups. There can be no doubt that social and economic advancements constitute a basic foundation to any serious attempts to protect and promote civil, political, as well as economic and social rights. However, it is not itself a guarantor of such protection, especially if its impact is imbalanced, as for example in the case where urban communities have generally progressed much better than rural ones. Further government action is necessary if the rights to basic freedoms, to housing, education and an adequate standard of living are to be attained.

In some cases economic removal of restrictions may bring benefits to a big part of the population, but the majority of human rights such as the right to education, right to freedom of religion, right to health, right to food, right to adequate standard of living are under threat for some ethnic minority groups. As a matter of fact, ethnic minorities have not equally gained the benefits like part of Vietnam did, after having made progress over the past decade in preventing poverty across the country. While the national poverty rate declined significantly from 58% in 1993 to 20% in 2004, the poverty rate among ethnic minorities decreased respectively from 86% to 61%. In Vietnam, minority groups represent the 14% of the whole population over ten million

¹²⁹ See Vietnamese Academy for Social Sciences, *Viet Nam Poverty Update Report 2006*, op cit, p. 38-39.

people and they make up the 39% of the poor; it has become an international affair that ethnic minorities are excluded from the evolution process of the state, the major concern of political institutions is that their opportunity of accessing rights is insufficient and inadequate. In 2004, the poverty rate for ethnic minorities was 61%, which is approximately 4,5 times the national poverty rate. Such figures signal systemic disadvantage and fundamental threats to the human rights of ethnic peoples.¹³⁰

2.3.2 Human rights in Vietnamese laws

As with all countries, measuring the levels of protection of human rights will change depending on which rights do you take into consideration. After a war of thirty years, fighting for independence and for the fundamental right of self-determination, Vietnam became an example among oppressed and colonial states, thanks to its peoples who battled with determination for the protection of social and political human rights. Vietnam is now in a better condition, after thirty years of incredible efforts to encourage social development and to promote a rapid growth in economy, to establish state mechanisms for the consolidation and protection of human rights, from civil and political to economic, social and cultural rights.

Human rights became an issue of particular interest for the Communist Party of Vietnam, as the country has turned its progress concerning international integration. In the Political Platform of 1991, the Communist Party of Vietnam stressed on “building a democratic and civilized society for the legitimate interest and dignity of the people”.¹³¹ The Party’s viewpoint on human rights was officially expressed in the documents of the IX Congress back in 2001, which stated its objectives as “to take care of the people, to protect rights and legitimate interest of everyone; to respect and implement international treaties on human rights that Vietnam has ratified or

¹³⁰ World Bank, *Viet Nam Development Report 2007: Aiming High*, p. 102 available at: http://siteresources.worldbank.org/VIETNAMEXTN/Images/vn_dr_2007_report

¹³¹ David Kinley and Hai Nguyen, *Viet Nam, Human Rights and Trade*, Ed. Friedrich Ebert Stiftung, n° 39, April 2008.

acceded to”.¹³² These human rights purposes have been further reaffirmed in the subsequent Party Congress in 2006 and 2011. The Political Report of the Party Central Committee expressly documented the responsibility of the state to institutionalize and to implement citizen’s rights and human rights efficiently. It also confirmed the policy of the Party to be open to human rights dialogue with other states and related regional administrations.¹³³

As far as the topic of human advancement is concerned, the Vietnamese government’s position is not to separate the implementation of human rights and the issue of human development. Vietnam also declares that promotion and protection of human rights are essential elements for a sustainable development that could also ensure a positive achievement of the national industrialization. In these expressed words “Vietnam considers human beings both as the goal and the driving force of the national building; human beings are placed at the centre of all socio-economic policies”. A primary recognition of an official perception about civil and political rights as well as economic, social and cultural rights was established in the first Constitution of Vietnam in 1946, consisting of 18 Articles in Chapter II “Citizen Rights and Obligations”. The 1959 and 1980 Constitutions marked a step forward with 21 and 29 Articles respectively, on the citizen’s rights and obligations. As a result, in formal legal terms at least, Vietnam is relatively well served in respect of human rights guarantees. The 1992 Constitution contains 34 provisions on Chapter V “Citizen Rights and Obligations”. It was adopted in the midst of Vietnam’s *Đổi Mới* reforms and it was documented as the most important step in laying down the foundations for legal expansion of the citizen’s rights. The Constitution expressly states: “All human rights in the political, civil, economic, cultural and social fields are respected. They are embodied in citizens’ rights and are determined by the Constitution and the law.” Realizing the crucial role of the law with its rules, this Constitution provided that the state of Vietnam governs the society by virtue of law, thanks to Article 4.

¹³² Political Report of the Communist Party in the IX Congress in 2001, available in Vietnamese at the Communist Party website:

http://www.dangcongsan.vn/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=8&leader_topic=226&id=BT25110530192

¹³³ Constitution 1992 (art. 50), as translated in Vietnam’s Report to the Human Rights Committee, 2001, UN Doc. CCPR/C/VNM/2001/2, p. 6.

A number of rights were introduced for the first time or supplemented by the 1992 Constitution. For instance, it was introduced Art. 57 on the right to free enterprise; Art. 68 on freedom of movement and residence was complemented by the right to freely travel abroad and to return in accordance with the law; Art. 69 on freedom of opinion and speech and freedom of the press was supplemented with the right to be informed; Art. 70 on freedom of religion was supplemented with “all religions are equal before the law”; Art. 72 provided for the presumption of innocence and freedom from punishment before the sentence of a Court has obtained full legal effect. These fundamental guarantees have provided the grounds for the enactment of a number of key laws and ordinances in the field of human rights.¹³⁴

Since 1986, Vietnam has publicized over 40 codes and laws, over 120 ordinances, approximately 850 Government documents and more than 3.000 regulatory documents issued by Ministries and agencies. Most human rights are recognized in these various laws. Voting rights, for example, are regulated by the Law on the Election of Deputies of the National Assembly, the Law on the Organization of the Government, the Law on the Election of Members of the People’s Council, the Law on the Organization of the People’s Council and People’s Committee.¹³⁵ Freedom of press has made considerable improvements, as a matter of fact the Press Law (revised on 12th June 1999) and the Law on Publication now accept the right of all citizens to exercise their freedom of speech through the press, and provide for freedom of press and freedom of information. For example, in 1990 there were only 258 newspapers and journals in all the country, but now there are 553 printed newspapers, nearly 700 publications and 200 electronic newspapers.¹³⁶ Today, more than 80% of families have access to radio broadcast and 70% have access to Internet and television. Nowadays, all provinces and cities have radios and television stations with an increasing number of broadcasting programmes; foreign TV channels such as CNN,

¹³⁴ See generally, Vietnam’s *White Paper on Human Rights*, op. cit. p. 16.

¹³⁵ Though, in practice, the choice of candidates to vote (despite apparent expansion in recent years) remains strictly limited.

¹³⁶ *White Paper on Human Rights*, op cit, p. 10-11.

BBC, TV5, DW, RAI and HBO are widely transmitted.¹³⁷ However, despite the revision of the Press Law in 1999, which brought about many of these changes, it remains the case that there is no non-state, independent media operating inside the country¹³⁸, outspoken protesters are suppressed¹³⁹ and web-based censorship of political content is still strict and has been recently strengthened.¹⁴⁰

Other rights such as freedom of association, freedom of movement, the right to education, the right to health and the right to form trade unions (as well as additional aspects of the right to a fair trial) are provided in the Civil Code 2005, Civil Procedure Code 2004, Criminal Code 1999, Criminal Procedure Code 2003, and the Law on the Protection, Care and Education of Children 2004. The Law on Gender Equality, adopted on 29th November 2006, has integrated many international human rights standards to protect the rights of women including the principles of equality and non-discrimination (Art. 6) and the promotion of gender equality in different aspects of social and family life (Articles 11-18). The Law on Domestic Violence, which was recently adopted at the 12^o National Assembly and came into force from the 1st July 2007, is another effort to protect the human rights and dignity of women in Vietnam. The Law on Social Insurance, adopted for the first time in 2006, seeks to realize a system of social welfare for issues such as sickness, maternity benefits, pensions, unemployment insurance, social security funds, social security organizations and to this end the Law provides regulations, policies, rights and obligations applicable to employers, employees and other administrative bodies. The Constitution also provided for the first time with Art. 15 that “the state develops a multi-sectors market economy driven by market mechanism and managed by the state, following socialist

¹³⁷ Ministry of Foreign Affairs, *Viet Nam's Achievements in the Protection of Human Rights* available at:

http://www.mofa.gov.vn/en/ctc_quocte/ptklk/nr040819162124/ns070731133814/view.

¹³⁸ See Decree 37/2006/CT-TTg of the Prime Minister dated 29th November 2006 on the Implementation of the conclusion of the Politburo relating to strengthening the leadership and management of the press.

¹³⁹ See Human Rights Watch, “Vietnam: Crackdown of Dissident in the Wake of WTO and APEC”, 9th March 2007, at: <http://hrw.org/english/docs/2007/03/09/vietna15466.htm>

¹⁴⁰ By the enactment of Decree No. 56/2006/ND-CP on punishment for administrative violations in the culture and information sector, which entered into force on 1st July 2006; see further Amnesty International, “Socialist Republic of Vietnam. A Tightening Net: Web-based Censorship and Repression” 22nd October 2006, at: <http://web.amnesty.org/library/Index/ENGASA410082006?open&of=ENG-VNM>

orientation. The multi-sectorial structure of the economy with diversified types of productions and business organizations is rested on the forms of public ownership of all people along with collective and private ownership". Among its amended provisions, the Constitution firmly recognized private ownership and provided legal instruments against nationalization (Art. 23) and ensured that foreign investments and trade are to be encouraged (Articles 24 and 25). These constitutional amendments reflected a completely new approach towards the private sectors' role and its important status.

The 1992 Constitution also reaffirmed the right to participate in the management of the State and society (Art. 53), the right to vote and to stand for elections (Art. 54), the right to work (Articles 55 and 56), the right to do business (Art. 57), the right to property and inheritance (Art. 58), the right to education (Art. 59), the right to do scientific and technological research, the right to invention, copyrights, industrial property rights (Art. 62), the right to health care (Art. 61), the right to housing (Art. 62), the right to gender equality (Art. 63), the right to marriage and form a family (Art. 64), the right of the child (Art. 65), the rights of the youth (Art. 66), the rights of war invalids, wounded soldiers, martyrs, families credited with estimable service to the revolution, the elderly, persons with disabilities, orphans (Art. 67), the right to inviolability of the body (Art. 71), the right to be presumed to be innocent (Art. 72), the right to inviolability of residence and correspondence (Art. 73) and the right to make petition and complaints (Art. 74). In the newly amended 2013 Constitution, for the first time in history of the country, Human Rights have been fully incorporated in one Constitution's chapter, the whole II Chapter is dedicated to them. The 2013 Constitution reflects Vietnam's more profound perspectives on the protection and respect of human rights and it ensures a better implementation of citizens' fundamental rights and obligations. Human rights have also been stated in many articles of the revised Constitution and the legal document stipulates new rights as a result of the nearly three-decade renewal process, in line with international treaties on human rights of which Vietnam is a member state.

As it said before, the new 2013 Constitution has devoted a Chapter on human rights which will pay the way for more consolidated national efforts in the field of human right protection and promotion in the years to come. Considerable effort, therefore, has been invested in providing the legal framework through which human rights concerns across the board might be addressed. However, the test for these rights guarantees is how well they are respected and applied in practice. The Government's program of ratification of the principal international human rights instruments provides important international standards against which progress in this sense can be measured. Despite the focus on economic and social rights in recent years, there have been positive steps taken towards better protecting and promoting civil and political rights. Though they may be limited, they are nonetheless notable. Thus, for example read the following list:

- Right to life: the death penalty is being imposed only in the most serious crimes. The government has pursued a policy of limiting the penalty of capital punishment, contemplating about its abolishment in the future. The White Paper on Human Rights notes that the number of offences subjected to capital punishment under the Penal Code 1999 has been reduced from 44 to 29 (at p. 23) and a proposal to reduce the number still further to 20 has been made by the Central Judicial Reform Commission to the Ministry of Public Security. The crimes to avoid are mostly economic such as fraud, embezzlement, corruption and counterfeiting.¹⁴¹
- Prohibition of torture: the issue of torture has been discussed principally among scholars and political institutions. A number of workshops, seminars and studies on the possibility of accepting the agreement to the UN Convention against Torture have been led with recommendations for Vietnam to prepare a roadmap for becoming a state party to the Convention. In December 2003 the Vietnamese Research Centre held an international seminar on the Torture Convention in

¹⁴¹ For criticism, see for example, Amnesty International, "Death Penalty News" May 2006, available at: <http://web.amnesty.org/library/Index/ENGACT530022006?open&of=ENG-VNM>

Hanoi for Human Rights and the Ministry of Foreign Affairs to prepare for this particular issue.¹⁴²

- Freedom of association: the Law on Associations (which is in fact a constitutionally protected right) has been in development since 1993 and the National Assembly reviewed a draft in 2006. But, due to the inability of the Government and the National Assembly to agree in certain important provisions, the law was removed from the agenda. Conflicting opinions persist on such fundamental points such as state administration of associations and the possibility of application of the law.¹⁴³
- Fair trial rights: among the judicial and legal sector reforms introduced in recent years, improvements have been made towards safeguarding the right to a fair trial generally, access to courts and to just solutions in particular. The Law on Complaint and Denunciation and the Resolution 388¹⁴⁴ have provided new rights and remedies aimed at increasing the justice and integrity of criminal proceedings. But the capacities of both the judiciary and the legal profession are still very inadequate and as a consequence there are considerable gaps between the rights provided in law and the mechanism for their actual realization.¹⁴⁵
- Rights of women and children: there have been developments in the recognition of the rights of women, such as the adoption of the Law on Gender Equality on November 2006, which entered into force the 1st July 2007. Moreover, the amendments to the Land Law and the Law on Marriage and Family in 2003, which aim at eliminating discrimination against women, also promote gender equality.¹⁴⁶ The 2001 Law on the Election of National Assembly Deputies and the 2003 Law on the Election of Members of the People's Council established a quota system for female deputies and set targets for women's representation in public bodies at different levels. Vietnam has also made progress regarding the rights of

¹⁴² See Ministry of Foreign Affairs, "International Cooperation in Protection of Human Rights", at:

http://www.mofa.gov.vn/en/ctc_quocte/ptklk/nr040819162124/ns070731133056/view

¹⁴³ Norlund Irene, "Filling the Gap: the Emerging Civil Society in Vietnam", UNDP, Hanoi, January 2007, p. 9.

¹⁴⁴ Following the adoption of Resolution 388 in 2003, a number of miscarriage of justice cases have been handled with adequate compensation and, for the first time, law enforcement officials have apologised publicly.

¹⁴⁵ Inter-Agency Steering Committee/Ministry of Justice, *Comprehensive Needs Assessment For the Development of Viet Nam's Legal System to the year 2010*, Hanoi, 2002, p. 16-17.

¹⁴⁶ Concluding Observations of the CEDAW, 2007, UN Doc. CEDAW/C/VNM/CO/6

children, achieving an admirably high rate of vaccination treatment and engaging in efforts to achieve universal registration at primary school level. Finally, revisions to the Criminal Code in 1997 and 1999 introduced new offences and more severe penalties for crimes related to the sexual exploitation of children.¹⁴⁷

As already noted above, there is a sizeable gap between the rights provided in law and the mechanisms for their actual implementation. In its Concluding Observation in 2002, the UN Human Rights Committee was concerned about the large number of crimes for which the death penalty may still be imposed, despite the above-mentioned reduction in crimes that carry the death penalty. The definition of certain acts such as opposition to order and national security violations, for which the death penalty may be imposed, were considered excessively vague and therefore inconsistent with Art. 6(2) of the ICCPR. The Committee was also concerned about the persistent use of administrative detention and the ability of persons to be kept under house arrest without the intermediation of a judge or a judicial officer.

Despite progresses regarding the issue of gender equality, there are still significant impediments to the full satisfaction of human rights by women and children. For example, in respect of gender equality, the UN Committee on the Elimination of Discrimination against Women in its 2007 Concluding Observations expressed alarm about the women in the informal economy, which negatively affects their eligibility for social security and other benefits, including health care. The Committee noted the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men within the family and society. The rates of prosecution and conviction of traffickers and persons who exploit the prostitution of women remain alarmingly high and there are inadequate mechanisms in place for the rehabilitation and reintegration of victims. Furthermore, a high proportion of adolescents drop out of school and girls in rural areas do not have full access to instruction. Generally speaking, women living in countryside and ethnic minority women are the most suffering this typical lack of appropriate access to health services, education and employment.

¹⁴⁷ Concluding Observations of the CRC – OP2, 2006, UN Doc. CRC/C/OPSC/VNM/CO/1

Regarding the discourse about children, the UN Committee on the Rights of the Child (CRC) has expressed concern that insufficient resources have been distributed for the improvement of health structures and education in remote and mountainous areas. A lower level of development markers for ethnic minorities indicates the existence of collective or institutional discrimination regarding their access to health care and education.¹⁴⁸ There are problems with birth registration in rural and mountainous regions and a high number of adoptions, suggesting that inter-country adoptions are a decision often taken because of economic reasons, due to the inefficiency of the state's regulations. Apprehensions have also been conveyed over the persistently high rates of maternal and infant mortality, malnutrition among children and the general rate of economic exploitation of children in the agricultural sector, as well as in gold mines, in timber production, in the private and service sectors' enterprises. There are economic grounds and explanations to believe that some of these problems, in respect of the general levels of the health and welfare of children, have improved since this CRC report in 2003, but in large measure, the particular problems it highlighted remain today.

Vietnam has a weak judicial organization, due to decades of inattention with a massive lack of competent, professionally and qualified lawyers and also because of the absence of just resources for the judiciary system. Certain government's practices seriously compromise the independence of the legal power, such as the fact that the judiciary competence seeks the opinion of the National Assembly's Standing Committee with the respect to the interpretation of laws; furthermore, the Standing Committee sets criteria and instructions binding on the judiciary context and the term of appointment of judges is only for four years, which preclude the security of tenure. In 2005, for the first time, the Ministry of Foreign Affairs has published a White Paper on Human Rights issues, which "provides a comprehensive outlook on the views and policies that Vietnam pursues to realize human rights, as well as the country's achievements in the field".¹⁴⁹ A comprehensive attitude on human rights, as

¹⁴⁸ Concluding Observations of the CEDAW, 2007, op cit. at par. 22.

¹⁴⁹ *White Paper on Human Rights*, wherein the Government stresses the principle of non-interference in a state's internal affairs at the same time as accepting the need for international cooperation, and its insistence on the interdependency of development and human rights.

stated by the Government echoes that “all rights should be treated equally; rights and freedoms of individuals can only be protected on the basis of respect for the common rights and interests of the nation and community; rights go along with obligations to the society”.

CHAPTER III

THE CASE STUDY OF MONTAGNARDS IN VIETNAM

3.1 Protection of minorities in the international states

The revolutionary Parliament of Hungary created the first minority rights in 1849; minority rights, as applying to ethnic, religious or linguistic minorities and indigenous peoples, are an integral part of international human rights law. Like children's rights, women's rights and refugee rights, minority rights are a legal framework designed to ensure that a specific group which is in a vulnerable, disadvantaged or marginalized position in society, is able to achieve equality and is protected from persecutions. The first post-war international treaty to protect minorities, which aims to protect them from the greatest threat to their existence, was the UN Convention on the Prevention and Punishment of the Crime of Genocide. Subsequent human rights standards that codify minority rights include the International Covenant on Civil and Political Rights (with Article 27), the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, two Council of Europe treaties (the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages) and the OSCE Copenhagen Document of 1990.

Some standard individual rights are especially important to ethnic and religious minorities, including rights to freedom of association, freedom of assembly, freedom of religion and freedom from discrimination. Human rights' documents also include rights that refer to minorities explicitly and give them special protections. For instance, the Civil and Political Covenant in Article 27 says that persons belonging to

ethnic, religious or linguistic minorities “shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language”. The term “minority rights” embodies two separate concepts: firstly, normal individual rights as applied to members of racial, ethnic, class, religious, linguistic or sexual minorities; secondly, collective rights accorded to minority groups. The term may also apply simply to individual rights of anyone who is not part of a majority decision. Civil rights movements often seek to ensure that individual rights are not denied on the basis of membership in a minority group. There are many political bodies, which also feature minority group rights.

Minority groups are often targets of violence, discrimination and cultural assimilation by the culture of majority groups. Concern for the equal rights of disadvantaged groups is a longstanding concern of the world communities. Human rights’ documents emphasize that all people, including women and members of minority ethnic groups, have the same basic rights and should be able to enjoy them without discrimination. The Civil and Political Covenant, for instance, commits participating states to respect and protect their people’s rights “without distinction of any kind, such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or social status”. Human rights norms call upon governments to refrain from such violence and to provide protections against it. This work is partly done by the right to life and protection of cultural traditions, which is a standard individual and collective right. The right against genocide that protects groups from attempts to destroy or decimate them also covers it. The Genocide Convention is held by both individuals and groups, it requires governments and other agencies to create protections at the national level.

Minority rights cover protection of existence, protection from discrimination and persecution, protection and promotion of identity and participation in political life. For the rights of LGBT, the Yogyakarta Principles¹⁵⁰ have been approved by the

¹⁵⁰ In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights, which affirm binding international

United Nations Human Rights Council and for the rights of persons with disabilities; in addition, the Convention on the Rights of Persons with Disabilities was adopted by United Nations General Assembly in 2009. To protect minority rights, many countries have specific laws and/or commissions or institutions. While initially, United Nations treated indigenous peoples as a sub-category of minorities, there is an expanding body of international law specifically devoted to them, in particular Convention 169 of the International Labour Organization and the UN Declaration on the Rights of Indigenous Peoples, adopted on 14th September 2007. Attempts to codify the rights of sexual minorities in international human rights law have met with strong opposition from a number of member states of the United Nations.

In September 2007, the United Nations General Assembly's adoption of the Declaration on the Rights of Indigenous Peoples (UNDRIP) raised expectations as to the implications for the protection of indigenous peoples' rights to survival. Some have cited the Declaration as being more concerned with the broad universal human rights of indigenous peoples than it is with the rights of indigenous peoples to survive as distinct peoples. While the Declaration is seen to define the individual and collective rights of the world's indigenous peoples, it is clear that the connection between the final version of the 2007 Declaration and the UN Charter on Human Rights and its reference to the rights of peoples in international law had been watered down compared with early drafts. How then does it now stand; does the Declaration advantage the advancement and protection of indigenous peoples? It provides for human rights protection, but is that sufficient to prevent the on-going abuses and genocide visited upon indigenous peoples?

Indigenous peoples have been denoted *primitives*, *savages* or *uncivilized*. These terms were common during the heights of European colonial expansion, but still continue in modern times. During the 17^o century, indigenous peoples were commonly labelled "uncivilized". Xenophobic and homophobic ideas from that period were part of that history. As a matter of fact, some philosophers such as Thomas Hobbes considered indigenous people to be merely "savages", while others considered them to be "noble

legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birth right.

savages". Those who were close to the Hobbesian view tended to believe themselves to have a duty to civilize and modernize indigenous populations. After World War I however, many Europeans came to doubt the value of civilization; at the same time, the anti-colonial movement, and advocates of indigenous peoples, argued that words such as "civilized" and "savage" were products and tools of colonialism and argued that colonialism itself was savagely destructive. In the mid 20^o century, European attitudes began to shift to the view that indigenous and tribal peoples have the right to decide for themselves what should happen to their ancient cultures and their ancestral lands.

Individual rights are not subjected to a public vote; a majority has no right to vote away the rights of a minority; the political function of rights is precisely to protect minorities from oppression by majorities (and the smallest minority on earth is the individual). The notion of an indigenous group depends on context and other issues. The adjective *indigenous* has the common meaning of "from" or "of the original origin". Indigenous peoples, or native, are ethnic groups who are native to a land or region, especially before the arrival and intrusion of a foreign and possibly dominating culture. They are group of people whose members share a cultural identity that has been shaped by their geographical region. A variety of names are used in various countries to identify such groups of people, but they generally are regarded as the "original inhabitants" of a territory or region. During the late 20^o century the term *indigenous peoples* evolved into a political term that refers to ethnic groups with historical ties to groups that existed in a territory prior to colonization or formation of a nation state. These are usually distinct ethnic groups that have preserved a degree of cultural and political separation from the mainstream culture and political system that has grown to surround or dominate them economically, politically, culturally or geographically. 'Indigenous peoples' is a term that internationalizes the experiences, the issues and the struggles of some of the world's colonized peoples. The United Nations issued a Declaration on the Rights of Indigenous Peoples, with the intent to protect the collective rights of indigenous peoples to their culture, identity, language, employment, health, education and natural resources.

Key to a contemporary understanding of "indigenesness" is the political role a cultural group plays, for all other criteria usually taken to denote indigenous groups (territory, race, history, subsistence lifestyle, etc.) can, to a greater or lesser extent, also be applied to majority cultures. However, the specific term *indigenous peoples* has a more restrictive interpretation when it is used in the more formalized, legalistic and academic sense, associated with the collective rights of human populations. In these contexts, the term is used to denote particular peoples and groups around the world who, as well as being native to or associated with some given territory, meet certain other criteria. A contemporary definition of "indigenous people" tends to include cultural groups who: inhabit the region before or subsequent to colonization or annexation; live alongside other cultural groups during the formation of a nation-state; remain differentiated in some degree from the surrounding populations and dominant culture of the nation-state, in maintaining distinct cultural, social, organizational and linguistic characteristics; last, but not least, peoples who are self-identified as indigenous, or recognized as such by other groups. Note that even if all the above criteria are fulfilled, some people may either not consider themselves as indigenous or may not be considered as indigenous by governments, organizations or scholars. The discourse of indigenous/non-indigenous may also be viewed within the context of post-colonialism and the evolution of post-colonial societies.

Contemporary distinct indigenous groups survive in populations ranging from only a few dozen to hundreds of thousands and more. Many indigenous populations have undergone a dramatic decline (even extinction) and remain threatened in many parts of the world. Some have also been assimilated by other populations or have suffered many other changes. Certain indigenous societies survive even though they may no longer inhabit their "traditional" lands, owing to migration, relocation, forced resettlement or having been supplanted by other cultural groups. In many other respects, the transformation of culture of indigenous groups is on-going and it includes permanent loss of language, loss of lands, encroachment on traditional territories and disruption in traditional lifeway due to contamination and pollution of waters and lands. Indigenous societies are found in every inhabited climate zone and continent of the world, they may be either settled in a given local/region or exhibit a nomadic lifestyle across a large territory, but are generally historically

associated with a specific territory on which they are dependent.¹⁵¹ Indigenous peoples confront a diverse range of concerns associated with their status and interaction with other cultural groups, as well as changes in their inhabited environment. Some challenges are specific to particular groups; however, other challenges are commonly experienced. Bartholomew Dean and Jerome Levi (2003) have explored why and how the circumstances of indigenous peoples are improving in some places of the world, while their human rights continue to be abused in others. These issues include cultural and linguistic preservation, land rights, ownership and exploitation of natural resources, political determination and autonomy, environmental degradation and incursion, poverty, health and discrimination.

The interaction between indigenous and non-indigenous societies throughout history has been complex, ranging from outright conflict and subjugation to some degree of mutual benefit and cultural transfer. The situation can be further confused when there is a complicated or contested history of migration and population of a given region, which can give rise to disputes about primacy and ownership of the land and resources. Moreover, the migration, expansion and settlement of societies throughout different territories is a universal, almost defining thread which runs through the entire course of human history. Many of the cross-cultural interactions that arose as a result of these historical encounters involved societies, which might properly be considered as indigenous, either from their own viewpoint or that of external societies. Most often, these past encounters between indigenous and non-indigenous groups lack contemporary account or description. Any assessment or understanding of impact, result and relation can at best only be surmised, using archaeological, linguistic or other reconstructive means. Where accounts do exist, they frequently originate from the viewpoint of the colonizing, expansionary or nascent state or from rather scarce and fragmented ethnographic sources compiled by those more congenial with indigenous communities and representatives.

In December 1993, the United Nations General Assembly proclaimed the International Decade of the World's Indigenous People and requested UN specialized

¹⁵¹ Douglas Sanders, "Indigenous peoples: Issues of definition", *International Journal of Cultural Property*, 1999, p. 4-13.

agencies to consider with governments and indigenous people how they can contribute to the success of the Decade of Indigenous People, commencing in December 1994. As a consequence, the World Health Organization, at its 47th World Health Assembly established a core advisory group of indigenous representatives with special knowledge of the health needs and resources of their communities, thus beginning a long-term commitment to the issue of the health of indigenous peoples.¹⁵² The WHO notes that: "Statistical data on the health status of indigenous peoples is scarce. This is especially notable for indigenous peoples in Africa, Asia and eastern Europe", but snapshots from various countries, where such statistics are available, show that indigenous people are in worse health than the general population, in advanced and developing countries alike: higher incidence of diabetes in some regions of Australia;¹⁵³ higher prevalence of poor sanitation and lack of safe water among Twa households in Rwanda;¹⁵⁴ a greater prevalence of childbirths without prenatal care among ethnic minorities in Vietnam;¹⁵⁵ suicide rates among Inuit youth in Canada are eleven times higher than the national average;¹⁵⁶ infant mortality rates are higher for indigenous peoples everywhere.¹⁵⁷

Various organizations are devoted to the preservation or study of indigenous peoples. Of these, several have widely recognized credentials to act as an intermediary or representative on behalf of indigenous peoples' groups, in negotiations on indigenous issues with governments and international organizations. These include: African Commission on Human and Peoples' Rights (ACHPR), Centre for World Indigenous Studies, Cultural Survival, Friends of Peoples Close to Nature (fPcN), Incomindios Switzerland, Indigenous Dialogues, Indigenous Peoples of Africa Co-ordinating Committee (IPAAC), International Work Group for Indigenous Affairs (IWGIA), Survival International, Society for Threatened Peoples (GfbV).

¹⁵² Resolution and decisions: WHA47.27 International Decade of the World's Indigenous People. The Forty-seventh World Health Assembly, *World Health Organization*, retrieved 17th April 2011.

¹⁵³ Anthony J. Hanley, *Diabetes in Indigenous Populations*, Medscape Today

¹⁵⁴ Nyang'ori Ohenjo, Ruth Willis, Dorothy Jackson, Clive Nettleton, Kenneth Good, "Health of Indigenous people in Africa", *The Lancet*, Benon, 2006.

¹⁵⁵ Health and Ethnic Minorities in Viet Nam, Technical Series No. 1, June 2003, WHO, p.10.

¹⁵⁶ Facts on Suicide Rates, First Nations and Inuit Health, Health Canada.

¹⁵⁷ "Health of indigenous peoples", *Health Topics A to Z*, retrieved 17th April 2011.

The International Day of the World's Indigenous People falls on 9th August, as this was the date of the first meeting in 1982 of the United Nations Working Group of Indigenous Populations of the Sub-commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights. "The UN General Assembly decided on 23rd December 1994, that the International Day of the World's Indigenous People should be observed on August 9 every year during the International Decade of the World's Indigenous People (Resolution 49/214). Later on 20th December 2004 the assembly decided to continue observing the International Day of Indigenous People every year during the Second International Decade of the World's Indigenous People (2005-2014, Resolution 59/174). The preservation and investigation of specialized indigenous knowledge, particularly in relation to the resources of the natural environment with which the society is associated, is a goal of both the indigenous and the societies who thereby seek to identify new resources and benefits.

A range of differing viewpoints and attitudes has arisen from the experience and history of contact between indigenous and non-indigenous communities. The cultural, regional and historical contexts in which these viewpoints have developed are complex and many competing viewpoints exist simultaneously in any given society. These views may be noted from both sides of the relationship. Indigenous peoples are increasingly faced with threats to their sovereignty, environment and access to natural resources. Examples of this can be the deforestation of tropical rainforests where many native tribes' subsistence lifestyles are threatened. Assimilative colonial policies resulted in on-going issues related to aboriginal child protection.

Survival International runs a campaign to stamp out media portrayal of indigenous peoples as "primitive" or "savage". Friends of Peoples Close to Nature considers not only that indigenous culture should be respected as not being inferior, but also sees their way of life as a lesson of sustainability and a part of the struggle within the "corrupted" western world, from which the threat stems. The UN declared 1993 as The International Year for the World's Indigenous Peoples. The decade from 1995 to

2004 was declared as the International Decade of the World's Indigenous Peoples. Recognizing the continuing need for attention to indigenous peoples' needs, the decade from 2006 through 2015 has been declared the Second International Decade of the World's Indigenous Peoples. In light of this original and continuing interest in Indigenous Peoples, this paragraph will serve as an introduction to researching indigenous peoples' rights under international law. International law has seldom considered indigenous peoples rights separately from the concerns of the general matters of international law. At the present time, development in this area appears to be confined to the subject of international human rights law. This topic will of necessity develop into a discussion of the general principles of societal organization and nation building, directly addressing the legitimacy of numerous nation-states within the community of nations subjected to international law. All present international human rights documents and doctrines apply to indigenous people throughout the world.

While human rights have been the subject of legal and political thoughts for many years, the specific concerns of indigenous peoples have been submerged by the dominant colonial societies, which have controlled access to domestic and international legal forum. In Asia, there are various tribal or hill peoples especially in India, Bangladesh, Pakistan, Vietnam and China and the Ainu people in Japan. In addition, most Asian and African states deny that there are any indigenous peoples within their territories. The displacement of indigenous peoples is usually the result of an invasion of their territory by an ethnically and culturally different group that then attempts to convert the native population to the conquerors' cultural norms and suppresses the indigenous peoples culture and history.¹⁵⁸ Usually, the conqueror believes its culture is materially and spiritually superior to that of the indigenous group. In most cases, the invader is able to establish sufficient control over the territory and society to force the indigenous population to deal with the imposed legal system in attempting to redress the injustice inherent in the process of conquest. Needless to say, the indigenous people lose most legal cases until the dominant society accepts its responsibility to make amends.

¹⁵⁸ Robert A. Williams, *The American Indian in Western Legal Thought*, Oxford: Oxford University Press, 1990.

Discussing the legal theories that were used to justify the western conquest of indigenous peoples, it is possible to derive them from the practices of the Catholic Church, the medieval crusades and the conception of Just War. Early commentators on the rights of indigenous peoples under international law believed that indigenous peoples personal and property rights were equal to those of the conquerors. Conquest and slavery were justified by the fact that the indigenous peoples were not Christians. This result encourages later imperialist adventures by the English and French in the Americas and Asia continents, but it is therefore instructive to contemplate the difference between the successes of these two types of colonisations. The French in Indochina and the English in India retreated from those colonies where they were unable to displace the indigenous populations. Like in the past, throughout in the world, indigenous peoples still continue to have high mortality rates from common diseases due to deliberate policies of neglect and inadequate health care facilities.

The Economic and Social Council controls several organs of the UN concerned with human rights; it is the parent of the former Commission on Human Rights.¹⁵⁹ Moreover, the Commission on Human Rights, of the ECOSOC, was an important organ in the UN Human Rights system. Its publications are in the ECN.4-series, it also produced reports, resolutions and decisions. The Commission had supervision of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Sub-Commission has several *ad hoc* working groups: the Working Group of Experts on South Africa, the Working Group of Experts to Investigate Israeli Practices Affecting Human Rights of the Population of the Occupied Territories, and the Working Group of Experts on Chile. Their reports will generally be in the ECN.4-series. Those of the Working Group on Chile often appear in the AC.3-series of the Third Committee of the General Assembly.

The United Nations Human Rights Council has replaced the Commission on Human Rights with A/RES/60/251 of 3rd April 2006. At its first session in June 2006, it

¹⁵⁹ Documents produced with other inter-governmental agencies are in the E-series. The annual report to the UN General Assembly appears as Supplement to GAOR. Its own documents are in the UN ESCOR, series in a Supplement.

adopted the Draft Declaration on the Human Rights of Indigenous Peoples and recommended it to the General Assembly for adoption HRC/RES/2006/2. The permanent forum on Indigenous Issues was established by the ECOSOC on 28th July 2000 and it held its first session from 13th to 24th May 2002. Its mandate covers economic and social development, culture, education, environment, health and human rights as they apply to indigenous peoples. A secretariat was established to assist the Permanent Forum on Indigenous issues in February 2003.

The Working Group on Indigenous Populations was created in 1982, the WGIP was the principal UN group concerned with indigenous peoples' rights until the Permanent Forum in Indigenous issues was established in 2000 and started working in May 2002. The Working Group was first presaged by Sub-Commission Resolution 4 B (XXIII) of 26th August 1970 and the resulting Economic and Social Council Resolution 1589 (L) par. 7 and their call for a comprehensive study of the problem of discrimination against indigenous populations. In accord with the Economic and Social Council's resolution, the Sub-Commission appointed Special Rapporteurs to make such a study. It resulted in a report called "The study of the problem of discrimination against indigenous populations" with 22 chapters. It was issued in a consolidated form in five volumes as UN DOC ECN.4Sub.219867 and Add.1-4. The WGIP documents appear in the ECN.4Sub.2year22 series. It has issued a "Report on the Working Group on Indigenous Populations" each year since 1982. At the 45th Session of the ECOSOC, it recommended that the Working Group Report be made a UN Sales Document to make it more available. Another important report is the "Report on the United Nations Seminar on the effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States", UN.Doc.ECN.4198922.

The main project of the WIGP has been the drafting of a Universal Declaration of Indigenous Rights.¹⁶⁰ The Working Group, in the Preamble, has rejected the assimilation orientation of ILO Convention 107 in favour of recognition of the independent nature of the existence of indigenous peoples. This has not been well

¹⁶⁰ The most recent text was reported to the Human Rights Council in its first session and was adopted and forwarded to the General Assembly on 29th June 2006, HRC/Res/2006/2.

received by all nations. Part I of the Declaration makes all previous human rights instruments applicable to indigenous peoples; Part II sets out guarantees of cultural rights. Part III describes the property rights of indigenous peoples, this section is controversial since it originally called for recognition of collective property rights and compensation. Part IV deals with indigenous economic and social systems; Part V gives standards for self-determinism by indigenous peoples, this is another controversial part since the settler states do not desire to lose their control over indigenous peoples' land. Particular objection has been taken to paragraph 23, which describes a collective right to autonomy. Part VI defines a dispute resolution process, states the purpose of the Declaration and prohibits states from using this instrument against indigenous peoples.¹⁶¹

3.2 Ethnic minority groups in North Vietnam

3.2.1 Who are the Montagnards and Hmong?

The purpose of this study is to provide information that will help to understand the interaction between Vietnam's government and the minority ethnic groups. Awareness and appreciation of the human dynamics operative in the lives of the ethnic Vietnamese and of the highland minority groups can provide bridges among the chasms of cultural differences. The assumption underlying this study on the Montagnards is that all human beings possess common basic physiological and psychological needs, but that these needs are met in a wide variety of ways by different societies in conformity with the requirements imposed by geographic location, economic conditions and cultural expectations.

To a very large degree, the culture of a population is determined by geography, economics and religion. Religion includes man's worldview combined with efforts to

¹⁶¹ For the text of the First Revised Draft Declaration on Rights of Indigenous Peoples see 16 Am. Ind. L. Rev pp.592-596 (1991).

achieve a harmonious relation between himself and his supernatural environment. The next paragraph will examine the recent history and the contemporary situation of these tribes. The Montagnards, also known as Degar, are groups of indigenous people living in the central highlands of Vietnam. The French term for these tribes' people who dwell in the mountainous areas of Vietnam is *Montagnards*; it means "mountain people" and it derives from the French colonial period in the country. The Vietnamese name for ethnic minorities is *người Thượng* and this term includes all the groups¹⁶²; any of these terms is preferable to *mọi* that means "savage" and was used by Vietnamese to create resentment and hostility.

They were originally inhabitants of the coastal areas of the region, but from the 9^o century they progressively began to move into the mountains, as a consequence to the invasions caused by Vietnamese, Cham and Cambodians. In the 17^o century they were definitively confined into the highlands, but before the 20^o century Vietnam's authorities have never controlled them. After French colonization, it was recognized the right of Montagnards people to live there, so that it was also formalized the existence of a territory called "Pays Montagnards du Sud Indochinois". The culmination of this process was the definition of an 'autonomous' Montagnard territory under direct French rules. Vietnam government started to control their region with the end of the colonialism, in particular after the two Indochina wars, when national politics began to clash with this situation regarding ethnic minorities. These historical facts created a Montagnard homeland and made it indispensable for any subsequent power seeking the support of the Montagnards for strategic reasons to promise some degree of cultural and political autonomy in a clearly defined territory within the Vietnamese state. The Montagnard identity was primarily a construction on the part of outside powers, which supported and exploited this distinct identity for their own purposes.

The Hmong are an ethnic group from the mountainous regions of Southeast Asia; their origins are based in China, where they are members of Miao group. They began to migrate in the 18^o century due to political unrest and to find more arable land;

¹⁶² Most of the peoples of the tribes tend to identify themselves by the name of their village or geographic location, rather than as members of a particular tribe.

Hmong arrived in Vietnam during the 19^o and 20^o centuries and made their home in the highlands near the Chinese border. The Hmong people were also known as the “Kings of the Jungle” thanks to some European writers, because they used to live into the jungle. When French occupied their territories, the invaders gave them the name *Montagnards*, but this should not be confused with the Degar of Vietnam who have the same terminology, by the way these are all minorities dealing with religious’ conflicts between them and the state. In 2009 there were 1.068.169¹⁶³ Hmong in Vietnam and they were all belonging to one of the 54 official ethnic groups of the country. Other smaller distinctions based on their customs and the colour of the clothes divide the group into a few subgroups; moreover they speak different dialects and languages.



Photo of the author: a Homng woman in the ricefield of Sapa (Lao Cai province), in North Vietnam Highlands, November 2015.

¹⁶³ National Population and Housing Census Directing Committee, ‘Appendix ii’, in *Official Report of the Result of National Population and Housing Census 01/04/2009*, Hanoi: National Population and Housing Census Publishing House, 2009.

Most of Hmong believe in traditionally ancestral spirits, they also venerate forests, mountains, rivers and fields. Some Hmong groups in Vietnam, China, Thailand and Laos have been “Christianized” since the late 19^o century; poverty and political and social suppression made it possible, because the converted appreciated the Protestant missionaries’ material and political support. In French Indochina, the colonial authority has always promoted Catholicism, but missionaries working among Hmong in both Vietnam and Laos had only modest results.¹⁶⁴ Despite having had little influence on the sociocultural life of the Hmong, the few early conversions and the presence of two churches in Sapa¹⁶⁵ were the evidence of Hmong willingness to accept colonial rules.¹⁶⁶ It was only in the early 1990s that the Vietnamese state authorities were suddenly alarmed by reports about thousands of Hmong who had abandoned their traditional beliefs to convert to Protestantism, calling it the “New Way”. Today, after two decades of massive growth, Protestantism is the claimed religion of roughly one-third of a million Hmong in Vietnam.

Although consisting of more than twenty different language groups, the indigenous population of the Central Highlands was known to the Vietnamese simply as *Moi*, a word which may be glossed as ‘savage’, but with servile connotations added by the slave trade out of the Highlands. The French adopted the term (sometimes written as *Moi*, sometimes as *Moy*) and it was only during World War II that the less offensive alternative, *Montagnard*, came into general use. The indigenous populations inhabiting the Highlands in the Vietnam-Laos-Cambodia border-zone were also designated with the Lao term *Kha* or with the Khmer term *Phnong*, having connotations of ‘savage’ and ‘slave’. At a later stage in history, they also have been called *Malaisiens*, *Proto-Indochinois*, *Highlanders*, or *Yards* by American Special Forces. Montagnards refugees in the United States with connections to the autonomy movement *Front Unifié de la Lutte des Races Opprimées* FULRO designate themselves now as *Dega*. The majority people of Vietnam have been ethnically designated as *Viet* or *Kinh*. In colonial times, the French used the term *Annamites*.

¹⁶⁴ Jean Michaud, *French missionary expansion in colonial Upper Tonkin*, *Journal of Southeast Asian Studies*, 2004, p. 287-310.

¹⁶⁵ Sa Pa or Sapa is a frontier township and capital of the district in the province of Lào Cai, in north-west Vietnam. It is one of the main market towns in the area where several ethnic minority groups such as Hmong live.

¹⁶⁶ Tran, Văn Hóa Hmong; Dang, ‘Vê Việc Truyền Bá Đạo Vàng Chứ Hay Giả Tinh Lành’, p. 150.

Before the French arrived, the Montagnards were mainly agriculturalists, sometimes growing wet rice, but more often dry rice by the method of shifting cultivation. Early travellers commented on the lack of 'community' inside the extended family, clan and village; there was little political organization beyond the village level in which it was possible to find just the figure of a 'big men' who temporarily managed to dominate a number of villages because of their military, economic and ritual prestige. The Moi nation does not exist and has never existed, because the social unit is the village. Indeed, despite fluid linguistic and cultural differences, no tribes or ethnic groups with a clear sense of identification and some degree of organization could be distinguished. Despite this decentralization, there had always been contacts among the different groups living in the valleys, the slopes and the plateaus of the Annam Cordillera, as well as between the Montagnards and the lowland civilisations and these contacts were primarily economic. Although in some places there was a formal recognition of the foreign control from the Khmer, Cham and the Viet states, most Montagnard populations maintained a real political autonomy.

After the establishment of the French 'protectorates' (a euphemism for indirect colonial rule) in Cambodia, Annam and Tonkin during the latter half of the nineteenth century, the region known as *Hinterland Moi*, bordering on Cochinchina, Annam, Laos and Cambodia, remained largely out of control.¹⁶⁷ The French divided Indochina into five countries: the colony of Cochinchina and the protectorates of Annam and Tonkin (the three parts which would form Vietnam) and the protectorate of Cambodia; in 1893, Laos was added as a protectorate. In 1887 French Indochina came under the unified French authority of a general government in Hanoi.

The first analysis of the strategic value of this mountainous hinterland was made in the context of the *mission Pavie* (1890-93), which aimed at the extension of French control over the left bank of the Mekong river by an allegedly 'peaceful conquest' of Laos, in the face of Siamese territorial claims. Part of the territorial conflict was fought out in the '*régions sauvages de l'Est de l'Indochine*', by captains Cupet, De

¹⁶⁷ Ardant du Picq, *Monographie du Pays Moy*, p. 4, Gougal, Centre des Archives d'Outre-Mer AOM, Aix-en-Provence.

Malglaive and Rivière.¹⁶⁸ These captains, aided by French missionaries in the region, managed to rally some Montagnard support against Siamese military intrusions. This experience fostered an assessment of the military value of the area and its inhabitants. While De Malglaive pleaded for the establishment of an effective administration of the Highlands with an eventual penetration by non-French if such an organization were lacking, captain Cupet noted that 'in the present state, the only means to prevent future insurrections (in Vietnam) is to hold the mountains.' Yet, these recommendations were not followed by the French colonial administration, which by 1893 had secured nominal control over this area in a direct military confrontation with Siam and at the same time was engaged in a bitter attempt to reconcile part of the mountain areas in Tonkin (northern Vietnam). Further penetration of the Central Highlands had no political priority and depended on *ad hoc* policies of French government and on the qualities of adventurous individuals who set out to explore the hinterland.¹⁶⁹

One such individual was the French administrator of Darlac province (today Dac Lac), Léopold Sabatier, who during his thirteen years in office (1913-1926) showed that the Montagnards were capable of development, contrary to the widely held assumption that such primitive populations were bound for extinction. Earlier explorers, ethnologists and linguists had identified various languages, spoken by different groups, which were then classified as tribes. By describing and transforming a culture for the largest linguistic group in Darlac, Sabatier provided an effective administrative and ethnographic model. A central element in this model was a strict isolation of society from foreign (ethnic Vietnamese) influence, which was based on two contradictory premises: the alleged historical absence of the Vietnamese from the Highlands and the eternal antagonism between Vietnamese and Montagnards.¹⁷⁰

¹⁶⁸ Henri Maitre, *Les populations de l'Indochine, Bulletins et Mémoires de la Société d'Anthropologie de Paris*, 6^e série, III, 1912, p. 110.

¹⁶⁹ Cap. Cupet, in Auguste Pavie, *Mission Pavie : Géographie et Voyages*, tome 3 : *Voyages au Laos et chez les sauvages du Sud-Est de l'Indochine par le Cap. Cupet*, Paris, Ernest Leroux, 1900, p. 417.

¹⁷⁰ The discussion of Sabatier and his impact on French policy in the Highlands is largely based on Salemink Oscar, *Ethnografie en kolonialisme. Minderheden in Vietnam, 1850-1954*, Amsterdam, IMAG, p. 59-82 and in George W. Stocking, *Colonial Situations: Essays on the Contextualization of Ethnographic Knowledge*, Madison WI, University of Wisconsin Press, p. 243-284.

With the rise of nationalism, fascism and communism in Asia, the French colonial regime in Indochina felt increasingly threatened from abroad and the French colonial government took measures to defend the colony. The growing concern with security and strategic affairs naturally channelled official attention to the Central Highlands, which were of strategic importance in any scheme for the defence of the colony. Montagnard-Vietnamese animosity was seen as an explanation for the alleged lack of communist ethnic policies in the Central Highlands. As a matter of fact, the situation in the Central Highlands has always been very ambiguous, this implies that these territories were more central to Viet Minh strategy than generally accepted. If French policy was not successful, then the related assumption concerns that fundamental Montagnard-Vietnamese animosity that was there to be exploited by the French.

During the 1920s and early 1930s the Montagnards were still formed by a number of mutually exclusive and antagonistic tribes. After 1937, however, French ethnographers and administrators started to stress the essential ethnic unity of the Montagnards through World War II and the First Indochina War. French policy, in defining a Montagnard territory and a Montagnard 'ethnic minority' to be protected by the French, effectively resulted in the construction of a Montagnard ethnic identity as opposed to a Vietnamese identity in a process of *ethnicization*. In contrast to the process of tribalization, which essentially defines indigenous populations in relation to territories, ethnicization defines a population in relation to a nation-state.

The Degar have a long story of tensions with the Vietnamese majority. The political position of these minorities gets worst with their support given first to French and after to Americans; when the last war ended in 1975, thousand of Montagnards fled to Cambodia as they were afraid that the new government would have launched reprisals against them, because of their support to U.S. Army. During all those wars, their mountain areas have been seen as strategically crucial territories for the control of Indochina, but also the control of the indigenous populations was important because of the support that locals could give for the employment of guerrilla

tactics.¹⁷¹ At the same time, the distinct identity of these tribes was conceptualized as an obstacle for Vietnamese nationalism and this view was strongly confirmed with the development of a Montagnards' movement to reach the independence, both from French and Vietnam's policies. A movement called BAJARAKA has been launched in 1957; its name was made with the first letters of the main tribes, aiming at the unification of the villages to achieve peacefully their autonomy. In the XIX century, French missionaries started to convert some Montagnards to the Catholic Church and then also American missionaries converted lots of them to Protestantism. For many years the socialist state considered the religious beliefs and practices of ethnic minorities to be strong impediments for modernization.¹⁷²

3.2.2 Problems of conversions against modernity

This part of the thesis tries to analyse the social implications of the recent mass conversions to Protestantism and Christianity by one-third of Hmong tribes in Vietnam. These changes of religion have been condemned by the Vietnamese state, while international human rights organizations have strongly defended the right on the part of the Hmong converted. The conversion to Protestantism by hundreds of thousands of Hmong in Vietnam is perhaps the most striking of all the changes that have affected this ethnic group in the last few decades.¹⁷³ Despite the sense of great solidarity inside ethnic communities, these conversions have caused many divisions among families and clans. Its internal power relations also affect the diffusion and institutionalisation of religious innovations in the society.¹⁷⁴ How social divisions and conflicts can contrast the perceptions and the acts of conversion by the Hmong?

¹⁷¹ Condominas Georges, *Aspects of a Minority Problem in Indochina*, Pacific Affairs, 1951, p. 87.

¹⁷² McElwee Pam, "Becoming Socialist or Becoming Kinh? Government Policies for Ethnic Minorities in the Socialist Republic of Vietnam". In *Civilizing the Margins: Southeast Asian Government Policies for the Development of Ethnic Minorities*, Ithaca, New York: Cornell University Press, 2004, p. 195-197.

¹⁷³ Tam T. T. Ngo, *Protestant conversion and social conflict: The case of the Hmong in contemporary Vietnam*. *Journal of Southeast Asian Studies*, 2015, p. 274-292.

¹⁷⁴ Kammerer C., *Discarding the basket: The reinterpretation of tradition by Akha Christians of Northern Thailand*, *Journal of Southeast Asian Studies*, 1996, p. 320-333.

State authorities focused their attacks on aspects of ritual practices that were considered irrational or that reinforced status distinctions. Moreover, the discord inside the ethnic groups caused by the widespread conversions gave the Vietnamese state authorities one more reason to suppress these religious movements. While international human rights advocates the conversions as a sign of human agency, the state views it as a problematic phenomenon behind different aspects.¹⁷⁵ The government recognises the socio-cultural problems that these conversions cause for both converted and unconverted Hmong, but at the same time it fails to acknowledge the importance of human agency in this movement.

The official view on this delicate topic is that Hmong people, with their extreme poverty, are persuaded to follow a religion foreign to their cosmology and beyond their comprehension.¹⁷⁶ In this sense, illegal missionaries and believers' activists are like predators who use religion to provoke ethnic conflicts and anticommunist ideologies, to create social and political instability.¹⁷⁷ Social conflict in the Hmong community is cited as evidence of the problematic nature of conversion. A lot of state-employed analysts think that many Hmong people are unable to read or simply understand Christian teachings; this opinion implies the fact to make a judgment questioning about a sentiment of fake faith and no commitment, as a consequence of illiteracy. Such perspectives on conversions become problematic when they form the basis of policies designed to detach Hmong from Protestantism. As a matter of fact, the areas where conversions have occurred have been subjected to political

¹⁷⁵ See for example <http://freedomhouse.org/religion/news/bn2003/bn-2003-10-01.htm> and <http://www.christianpost.com/news/vietnam-tries-to-portray-cult-gathering-as-christian-50143/> (last accessed 11th February 2015). Hmong conversion is often used by these organisations to criticise Vietnam's religious policies. The United States has also designated Vietnam a "Country of Particular Concern" under the International Religious Freedom Act in 2004, 2005 and 2014: <http://www.uscirf.gov/sites/default/files/Vietnam%202014.pfd>.

¹⁷⁶ Nghiem Van Dang, 'Về Việc Truyền Bá Đạo Vàng Chứ Hay Giả Tinh Lành', about the proselytization of the Vang Chu cult or fake Protestantism, in *Những Vấn Đề Liên Quan Đến Hiện Tượng 'Vàng Chứ'*, issues relating to the 'Vàng Chứ' phenomenon, Hanoi: Institute of Religious Studies, 1998.

¹⁷⁷ Government Committee for Religious Affairs, *Religion and policies regarding religion in Vietnam*, Hanoi: Government Committee for Religious Affairs, 2006. See also Oscar Salemink, *Enclosing the highlands: Socialist, capitalist and Protestant conversions of Vietnamese highlanders*, paper presented at the Politics of the commons: Articulating development and strengthening local practices conference, Chiang Mai, 2003, <http://hdl.handle.net/10535/1787>.

propaganda programmes about education and development, while at the same time there was a strict censorship and prohibition of evangelical missions.

Conversions of ethnic minorities in Asia are seen in many cases as an act of redrawing ethnic boundaries, in embracing Christian values and traditions.¹⁷⁸ The attachment to another religion is the way in which many Hmong distance themselves from their marginal and subordinate position, in relation to Vietnam's dominant groups. Both conversion and resistance to Christianity are connected with various dilemmas in history of contemporary Vietnam. The end of the 1980s and the beginning of the 1990s were periods of difficult time for the majority of Hmong in Vietnam. Since the economic reforms began in 1986, many subsidised programmes in the mountainous regions were deregulated. The Hmong then and other ethnic groups had to pay cash for necessities such as salt, sugar and medicines, with respect to the price demanded by traders. Moreover, opium was soon banned and it was until then the main source of cash income for the families of the tribes.

The National Land Law, implemented in 1993, imposed very strict conditions and regulations on land use; in mountainous areas, each family could only claim usage of ten hectares maximum of forest land which belong to the state (like all land in Vietnam). The implementation of the Land Law has also seen the intensification of forced sedentarisation¹⁷⁹ aiming at bringing ethnic minorities down from the mountains, because that living in the highlands could be the cause of their social and cultural isolation. Thousands of Hmong families have either been forced or encouraged to move down from the mountains, a fact that has caused several negative results. The Hmong need time to clear their fields and adapt to sedentary cultivation and to much smaller pieces of land, because of the transition from one mode of production to another; the traditional structure of villages based on clans was destroyed, with a resulting loss of closeness and mutual support. The last effect is that the rate of conversion among these new communities was extremely high;

¹⁷⁸ Kammerer C., *Customs and Christian conversion among Akha highlanders of Burma and Thailand*, *American Ethnologist* 17, 1990, p. 277-291.

¹⁷⁹ Salemink, in *Enclosing the highlands* describes a similar development in the Central Highlands. There the sedentarisation programme completely changed the demographic composition and negatively impacted ethnic relations, which indirectly facilitated the massive rise of Protestant conversions among the minorities.

relocated families often chose to convert if their neighbours were Christians, despite the persecution of converted by the authorities. If they convert, they will be in conflict with relatives who remain traditionalists that they have left behind; if they do not convert they will face difficulties and marginalization by their neighbours.

Therefore, to escape the pressures and the interventions of governmental authorities of the Northern Highlands, Christian Hmong try to migrate outside the country or inside the Central Highlands that seems to be more secure. Displacement of socio-economic resources was the principal cause of attracting many Hmong people to Christianity and Protestantism, because of their poverty and spiritual suffering many believers could no longer conduct traditional ancestral rituals. For instance, Hmong tradition needs a financial support that includes also expensive weddings and a high bride price. Actually, many of them decided to convert to Christianity in order to be exempted from paying a high bride price,¹⁸⁰ in this sense indemnity from paying the bride amount is one of the perceived attractions of Christianity. Conversion also seems to guarantee an escape from the hierarchy structure based on seniority and not on meritocracy, usually found in non-Christian Hmong communities. When a whole community does convert, younger converts can earn population's respect because of their theoretical knowledge, linguistic and socio-political skills in case of leading their church organizations under state oppression. It happens that younger Hmong who have been to school, studied or travelled possess these skills.

Furthermore, Protestantism promise a better position for women compared that proposed by traditional Hmong cults. Women play a leading role in many cases of conversion, as a matter of fact becoming a Christian seem to be more attractive for women than for men, as it can be a new way to their emancipation. Many women explained that their lives would change in a better way if they would become Christians. As a Christian, a Hmong woman could enjoy a Sunday free from labour, she would also not have to spend money to host all kinds of ceremonies which often involve a lot of cooking and cleaning. The Lord also prohibits men to drink alcohols,

¹⁸⁰ The standard bride price is of at least 5 million VND (about 200 €), excluding some silver coins, pork and one buffalo.

to beat women and to have two wives; this is one of the reasons for some Hmong women to consider conversion as a form of protection against domestic violence.

It is clear that the considerable poverty and increased marginality of Hmong communities directly and indirectly influence the decision to convert. Radical socio-economic displacement has been quoted as one of the principal causes of conversion in many cases of rapid Christianization.¹⁸¹ The temptation of becoming Christian is not only a way to escape the amount of money requests for traditional ritual obligations, but is also due to the fact that missions and missionaries could provide for missing provisions and resources. It's a fact that the major reason for conversion deals with economic problems of tradition. Therefore, the human causes and context for Hmong converts' change of religion are economic pragmatism, spiritual distress and aspirations for self-determination. On one hand, many families can actually see an economic improvement as the recompense for becoming Christians or Protestants; on the other hand, although the ancestors do not punish them for not performing the rituals, the revenge from their living relatives and neighbours is quite clear in cutting off relationships.

The theme of conversion in Southeast Asia is a reaction to individual and collective problems, which are linked to a bigger crisis of political and religious affairs concerning authority and legitimacy.¹⁸² These crises could be at multiple levels, in various contexts and for different groups, so that they require solutions not just at the instrumental (social and economic) levels, but also at a deeper existential level. One example of such a crises concerns tribal groups whose "practice of localized animistic religions is markedly disjunctive with the world in which they now live".¹⁸³ Southeast Asian people decide to change religion, once realized that their old beliefs no longer enable them to navigate the new world that they have come to live in. As a

¹⁸¹ Cheung, *Millenarianism, Christian movements and ethnic change*, Berkeley: University of California Press, 2004, p. 37.

¹⁸² *Asian visions of authority: Religion and the modern states of East and Southeast Asia*, ed. Charles Keyes, Laurel Kendall and Helen Hardacre, Honolulu: University of Hawaii Press, 1994.

¹⁸³ Keyes C., *Being Protestant Christian in Southeast Asian worlds*, *Journal of Southeast Asian studies*, 1996, p. 288.

consequence, they choose a new belief system that they identify to be better for their circumstances and needs.

In this sense, Christian and Protestant conversions become a “form of modernization”, thanks to the alliance with a major world religion; ethnic minorities groups can differentiate themselves from the rest of the population without inferiority, because they choose a distinctive creed from the dominant religion of the state.¹⁸⁴ However, acts of conversion cannot be just associated to modernization.¹⁸⁵ Economic and spiritual suffering, as well as the perceived advantages (literacy, gender equality and membership in the global Christian community) constitute the context in which many Hmong believe that conversion to Christianity and Protestantism is a way to achieve faster their pursuit of a better life and of modernity. These religions, or the “New Ways”, have become the most powerful vehicle for transforming Hmong life (collectively and individually) in very significant ways.¹⁸⁶

These cults have only been able to convert a third of the Hmong population, 700.000 Hmong still see themselves as “traditional” and many also strongly oppose the new religions. Their resistance is expressed verbally or physically, because most non-Christian Hmong observe conversions as acts of infidelity or apostasy. They denounce the converts’ denial of ancestral worship and spirit offerings, because this behaviour was thought to be morally wrong as well as leading to serious consequences not only for the converted themselves, but also for the rest of the community (in the form of acts of vengeance and punishment from ancestors and spirits). Conversion is also seen as damaging the cohesion of the community and destroying Hmong culture and identity. The non-Christian majority feels that the most serious dilemma is the rejection of Christian converted to participate in common ritual obligations concerning relatives, particularly in connection with funerals.¹⁸⁷ The Hmong believe

¹⁸⁴ Salemink, *Enclosing the highlands*, 2003, p. 46.

¹⁸⁵ Peter van der Veer, ‘Afterword: Global conversions’, in *Mixed messages: Materiality, textuality, missions*, ed. Jamie S. Scott and Gareth Griffiths, New York: Palgrave Macmillan, 2005, p. 221-232.

¹⁸⁶ Tam T. T. Ngo, *Protestant conversion and social conflict: The case of the Hmong in contemporary Vietnam*, *Journal of Southeast Asian Studies*, 2015, p. 274-290.

¹⁸⁷ Jan Ovesen, *A minority enters the nation state: A case study of a Hmong community in Vientiane province, Laos*, Uppsala: Uppsala Research Reports in Cultural Anthropology, 1995.

that it is very important to provide a guarantee for deceased relatives in safeguarding the passage from this world to the “village of the ancestors”, for which the sacrifice of a number of farm animals is necessary. The practice of animals’ sacrifice is criticized by Christians as not just sinful, but also irrational and wasteful. Moreover, they refuse to contribute in ritual observances because they don’t want the risk to eat sacrificial meat and food, which they are prohibited from doing. Near villages are separated because of mutual antipathy related to religions, people don’t want to talk to each others and in many occasions Protestants or Christians Hmong mock non-Christians Hmong for religious reasons and vice versa.

The general sentiment of disapproval concerning this delicate situation is partially the result of political influence and opinion; the messianic character of Hmong Christianity not only origins concern within the Hmong communities, but also increases external political pressure upon both the converted and unconverted Hmong. The use of forced public confessions was a main issue discussed by local officials at a number of government meetings, dealing with how to block conversions in these regions. However, neither the converted nor the non-converted wanted to cause social conflicts and divisions. Even if they still have a strong sense of tradition and ethnic solidarity, the converted believe that new religions are in many cases the answer to the Hmong’s existing problems and that the change in religious beliefs will help them to achieve a controlling spiritual resource, one that will improve and strengthen the unity of their community. The unconverted Hmong obviously don’t share this interpretation, even if they share the desire to see a strong and unified population. A complete harmony between the two sides is impossible, although Hmong still need to depend on clan-based relationships for social and economic subsistence.

This situation explains why conversions create a dilemma for the entire Hmong society. For those who chose not to become Christian, the conversion of relatives often underlines the need for changes in Hmong social and cultural life (even if Christianity itself is not seen as the solution). By the way, many unconverted Hmong also comprehend the motivation of others to accept the Christian faith as connected to several state operations and oppressions. For example, the government prohibited

any festivals or ceremonies and restricted the Hmong of Lào Cai to celebrate the New Year for only a few days rather than the traditional month.¹⁸⁸ The fact to do resistance to such measures was often brutally punished; moreover, authority has become progressively extra-local over the lives of ethnic minorities, as decisions and resolutions about economic, agricultural, social and cultural problems have been taken over by Vietnamese government programmes and plans.¹⁸⁹ These policies led the Hmong groups to a further loss of control over their spiritual life, because for many years their traditions and customs were seen as “superstitious” and illegal. When part of the Hmong community chose to change religion, in becoming Christian or Protestant, paradoxically new policies tried to force them to restore ancient traditions that were before forbidden, as a reaction to reject their new faith. Loss of self-government and independence regarding these matters has left many Hmong frustrated and offended.

The continuing exclusion from the society of the Hmong offers a perspective for understanding the converts’ aspiration to seek in new religions a new way to escape from their complications. Conversion, for those who choose it, represents a bridge inside a new panorama of modernity.¹⁹⁰ Another viewpoint is that Hmong’s change of religion is basically linked to the current globalization of Christianity and Protestantism, is like a global movement that includes the conversion of tribal and minority groups to more broadly organized “world” religions.¹⁹¹ The fact of converting to Christianity and Protestantism has come to be seen like the faster channel of becoming members of this huge worldwide society. Notwithstanding the enormous number of converted, at least two-thirds of the Hmong community is still unconverted and many of them are quite critical about this “New Way” of thinking. By the way, also the persistent dislocation of Christian and non-Christian Hmong in many areas of the country had a direct effect on the establishment of a Protestant

¹⁸⁸ Tran, Văn Hóa Hmong, p. 174-178.

¹⁸⁹ Trong Cuc Le and Terry Rambo, *Bright peaks, dark valleys: A comparative analysis of environmental and social conditions and development trends in five communities in Vietnam’s northern mountain region*, Hanoi: National Political Publishing House, 2001.

¹⁹⁰ Peter van der Veer, ‘Introduction’, in *Conversion to modernities: The globalization of Christianity*, ed. Peter van der Veer, London: Routledge, 1996, p. 1-21.

¹⁹¹ Robert Heffner, ‘Introduction: World building and the rationality of conversion’, in *Conversion to Christianity: Historical and anthropological perspectives on a great transformation*, ed. Robert Hefner, Berkley: University of California Press, 1993, p. 3-44.

Hmong group. Although more than twenty years after the first big wave of conversion, the majority of Hmong believers are determined to stay Christians, while some other choose to reconvert and come back to origins. One of the consequences of these reconversions is the revitalization of Hmong traditions and customs. As a matter of fact, in the process of establishing their churches and new communities, the Hmong converted in Vietnam have been trying to connect their way of living with the rest of the world. These attempts, however, have brought the Hmong into deeper conflict both with the Vietnamese state and amongst their groups. Thus, while becoming Christian or Protestant provides a possible solution to their exclusion from the society, it does not simply end this condition. On the contrary, being a Hmong converted has meant also to be distrusted by both the state and their compatriot Hmong who remain traditionalists.¹⁹²

3.3 Alleged violations of the right of freedom of religion

3.3.1 Violations to the fundamental human right

This paragraph studies in greater detail the problem often discussed at an international level, in public debates and in political advocacy around the question of whether or not the people of Vietnam enjoy religious freedom. There is no denying that religion in Vietnam is a topic of animated debates and contestation. For several years, indeed, this phenomenon has been studied by foreign and domestic scholars interested in why and what it was happening, its political causes and, more generally, its implications for understanding the place of religion in the country compared to the modern world. The frequent international discussion on religion in Vietnam is about alleged human rights violations and resistance to a repressive state. The fact that Vietnam's leaders approve different religious behaviours contravenes the concept that communist states are opposed to religion on ideological or institutional grounds. Ironically, some political leaders in Asia began to promote the idea that their societies

¹⁹² Tam T. T. Ngo, *Protestant conversion and social conflict: The case of the Hmong in contemporary Vietnam*, *Journal of Southeast Asian Studies*, 2015, p. 274-290.

were organized according to unique cultural attributes such as hierarchy and consensus and were not to be judged by human rights.¹⁹³

In the beginning of the 21st century, the theme of religion came under intense analysis in Vietnam. Human rights organizations, exiled groups, exponents of clergy and international media described a critical deterioration in the freedom to worship; for instance, acts of torture and believers' imprisonments dealing with religious affairs were reported by different sources, but the state always excluded its implication in these activities. As a consequence, millions of Vietnamese people (conscious of what was happening) started to follow and to participate in national uprisings for religious freedom of great power, but the media attention did not take in consideration those facts and actualities. A shared disapproval in the critics made by these movements and groups is that Vietnamese government seems to adopt a systematically repressive approach concerning religion. A common point of criticism is the heavy regulation of religious activities including the rights to associate, create new areas of worship, found new religious organizations and spread the faith. These critics sustain that despite formal legal guarantees, freedom of religion is authorized by various security rules that are open to abuse. Strict penalties for violations of these laws include detention of religious dissidents without trial or in extreme cases death penalty. In addition, reports of forced repudiations of faith, church burnings and physical maltreatment to believers by state agents are seen as examples of poor implementation of official policy and, at worst, as a sign of original antipathy of the regime about religion.¹⁹⁴

The accusation that Vietnamese government is repressing religion comes also from a variety of groups including overseas Vietnamese religious and political organizations, evangelical Christian churches, international human rights organizations and multinational bodies such as the United Nations, the European Union and individual states (as it will be explained in the next paragraph). A powerful intervention into the

¹⁹³ Jacobsen Michael and Ole Bruun, *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*. Richmond, Surrey: Curzon, 2000, p.67.

¹⁹⁴ Taylor Philip, *Modernity and Re-enchantment: Religion in Post-revolutionary Vietnam*, Institute of Southeast Asian Studies, 2007, p. 7.

discussion of this theme was the critical report by the UN Rapporteur for Religious Freedom made in 1999. In 2003, the European Parliament issued a resolution on freedom of religion in Vietnam expressing concern about the repression of the Unified Buddhist Church, Catholics, Montagnard Christian groups and Hòa Hảo Buddhists.

In the same year, the U.S. State Department included Vietnam state in its International Religious Freedom Report of 2004 and 2005 (for the second successive year) on a list of countries allegedly in grave violation of the right to freely observe religion.¹⁹⁵ In addition, in 2004 and again in 2005, U.S. Government listed Vietnam as a “country of particular concern” for its alleged serious violations of the right to religious freedom. These overseas Vietnamese groups who have promoted the right to freedom of religions in Vietnam include the International Buddhist Information Bureau based in France, Hòa Hảo Buddhist groups and the Montagnard Foundation in North Carolina that fight for the rights of the indigenous people of the Central Highlands to practice their Christian and Protestant faith. Human Rights Watch and Amnesty International reports regularly address official constraints on freedom of religious expression in Vietnam.

In August 2005 two international workshops dealing with the topic of freedom of religion in Vietnam took place at the Australian National University. The first was held on 10th August and was entitled: “Religion in Contemporary Vietnam”, which was followed on 12th August by a second one: “Not by Rice Alone: Making Sense of Spirituality in Reform-era Vietnam”. These workshops brought together seventeen researchers from eleven countries to present the results of their ethnographic, historical and cultural studies on religion in Vietnam. Official representatives also attended the workshops, from the U.S. diplomatic mission and European Union in Vietnam as well as development agency and NGO workers, academics, religious experts, Australian and Vietnamese government representatives, journalists and members of the overseas Vietnamese community. The meeting was an influential demonstration to the high level of international interest in the contemporary matter.

¹⁹⁵ The U.S. State Department listed Vietnam as a country of particular concern in its *International Religious Freedom Report* of 2004 and 2005.

The results of these meetings determined that the constitutional right of freedom of religions and beliefs continued to be understood and applied not with a civil approach. In some areas local officials not permit a wide freedom of action to believers of new faiths; in other provinces members of religious groups unrecognized from the state were sometimes subjected to persecution from governmental representatives. A lot of limitations regarding freedom of religion were put in practice with bureaucratic and governmental impediments, for instance also officially recognized religious groups faced restrictions in obtaining teaching materials, in publishing religious materials, in expanding the number of religious spaces and in building new places of worship. Because of the absence of a proper legal system for due processes, the activities of different religious believers can be subjected to the discretion of local officials in their respective jurisdictions. For instance, the Central Highlands province of Gia Lai still follows government policy, however others near provinces live in different realities. Just in certain cases people are able to overcome local persecution, when they can appeal to higher-level authorities, so that they can overturn negative local decisions taken because of their different creed, this happens both in recognized and unrecognized Protestant and Christians groups. Nevertheless, the government continue to prohibit and discourage the participation in certain unrecognized religious associations, including some Protestant, Cao Đài and Hòa Hảo groups.

Actually there are no formal prohibitions on changing religion, but formal conversions still are quite rare; many converted have fear of government, because of its punishments and harassments, so that they decide to reject conversion procedures. There are some reports saying that local officials in rural communities don't stop to discourage conversion to Christianity or Protestantism, by threatening people that they would lose instruction and social welfare. The government still controls and supervises all forms of public assembly, including reunions for religious affairs and activities. The national policy also doesn't permit persons who belong to unofficial religious groups to speak publicly about their beliefs, but some people continue to organize religious activities without difficulties. Members of registered and legal religious organizations are permitted to speak publicly about their beliefs

and they try to convince others to embrace their religions in recognized places of worship, at the same time they are discouraged from doing so elsewhere.

The government obliges that all religious publishing have to be done by the Religious Publishing House (which is a part of the Office of Religious Affairs) or by other publishing houses approved by the state and not before the Government first accepts the proposed articles. In the recent past the Religious Publishing House printed 130 new religious titles, including the Bible written in two Central Highlands' ethnic languages. A range of Bibles, Buddhist sacred scriptures, publications and other religious texts are printed by these organizations and are open to distribution. In addition, this association has printed 250.000 copies of parts of the Hòa Hảo sacred scriptures, along with 100.000 volumes including the founder's teachings and predictions; however, Hòa Hảo believers reported that the government continued to impede the circulation of the full scriptures.

The government permits people to travel for religious affairs, but the state requires that the authorities must approve participation in religious meetings and training courses outside the country; Buddhists, Catholics and Protestants representatives could generally go abroad for study and for seminars; Muslims believers are free to undertake the Hajj. By the way, religious delegates who travelled outside Vietnam in the past were occasionally questioned about what they have done abroad with their activities and sometimes the state ask to confiscate their passports. The government doesn't allow religious teaching in public schools, however it authorizes Christian ministers to teach subjects that they know at universities. Catholic religious education is authorized in most areas of the country and has increased in recent years in number of churches. Catholic, Protestant, Muslim and Buddhist groups can provide religious education to children.

Depending on localities, the government takes the control on the activities that are carried out, because with the Ordinance on Religion and Belief many religious organizations are inspired and allowed to conduct charitable activities concerning education and healthcare. In specific areas, especially in the south of the country, Catholic ministers like priests and nuns work in orphanages, kindergartens and

hospitals and they are also involved in many other humanitarian projects. On the contrary, in northern Vietnam these activities linked with religious groups are much more limited. A lot of cases of abuses of the right to freedom of religion continue to be reported; some believers still live situation of persecution and repression from governmental authorities, just because they worship without legal permission.

In some exceptional occasions, local officials have repressed Protestant believers in the Central and North-west Highlands by closing churches and forcing individuals to abandon their creeds. Inside ethnic minority groups of the Central Highlands there are depositions of religious oppression, as it will be explained in the last chapter particularly in areas where the Degar live. However, nowadays the number of reports dealing with this type of violations is considerably lower compared with previous years. In a lot of cases these errors were the reflection of a wrong policy at the local level and many officials involved were fired.

During this critical period, it was difficult to determine the exact number of religious detainees and prisoners, because there was little transparency in the justice system and it was very hard to obtain confirmation of when and where persons were detained, imprisoned or released. The government claimed that it didn't hold any religious prisoners; such persons were normally imprisoned for violating national security laws or general criminal laws. On the contrary, observers notice that the result is a high number of religious prisoners in jail, because they include also individual arrested after the clashes between the police and ethnic minority groups, like the Degar protesters. The government, as well as many official and unofficial religious leaders, described the demonstrations as being encouraged by disputes over land or other socio-economic reasons, rather than religious affairs.

3.3.2 International reports analyses

The following reports' analyses are based on interviews with Montagnards (who have fled Vietnam), on reports in Vietnam's government-controlled media, International Religious Freedom reports of the U.S. State Department, Human Rights Watch reports and United Nations reports. The period of time taken into consideration goes from

2001 until 2015, including the most problematic years full of judgments and disapproval. A lot of interviews were conducted in Jarai or Vietnamese with interpretation in English, sometimes via Khmer.

From 1954 to 1975, the Central Highlands were subject of disputes between two blocks: the US anti-Communist Republic of Vietnam (South Vietnam) and the communist Democratic Republic of Vietnam (North Vietnam). Highland communities were again politically divided in two groups: there were some linked with the communist revolutionaries and there were the US military with the South Vietnamese government in Saigon. Conversions to other religions such as Christianity or Protestantism were very common among highlanders allied with the United States, including Jarai and Hmong groups. Some of them were also connected to FURLO, the armed insurgent movement that emerged in the 1960s; it was an independent association fighting for autonomy of Montagnards ethnic minorities from Vietnam and it would be a critical actor in the sequence of events dealing with the alleged violations caused by the state.

After the 1975 communist victory of the North in the war of Vietnam and the following unification of the country as a Socialist Republic, the new government looked with a certain apprehension after anti-Communist Jarai and Montagnards minorities, including Christians and FURLO exponents. Some fled into the jungle, while others were arrested and sent for years to re-education camps where they were often subjected to severe ill treatments. Those who stayed in their villages inside the highlands suffered various forms of persecution and oppression, because the government tried to define economic and administrative dispositions due to the fact that it lost the control over the land where the Montagnards lived. People inside the jungle were hunted by government armed forces and many died in combat or as a result of the extremely difficult conditions they experienced. By this time, Degar or Montagnards movement appeared as an important anti-communist Jarai religion and other new forms of Christianity (such as Ha Mon Christianity) had also spread among Central Highlands groups. A great number of Montagnards moved abroad as refugees, particularly in the United States of America because of the historical presence of the US in Vietnam. The ethnic and religious persecution documented in this thesis is, as it

could be noticed, a continuation of past persecution in the Central Highlands. Many reports have recognized violations of the human rights of religious freedom for evangelical Christians belonging to independent churches, for people protesting about the assignment of land and forests to the state (traditionally used by highlanders to support themselves). The authorities have asserted that advocacy by some Degar Protestants of the notion of a “Degar country” was a cover for the resurrection of the armed separatist insurgency of the Front Uni de Lutte des Races Opprimées (United Front for the Liberation of Oppressed Races, or FULRO) launched in 1960s. However, even an official history of the Vietnamese security forces and their publications have declared that this political association ceased to exist in 1992, from that time violent changes have been replaced by “peaceful evolution”. The history also acknowledges that problems arising since 1992 have resulted in part from the Vietnamese authorities’ shortcomings in dealing with the rapid expansion of market economy in the Central Highlands, causing consequentially powerful changes in the social structure, even with “uneven effects on the residents of the area”. Recent media reports present no evidence that any armed or other violent activities have taken place and continue to describe only peaceful activities.

During the last decade, the Vietnamese government has launched a series of restrictions on Montagnards in the Central Highlands, often as an answer to mass public protests asking for the return of confiscated land and for the right of religious freedom. The demonstrations have been fuelled by Montagnards’ growing anger and desperation over the huge loss of their farmland and agricultural plantations, along with intensified restrictions on independent house churches. Representatives of the state have employed coercion to pressure Montagnards in order to abandon their religions and to respect the government plus the Communist Party of Vietnam. Police have used excessive force to dissipate peaceful protests, with abuse of power resulting in the deaths of eight Montagnards during demonstrations in April 2004¹⁹⁶, as well as harassments and other deceased during detention and later under police custody. It happened that some restrictions have been placed on travel within the highlands, on public gatherings and on telephone communication with the outside

¹⁹⁶ “Vietnam: Independent Investigation of Easter Week Atrocities Needed Now”, Human Rights Watch Briefing Paper, May 2004; “Socialist Republic of Viet Nam: Renewed concern for the Montagnard minority”, Amnesty International, 28th April 2004.

world.

Members of some ethnic minorities from Gia Lai and Dak Lak provinces in Vietnam explained that police detained them for questioning about their religious or political activities and detention periods lasted from a few hours to several months. Some also alleged that authorities beat or hit them during interrogations. The government's actions violate its obligations under international human rights treaties to which Vietnam is a party, notably the International Covenant on Civil and Political Rights (ICCPR)¹⁹⁷ and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹⁹⁸. The ICCPR defends the right to freedom of religion and belief, the right to freedom of expression and opinion, the right not to be subject to torture or other ill treatment and the right of everyone to leave any country (including their own) among other rights.¹⁹⁹ In addition, Cambodia is the country where people in recent years ask for asylum the most; the state is bound not to return a refugee or asylum seeker to any country where their life or freedom is at risk, as it has signed and ratified the Convention relating to the Status of Refugees of 1951 and its Protocol.²⁰⁰ Diplomatic action and sanctions, including on trade agreements, should press the Vietnamese government to end these abuses, which are a serious outrage to fundamental human rights.

Inside the Central Highlands, Degar/Montagnards and other Christians movements progressively mingled evangelical beliefs with Montagnards' aspirations for greater civil freedoms, protection of ancestral lands and autonomy, but without any

¹⁹⁷ International Covenant on Civil and Political Rights (ICCPR) adopted on 16th December 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force on 23rd March 1976, ratified by Vietnam on 24th September 1982.

¹⁹⁸ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) adopted on 21st December 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force on 4th January 1969, ratified by Vietnam on 9th June 1982. ICERD defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any field of public life."

¹⁹⁹ See ICCPR, arts. 7, 12, 18 and 19. See also ICERD, art. 8.

²⁰⁰ Convention relating to the Status of Refugees, 189 U.N.T.S. 150 entered into force on 22nd April 1954; the Protocol, 606 U.N.T.S. 267 entered into force on 4th October 1967. This is the fundamental refugee law principle of nonrefoulement.

particular political leadership or organization. Large protests took place in 2001, 2002, 2004 and 2008 and the government reacted with repression that combined military and police operations with intensive propaganda campaigns. Hundreds of persons were arrested, followed by trials, imprisonments of Jarai and others for their religious and political beliefs and nonviolent activities. The government's objectives were to force Montagnards to renounce Degar Christian condition, or other creeds and end related political conflicts. These government viewpoints and intentions have been neither achieved nor abandoned.

During the 1990s, Montagnards who joined unofficial Christian churches increased in number; later, in 2000 an activist religious movement appeared in the Central Highlands combining Christians principles with aspirations for greater political freedom and autonomy. Less than one year after, in February 2001, unprecedented mass protests broke out in all the provinces of the Central Highlands. Thousands of Montagnards marched to ask for the right to freedom of religion. In response, the government ordered a violent suppression, dozens of Montagnards were arrested and police used torture to obtain confessions about faith and public statements of remorse.²⁰¹ The end of 2001 had sentenced 36 Montagnards to prison from 4 to 13 years, with others 32 persons waiting for trial. By early 2002, more than 1.000 Montagnards had fled to Cambodia, where they were recognized as refugees and resettled abroad. In 2005 government's "Instruction No. 1" strengthened the needs for religious groups to get official permissions in order to be able to operate and worship, while providing an additional legal basis for trying to eliminate Degar and other reactionary behaviours.

Another reason that complicated the situation in the Central Highlands has been the reciprocal no confidence between the government and the highlanders. The government affirms that Montagnards belonging to independent churches are using religion as a front for political activities, but at the same time for example many Montagnards don't trust legal organizations like the Southern Evangelical Church of Vietnam (SECV) that is recognized and authorized by the state. Some Montagnards

²⁰¹ Human Rights Watch, *Repression of Montagnards: Conflicts over Land and Religion in Vietnam's Central Highlands*.

have chosen to worship in village or house churches that they control themselves, rather than affiliating with the SECV. In the meanwhile the Vietnamese Communist Party was afraid of popular movements that might undermine its power, that's why the government launched rigorous propaganda campaigns to remove forever Degar Protestantism and force Montagnards Christians to join the SECV.

Police with special units were dispatched into the Central Highlands to search for Montagnards activists who were hiding.²⁰² The Provincial Public Security Department of Vietnam put together its provincial level unit with the national level organization (that is the Department of Central Highlands Security also called A43), forming the PA43. It was created on 19th July 2004, originally codes as A44, under the General Department of Security. PA43 employees are controlled by A43, while the unit's logistics are controlled by the Provincial Public Security Department. In early 2010, the Department of Central Highlands Security was re-coded as A90, when the colonel Nguyen Hung Linh took the command of the unit.²⁰³

The last fifteen years have seen a lot of waves of repression and turmoil. In April 2004 thousands of Montagnards went another time in the streets to protest, with smaller demonstrations taking place in September 2002 and April 2008.²⁰⁴ Since 2010 the Vietnamese government has strengthened oppression toward Montagnards Christians and indigenous people in the Central Highlands who are demanding for religious freedom and land rights. The government still has the opinion that some

²⁰² Ngoc Diep-Ksor H'bui, "The Judicial Protection and Assistance Mobile Police: Striving to Do Good Things" (Phong canh sat co dong bao ve va ho tro tu phap: No luc lam nhieu viec tot), Bao Gia Lai, June 28, 2010, <http://baogialai.com.vn/channel/1602/201006/Phong-Canh-sat-Co-dong-Bao-ve-va-Ho-tro-tu-phap-No-luc-lam-nhieu-viec-tot-1948557/> (accessed February 2, 2011); Le Duy, "Youthful Strength of the Special Task Force Police Team" (Suc tre cua Doi Canh sat Dac nhiem), January 22, 2011, Cong An Nhan Dan (People's Police), <http://cadn.com.vn/News/Chinh-Tri-Xa-Hoi/Hoat-Dong-LLCA/2011/1/22/54679.ca> (accessed January 23, 2011).

²⁰³ (Cuc An ninh Tay Nguyen don nhan Huan chuong Chien cong hang Nhat), An Ninh Thu Do, August 13, 2007, <http://www.antd.vn/Tianyon/Index.aspx?ArticleID=6263&ChannelID=3> (accessed March 31, 2011).

²⁰⁴ "Vietnam: Montagnards under Lockdown", Human Rights Watch release, 28th May 2004, <http://www.hrw.org/en/news/2004/05/26/vietnam-montagnards-under-lockdown>; "Vietnam: Independent Investigation of Easter Week Atrocities Needed Now", Human Rights Watch briefing paper, May 2004, <http://www.hrw.org/en/reports/2004/05/27/vietnam-independent-investigation-easter-week-atrocities-needed-now> and Human Rights Watch, *World Report 2010* (New York: Human Rights Watch, 2010) Vietnam chapter, <http://www.hrw.org/en/node/87404>.

places could be like covers for Montagnards movements pursuing the independence from the state, for instance some unregistered or house churches in which many people pray and worship. Recent news confirms that more than 70 Montagnards have been detained or arrested during 2010. Legal instruments for Vietnamese government's control increased with the Decree 92 promulgated in January 2013, which prohibits "manipulation of freedom of belief and religion to conduct propaganda against the state or undermine the national unity"; this statement made it easier for the authorities to repress any religious activities they wanted.²⁰⁵ This legal persecution is driving Christians from Montagnards ethnic minorities to seek asylum outside Vietnam, in Cambodia and Thailand. Vietnamese authorities have stressed also Cambodian authorities to block border crossings and deny the right to seek asylum to those who cross the borders. Some newspapers dealing with the Vietnamese border defence armies have reported that authorities from Gia Lai province stated: "almost 100 minority people had gone absent without reasons in 2014", including persons from other districts of the country like Phu Thien, Chu Se, Chu Pu, Dac Doa and Duc Co. This fact seems to be related to another upsurge started in recent November 2014 of crossings into Cambodia by Degar believers and other highlander minorities.

The authorities concede that one of the main reasons that Christian minorities (including Degar) are seeking asylum abroad is their hope of making their way to a place where they can freely practice their creed. Among those who crossed around November 2014 were some in a group of 13 Jarai who were helped to make their way from Ratanakiri province to Phnom Penh in late December, by the Cambodia Office of the United Nations High Commissioner for Human Rights.²⁰⁶ The Cambodian government eventually recognized them as refugees having fear of persecution in

²⁰⁵ Human Rights Watch, "Vietnam Universal Periodic Review Submission 2013", 7th January 2014, <http://www.hrw.org/news/2014/01/07/vietnam-universal-periodic-review-submission-2013>.

²⁰⁶ Aun Pheap and George Wright, "In Ratanakiri, Montagnards Hiding, but Still Hopeful," Cambodia Daily, on 28th November 2014, <http://www.cambodiadaily.com/news/in-ratanakiri-montagnards-hiding-but-still-hopeful-73249/> (accessed November 30, 2014); Phak Seangly, "Montagnards in R'kiri vow to stay," Phnom Penh Post, November 28, 2014, <http://www.phnompenhpost.com/national/montagnards-r%E2%80%99kiri-vow-stay> (accessed November 29, 2014). The first of this group-entered Cambodia on October 30, 2014, with others following in November.

Vietnam. Vietnamese media excoriated them as law-breakers for participating in Degar religious activities, in addition the police lamented that by successfully fleeing to Cambodia with the help of non-governmental organizations, 13 people were able to avoid confrontations with the government.

In November 2014 meetings on suppressing illegal border crossings were held between the Vietnamese Ministry of Public Security and the Cambodian Ministry of Interior, Vietnamese immigration officials and Cambodia's Supreme Director for Immigration, Police General Sok Phal, VPA Border Defence Forces and provincial army units.²⁰⁷ Western Highland Vietnamese authorities requested that their Cambodian counterparts capture Montagnards who reached Cambodia and return them to Vietnam. Ratanakiri provincial deputy police chief Chea Bunthoeun confirmed that authorities had received a report about 13 Montagnards, but also said he did not know their location. He said that if the group members come forward to the police, authorities would evaluate them to determine whether they qualify as refugees or as economic migrants. "We will evaluate them. If they apply for refugee status, we will report their case to the government", he said. Khieu Sopheak (spokesman for Cambodia's Ministry of Interior) told that authorities would conduct an investigation into whether Montagnards were eligible for assistance from the government. "When we get further details, we will travel to the province to see if they are really refugees", he said adding that Cambodia has acted several times in the past to help refugees resettled in third countries. Nevertheless, But Chai Thy an official with Cambodian rights group Adhoc (the Cambodian Human Rights and Development Association) based in Ratanakiri, told that Montagnards do not trust local authorities, adding that his organization would do whatever it could to prevent them from being returned to Vietnam. "They don't want to go to the authorities first, they are waiting for help from international organizations, because they are afraid of the local authorities". The official spokesman of the Ministry of Foreign Affairs refused to comment on the situation, saying he was unaware about the details.

²⁰⁷ "Cambodia-Vietnam Police Coordinate Pursuit and Arrest of Wanted Objects" (Cảnh sát Campuchia - Việt Nam: Phối hợp truy bắt các đối tượng truy nã), November 18, 2014, <http://www.congan.com.vn/?catid=708&id=528971&mod=detnews&p=> (accessed November 20, 2014).

In January 2015, Cambodian officials in Ratanakiri province launched sustained and intensive searches for asylum seekers in jungle areas. Those found were deported to Vietnam the same month. On 16th January 2015 the Vietnamese Minister of Public Security, Tran Dai Quang, visited Phnom Penh and met the Cambodian Minister of Interior, Sar Kheng, in a meeting during which they signed a further set of agreements between the two governments. The Cambodian Prime Minister Hun Sen hailed the agreement. Among them were provisions on security force cooperation in border areas, including coordination “in struggle against objects wanted” in both countries who had “fled across to the other country for refuge”.²⁰⁸ In another apparent response to the rise in departures, Tran Dai Quang stated in a speech, in Buon Ma Thuot on 26th January 2015, that the VPA Border Defence Force headquarters in Hanoi had “increased its forces and coordinated with our relevant forces and Cambodian ones to carry out methods to arrest objects” who had reached Cambodia.²⁰⁹

In a similar measure, the Gia Lai province administration, on the suggestion of the Province Military Command, established commune-level permanent militia units under special commune military commands in every border to help other security forces seal the frontier and suppress Degar proselytizing.²¹⁰ One Vietnamese media account reported that in February 2015 border patrol forces arrested two Degar believers trying to take others into Cambodia from Gia Lai province. A criminal persecution was then initiated.²¹¹ This is part of a pattern: people accused of organizing departures are subjected to public denunciation, arrest and prosecution. Other accounts stress that members of national minorities attempting to cross into

²⁰⁸ “Minister of Public Security Tran Dai Quang Visited and Worked with Cambodia” (Bộ trưởng Công an Trần Đại Quang thăm và làm việc tại Campuchia), TTXVN/Vietnam, January 16, 2015, <http://www.vietnamplus.vn/bo-truong-cong-an-tran-dai-quang-tham-va-lam-viec-tai-campuchia/302587.vnp> (accessed January 19, 2015).

²⁰⁹ “The Western Highlands Steering Committee Initiates 2015 Work Duties” (Ban Chỉ đạo Tây Nguyên triển khai nhiệm vụ công tác năm 2015), http://www.mps.gov.vn/html/portlet/vcmsviewcontent/print_article.jsp?articleId=31960&iEnglish=false (accessed April 19, 2015)

²¹⁰ “Peace Relies on a Standing Militia” (Bình yên nhờ dân quân thường trực), Quân đội nhân dân, March 27, 2015, <http://www.qdnd.vn/qdndsite/vi-vn/61/43/quan-su-quoc-phong/binh-yen-nho-dan-quan-thuong-truc/352181.html> (accessed April 19, 2015)

²¹¹ “Strengthen the Blocking of Illegal Border Crossings in the Western Highlands” (Tăng cường ngăn chặn vượt biên trái phép ở Tây Nguyên), <http://www.bienphong.com.vn/tang-cuong-ngan-chan-vuot-bien-trai-phep-o-tay-nguyen/30468.bbp>

Cambodia are liable to get lost in the jungle, where they suffer from hunger, thirst and some simply disappear, with their relatives left not knowing whether they are alive or dead.²¹²

In late April 2015 the Cambodian government deployed almost 1.000 additional security forces to the Ratanakiri/Gia Lai/Dak Lak border with the primary mission of preventing asylum seekers from entering Cambodia. On May 2015, the governor of Ratanakiri, Thang Savun, who controls security forces in his province, met in Buon Me Thuot with Vietnam's Steering Committee for the Western Highlands to discuss strengthening the coordination of efforts against "hostile and reactionary forces in border areas". By the beginning of June 2015, Cambodia has sent back at least 54 Montagnards without allowing any opportunity to seek refugee status and had denied at least another 109 possibilities of registering there as asylum seekers.

In addition, government officials have forced hundreds of Montagnard Christians in public criticism sessions to publicly renounce their faith, violating internationally protected rights to freedom of religion and conscience. Those who resist and insist on their right to independent worship face beatings, arrests and imprisonments. Some are arrested and jailed on national security charges, such as "undermining national solidarity." Provincial courts often hold "mobile trials" of people charged with national security crimes before hundreds of people, reinforcing the message not to follow unsanctioned religious groups. The persecutions carried out against what Vietnamese authorities call "objects" of security force suspicions. These include those who subscribe to beliefs the Vietnamese government maintains are "set up by the reactionaries" to oppose Communist Party rule and achieve other "dark purposes" such as to "abuse the freedom of belief to sow division among the national great unity".

Official media reports describe the security forces as taking action against minority "peaceful evolution" activists protesting against shortcomings in Communist Party policies related to "national minorities", including allegations that the authorities are

²¹² "Making a Commitment to the Village" (Nhận lỗi với buôn làng), Báo Công an nhân dân, http://www.cadn.com.vn/news/75_127298_nha-n-lo-i-vo-i-buon-la-ng.aspx

violating their human rights. The Vietnamese authorities deny these violations and characterize them as a fabricated excuse for committing the crime of illegally leaving Vietnam for Cambodia. Official Vietnamese media makes it clear that such government actions are part of a high level policy to eliminate “evil way” (ta dao) religions, such as the Degar Protestantism and Ha Mon Catholicism practiced by some ethnic Montagnards, which the government has deemed fall outside the belief systems considered pure. Their beliefs and faith practices are suppressed on the grounds that they are not religions, but evil ways of believing. Gia Lai provincial television has reported that local officials have organized “many waves of search and hunt” actions against unofficial religious activities, in order to “deal seriously with their leaders and core members”.

The following timeline, drawn from Vietnamese state media accounts, western wire service reports and Montagnard sources, illustrates a continuous pattern of repression of independent political and religious activities in the Central Highlands during the last 10 years. In February 2001 authorities suppressed widespread demonstrations by Montagnards by dispatching tanks and elite troops to the region and arresting dozens of protest organizers. Afterwards, authorities enforce sharp restrictions on public gatherings, church meetings and freedom of movement.²¹³ In April 2001 officials announced that 13 military regiments are to be located in an “economic defence zone” in Dak Lak and neighbouring Binh Phuoc province, bordering Cambodia. The plan called for the resettlement of close to 100.000 soldiers, militia and their families, who are to clear up to 230.000 hectares of land to plant rubber, cashews, cotton, coffee and pepper.²¹⁴ In May 2001 officials organized “goat’s blood ceremonies” in dozens of villages in the Central Highlands. Villagers who participated in the February 2001 demonstrations are forced to stand up in front of their entire village and local authorities to admit their wrongdoing, pledge to cease any contacts with outside groups and renounce their religion. To seal their loyalty,

²¹³ See Human Rights Watch report, *Repression of Montagnards: Conflict over Land and Religion in Vietnam’s Central Highlands*, ISBN: 1-56432-272-6, April 2002, <http://www.hrw.org/en/reports/2002/04/23/repression-montagnards>.

²¹⁴ Agence France Press, “Vietnam settling soldiers, militiamen in restive Central Highlands”, on 27th April 2001.

they are forced to drink rice wine mixed with goat's blood.²¹⁵

In February 2002 an additional 2,300 soldiers are deployed in Gia Lai, Dak Lak and Kon Tum provinces, with party cadre sent to “hot spots” and remote areas to help maintain order.²¹⁶ In August and September 2002 police tightened security and arrested 70 Montagnards in Gia Lai, Dak Lak and Phu Yen provinces in an effort to suppress Montagnard protests reportedly planned in Mdrak district of Dak Lak and Buon Ma Thuot City.²¹⁷ “We arrested all the demonstrators. Nobody could escape,” a police chief in Dak Lak tells reporters.²¹⁸ In October and December 2002 more than 600 “fast deployment” military teams are dispatched to the highlands.²¹⁹ Authorities intensified propaganda campaigns against “hostile forces” in the highlands, culminating in an October 2002 Party directive outlining the government’s efforts to eliminate “Degar Protestantism.”²²⁰ State media covers officially organized ceremonies in which Montagnard Christians “voluntarily” reject their religion, with Dak Lak provincial television broadcasting programs called “Dispersing the Illegally Self-Elected Protestant Board of Deacons” and “Illegally Self-Elected Protestant Deacons Voluntarily Disperse”, showing Montagnard Christians “volunteering” to abandon their religion.²²¹ In November of the same year, government officials reported that more than 2,700 Christians have severed connections with “bad

²¹⁵ Human Rights Watch interviews with Jarai from Vietnam, October 2001; transcripts on file at Human Rights Watch. See also, *Repression of Montagnards*, 2002; “Report on the Protestants’ Situation in Dak Lak Province” on 3rd September 2001, written by a Protestant church leader in the Central Highlands who asked to remain anonymous.

²¹⁶ Reuters, “Vietnam to send extra police to Central Highlands” on 29th January 2002; Reuters, “Hanoi troops sent to teach highlanders about plots” on 25th February 2002.

²¹⁷ Associated Press, “Vietnam arrests scores of hill tribe members for attempting new protest,” September 6, 2002; Agence France Presse, “Demonstrators arrested in Vietnam’s Central Highlands,” September 6, 2002; Associated Press, “Two Montagnards surrender to charges of instigating anti-government protests,” October 30, 2002; Vietnam News Brief Service, “Two Initiators of Riot in Central Highlands Give up to Police,” October 30, 2002; Vietnam News Brief Service, “Army Newspaper Slams Attempts to Lure Minority Refugees,” November 22, 2002.

²¹⁸ “New Unrest Flares in Vietnam’s Central Highlands,” Deutsche Presse-Agentur, September 6, 2002.

²¹⁹ “Vietnam forces ‘successfully’ maintain political stability in Central Highlands,” BBC Monitoring Asia Pacific, Text of report in English by Vietnam News Agency web site.

²²⁰ “Material to Propagandize and Fight Against the Scheme of the Enemy Forces to Establish an Independent Degar Country and Degar Protestantism,” Communist Party of Dak Lak, Cu Mgar District, October 22, 2002. Vietnamese language document on file at Human Rights Watch.

²²¹ Vietnam TV broadcast, Krong Pak, Dak Lak, September 28, 2002. Videotape of the 25-minute broadcast is on file at Human Rights Watch.

elements who abuse religious issues to sow divisions in national unity,” dozens of evangelical Christians have confessed to having preached illegally and 37 religious “cells” have been disbanded.²²²

In February 2003 the government and party officials in the Central Highlands are instructed to “eradicate all illegal religious organizations” and to organize official “Swearing Brotherhood” (le ket nghia) ceremonies in which Montagnards must publicly pledge their loyalty to the government and the party and renounce “Degar Protestantism.”²²³ To enforce the new directives, police launched a fresh round of arrests of Montagnard Christians and political activists, as well as those suspected by the government of seeking to flee to Cambodia.²²⁴

In January 2004 the authorities intensified crackdown on Montagnards, with Mobile Intervention Police searching villages and nearby coffee plantations (sometimes with dogs) to arrest Montagnards suspected of supporting the Degar church movement. After cordoning off a village, prohibiting entry and exit, the security forces then entered the village. They searched the homes of villagers suspected of hiding or feeding others, often destroying the houses and beating the inhabitants during interrogation. Then they fan out into nearby fields and forests, searching for people in hiding. In July 2004, after widespread Montagnards’ protests in the Central Highlands in April 2004, the Department of Central Highlands Security is founded after a national conference on security in the highlands presided over by Deputy Prime Minister Nguyen Tan Dung.²²⁵ Elite police units, such as PA43, Political Security

²²² “Report: Protestant missionaries illegally preaching in Vietnam's restive Central Highlands,” Associated Press, citing the official Phap Luat (Law) newspaper, November 1, 2002.

²²³ “The Plan: Swearing brotherhood between all government organizations and units with all hamlets and villages in the district,” Communist Party of Vietnam, Party Office of Dak Lak, Dak Song District, no. 14 - KH/HU, February 12, 2003, Vietnamese language document on file at Human Rights Watch; “Directions re: Organizing the Swearing Brotherhood Ceremony,” Communist Party of Vietnam, Dak Song District, no. 44-HD/BTC, February 12, 2003; Vietnamese language document on file at Human Rights Watch; “Vietnam: New Documents Reveal Escalating Repression,” Human Rights Watch Briefing Paper, April 18, 2003.

²²⁴ “Vietnam: New Documents Reveal Escalating Repression,” Human Rights Watch Briefing Paper, April 18, 2003, <http://www.hrw.org/en/reports/2003/04/18/vietnam-new-documents-reveal-escalating-repression> (accessed March 25, 2011).

²²⁵ Ngoc Nhu, “On the Frontlines against FULRO” (Tren tuyen dau chong FULRO), Cong An Nhan Dan (People’s Police) <http://www.cand.com.vn/vi->

Section VI units, the Mobile Intervention Police and the “Special Task Force” are dispatched to the region to back up provincial and district police to prevent further demonstrations, root out Montagnard activists in hiding, stop the flow of asylum seekers to Cambodia and bring an end to groups allegedly taking advantage of ethnic issues and religion to incite social turmoil.²²⁶

In late 2004 and early 2005 the Police operations focus on capturing “reactionary FULRO operatives” in Dak Doa and Chu Se districts of Gia Lai, with state media reporting that 147 people are arrested in late 2004, including Kpa Hung, a key “ringleader” who is shot and wounded during his arrest and is now serving a 12 year prison sentence.²²⁷ In March 2005: targeting of Montagnard Christians for persecution, arrest and mandatory renunciation sessions intensified after promulgation of legislation that requires all religious groups to be officially registered. As a matter of fact the Decree 22, promulgated in March 2005, bans any religious activity deemed to threaten national security, public order or national unity. Instruction No. 1, issued by the Prime Minister in February 2005, specifically bans Degar Protestantism.²²⁸ The new regulations provide legitimacy to government officials and police arresting or forcing the recantation of faith of Montagnards

VN/trongmatdan/2008/8/97681.cand.

²²⁶ The PA43 unit was re-coded as PA90 in early 2010. “Department of Central Highlands Security Receives First Rank Medal” (Cuc An ninh Tay Nguyen don nhan Huan chuong Chien cong hang Nhat), An Ninh Thu Do, August 13, 2007, <http://www.antd.vn/Tianyon/Index.aspx?ArticleID=6263&ChannelID=3> (accessed March 20, 2011); “Political Security Section VI (PA43) of the Provincial Police: On the Frontlines of Fighting Reactionary Forces” (Phong Bao ve chinh tri VI [PA43]-CA tinh: Chu Cong Tren Mat Tran Dau Tranh Voi Ca The Luc Phan Dong), Bao Dak Lak online, Dec. 11, 2009; Tien Dung, “Quiet Victories” (Lang tham nhung chien cong), Bao Gia Lai, March 19, 2011, <http://www.baogialai.com.vn/channel/1602/201103/Lang-tham-nhung-chien-cong-1983520/> (accessed March 27, 2011).

²²⁷ Tung Duy, “FULRO’s Nemesis” (Khac tinh cua FULRO), Viet Bao Online, August 18, 2005, <http://vietbao.vn/The-gioi-tre/Khac-tinh-cua-Fulro/70020908/504/> (accessed September 21, 2010). Information about arrests in state media accounts was corroborated by credible reports received by Human Rights Watch in late 2004 that 144 Montagnards were arrested during a two-week period (December 12-24, 2004), most of whom were from Gia Lai province. See Human Rights Watch briefing paper, “Vietnam: Torture, Arrests of Montagnard Christians,” January 2005, <http://www.hrw.org/legacy/backgrounder/asia/vietnam0105/index.htm>.

²²⁸ Decree 22/2005/ND-CP, “Instructions for Implementing the New Ordinance on Beliefs and Religions; Prime Minister’s Instruction no. 01/2005/CT-TTg, “Some Work in Regard to Protestantism,” February 4, 2005.

belonging to religious groups that operate independently of the government-approved Southern Evangelical Church of Vietnam.

In November 2005 some plans are announced to send 2.000 families from northern Vietnam to live and work in “Economic-National Defence Zones” (ENDZ) in Kon Tum and Gia Lai provinces near the Cambodian border. The Prime Minister also approved a plan to send 400 “young intellectuals” and members of the Communist Youth Union to the ENDZs for two years to “enhance socio economic development and strengthen defence” in the region.²²⁹ From April 2006 until July 2009, PA43 forces and provincial police launched a “1.200 day campaign” that focused on capturing “reactionary FULRO operatives” and “Degar Protestants” in Chu Se district in Gia Lai.²³⁰

In 2006 the government began implementation of the 01 CA-QS plan by provincial and district police and military Corps 15 to ensure political stability, national security and defence in three border districts of Gia Lai, for rubber plantations located there. Goals of the 01 CA-QS plan were: ensure national security (both political security and security of rubber plantation); eradicate FULRO and prevent escapes into Cambodia; mobilize masses to turn in reactionaries and stop crime, especially illegal smuggling of rubber.²³¹ In August 2006 the Special Task Force, an elite police unit within the E20 Battalion of the Central Highlands Mobile Police, coordinated with PA43 units, district and provincial police to hunt down and suppress FULRO “ringleaders” focusing on Gia Lai.²³²

²²⁹ “Northern Households Rounded Up to Central Highlands”, Vietnam News Brief Service, November 22, 2005.

²³⁰ D.A., “1,200 Days Hunting Dangerous FULRO” (1,200 Ngày Truy Bat Nhung Ten Fulro Ngay Hiem), Cong An Thanh Pho Da Nang, August 4, 2009, <http://cadn.com.vn/News/Print.ca?id=29006> (accessed February 2, 2011); Tien Dung, “Quiet Victories” (Lang tham nhung chien cong), Bao Gia Lai, March 19, 2011, <http://www.baogialai.com.vn/channel/1602/201103/Lang-tham-nhung-chien-cong-1983520/> (accessed March 27, 2011).

²³¹ Thanh Khiet, “Building National Security and Defence for All Citizens” (Xay dung the tran an ninh- quoc phong toan dan), Bao Gia Lai, July 5, 2010, <http://baogialai.com.vn/channel/1602/201007/Xay-dung-the-tran-an-ninh-quoc-phong-toan-dan-1949504/> (accessed August 1, 2010).

²³² Le Duy, “Youthful Strength of the Special Task Force Police Team” (Suc Tre Cua Doi Canh Sat Dac Nhiem), Cong An Nhan Dan (People’s Police), January 22, 2011; Trong Tinh, “Political Security Section VI (PA43) of the Provincial Police: On the Frontlines of Fighting Reactionary Forces” (Phong Bao ve chinh tri VI [PA43]-CA tinh: Chu Cong Tren Mat Tran Dau Tranh Voi Cac The Luc Phan Dong), Bao Dak Lak, December 11, 2009; Ngoc Diep-Ksor H’bui, “The

In January 2007 other plans are announced for construction of resettlement villages in border and low-income areas (including four Central Highlands provinces) for young people from other parts of Vietnam to “uphold their pioneer role in socio-economic development.”²³³ From April 2007 to June 2010, public security forces launched a three-year offensive that targets Montagnard church activists in Chu Se district, Gia Lai.²³⁴ In May 2010, officials launched propaganda campaigns and public criticism ceremonies targeting the Catholic Ha Mon sect in Kon Tum, Gia Lai and Dak Lak provinces.

In June 2010 heightened border security, arrests and forced renunciation ceremonies take place in Gia Lai, allegedly in response to unrest in rubber plantations in Chu Prong district.²³⁵ Since 2001, more than 350 Montagnards have been sentenced to long prison sentences on vaguely-defined national security charges for their involvement in public protests and unregistered house churches considered subversive by the government or for having tried to flee to Cambodia to seek asylum. They include Degar church activists as well as Montagnard Christians who do not describe themselves as followers of Degar Protestantism, including pastors, house church leaders and land rights activists. Charges brought against them include undermining national solidarity (Penal Code article 87) or disrupting security (article

Judicial Protection and Assistance Mobile Police: Striving to Do Good Things” (Phong canh sat co dong bao ve va ho tro tu phap: No luc lam nhieu viec tot), Bao Gia Lai, June 28, 2010.

²³³ “Youth Villages to be Built in Remote Areas,” Voice of Vietnam Radio, January 31, 2007, <http://english.vovnews.vn/Home/Youth-villages-to-be-built-in-remote-areas/20071/28730.vov> (accessed March 24, 2011).

²³⁴ Ngoc Diep-Ksor H’bui, “The Judicial Protection and Assistance Mobile Police: Striving to Do Good Things” (Phong canh sat co dong bao ve va ho tro tu phap: No luc lam nhieu viec tot), Bao Gia Lai, June 28, 2010.

²³⁵ Thanh Khiet, “Building National Security and Defence for All Citizens” (Xay dung the tran an ninh-quoc phong toan dan), Bao Gia Lai, July 5, 2010; Ngoc Tan, “Chu Prong: ‘Hot’ Rubber Plantations,” Bao Gia Lai, September 9, 2010, <http://www.baogialai.com.vn/channel/1602/201009/Chu-Prong-Nhung-vuon-cao-su-dang-nong-1957912/> (accessed September 18, 2010); N. Nhu, “Hook Up with FULRO to spread reactionary propaganda” (Cau ket voi FULRO tuyen truyen phan dong), Cong An Nhan Dan (People’s Police), September 8, 2010, <http://ca.cand.com.vn/vi-vn/thoisuxahoi/thoiluan/2010/9/168205.cand> (accessed October 8, 2010); S.C., “Criticism of 50 Subjects in Social Disturbances in Ia Dok Commune, Duc Co” (Kiem diem 50 doi tuong gay roi tai xa Ia Doc-Duc Co), Bao Gia Lai, October 1, 2010, <http://www.baogialai.com.vn/channel/1602/201010/Kiem-diem-50-doi-tuong-gay-roi-tai-xa-ia-dok-duc-Co-1960717/> (accessed November 11, 2010).

89).²³⁶ At least 65 of the Montagnards imprisoned since 2001 were arrested trying to seek safety and political asylum in Cambodia. They were sentenced to prison in Vietnam on charges of “fleeing abroad to oppose the People’s Administration” (article 91).

By making peaceful dissent and unsanctioned religious activities criminal acts, the Vietnamese government disregards fundamental rights and Vietnam's own commitments under international human rights treaties it has signed, including the International Covenant on Civil and Political Rights, acceded to by Vietnam in 1982. The forced return of asylum seekers violates the rights to leave one's country and to seek asylum outside of one's country, which are recognized in articles 13 and 14 of the Universal Declaration of Human Rights. Forced return of asylum seekers is also in violation of Cambodia’s obligations as a signatory to the 1951 Refugee Convention and its 1967 Protocol not to return people to a place where their lives or liberty are at risk, or where they face the possibility of being tortured.

During 2009 and 2010, Vietnamese state media reported that 12 Montagnards were tried and sentenced to prison; it is unknown how many others were tried in proceedings not covered in the state press or were detained without trial in government “education centres” (co so giao duc or trung tam giao duc thuong xuyen).²³⁷ The arrests are on going with more than 70 Montagnards arrested or detained during 2010 in Gia Lai. Nowadays, at least 250 Montagnards currently remain in prison or are awaiting trials. The current campaign of religious and political persecution of ethnic minorities was given authoritative impetus in a January 2014 speech by General Tran Dai Quang, Vietnam’s Minister of Public Security and Chairman of the Communist Party’s Steering Committee for what the government calls the “Western Highlands”. He called on security forces to eliminate reactionary organizations and evil religions, including Degar Protestant Christianity.²³⁸

²³⁶ Penal Code of the Socialist Republic of Vietnam, cited in *A Selection of Fundamental Laws of Vietnam* (Hanoi: The Gioi Publishers, 2001).

²³⁷ Ordinance 44/2002/PL-UBTVQH10 authorizes placing people suspected of threatening national security in detention for up to two years without trial in so-called “education establishments” (co so giao duc) operated by the Ministry of Public Security.

²³⁸ “Eliminate the Reactionary FULRO Organization, the ‘Ha Mon’ Evil Ways, and ‘Degar Protestantism’” (Xóa bỏ tổ chức phản động Phun-rô, tà đạo ‘Hà Môn’ và ‘Tin lành Đêga’), An

At the same time, the government has initiated some reforms to address Montagnards grievances, including official programs to allocate land to ethnic minority families, improve educational opportunities and bring economic development to the impoverished region. Police who have been posted in villages to monitor activities of suspected Montagnards leaders and prevent escapes to Cambodia have also carried out public works projects such as assisting villagers with farming and village clean-up projects.

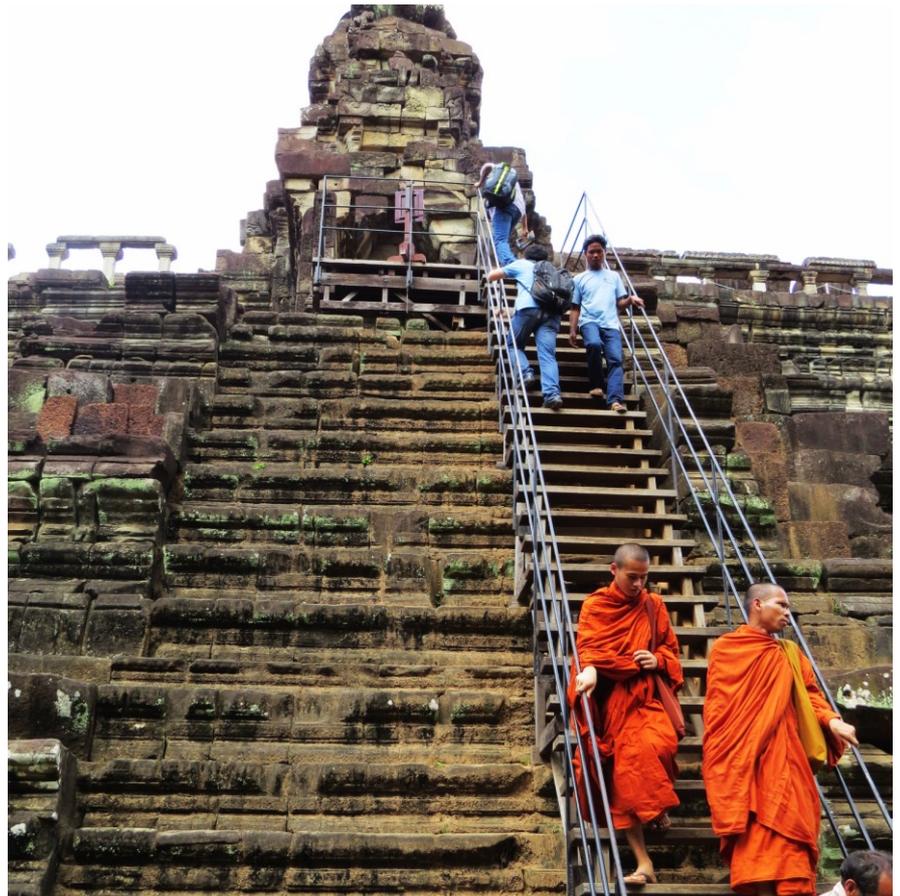


Photo of the author: Buddhists in Angkor Wat Temples in Cambodia.

Conclusion

ninh Thủ đô, <http://www.anninhthudo.vn/thoi-su/xoa-bo-to-chuc-phan-dong-phunro-ta-dao-ha-mon-va-tin-lanh-dega/533598.antd>.

As we have seen with this work, human beings have universal moral rights simply because they are human or because they are persons that have what is called “dignity” and we have it by our very nature. Human dignity is at the heart of those universal and equal rights that we call human rights and that are codified in international conventions. The universality of human rights is the feature that accounts for the affirmation that human beings have such rights whether or not they are recognized and protected under the laws of a particular government. As we have seen in this thesis, all human rights carry corresponding obligations, mostly on States, to take a particular decision of passive or active actions and to achieve a certain result.

Vietnam is a socialist state and with the Communist Party lays down the foundations of its national policy. Its principles, based on Marxism and socialism, influence the everyday life of the state and of the population. In the case study of Montagnards, the state had and still has the leading role in all the events that have characterized this particular situation. The political system put the nation at the centre of the public and private lives of its citizens, but sometimes in my opinion the main problem is the presence of some totalitarian aspects that still contaminate logics of freedom inside the state policy. Many of the alleged violations of religious freedom are related not so much to religious beliefs and practices, but to organizational state’s provisions. These conflicts involving ethnic Christians and Protestants minority concern not only the aspect of religious nature, but moreover they deal with the complex set of economic, social, cultural, political and historical grievances of the country. On the one hand there is the insistence by foreign governments and human rights organizations, on the other hand there are transnational religious and ethnic groups, both discussing over the importance of religious freedom in politics’ ideology.

Vietnamese governments representatives frequently declare that religion is freely observed in the country, both in law and practice. Following the law, all religious activities must be registered with the consensus of state’s authorities, although informal practices are widespread and uncontrolled. In general, the renewal in religious life and customs is the proof that the state try to support this reality, but the

fact is that religious groups and movements have to face restrictive regulations and have only achieved many of these activities with strong efforts.²³⁹

Article 8 in the Ordinance of the Standing Committee of the National Assembly No. 21/2004/PL-UBTVQH11 of 18 June 2004 prohibits the abuse of belief and religion for “superstitious practices” and activities that infringe the law, instigate “divisions among people and ethnic groups” and “infringe national security”. It seems to be inevitable that religious activities are subjected to limitations and most of all to unfair interpretations of the law at a national level; it’s all caused by the ambiguity of the definition of acts considered to be a threat to law, unity and security. This unclear situation could highlight Vietnamese’s state ideology to be hostile to religion. Another explanation could be that the Vietnamese communists embody a Confucian view of the world where there is a human philosophy adverse to alternatives creeds like Buddhism, Taoism and Christianity.²⁴⁰ Another possible explanation places the present day government as beneficiary to the nationalist movement of the early twentieth century.²⁴¹ Many nationalists were antagonistic to Confucianism and also to Catholicism, because the first philosophy was considered one of the causes for Vietnam’s failure to European expansionism, while the second one was seen as an excuse used by French to occupy and colonize the country.²⁴²

After the unification of the country in 1975, Vietnam’s leaders considered many religious organizations of the south as politically and militarily dangerous; indeed, their view of religion passed through a cultural lens shaped by long years of fighting foreign occupying armies.²⁴³ Much of Vietnam’s contemporary religious scene is an expression of resistance to state power. A related way to understand the spread of religion in present day Vietnam is to see it as an answer to the decline of the state

²³⁹ Press conference by head of government’s Committee for Religious Affairs, “Government Assures Right to Freedom of Religion” reported in *Viet Nam News*, 25/04/2006.

²⁴⁰ McLeod Mark W. and Nguyen Thi Dieu, *Culture and Customs of Vietnam*, Westport, Greenwood Press, 2001, p. 55.

²⁴¹ McHale, Shawn F., *Print and Power: Confucianism, Communism and Buddhism in the Making of Modern Vietnam*, Honolulu: University of Hawaii Press, 2004, p. 137-140.

²⁴² Cao Huy Thuan, *Christianisme et Colonialisme au Vietnam*, Political Science, University of Paris, 1968.

²⁴³ Taylor Philip, *Goddess on the Rise: Pilgrimage and Popular Religion in Vietnam*, Honolulu: University of Hawaii Press, 2004, p. 78.

power, in an era where there are post-socialist economic policies. In this sense these “substitute religions”, also called “new ways”, filled the void left inside state authority.²⁴⁴

Another related contemporary theme is the intrinsic relationship between the on-going religious expansion in Vietnam and the dramatic social and cultural changes that are transforming the country.²⁴⁵ Some scholars in the Marxist tradition see the social order development and the improvement of material conditions as one of the causes for religion falling. This compensatory viewpoint has currency today among many Vietnamese intellectuals who see the contemporary revival of religion as a response to a variety of crises produced by the development of market integration.²⁴⁶

In recent years, road-based transport networks have connected indeed countryside territories and rural settlements, while cities are expanding rapidly and migrants tend to leave areas that are economically depressed. At the same time, a growing numbers of Vietnamese are going abroad to study and work. All these changes will lead to a deterioration of social connections and interactions, which imply as a consequence the dissolution of a national religion. So, the overwhelming rising of globalization and flexibility of relationships in modern society has led to a related weakening in ritual and spiritual life.²⁴⁷ Another different hypothesis is that the state authority is now more compatible with religious needs and expression, that’s why it counts on religion to protect its universal legitimacy. In any case, the entire social system of Vietnam traditionally expresses some fundamental unitary principles: such as that the traditional family is modelled on the state and the state modelled itself on the family. Religion is just the cement that keeps the entire order together.

Bibliography:

²⁴⁴ McAlister, John and Paul Mus, *The Vietnamese and Their Revolution*, New York: Harper and Row, 1970, p. 112.

²⁴⁵ Huntington, Samuel. *The Clash of Civilizations and the Remaking of World Order*, New York: Simon and Schuster, 1996, p. 99-104.

²⁴⁶ Le Hong Ly, “Praying for Profits. The Cult of the Lady of the Treasury”, paper of the Association for Asian Studies, Chicago, 2001.

²⁴⁷ Durkheim Émile, *The Elementary Forms of the Religious Life*, London: edited by George Allen and Unwin, 1976, p. 245.

Amodio Paolo Alberto e D'agostino Francesco, *Le libertà di religione e di culto. Contenuti e limiti*, Giappichelli Editore, Torino, 2003.

Anderson David, *The Columbia Guide to the Vietnam War*, Columbia University Press, New York, 2004.

Angiolini V., *Diritti umani*, Giappichelli Editore, 2012.

Antlöv Hans e Tønnesson Stein, *Imperial Policy and Southeast Asian Nationalism*, Curzon Press, 1994.

Bahiyyih G. Tahzib, *Freedom of religion or belief: ensuring effective international legal protection*, in The Hague, 1996.

Bainton Roland H., *La lotta per la libertà religiosa*, Il Mulino, 1999.

Brownlie Ian, *Principles of Public International Law*, 8th edition, Oxford: Oxford University Press, 2012.

Ceccherini E., *Pluralismo religioso e libertà di coscienza*, Giuffrè Editore, 2012.

Cohn Ronald e Russell Jesse, *Freedom of religion in Vietnam*, Vsd, 2012.

Cumper Peter and Lewis Tom, *Religion, Rights and Secular Society: European Perspectives*, Edward Elgar Pub, 2012.

Davis Thomas W. D., Galligan Brian, *Human Rights in Asia*, Edward Elgar Pub, 2011.

De Francesco G., Piemontese C., Venafro E., *Religione e religioni: prospettive di tutela, tutela della libertà*, Giappichelli, 2007.

Di Falco Jean-Michel, Radcliffe Timothy e Riccardi Andrea, *Il libro nero della condizione dei Cristiani nel mondo*, Mondadori, 2014.

Durkheim Émile, *The Elementary Forms of the Religious Life*, London: edited by George Allen and Unwin, 1976.

Ferrari Silvio, *Diritti dell'uomo e libertà dei gruppi religiosi: problemi giuridici dei nuovi movimenti religiosi*, CEDAM, 1989.

Ferrari Silvio, *La tutela della libertà di religione: ordinamento internazionale e normative confessionali*, CEDAM, 1988.

Ferri Marcella, *Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Vita e Pensiero, 2015.

Gheddo Piero, *Cattolici e buddisti nel Vietnam*, Firenze: Vallecchi, 1968.

Guidieri Remo, Pellizzi Francesco e Stanley J. Tambiah, *Ethnicities and Nations: Processes of Interethnic Relations in Latin-America, Southeast Asia and the Pacific*, University of Texas Press, Rothko Chapel, 1988, p. 229-58.

Jacobsen Michael and Ole Bruun, *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*. Richmond, Surrey: Curzon, 2000.

Jan Ovesen, *A minority enters the nation state: A case study of a Hmong community in Vientiane province, Laos*, Uppsala: Uppsala Research Reports in Cultural Anthropology, 1995.

Kammerer C., *Customs and Christian conversion among Akha highlanders of Burma and Thailand*, *American Ethnologist* 17, 1990.

Knights Samantha, *Freedom of religion, minorities and law*, Oxford: Oxford University Press, 2007.

Leiden Brems Eva, *Article 14: the right to freedom of thought, conscience and religion*, Boston: Martinus Nijhoff Publishers, 2006.

Lessing Gotthold E., *Religione e libertà*, Morcelliana, 2000.

Maitre Henri, *Les populations de l'Indo-Chine: conférence Broca, Bulletins et mémoires de la Société d'Anthropologie de Paris*, 6e série, 1912.

Marchesi Antonio, *La protezione internazionale dei diritti umani*, Franco Angeli, 2011.

McAlister, John and Paul Mus, *The Vietnamese and Their Revolution*, New York: Harper and Row, 1970.

McLeod Mark W. and Nguyen Thi Dieu, *Culture and Customs of Vietnam*, Westport, Greenwood Press, 2001.

Messer R. Carlos, *A debt too far? A case study of the montagnards in Vietnam*, BiblioScholar, 2012.

Mole L. Robert, *Montagnards of South Vietnam: A study of nine tribes*, Tuttle Publishing, 1970.

Morton E. Winston, *The philosophy of Human Rights*, Wadsworth Publishing Company, 1989.

Peroli Enrico, *L'idea di tolleranza in età moderna*, Morcelliana, 2014.

Pineschi L., *La tutela internazionale dei diritti umani*, Giuffrè, 2006.

Pirrone P., *Circolazione dei valori giuridici e tutela dei diritti e delle libertà fondamentali*, Giappichelli, 2011.

- Possenti Vittorio (a cura di), *Diritti umani e libertà religiosa*, Rubbettino, 2010.
- Renucci Jean-François, Article 9 of the European convention on human rights: freedom of thought, conscience and religion, Strasbourg: Council of Europe, 2005.
- Ruffini Francesco, *La libertà religiosa*, Feltrinelli Editore, 1992.
- Shelton Dinah L., *Advanced Introduction to International Human Rights Law*, Edward Elgar Pub, 2014.
- Stacey Tom, *I popoli della Terra*, vol. 10, Arnoldo Mondadori Editore, 1975.
- Tam T. T. Ngo, *Protestant conversion and social conflict: The case of the Hmong in contemporary Vietnam*, Journal of Southeast Asian Studies, 2015.
- Taylor Philip, *Goddess on the Rise; Pilgrimage and Popular Religion in Vietnam*, Univ of Hawaii, 2004.
- Taylor Philip, *Modernity and Re-enchantment: Religion in Post-revolutionary Vietnam*, Institute of Southeast Asian Studies, 2007.
- Terzani Tiziano, *Pelle di Leopardo e Gai Phong! La Liberazione di Saigon*, Longanesi, Milano, 2000.
- Thion Serge, *Remodeling Broken Images: Manipulation of Identities Towards and Beyond the Nation, an Asian Perspective*, Rothko Chapel, 1988.
- Thornberry Patrick, *International law and the right of minorities*. Clarendon Press, Oxford, 1991.
- Tomás A.F. Fernández, *Lecciones de derecho internacional público*, Tirant lo Blanch, 2011.
- Van Ooijen Hana, *Religious symbols in public functions*, Intersentia, 2012.
- Vietnam: Foreign Policy and Government Guide*, International Business Publications USA, 2007.
- Zappala' Salvatore, *La tutela internazionale dei diritti umani*, Il Mulino, 2011.
- Zincone G. e Tornquist D., *Vietnam*, Touring Club Italiano, 1991.

Websites:

- ASEAN site: <http://www.asean.org>
- Asia forum: www.eastasiaforum.org
- Asia news: <http://www.asianews.it>
- Communist Review: <http://english.tapchicongsan.org.vn>
- Degar Foundation: <http://www.degarfoundation.org/who-are-degar-2>
- DVD: Diritti umani, Cultura dei diritti e dignità della persona nell'epoca della globalizzazione
- Embassy Vietnam-US: www.vietnamembassy-usa.org
- Human Rights Watch: www.hrw.org
- Indigenous Policy Journal: <http://indigenouspolicy.org/index.php/ipj/index>
- Intervista a Kok Ksor: <https://www.youtube.com/watch?v=jk2ljCntSzw>
- Intervento di Kok Ksor al Partito Radicale: <http://www.fainotizia.it/inchiesta/13-11-2011/il-destino-dei-cristiani-montagnard-vietnam>
- Montagnard Foundation: <http://www.montagnard-foundation.org>
- ONU: <http://www.un.org/en/index.html>
- The International Journal of Peace Studies:
<http://www.gmu.edu/programs/icar/ijps/index.htm>
- UN Chronicle: <http://unchronicle.un.org>
- U.S Department of State: www.state.gov
- World Relief: <http://worldrelief.org/page.aspx?pid=1166>
- Vietnam tours: <http://www.vietnambiketours.com/index.html>
- Vietnam Legal Forum: www.vietnamlawmagazine.vn