

RELIGIOUS FREEDOM IN VIETNAM
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Particular Concern Designation
10 Years After its Removal

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INTRODUCTION

On November 13, 2006, the U.S. Department of State (State Department) lifted Vietnam's designation as a "country of particular concern," or CPC, after only 26 months. The lifting of the designation acknowledged the Vietnamese government's actions to improve religious freedom, and the speed and the method by which it was achieved—diplomatic activity—remain noteworthy a decade later.

The 10-year anniversary of the lifting of the CPC designation is marked by Hanoi's Law on Belief and Religion, adopted by the National Assembly on November 18, 2016. The measure contains some positive language, and as of this writing, the Vietnamese government was disseminating the law nationwide. The new law will: extend legal personality to some religious organizations; reduce the time that religious organizations must wait for government registration; encourage the establishment of religious schools or other educational facilities; and transition some government approvals to notifications, for example, regarding clergy and certain religious activities. However, many religious organizations and international observers view the law as fundamentally flawed because it will increase the government's control over religious life and make activities it deems "illegal" subject to the force of law. The law also will limit freedom of religion or belief through vaguely worded and broadly interpreted national security provisions.

This contrast characterizes religious freedom in Vietnam today: modest improvements paired with repressive government control. To be sure, the freedom to practice one's faith or beliefs in Vietnam has come a long way since the dark days following the 1975 communist takeover. Many individuals and religious communities are able to exercise their religion or belief freely, openly, and without fear. To its credit, the Vietnamese government has made a concerted effort to improve conditions in a number of ways. For example, the government is creating more space for religious organizations to conduct charitable work and taking steps to improve relations with the Vatican. In many communities, religious organizations and local officials get along well, with little to no interference by the latter. And the government solicited limited public input on its religion law, a move that would have been unheard of just a few years ago.

Nevertheless, the Vietnamese government's complicity in or indifference to egregious violations of religious freedom in many parts of the country is deeply troubling. In some areas, local authorities harass and discriminate against religious organizations that do not have government recognition, and in others, they threaten religious followers with eviction from or demolition of their places of worship or other religious buildings—in some instances carrying out these threats. Law enforcement officials continue to detain, arrest, and/or imprison individuals due to their religious beliefs or religious freedom advocacy. The scope and scale of these violations make clear that Vietnam still is a long way from respecting the universal right to freedom of religion or belief as defined by international law and covenants.

Of all the countries the U.S. government has designated as CPCs, Vietnam is unique in that it is the only one removed from the CPC list due to diplomatic activity. This raises several questions: Why was Vietnam first designated as a CPC? What was different about this designation that led to Vietnam's swift removal from the list? If the strategy was a success in de-listing Vietnam, why has it not been replicated in other countries? This paper examines the history and efficacy of Vietnam's CPC designation, ultimately arguing it should be re-designated.

BACKGROUND: THE CPC DESIGNATION

In October 1998, the U.S. Congress unanimously passed and President Bill Clinton signed into law the International Religious Freedom Act (Public Law 105-292; IRFA), which sought to prioritize religious freedom in U.S. foreign policy. In addition to creating two bodies responsible for monitoring religious freedom worldwide—the State Department's Office of International Religious Freedom and the independent, bipartisan U.S. Commission on International Religious Freedom (USCIRF)—IRFA created tools that require the U.S. government to take action against countries violating international religious freedom standards. The Act provides the U.S. government a menu of options ranging from a diplomatic demarche to economic sanctions, with actions calibrated to the severity of the violations. The most severe violators are to be designated annually and publicly as CPCs based on their systematic, ongoing, egregious violations of freedom of religion

or belief. These countries are subject to more serious options on the menu, though taking action can be waived in certain circumstances.

In the course of carrying out its mandated duties under IRFA, USCIRF regularly reviews religious freedom conditions abroad and makes policy recommendations to the U.S. government. This includes public annual recommendations about which countries USCIRF determines meet the CPC threshold. The authority to make CPC designations lies with the President, who has delegated this power to the Secretary of State. Over time, the disparities between USCIRF's CPC recommendations and the State Department's CPC designations have grown, with USCIRF consistently recommending more countries than the secretary designates.

In the 18 years since IRFA became law, the State Department has made CPC designations on 12 occasions: October 1999, September 2000, October 2001, March 2003, September 2004, November 2005, November 2006, January 2009, August 2011, July 2014, February 2016, and October 2016. In the case of Vietnam, the State Department first designated it as a CPC in September 2004 and lifted the designation in November 2006. USCIRF has annually recommended CPC designation for Vietnam each year since 2002, reflecting one of the key disparities between USCIRF's CPC recommendations and the State Department's CPC designations.

DESIGNATING VIETNAM AS A CPC

The State Department's first *International Religious Freedom Report* (IRF Report) in 2001 noted the extent to which U.S. government officials raised religious freedom concerns with the Vietnamese government, including at the U.S.-Vietnam Human Rights Dialogue. At the next such dialogue, in November 2002, U.S. officials informed the Vietnamese government that the United States might designate Vietnam as a CPC if it failed to improve religious freedom conditions. After the U.S. government became discouraged by what the State Department described as "limited progress on issues discussed in previous dialogues,"¹ the United States suspended the Human Rights Dialogues in 2003, and Ambassador-at-Large for International Religious Freedom John Hanford reiterated the warning that the United States might designate Vietnam as a CPC.

On September 15, 2004, Ambassador-at-Large Hanford announced Vietnam's designation as a CPC. During press remarks, he cited several key reasons why the designation was made: religious prisoners, closures of houses of worship, forced renunciations of faith, and beatings and killings of religious believers. He also expressed concern about growing ill-treatment of ethnic and religious minorities, including Protestants and Buddhists.

THE BINDING AGREEMENT

After making the CPC designation in 2004, the United States engaged in a series of negotiations with Vietnam pursuant to Section 405(c) of IRFA, which provides:

The President may negotiate and enter into a binding agreement with a foreign government that obligates such government to cease, or take substantial steps to address and phase out, the act, policy, or practice constituting the violation of religious freedom. The entry into force of a binding agreement for the cessation of the violations shall be a primary objective for the President in responding to a foreign government that has engaged in or tolerated particularly severe violations of religious freedom.

On May 5, 2005, the two countries formalized a binding agreement that allowed Vietnam to avoid sanctions or another "commensurate action" associated with CPC designations under IRFA. The Secretary of State also has the ability under IRFA to waive the requirement of action or determine that pre-existing sanctions are adequate, but at the time Vietnam was not subject to any existing sanctions. (Avoiding sanctions under IRFA by applying existing sanctions is also known as "double-hatting" sanctions.)

Under the binding agreement, the two countries negotiated a number of actions the Vietnamese government would undertake to improve religious freedom conditions in order for the State Department to lift the CPC designation. Although the binding agreement itself was never disclosed publicly, some details emerged. According to State Department's *2005 International Religious Freedom Report for Vietnam*, the Vietnamese government committed:

... to fully implement the new laws on religious activities and to render previous contradictory

regulations obsolete; to instruct local authorities to strictly and completely adhere to the new legislation and ensure their compliance; to facilitate the process by which religious congregations are able to open houses of worship, and; to give special consideration to prisoners and cases of concern raised by the United States during the granting of prisoner amnesties.

In return, the United States “committed to consider the removal of Vietnam from the CPC list.”² However, the report later disclosed that U.S. officials informed Vietnam that the bilateral relationship would suffer if religious freedom conditions remained poor, a sentiment repeated in the 2006 IRF Report.

This instance is the only known use of a binding agreement pursuant to a CPC designation under IRFA. Moreover, Vietnam’s brief CPC designation and the strategic use of the binding agreement produced tangible religious freedom improvements, albeit not enduring ones, without hindering other aspects of the U.S.-Vietnam bilateral relationship.

LIFTING THE CPC

By 2006, the United States agreed to resume the bilateral Human Rights Dialogue with Vietnam.

In November 2006, the State Department formally removed Vietnam’s CPC designation. At the time, Ambassador-at-Large Hanford announced that, “Though important work remains to be done, Vietnam can no longer be identified as a severe violator of religious freedom. . . . Major progress has been achieved on all points of concern. . . .”³

When the CPC designation was lifted, USCIRF concurred with the State Department’s assessment that modest improvements occurred, in large part due to the binding agreement. For example, the Vietnamese government expanded the zone of permissible religious activity, issued new administrative ordinances and decrees that better outlined registration procedures, released some religious prisoners, and officially banned forced renunciations of faith. Nevertheless, USCIRF did not agree that the CPC designation should be lifted because it was too soon to determine whether the new policies and legal protections would be permanent or effective. Additionally, USCIRF believed “that lifting the CPC designation potentially

removed a positive diplomatic tool that had proved to be an effective incentive to bilateral engagement on religious freedom and related human rights.”⁴

On several occasions, through congressional testimony, letters to the Administration, press releases, and its regular reporting, USCIRF expressed concern about continuing religious freedom violations in Vietnam.

In 2006, both before and after the State Department lifted Vietnam’s CPC designation, USCIRF noted the following religious freedom violations: detentions and arrests for participating in religious activities; forced renunciations of faith; restrictions stemming from new regulations designed to protect freedoms that in effect limited them; and the particular targeting of ethnic minority Protestants, Hao Hao Buddhists, Mennonites, Khmer Krom Buddhists, and the government-banned Unified Buddhist Church of Vietnam. USCIRF also reported that after Vietnam joined the World Trade Organization (see next section) just two months after the CPC designation was lifted, its government “initiated a crackdown on human rights defenders and advocates for the freedoms of speech, association, and assembly, including many religious leaders who previously were the leading advocates for religious freedom in Vietnam.”⁵ Among those arrested were Fr. Nguyen Van Ly and lawyer Nguyen Van Dai, both religious freedom advocates.

In one particularly tragic example, in spring 2007, security officials in Phu Yen Province brutally beat a young, ethnic minority Protestant man named Y Vin Het after he refused to renounce his faith. Forced renunciations were explicitly banned under Decree 22, which the Vietnamese government issued in 2005 during the country’s CPC designation. According to reports, Y Vin Het suffered severe internal injuries from the beatings, but could not afford medical care to receive treatment; he later died of his injuries. To this day, USCIRF continues to receive reports that security officials harass, threaten, and pressure—sometimes through violent means—religious clergy and followers to abandon their faith.

VIETNAM JOINS THE WORLD TRADE ORGANIZATION

In addition to the benchmarks in the binding agreement, the United States implicitly linked Vietnam’s accession to the World Trade Organization (WTO) to that country’s ability to improve religious freedom

conditions. The United States was the last of the WTO member-countries with whom Vietnam was required to negotiate bilaterally as part of its WTO application process. Additionally, the United States needed to confer permanent normal trade relation status (PNTR) on Vietnam, which required congressional approval, in order for that country to fully benefit from WTO membership.

Religious freedom was not the only controversial issue impacting the U.S. government's consideration of Vietnam's PNTR status and accession to the WTO. Some U.S. manufacturers opposed the import of certain Vietnamese goods, such as textiles and apparel. Human rights groups expressed concerns about Vietnam's repressive communist rule. Meanwhile, the defense community sought ways to expand ties through training and exchanges.⁶

At the time, the United States and Vietnam had both strategic and economic reasons for wanting to grow the bilateral relationship. To some in the U.S. government, the CPC designation impeded the Administration's plans, which included PNTR and WTO. The State Department's announcement lifting the CPC designation came just days before President George W. Bush attended the 14th Asia-Pacific Economic Cooperation Leaders' Meeting, coincidentally held in Hanoi, Vietnam. Then, on December 29, 2006, the United States granted Vietnam PNTR status, paving the way for Vietnam to join the WTO on January 11, 2007.

USCIRF'S APPROACH TO VIETNAM

Before USCIRF began making its CPC recommendations in its Annual Report, the Commission submitted letters to the Secretary of State noting which countries it recommended for CPC designation or for other attention. For example, on Friday, July 28, 2000, USCIRF wrote to Secretary of State Madeleine Albright recommending the State Department closely monitor religious freedom in Vietnam (among other countries), noting "the extensive regulation of religious organizations by the state" and that leaders and followers of several faiths had been "detained without charge, imprisoned, heavily fined, harassed, or subject to government surveillance."⁷

Ahead of President Bill Clinton's trip to Vietnam in October 2000, USCIRF wrote to him urging that he raise with the Vietnamese government "the need to protect

rather than infringe upon religious freedom and the security of religious believers there."⁸

On February 13, 2001, USCIRF held a hearing to examine religious freedom violations and U.S. policy in Vietnam. In March 2001, USCIRF sent a letter to Secretary of State Colin L. Powell and Secretary of the Treasury Paul H. O'Neill urging them to raise religious freedom protections at the 57th session of the UN Commission on Human Rights and withhold U.S. support for International Monetary Fund and World Bank loans to Vietnam in light of that government's religious freedom violations.

On August 16, 2001, USCIRF wrote to Secretary Powell recommending the State Department closely monitor religious freedom in Vietnam (among other countries). On September 12, 2001, USCIRF issued a press release calling on the Bush Administration and Congress to refrain from ratifying the Bilateral Trade Agreement with Vietnam until religious freedom conditions improved. On October 29, 2001, USCIRF issued a press release condemning Vietnam for the 15-year sentence handed down to Fr. Ly following an earlier arrest.

In February 2002, Commissioner Firuz Kazemzadeh and USCIRF staff traveled to Vietnam, where they met with Vietnamese government officials and representatives of religious organizations. In its Annual Report released in May 2002, USCIRF found "grave violations of religious freedom engaged in or tolerated by the governments of India, Pakistan, Uzbekistan, and Vietnam." The report also stated that USCIRF "is seriously considering whether these and additional countries meet the statutory criteria for designation as CPCs."⁹ In July 2002, USCIRF sent a letter to Secretary Powell that included a number of policy recommendations on Vietnam and urged him to raise religious freedom issues with the Vietnamese government. In September 2002, USCIRF wrote to Secretary Powell requesting that he designate 12 countries, including Vietnam, as CPCs.

In 2003, USCIRF testified before Congress, issued press releases, and held a press conference on U.S. policy toward Vietnam. In 2004, the year Vietnam was designated as a CPC, USCIRF testified before Congress and welcomed, via press release, Vietnam's designation. In 2005, USCIRF testified before Congress and issued several press releases, including one calling on the State Department to disclose the details of the May 5, 2005

binding agreement. In 2006, USCIRF testified before Congress, including after the CPC designation was lifted to express concern it was done so prematurely. That same year, USCIRF also submitted a letter to Secretary of State Condoleezza Rice urging the State Department to maintain Vietnam as a CPC and issued press releases with this same message.

Since Vietnam's removal from the CPC list, USCIRF has publicly maintained its position that religious freedom conditions in that country warrant another CPC designation. In the 10 years since, USCIRF has continued to make the case for the CPC designation in its annual reports, as well as in testimony before Congress, government correspondence, speeches, press releases, and op-eds.

CONCLUSION

The CPC designation does not gauge religious freedom conditions over a long period of time. Rather, it reflects a one-year snapshot in time that empowers the U.S. government to assess conditions year-to-year and respond accordingly. While the designation can take long-term factors into account, USCIRF and the State Department monitor, analyze, and report on conditions annually to ensure that the U.S. government's actions are responsive, timely, and appropriate given the most up-to-date information. Thus, the following paradox can result: Vietnam definitively has improved religious freedom conditions in the 40 years since the communist takeover, including in the 10 years since the CPC designation was lifted, but ongoing religious freedom violations still meet IRFA's CPC standard.

Many within and outside Vietnam are anxious to see how the Law on Belief and Religion is eventually implemented. Will local officials adhere to the law, and will Hanoi hold accountable those who do not? Will unregistered religious organizations be able to practice their faith publicly or privately, without interference, and free from fear? Will the law help put an end to pervasive physical violence, such as harassment, intimidation, beatings, property damage, and other forms of thuggery?

While the impact of the law may not be discernible for some time, in the interim, followers of many faiths suffer. The law could bring relief in both small and big ways, but it also has the potential to entrench existing

harmful policies and practices. As history has shown with Vietnam's premature removal from the CPC list, the law's promise of change and its ability to create lasting religious freedom improvements are two very different things.

Vietnam's brief placement on the CPC list demonstrated that the pairing of the CPC designation with the binding agreement worked to foster high-level cooperation between the United States and Vietnam, even if not to solidify lasting religious freedom improvements. The bilateral relationship was and continues to be important to both parties, and strategic use of the binding agreement—made possible under the CPC designation—gave both sides something they wanted. The United States scored a diplomatic victory in having a direct hand in making Vietnam's policies more consistent with international standards, whereas Vietnam negotiated reasonable benchmarks to earn U.S. rapprochement, while at the same time acceding to the WTO and avoiding the embarrassment of sanctions.

Each country wants the other as an ally: this is as true today as it was a decade ago. Critically, Vietnam has been willing to come to the table when the United States encourages religious freedom improvements. However, the history of the CPC designation, its lifting, and the continued persecution of individuals and communities of faith in the decade since demonstrate that persistent U.S. engagement is required to ensure that progress on religious freedom in Vietnam is both far-reaching and sustainable.

- ¹ See the State Department's *2004 International Religious Freedom Report on Vietnam*: <http://www.state.gov/j/drl/rls/irf/2004/35433.htm>, accessed October 21, 2016.
- ² See the State Department's *2005 International Religious Freedom Report on Vietnam*: <http://www.state.gov/j/drl/rls/irf/2005/51535.htm>, accessed October 21, 2016.
- ³ See the State Department's Special Briefing (transcript) on November 13, 2006: <https://2001-2009.state.gov/r/pa/prs/ps/2006/75927.htm>, accessed October 21, 2016.
- ⁴ See USCIRF's *2007 Annual Report* chapter on Vietnam: http://www.uscifr.gov/sites/default/files/resources/AR_2007/vietnam.pdf, accessed October 21, 2016.
- ⁵ Ibid.
- ⁶ See Congressional Research Report *Vietnam PNTR Status and WTO Accession: Issues and Implications for the United States*, August 2, 2006
- ⁷ See USCIRF Press Release dated July 31, 2000: <http://www.uscifr.gov/news-room/press-releases/uscifr-urges-laos-n-korea-saudi-arabia-turkmenistan-countries-particular>, accessed October 21, 2016.
- ⁸ See USCIRF Press Release dated October 5, 2000: <http://www.uscifr.gov/news-room/press-releases/commission-asks-pres-clinton-raise-religious-freedom-issues-during-trip-0>, accessed October 21, 2016.
- ⁹ See USCIRF's *2002 Annual Report*: http://www.uscifr.gov/sites/default/files/resources/stories/pdf/Annual_Report/2002report.pdf, accessed October 28, 2016.



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