

# Freedom of Association in Vietnam: The Journey, Challenges, and Prospects for Legal Reform

## Abstract

Vietnam has long upheld the right to freedom of association in its constitutions, reflecting a commitment to fundamental human rights in line with international conventions. However, the country's current legal framework (rooted in the 1957 Order No. 102) remains outdated, restricting civil society's potential and falling short of modern needs. This article examines the intricate path toward establishing a comprehensive law on freedom of association, focusing on balancing state oversight and individual liberties. The article advocates for a progressive legal framework, emphasizing the need for reforms to nurture a vibrant civil society, positioning it as an ally in national development rather than a challenge to state authority. Such a law would enhance Vietnam's global reputation, support sustainable development, and encourage a more dynamic, democratic society. This study adds meaningful insights to Vietnamese legal scholarship, offering actionable recommendations for policymakers and reaffirming Vietnam's commitment to harmonizing its legal landscape with national ambitions and global human rights standards.

**KEYWORDS:** freedom of association, human rights, civil rights, law on the right to freedom of association, Vietnam

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## 1. Introduction

Freedom of association is regarded as a human right, widely mentioned in international conventions, such as the Universal Declaration of Human Rights of 1948 (Article 20.1) and the International Covenant on Civil and Political Rights (Article 22.1). Freedom of association is an expression of individual freedom and a foundation for societal development. Studies have shown that a society is unlikely to thrive if it does not respect the right to freedom of association. “This right allows all individuals, regardless of race, gender, or age, to choose the people with whom they can collaborate”.<sup>[1]</sup>

In Vietnam, the right to freedom of association was recognized early on in the 1946 Constitution (Article 10), and later continued to be acknowledged in the 1959 Constitution (Article 25), the 1980 Constitution (Article 67), the 1992 Constitution (amended and supplemented in 2001) (Article 69), most pro-human rights Constitution, the 2013 Constitution (Article 25). However, since 1946, Vietnam has had only one separate law regulating the right to association, which is the Law on the Right to Association of 1957. This law has been in place for a long time, and therefore, the National Assembly has considered drafting a new law on the right to freedom of association on several times to better align with the practical needs of the country.

QUEDRFTG “According to the 2023 report on measuring civil liberties and political rights published by Freedom House, Vietnam scored only 19/100 for civil liberties and political rights, as in 2022. Specifically, Vietnam scored only 4/40 for political rights and 15/60 for civil liberties.”<sup>[2]</sup> These figures reflect the limitations in ensuring fundamental freedoms in Vietnam, including the right to freedom of association. The stagnant score over the years highlights the urgent need for Vietnam to establish a new, more specific legal framework – a law on the right to freedom of association – to improve the current situation. Such a law would help Vietnam enhance its standing in international assessments, contribute to sustainable development, and ensure citizens’ freedoms in global integration.

<sup>1</sup> Robert, Bork, “Civil Rights – A Challenge” *New Republic*, 31 August 1963.

<sup>2</sup> Andrew Wells-Dang, “The Political Influence of Civil Society in Vietnam”, [in:] *Politics in Contemporary Vietnam: Party, State, and Authority Relations*, ed. Jonathan D. London. 162-183 (London. Palgrave Macmillan, 2014).

## 2 | A more than 20-year journey to enact Vietnam's law on freedom of association

The right to freedom of association in Vietnam was first mentioned in 1919 when President Ho Chi Minh (then known as Nguyen Ai Quoc) submitted the “Demands of the Annamite People” to the Versailles Peace Conference. In this document, the right to freedom of association and assembly was explicitly listed as one of the eight core demands of the Annamite People to the French government.

On this basis, during the struggle for national independence from 1930 to 1945, the Communist Party of Vietnam (then the Indochinese Communist Party) began paying attention to and gradually laying the foundation for the rights to freedom of association and assembly. The Party's 1930 brief political platform affirmed the resolve to “struggle for the people's right to organize freely.” The Party's Central Committee resolution of 1930 called for the implementation of rights such as “freedom of organization, speech, assembly, strikes, demonstrations, and protest marches.” Additionally, in various appeals in 1931, “the Party strongly urged the public to demand that the French government return to the people the rights to strike, demonstrate, and associate.”<sup>[3]</sup> Although the right to freedom of association was not formally codified into law during this period, nor were there explicit provisions for its enforcement, its initial recognition in key documents reflected the Communist Party of Vietnam's early consideration of this right.

The concept of freedom of association was constitutionally recognized for the first time in 1946, in Vietnam's first Constitution. Article 10 of the 1946 Constitution acknowledged the ‘freedom of organization and assembly’ as a fundamental right of citizens. This recognition marked a significant milestone in developing a legal framework that respects and ensures civil rights, with the right to freedom of assembly as a prominent example. This right was subsequently reaffirmed in the 1959 Constitution (Article 25), the 1980 Constitution (Article 67), the 1992 Constitution (amended and supplemented in 2001) (Article 69), and the 2013 Constitution (Article 25).

In addition to constitutional provisions, Vietnam issued Order No. 102 of 1957, which regulated the right to form associations (Order No. 102 of 1957) to ensure the practical implementation of the right to freedom of association.

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<sup>3</sup> Khanh Tung La, Xuan Hoa Nghiem, Cong Giao Vu, *A Rights-Based Approach to Associations and Freedom of Association* (Hong Duc Publishing House, 2015), 11.

However, with rapid societal changes, many provisions of Order No. 102 of 1957 have become outdated and no longer align with the realities of modern Vietnam. Precisely, the decree consists of 12 articles. While four articles – those of a declaratory or principled nature (Articles 1, 10, 11, 12) – are still somewhat relevant, the remaining eight (Articles 2, 3, 4, 5, 6, 7, 8, 9) have become obsolete. As a result, relevant agencies and organizations have drafted new laws on the right to freedom of association to present to the National Assembly over the years. Bills were officially submitted in 2006 and again in 2016, hoping to create a new legal framework to regulate citizens' right to association. However, the National Assembly has yet to pass a new law to replace the outdated Order No. 102 of 1957.

The main reason for this delay lies in the careful balance between ensuring citizens' right to freedom of association and meeting the requirements of state management. "Drafting a new law requires harmonizing the facilitation of social organizations' development with maintaining the necessary state control."<sup>[4]</sup> This is one of the key reasons that has hindered the passage of a law on freedom of association.

As mentioned, Order No. 102 of 1957 remains the highest legal document governing citizens' right to freedom of association. However, as it no longer fits the current reality, government decrees have rendered most of its provisions ineffective. It is rare in state management that legal document issued in 1957 is still in force in 2024. The prolonged legal validity of Order No. 102 is not due to the inherent strength of its provisions but rather the "caution" of the legislators.<sup>[5]</sup> Currently, among the 137 legislative tasks of the 15th National Assembly (2021-2026), the bill on freedom of association is not included. This indicates that the development and passage of a law on freedom of association will likely be delayed. In the meantime, Vietnam will continue to apply the provisions of Order No. 102 of 1957, along with Decree No. 45/2010/ND-CP (amended and supplemented by Decree No. 33/2012/ND-CP), and soon Decree No. 126/2024/ND-CP, which will take effect on 26 November 2024.

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<sup>4</sup> Ti Than Puong Nguyen-Pochan, *The Draft Law on Association in Vietnam: Legal, Political, and Practical Norms Under Debate*, [in:] *The Palgrave Handbook of Political Norms in Southeast Asia*. ed. Gabriel Facal, Elsa Lafaye de Micheaux, Astrid Norén-Nilsson (London: Palgrave Macmillan, Singapore, 2024), 94.

<sup>5</sup> Vietnamnet, *Why Hesitate on the Right to Form Associations?* [<https://vietnamnet.vn/quyen-lap-hoi-sao-phai-e-de-263155.html>], accessed September 24, 2024.

### 3 | Urgent reasons for enacting a law on freedom of association in Vietnam

First, compliance with the right to freedom of association as stipulated in international commitments that Vietnam has signed.

The pioneering document that laid the foundation for establishing international standards on the right to freedom of association is the Universal Declaration of Human Rights (UDHR). The UDHR plays a crucial role in raising awareness of this right by affirming freedom of association as a fundamental human right. The UDHR also laid the groundwork for principles and values that were later inherited in many international legal documents. Article 20 (1) of the UDHR clearly states: “Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association.” Thus, the UDHR ensures that the right to freedom of association is recognized for “everyone,” without distinction, reflecting the equality and universality of human rights.

Following that, the International Covenant on Civil and Political Rights (ICCPR) further reinforced the right to freedom of association (Article 22)<sup>[6]</sup> as a fundamental human right. The provisions of the ICCPR affirm the right to freedom of association and impose binding obligations on member states.<sup>[7]</sup> Like the UDHR, the ICCPR stipulates that the right to freedom of association belongs to everyone, without discrimination based on race, color, gender, language, religion, or political opinion. Additionally, the ICCPR specifically mentions trade unions as a form of association. However, “this provision is not intended to limit the scope of the right to freedom of association by excluding other forms of association.”<sup>[8]</sup>

To ensure the right to freedom of association for human rights defenders, the United Nations General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to

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<sup>6</sup> Article 22(1) ICCPR provides: “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

<sup>7</sup> Irish, L.E., and Simon, K.W., “Freedom of Association, Recent Developments Regarding the Neglected Right”, *International Journal of Not-for-Profit Law*, vol. 3, issue 2, (2000): 4.

<sup>8</sup> Alan Fowler, *Public Interest Law Initiative. Enabling Civil Society: Practical Aspects of Freedom of Association. A Source Book*. 2nd ed. (Public Interest Law Initiative, 2003), 23-24.

Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms in 1998 (the Declaration). Unlike the UDHR and ICCPR, which generally regulate freedom of association, the Declaration addresses the right to freedom of association for human rights defenders. Article 1 of the Declaration states: “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”

In addition, provisions ensuring the right to freedom of association can also be found in other international human rights documents, such as Articles 1 and 2 of the First Optional Protocol to the International Covenant on Civil and Political Rights of 1966<sup>[9]</sup>, and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).<sup>[10]</sup>

As a member state that has signed and ratified many international conventions, including the ICCPR and CERD, Vietnam is obliged to comply with regulations related to the right to freedom of association. This is not simply a commitment on paper but requires Vietnam to take active steps in building and maintaining a robust legal framework, with specific and transparent laws, to respect, ensure, and enforce the right to freedom of association in practice.

Secondly, compliance with the provisions on freedom of association as well as the limitations on this right in the 2013 Constitution.

According to Article 15 of the Law on Promulgation of Legal Documents of 2015 (amended and supplemented in 2020), the National Assembly issues

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<sup>9</sup> The First Optional Protocol to the International Covenant on Civil and Political Rights took effect on March 23, 1976. The United Nations General Assembly adopted it through Resolution 2200A (XXI) on December 16, 1966. Article 1 of the Protocol provides that the Human Rights Committee has the authority to receive communications from individuals whose rights under the ICCPR, including the right to freedom of association, have been violated by states. Article 2 stipulates that these individuals must exhaust all available domestic remedies before submitting a written complaint.

<sup>10</sup> The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) came into effect on January 4, 1969. It was adopted by the United Nations General Assembly through Resolution 2106 (XX) on December 21, 1965. Article 5 of CERD stipulates that, in exercising civil rights such as the right to peaceful assembly and association, states commit to prohibiting and eliminating all forms of racial discrimination and ensuring equality before the law for the enjoyment of these rights, without any discrimination based on race, color, national or ethnic origin.

laws to regulate human rights and the basic rights and obligations of citizens. Freedom of association is a fundamental right of citizens, recognized in the 2013 Constitution. Therefore, the enactment of a specific law governing the right to freedom of association is in line with the provisions of the Law on Promulgation of Legal Documents of 2015 (amended and supplemented in 2020).

In theory, “the rule- of-law is a state that protects human rights through humane laws.”<sup>[11]</sup> Protecting human rights also includes limiting human rights when necessary to ensure the community’s common interests. In Vietnam’s constitutional history, the National Assembly introduced, for the first time, a general principle on the limitation of human and citizen rights. Accordingly, Clause 2 of Article 14 of the 2013 Constitution states: “Human rights and citizens’ rights may only be restricted by law in cases of necessity for reasons of national defense, national security, public order, social safety, social morality, and public health.” Based on this principle, the freedom of association may also be restricted when necessary for reasons such as national defense, national security, public order, social safety, social morality, or public health. The ICCPR also limits the right to freedom of association when necessary for national security, public safety, public order, the protection of public health, or public morals.

Overall, the 2013 Constitution allows for limiting the right to freedom of association in necessary cases, with reasons primarily aligned with the ICCPR. The legal issue that arises is that any restriction on citizens’ freedom of association must be prescribed by the National Assembly in a document with the form and title of “law.” Thus, the continued enforcement of Order No. 102 of 1957 is neither lawful nor reasonable from a conceptual and practical standpoint. It is unreasonable because Order No. 102 of 1957, issued by the President, does not fully reflect the aspirations and wishes of the citizens as a law – a document issued by the highest representative body of the nation. It is unlawful because Order No. 102 of 1957, issued by the President, regulates matters directly related to limiting human rights and citizens’ rights. For example, Article 2 of Order No. 102 of 1957 states that “those who have lost their citizenship or are being prosecuted before the law” do not have the right to form associations. The essence of this provision is the restriction of citizens’ right to association; however, the National Assembly does not regulate such a restriction.

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<sup>11</sup> Martin Loughlin, “The Rule of Law: A Slogan in Search of a Concept” *Hague Journal on the Rule of Law*, vol. XVI (2024): 509-523.



Moreover, there is a conflict between this decree and the provisions on the deprivation of citizenship in the 2015 Criminal Code (amended and supplemented in 2017) and the vague nature of the term “those who have lost their citizenship.” It is important to note that the National Assembly is not authorized to maintain human rights and citizens’ rights restrictions in any legal document other than laws passed by the National Assembly, as only laws, in the form of statutes, have the authority to regulate such issues. With this approach, it becomes more urgent than ever for the National Assembly to consider enacting a Law on Freedom of Association to replace Order No. 102 of 1957.

Thirdly, promoting the development of civil society in Vietnam.

“Defining civil society is a complex issue due to the diverse nature of organizations within the entire civil society sector.”<sup>[12]</sup> Nevertheless, “civil society is generally recognized by several key characteristics: (i) it operates independently of the state; (ii) it functions based on voluntary principles; (iii) it is financially autonomous; (iv) its scale, organizational forms, and structures are highly diverse; and (v) its common goal is community development, with most organizations being non-profit.”<sup>[13]</sup>

As an essential component of civil society, associations are therefore seen in studies as foundational to a dynamic civil society. “The right to collaborate with others to promote a specific goal over time is a key element supporting other citizens’ freedoms.”<sup>[14]</sup>

According to the 2023 report by Freedom House on measuring civil liberties and political rights, Vietnam scored only 19/100 in civil liberties and political rights. This score remains “stagnant,” with no change from 2022. Specifically, Vietnam scored 4/40 for political rights and 15/60 for civil liberties. These figures indicate certain limitations in Vietnam’s development of civil society.<sup>[15]</sup> Therefore, enacting a Law on Freedom of Association is crucial to create a clear legal framework for civil society organizations to operate and to improve effectiveness in monitoring and providing feedback

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<sup>12</sup> OECD, *Innovative Citizen Participation and New Democratic Institutions* (Paris: OECD Publishing, 2020). [https://www.oecd.org/en/publications/innovative-citizen-participation-and-new-democratic-institutions\\_339306da-en.html](https://www.oecd.org/en/publications/innovative-citizen-participation-and-new-democratic-institutions_339306da-en.html).

<sup>13</sup> Manh Toan Vu, “Corporate Responsibility in Vietnam: Challenges for Businesses, Government, and Civil Society” *Journal of Philosophy*, No. 2 (2009): 13-17.

<sup>14</sup> Dang Dung Nguyen, Dang Duy Nguyen, “Associations in Civil Society and the Draft Law on Associations in Vietnam” *Journal of Legislative Studies*, No. 12 (2016): 25.

<sup>15</sup> Wells-Dang, “The Political Influence of Civil Society in Vietnam”, 162-183.



on public policies. The Organization for Economic Cooperation and Development (OECD) has pointed out the advantages when governments encourage the participation of civil society organizations. “Such encouragement increases public trust and ensures that all segments of society are heard and reflected in the policy-making and implementation process.”<sup>[16]</sup>

Fourth, it addresses the fragmentation and limitations of outdated regulations on the right to freedom of association.

Shortly after the establishment of the Democratic Republic of Vietnam, President Ho Chi Minh placed great emphasis on forming and managing associations. The right to freedom of association for citizens was also clearly stated in the 1946 Constitution. On 20 May 1957, President Hồ Chí Minh issued Order No. 102 of 1957, which regulated the right to form associations. Subsequently, several legal documents concerning the right to freedom of association were consecutively issued. A reference table of these regulations can be consulted.

**Table 1: Summary of state-issued documents regulating the right to freedom of association from 1946 to the present**

No.	Document Title	Issuing Authority	Date of Issuance
1	Constitution of 1946	National Assembly	09/11/1946
2	Decree No. 257-TTg on the right to establish associations	Prime Minister	14/6/1957
3	Order No. 102/SL/004 on the right to form associations	President	20/5/1957
4	Decree No. 258-TTg detailing the implementation of Order No. 102/SL/004 on the right to form associations	Prime Minister	14/6/1957
5	Constitution of 1959	National Assembly	31/12/1959
6	Constitution of 1980	National Assembly	18/12/1980
7	Directive No. 01/CT on the management of organizations and activities of associations	Council of Ministers	05/01/1989
8	Circular No. 07/TCCP guiding the implementation of Directive No. 01/CT on the management of organizations and activities of associations	Government Organization Committee	06/01/1989

<sup>16</sup> Organization for Economic Cooperation and Development, *Innovative Citizen Participation and New Democratic Institutions*, 2020. [https://www.oecd.org/en/publications/innovative-citizen-participation-and-new-democratic-institutions\\_339306da-en.html](https://www.oecd.org/en/publications/innovative-citizen-participation-and-new-democratic-institutions_339306da-en.html).

No.	Document Title	Issuing Authority	Date of Issuance
9	Directive No. 202/CT on the observance of the State's guidelines regarding associations	Council of Ministers	05/6/1990
10	Constitution of 1992	National Assembly	15/4/1992
11	Decision No. 64/2001/QĐ-TTg on the use of foreign aid in government organizations	Prime Minister	26/4/2001
12	Circular No. 04/2001/TT-BKH guiding the implementation of Decision No. 64/2001/QĐ-TTg on the use of foreign aid in government organizations	Ministry of Planning and Investment	05/6/2001
13	Circular No. 199/TCCP guiding the management of civil servants in associations	Government Organization Committee	05/6/1994
14	Decree No. 45/2010/ND-CP on the organization, operation, and management of associations	Government	21/04/2010
15	Decision No. 68/2010/QĐ-TTg on foreign non-governmental organizations	Prime Minister	01/11/2010
16	Circular No. 71/2011/TTLT on the management of government financing for associations	Ministry of Finance	24/05/2011
17	Decree No. 33/2012/ND-CP amending Decree No. 45/2010/ND-CP on associations	Government	13/04/2012
18	Constitution of 2013	National Assembly	28/11/2013
19	Decree No. 162/2020/ND-CP on the organization, operation, and management of associations	Government	08/10/2020

In addition to documents issued by state agencies, the Communist Party of Vietnam (the ruling party) has also placed particular emphasis on citizens' right to freedom of association by issuing various guiding and leadership documents. A summary table can be found below:

No.	Document Title	Issuing Authority	Date of Issuance
1	Resolution No. 05-NQ/TW on renewing and raising the level of leadership, management of culture, arts, and literature, promoting creativity and development	Politburo	28/11/1987
2	Directive No. 51-CT/TW on supporting the Association of the Blind of Vietnam	Central Executive Committee	12/4/1989
3	Resolution No. 08B/NQ-HNTW from the 8th Conference of the Central Committee (6th Tenure) on public affairs, strengthening the relationship between the Party and the people	Central Executive Committee	27/3/1990

No.	Document Title	Issuing Authority	Date of Issuance
4	Directive No. 61-CT/TW on some current issues in the management of culture, arts, and literature	Central Executive Committee	21/6/1990
5	Announcement of the Secretary's opinion No. 26 on consolidating the Union of Cultural and Artistic Associations	Secretariat	16/9/1992
6	Directive No. 27/CT-TW on the tasks and organization of the Vietnam Union of Friendship Organizations	Central Executive Committee	27/7/1993
7	Announcement of the Secretary's opinion No. 125-CT/TW on organizing the Association of Industry and Trade	Secretariat	24/8/1995
8	Directive No. 59-CT/TW on caring for the elderly	Central Executive Committee	27/9/1995
9	Directive No. 01/TT-TW on strengthening leadership of the Red Cross of Vietnam	Central Executive Committee	20/9/1996
10	Directive No. 42/CT/TW on increasing the Party's leadership over mass organizations	Central Executive Committee	06/10/1998
11	Directive No. 45/CT-TW on promoting the activities of the Union of Scientific and Technical Associations of Vietnam	Central Executive Committee	11/11/1998
12	Directive No. 05-NQ/TW on the Party's leadership over the Vietnam Association for the Promotion of Education	Central Executive Committee	24/8/1999
13	Directive No. 56-CT/TW on increasing the Party's leadership over the Union of Vietnam Friendship Organizations	Politburo	18/8/2000
14	Directive No. 17-CT/TW from the Politburo on renewing and enhancing the Party's leadership over mass organizations	Politburo	28/8/2012
15	Conclusion No. 102-KL/TW of the Politburo on mass organizations	Politburo	22/9/2014
16	Resolution No. 226-CV/TW of the Politburo on mass organizations	Politburo	10/8/2015

Although there have been quite a few documents issued by the Party and the State regulating the right to freedom of association, to date, the issue of establishing associations and state management of associations is still explicitly governed by a legal document with the highest legal value, which is Order No. 102 from 1957. The regulation of citizens' right to freedom of association in Order No. 102 from 1957 would not be a matter of concern if this document remained appropriate for practical implementation. However, after 67 years of enforcement, Order No. 102 from 1957 is no longer

suitable for the current situation and has become an obstacle to implementation. Due to the inconsistency between this decree and the present reality, when addressing issues related to establishing associations, the legal basis cited for resolution is lower-level legal documents such as Decree No. 45/2010/ND-CP and Decree No. 33/2012/ND-CP. Decree No. 45/2010/ND-CP and Decree No. 33/2012/ND-CP have also revealed limitations and inadequacies (LE, 2015). In this context, the Government urgently issued Decree No. 126/2024/ND-CP to replace Decree No. 45/2010/ND-CP (amended and supplemented by Decree No. 33/2012/ND-CP). However, the Government's decree detailing the citizens' right to establish associations is merely a "fire-fighting" measure. Additionally, these decrees often define the right to establish associations in a way that favors management activities. This, "in turn, has significantly narrowed the citizens' constitutionally sacred right to form associations through the 'scissors' of the decrees."<sup>[17]</sup>

Thus, "the right to freedom of association is scattered across various legal documents."<sup>[18]</sup> In reality, Order No. 102 from 1957 is no longer applied. The regulation of the right to freedom of association is "left to" sub-law documents. Still, these documents are only suitable for the development of society or the needs of the people in the context of deeper international integration. Therefore, issuing a law with direct legal effect to replace Order No. 102 from 1957 would be an effective solution to overcome the situation of having many documents but needing more quality regulations that governing the right to freedom of association and the state management of associations.

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<sup>17</sup> Vu Cao, Minh Nhat Khanh Nguyen, "The Law on Associations: A Legal Basis for State Management of Associations" *Journal of Legal Science*, No. 2 (2017): 14-15.

<sup>18</sup> Thi Nu Nguyen, "The Right to Form Associations under the Constitution of the Socialist Republic of Vietnam" *Journal of Hue University of Science: Social Sciences and Humanities*, No. 6C (2021): 83-91.

## 4 | Barriers to the introduction of the law on the right to freedom of association in Vietnam

Firstly, the Communist Party of Vietnam, the ruling party in Vietnam, is concerned that the establishment and activities of associations will promote the development of “civil society.” This poses a potential risk of weakening and undermining the leadership and ruling role of the Communist Party of Vietnam.

Theoretically, “associations and the right to freedom of association are often considered the core components of civil society.”<sup>[19]</sup> “Is “civil society” at base a cooperative force for sustainable development and poverty reduction, or a political movement aiming for system-wide change?”<sup>[20]</sup> This is a critical issue related to the survival of the Communist Party of Vietnam. After the Renewal process, the leadership of the Communist Party of Vietnam showed signs of weakening, which made the Communist Party of Vietnam highly concerned about the development of “civil society”. Even more concern for Vietnamese domestic civil society organizations is the renewed push to adopt new restrictions on associational life. As early as the 1990s, nascent Vietnamese NGOs began pressing for a rights-enhancing Law on Associations. However, “for years, such legislation was blocked by those in the ruling party who opposed the growth of civil society.”<sup>[21]</sup>

The Communist Party of Vietnam is concerned that the development of “civil society” through associations, groups, etc., could easily lead to “color revolutions,” with the politicization of associations turning them into opposition forces that would directly compete with the ruling position of the Communist Party of Vietnam. As a result, civil society and associations could pursue the goal of overthrowing the Communist Party of Vietnam by “non-violent” and “non-military” means. Therefore, Directive No. 17-CT/TW of the Politburo has established the principle that “associations operating at any level must be under the leadership of the Party committee at that level” and that “it is necessary to promptly establish Party organizations where conditions allow, to consolidate and enhance the quality of existing Party organizations within associations.” Regarding the development of

<sup>19</sup> Wells-Dang, “The Political Influence of Civil Society in Vietnam”, 162-183.

<sup>20</sup> Ibidem, 162.

<sup>21</sup> Mark Sidel, “Vietnam’s Closing Legal Space for Civil Society” *USALI Perspectives*, No. 14 (2023): 3.

civil society, the Communist Party of Vietnam strictly prohibits its affiliated Party organizations and Party members from discussing this issue. Regulation No. 69-QĐ/TW dated 6 July 2022, issued by the Politburo (Communist Party of Vietnam), applies the most severe disciplinary measures to Party organizations (dissolution of the Party organization) or Party members (expulsion from the Party) who raise the issue of civil society development or support pluralism and multiparty systems. “With the principle of comprehensive leadership by the Communist Party, civil society matters and the core issue of association formation are severely restricted.”<sup>[22]</sup> As a result, the Law on the Right to Freedom of Association in Vietnam has not yet been considered urgent for enactment by the Party.

Secondly, lawmakers in Vietnam still need more trust in associations.

As mentioned, “recognizing civil society in Vietnam still needs to be fully opened.”<sup>[23]</sup> Due to the nature of gathering large numbers of people and working towards common goals, some state agencies in Vietnam feel uneasy, fearing that establishing associations could easily be exploited for illegal purposes.<sup>[24]</sup> In reality, “some associations and organizations have received financial support from terrorist organizations for money laundering or for calling for actions against the government.”<sup>[25]</sup> Therefore, the State believes it is essential to control the registration process and associations’ activities strictly.

Economically, Vietnam has fundamentally transitioned to a market economy, but socially, it is clear that the country still emphasizes the role of state management. The historical legacy in the mindset of politicians is that all societal issues must be managed. Among them, the management of the establishment and activities of associations is a critical area that the

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<sup>22</sup> Christopher Heurlin, “Governing Civil Society: The Political Logic of NGO – State Relations Under Dictatorship” *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, No. 2 (2009): 222–224.

<sup>23</sup> Thiem H. Bui, “The development of civil society and dynamics of governance in Vietnam’s one party rule”, *Global Change, Peace and Security: formerly Pacifica Review: Peace, Security and Global Change*, vol. 25(1) (2013): 77–93.

<sup>24</sup> Quang Ba Bui, “From ‘Civil Society’ to Pluralism and Multi-Party Politics: A Roadmap to Political Change in Vietnam”, [in:] *Proceedings of the Scientific Conference on Criticism of Wrong Views, Protection of the Party’s Policies* (Central Theoretical Council, 2018).

<sup>25</sup> Thanh Tuan Bui, “Promoting ‘Civil Society’ in Vietnam: A Dangerous Form of Hostile Force Sabotage” *National Defense Journal*, (2022). <http://tapchiquptd.vn/vi/phong-chong-dbhb-tu-dien-bien-tu-chuyen-hoa/thuc-day-xa-hoi-dan-su-o-viet-nam-hinh-thuc-chong-pha-nguy-hiem-cua-cac-the-luc-thu-dich/19160.html>.

State must pay particular attention to. Therefore, lawmakers' perceptions of the right to freedom of association remain stringent. With a heavily subsidized economy mindset, where all sectors must be primarily managed by the State, the mentality of 'if it cannot be controlled, it should be banned' is still deeply ingrained in the thinking of some officials and civil servants.<sup>[26]</sup> This entrenched bias has caused regulations governing the right to freedom of association to remain rigid and outdated. According to the subjective views of some representatives of state agencies, mainly those responsible for ensuring national security, public order, and safety, formation of association and the right to freedom of association are considered sensitive issues.<sup>[27]</sup> As a result, instead of regularly amending, supplementing, or issuing new legal documents, some state authorities have opted for "ignoring" – a form of prohibition expressed through inaction.<sup>[28]</sup> Consequently, the opportunity for the right to freedom of association to be concretized into a law, which once seemed "bright" when explicitly stated in the Constitution, now appears "fragile and distant."

Thirdly, since the Constitution has yet to affirm its direct value in Vietnam's legal life, exercising the right to freedom of association faces many barriers.

Although it is considered the highest-ranking document in Vietnam's legal system, the Constitution still needs more direct applicability. Evidence of this is that "law enforcement agencies have never cited the Constitution to resolve specific issues arising in daily life."<sup>[29]</sup> As a result, the provisions of the Constitution, including the right to association, cannot be directly implemented in practice but require specific legal documents and implementation guidelines, such as laws, decrees, circulars, etc. This is explicitly affirmed in the 2013 Constitution, where Article 25 states: "Citizens have the right to freedom of speech, freedom of the press, access to information,

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<sup>26</sup> Duc Toan Pham, "Reflecting on the Development of Management Thought and Its Significance for Leadership in the Current Period" *Journal of State Management*, No. 240 (2016): 46.

<sup>27</sup> Cao, Vu Minh, "The Law on Associations Should Reflect a More Prominent Renewal of State Management Thought" *Journal of Legislative Studies*, No. 21 (2016): 40–41.

<sup>28</sup> Cao, Dieu Linh, and Nguyen, Anh Tuan, "Improving the Effectiveness and Efficiency of State Management on International Economic Integration in the New Situation" *Journal of Finance*, No. 10 (2018): 25.

<sup>29</sup> Hoang, Thi Kim Que, "On Constitutionalism: The Direct Effect of the Constitution and Its Necessity in the 1992 Constitution Draft Amendment" *Journal of Legislative Studies*, No. 12 (2013): 3–6.



assembly, association, and demonstration. The exercise of these rights is regulated by law.” Thus, the practical enforceability of the right to association primarily depends on subordinate legal documents, as the Constitution itself cannot ‘guarantee’ the exercise of this right on its own.

Referring to the experience in the Russian Federation, Article 30 of its Constitution stipulates:

1. Everyone shall have the right to association, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed.
2. No one may be compelled to join any association and remain in it.

Thus, in the Russian Federation, the right to freedom of association is directly stipulated and guaranteed in the Constitution. Additionally, “the Constitution of the Russian Federation sets forth a system of principles that can be considered practical tools to ensure the exercise of the right to freedom of association.”<sup>[30]</sup> “These provisions are directly effective and supreme, and their content is deemed significant in guaranteeing the exercise of human and citizen freedoms, including the right to freedom of association.”<sup>[31]</sup> Thanks to the constitutionally guaranteed mechanism, citizens have the right to invoke constitutional provisions to exercise and protect their right to freedom of association. At the same time, the direct applicability of the Constitution exerts a strong influence on the State to issue laws that acknowledge citizens’ right to freedom of association. As a result, in the Russian Federation, not only is there a specific law regulating the right to freedom of association, but there are also specific laws guiding the establishment and operation of various associations, such as the 1996 Federal Law on Nonprofit Organizations, the Federal Law on Freedom of Conscience and Religious Organizations, the 1995 Law on Trade Unions and the Legal Guarantees for Their Activities, the 1995 Law on Charitable Activities and Charitable Organizations, and the 1995 Law on State Support for Youth and Children’s Organizations.

Moreover, the constitutional protection mechanism in the Russian Federation plays a vital role in the legal life of the country. “The Constitutional

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<sup>30</sup> Van Thang Mai, “The Law on Associations and Mechanisms to Ensure the Right to Freedom of Association in Russia”, *Journal of State Management*, No. 248 (2016): 111-112.

<sup>31</sup> Ibidem.

Court ensures that the provisions of the Constitution are upheld, including the regulations on the freedom of association. In practice, the Constitutional Court of the Russian Federation has often handled complaints about exercising the people's right to freedom of association."<sup>[32]</sup> Meanwhile, "in Vietnam, due to the absence of an independent constitutional protection mechanism,"<sup>[33]</sup> "many sub-law documents inconsistent with the Constitution and 'curtail' citizens' rights still need to be addressed."<sup>[34]</sup> "During the drafting of the 2013 Constitution, several proposals were made to establish an independent constitutional protection body."<sup>[35]</sup> However, in the end, this issue needed to be more boldly acknowledged by the drafters of the Constitution. This has diminished the value of the provisions enshrined in the Constitution, including the right to form associations. As a result, citizens have no legal guarantee to demand the State except for relying on the "enthusiasm" of the State in drafting and promulgating laws on citizens' right to freedom of association.

Fourth, the National Assembly is still 'passive' in its legislative activities, while the Government carries a heavy 'management mindset' when drafting laws, including the Draft Law on Associations.

The National Assembly is the body responsible for exercising legislative power, with the authority to draft and pass laws. However, in reality, the National Assembly only approves laws, while the Government is the actual "designer" and "chief architect" of legislative projects in Vietnam. Statistics show that 90% of legislative drafts are directly prepared by the Government and submitted to the National Assembly for approval. Through this process, the Government positively influences the legislative activities of the National Assembly in many ways. However, the same process means that the needs of the Government affect the content and progress of the National Assembly's legislative work.

As the highest administrative body exercising executive power, the Government is the first to recognize emerging societal issues. At this point, the

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<sup>32</sup> Ibidem, 113.

<sup>33</sup> Cao, Vu Minh, and Vu, Van Huan, "Improving Legal Regulations on Disciplinary Authority of Public Officials" *Journal of Legislative Studies*, No. 19 (2022): 42-49.

<sup>34</sup> Vo, Tri Hao, *Constitutional Rights Cannot Be Arbitrarily Reduced*. <https://thesaigontimes.vn/quyen-hien-dinh-khong-the-bi-tuy-tien-cat-xen>. [accessed: 10.10.2024].

<sup>35</sup> Ngoc Dien Nguyen, "On Constitutionalism: Ensuring the Independence of Constitutional Jurisprudence" *Journal of Legislative Studies*, No. 15 (2012): 3-5.

Government will need legal tools to address them. “For matters under the National Assembly’s jurisdiction, the Government actively drafts proposals for the National Assembly to review and approve.”<sup>[36]</sup> In reality, it is the Government, not the National Assembly, that has a real need to enact laws. In other words, “the Government’s executive activities create the ‘raw material’ for the National Assembly to exercise its legislative power.”<sup>[37]</sup>

Due to the characteristics of the Government as a state management body, when drafting legislative projects, the drafters often incorporate a management mindset into the content of the draft laws. This ensures that state management is carried out smoothly and effectively once the law is passed. Although the Vietnam Lawyers Association was assigned to lead the drafting of the Draft Law on Associations, this draft required the Government’s input concerning the state management aspects of associations. By placing excessive emphasis on the management aspect in the Draft Law on Associations, the evaluating bodies, which are inherently government agencies, have been overly strict in creating a more open legal framework related to the right to freedom of association.

When the Government wants to intervene too deeply in the organization and activities of associations, it is understandable that the right to freedom of association is “tied up” with strict regulations that emphasize management and are heavily based on a ‘permission-based’ mechanism.<sup>[38]</sup> With decrees regulating the organization and activities of associations, the Government believes it already has enough legal tools to manage associations. Therefore, enacting a law governing the right to freedom of association is considered something other than truly necessary. This could be reason why, despite widespread social support, “the National Assembly still needs to pass the Law on Associations.”<sup>[39]</sup>

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<sup>36</sup> Thi Tuyet Dung Thai, “The Role of the Government in the Enactment and Implementation of National Laws” *Journal of Legislative Studies*, No. 9 (2014): 42.

<sup>37</sup> Vu Minh Cao, *State Management Decisions of the Government: Theory and Practice* (National Political Publishing House – Truth, 2017), 112.

<sup>38</sup> Si Dung Nguyen, “On the Philosophy of Legislation” *Journal of Legislative Studies*, No. 6 (2003): 6.

<sup>39</sup> Le Nguyen, *More than 90% of Deputies Agree Not to Pass the Law on Associations*. <https://vneconomy.vn/hon-90-dai-bieu-dong-y-chua-thong-quat-luat-ve-hoi.htm>. [accessed 10.10.2024].

## 5 | Some orientations for drafting the law on the right to freedom of association in Vietnam

First, drafting a specialized law to ensure the implementation of citizens' right to freedom of association is extremely necessary. It is essential to recognize that the enactment of the law provides a legal foundation to ensure the exercise of the right to freedom of association for citizens, as well as tools for state management on this issue. We should not be overly concerned about the misuse of the right to freedom of association to engage in unlawful activities because "the right to freedom of association" and "the abuse of the right to freedom of association" are two entirely different concepts. "The right to freedom of association" is a fundamental right of citizens that must be recognized, respected, protected, and guaranteed. Meanwhile, "the abuse of the right to freedom of association" is an unlawful act that will face legal sanctions. It is thought that explicit provisions on sanctions against those who abuse the right to freedom of association are sufficient to punish and deter violators. This legally binding acts like a "rein and bridle" and is far different from "tying down" – completely prohibiting or delaying the exercise of citizens' right to freedom of association.

For this reason, the Communist Party of Vietnam needs to "rise above itself" to adopt the policy of drafting and enacting the Law on the Right to Freedom of Association. The purpose of drafting and enacting this Law is to ensure that legal documents on associations keep pace with the development of mass organizations, a requirement outlined in Directive No. 17-CT/TW of the Politburo. Based on this political foundation, the National Assembly should promptly pass the Law on the right to freedom of association in Vietnam. "The Law on the Right to Freedom of Association should be drafted with an open mindset that respects the right to establish, join, and operate associations rather than based on the strict control mindset seen in Order No. 102 of 1957."<sup>[40]</sup> If the National Assembly enacts the Law on the Right to Freedom of Association but retains the strict control provisions over associations as found in Order No. 102 of 1957, then the new Law would merely be an upgrade in the form of the document, with no substantive change ("old wine in a new bottle"). Therefore, when drafting this Law, the legislators should focus on specific provisions that regulate

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<sup>40</sup> Nguyen-Pochan, "The Draft Law on Association in Vietnam: Legal, Political, and Practical Norms Under Debate" 87.

essential issues such as the right to establish and join associations, the right to operate freely and be protected from unreasonable interference, the right to access funds and resources, mechanisms to protect associations from unlawful actions; and sanctions for abusing the right to freedom of association to violate the Law. Of course, the exercise of this right still requires state management, so provisions regarding state intervention are necessary. In our opinion, “the critical issue that needs to be addressed is defining the boundary between the right to freedom of association and the necessary restrictions on this right to prevent the misuse of associations for undemocratic purposes.”<sup>[41]</sup>

Second, the legislators must define the overarching mindset by naming the law. The first document regulating the right to association in our country, issued in 1957, was titled Order No. 102 on the Right to Association. Meanwhile, all draft bills have used the title “Law on Associations.” The title “Law on Associations” is not genuinely scientific.

The right to association is one of the critical political and civil rights of individuals, recognised in international legal documents and in Vietnam’s constitutions. From a political rights perspective, the right to association enables individuals to unite and create collective strength, thereby protecting members’ interests and combating societal issues such as bureaucracy, authoritarianism, and corruption. From a civil rights perspective, associations are formed voluntarily by individuals who choose to join together. Individuals can decide whether to participate in or leave an association. The organization and activities of an association are based on its Charter, which is created by the unified will of all its members. Through associations, individuals and organizations exercise their personal and property rights. “Associations are a platform for interaction, protecting members’ interests, and also a place to express a nation’s solidarity and cultural identity.”<sup>[42]</sup> This demonstrates associations’ broad “social” nature, which the law must respect.

Professor Bui Ngoc Son argues that association is a matter of personal privacy for citizens. The state should only intervene so that associations do not negatively impact other parts of society, such as families, markets,

<sup>41</sup> Tran, Viet Dung, “Ensuring the Right to Freedom of Association in International Law and German Law: Some Suggestions for Vietnam’s Draft Law on Associations” *Journal of Legal Science*, No. 2 (2017): 50.

<sup>42</sup> Frank Dietrich, F, “Who are the People? Associative Freedom and the Democratic Boundary Problem” *Critical Review of International Social and Political Philosophy*, 17 November 2023.

the government, or in cases where associations harm one another. Therefore, if the title “Law on Associations” is used, the Law will inevitably contain provisions that guide the organization and activities of associations according to the state’s will. Meanwhile, in line with the spirit of the Constitution, this law should be enacted to ensure the right to freedom of association.<sup>[43]</sup> Agreeing with this view, Professor Thai Vinh Thang also believes that the title “Law on Associations” does not adequately reflect the social nature of associations and is heavily influenced by a management mindset. Such a title implies that the state will continue to manage and coordinate the activities of associations.<sup>[44]</sup> We agree with these views and suggest that legislators consider naming the law “Law on the Right to Freedom of Association” to properly reflect its nature as a “foundation” for exercising citizens’ right to association.

Third, shifting from a management mindset to a developmental perspective in drafting the law on the right to freedom of association is necessary. Recently, the Government issued Decree No. 126/2024/NĐ-CP to replace Decree No. 45/2010/NĐ-CP (amended and supplemented by Decree No. 33/2012/NĐ-CP). Reviewing the provisions of Decree No. 126/2024/NĐ-CP, it is easy to see that everything must be “fully” permitted by state authorities, from the establishment of associations to their activities. Specifically, Chapter II of Decree No. 126/2024/NĐ-CP on establishing associations contains eight legal provisions (from Articles 10 to 17), and seven regulate the permission of competent state authorities (Article 10. Conditions for establishing associations; Article 11. The formation committee for establishing an association; Article 12. Dossiers, procedures, and authority for recognizing the formation committee for establishing an association; Article 13. Dossiers and methods for establishing an association; Article 14. Main contents of the association’s charter; Article 15. Authority for handling procedures related to associations; Article 16. Time for the founding congress). Chapter III on the organization of associations has five legal provisions (from Articles 18 to 22), of which three regulate the approval of competent state authorities (Article 19. Congress; Article 21. Reporting congress results and approving the association’s charter; Article 22. The executive board, standing committee, president,

<sup>43</sup> Ngoc Son Bui, “From Legal Limitations to the Stopping Point of the Law on Associations” *Journal of Legislative Studies*, No. 27 (2007): 43

<sup>44</sup> Vinh Thang Thai, “Some Opinions on the Draft Law on Associations” *Journal of Legislative Studies*, No. 10 (2016): 37.

and association vice president). Chapter IV on the activities of associations contains eight legal provisions (from Articles 23 to 30), of which six regulate the management of competent state authorities (Article 24. Obligations and responsibilities of associations; Article 25. Organizations under the association; Article 26. Finance and assets of associations; Article 28. Rewards; Article 29. Discipline and resolution of complaints, petitions, disputes, and denunciations related to associations; Article 30. They are handling violations). Chapter V, which regulates renaming, splitting, separating, merging, consolidating, temporarily suspending, and dissolving associations, consists of six legal provisions emphasizing the ‘permission-based’ relationship between associations and competent state authorities. In fact, with the provision allowing competent state authorities to assign tasks to associations (Article 8), Decree No. 126/2024/NĐ-CP essentially “turns” associations into the “extended arm” of state agencies.

“A rule-of-law state is a state that fosters development, ensures human rights and citizens’ rights, and minimizes administrative intervention in social life.”<sup>[45]</sup> To build a rule-of-law state, the first and most fundamental step is to establish a complete and consistent legal system. “This legal system must be developed and refined with a new mindset – enacting laws to create conditions for development rather than for managing and overseeing in a ruling sense.”<sup>[46]</sup> Therefore, with the spirit of building a legal framework to concretize the right to freedom of association for citizens, we believe that when drafting the Law on the Right to Freedom of Association, legislators should focus mainly on a law-making mindset that facilitates legal conditions for citizens to effectively exercise their right to freedom of association in practice.<sup>[47]</sup>

Fourth, the Law on the right to freedom of association must encourage the activities of associations to work towards building a diverse, democratic, and sustainable society.

The participation of associations in tasks and areas that the State currently manages is a way to share the burden of the State with civil society. Where civil society shares the responsibility of the community, the State is indeed aware that the cause of development is not a “monopoly” of the

<sup>45</sup> Vusi Gumede, “South Africa’s Journey towards a Democratic Developmental State” *Africanus: Journal of Development Studies*, No. 2 (2019): 1-23.

<sup>46</sup> Dung Sy Dinh, “Vietnam’s Legal System in the Process of National Renewal and Development” *Journal of Legislative Studies*, No. 1 (2020): 9.

<sup>47</sup> Hong Quang Truong, “Some Suggestions for the Draft Law on Associations” *Journal of State and Law*, No. 11 (2015): 19.



State. In many countries, establishing and developing associations, enabled by the right to freedom of association, has brought significant benefits to the community and society. This may be the experience and motivation for the Law on the Right to Freedom of Association, when enacted, to always aim at the goal of building a diverse, democratic, and sustainable society.

## 6 | Conclusion

The journey to enact a law on the right to freedom of association in Vietnam has spanned over two decades, yet progress still needs to be made faster and more complex. Despite Vietnam's commitment to recognizing this right in its Constitutions and the international conventions it has ratified, the current legal framework, rooted in Order No. 102 from 1957, needs to be updated and aligned with the country's modern needs. The delays in passing a new law highlight the challenges of balancing state management with the need to respect and promote citizens' rights. Moving forward, Vietnam must adopt a more developmental approach that encourages associations and civil society to contribute to national development while ensuring that the state plays a supportive rather than restrictive role. A comprehensive legal framework that guarantees the right to freedom of association is essential to improving Vietnam's international standing and fostering a diverse, democratic, and sustainable society.

This research has made significant contributions by offering a detailed analysis of this prolonged legislative process. It highlights vital obstacles, such as the tension between state control and individual freedoms, and proposes practical directions for future reforms. By critically evaluating the outdated provisions of the 1957 Order, the study emphasizes the need for a modern law that not only facilitates civil society's role but also aligns with Vietnam's international commitments.

In terms of academic impact, the research enriches domestic scholarship by thoroughly examining the complexities surrounding legal reform in Vietnam. It is a valuable reference for policymakers, legal scholars, and human rights advocates while contributing to international discussions on human rights and governance in transitional economies. Ultimately, this study underscores the broader implications of legal reform for both

domestic and global scholarship, helping to bridge the gap between Vietnam's legal framework and its aspirations for a more open and democratic society.

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