

Joint submission on freedoms of expression, association and assembly

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Joint Submission by:

Defend the Defenders (DTD)
Brotherhood for Democracy (BFD)

Vietnam's 4th Cycle UPR 2024

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Defend the Defenders & Brotherhood for Democracy

Methodology and consultation process

1. This joint submission by Defend the Defenders (DTD) and Brotherhood for Democracy (BFD) addresses freedom of opinion and expression (herein referred to as freedom of thought and expression) and freedom of association and assembly relating to the following recommendations made at Vietnam's 2019 UPR:

Accepted: 38.42 (Chile), 38.168 (France), 38.172 (Greece), 38.179 (Luxembourg), 38.184 (Ireland), 38.186 (Ireland), 38.189 (Peru), 38.195 (Japan), 38.197 (Seychelles), 38.200 (Spain), 38.203 (The UK and Northern Ireland), and 38.207 (Australia);

Partly accepted: 38.194 (Portugal), 38.198 (Italy), 38.202 (Switzerland), and 38.214 (Czechia);
and rejected: 38.166 (Denmark), 38.177 (Argentina), 38.183 (the Netherlands), 38.188 (Norway), and 38.196 (Romania).

2. Contributions to this joint submission came from the following sources:

Reports and data collected by Defend the Defenders (DTD) and Brotherhood for Democracy (BFD), the two non-profit and non-government organizations working to protect and promote human rights in Vietnam, as well as reports from other NGOs.

Vietnam's legal framework

3. In the past two decades, the Vietnamese government has systematically codified the de facto restrictions on the Vietnamese people's right to free thought and expression and right to freedom of assembly and association. The government has passed laws to silence government critics under the pretext of national security. On their face, these laws clearly violated many UN treaties such as Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) to which Vietnam is a state-party.

4. In addition to overt violations of human rights, the vagueness of many of these provisions makes it impossible for an individual to foresee what actions are criminalized, in violation of the principle of legality embedded in Article 15 of the International Covenant on Civil and Political Rights (ICCPR), Article 11 of the Universal Declaration of Human Rights (UDHR), and Article 20 of the ASEAN Human Rights Declaration (AHRD); these provisions prohibit prosecution for a crime—which did not constitute a[n] offense[s], under national or international law, at the time when it was committed. In General Comment No. 35, the UN Human Rights Committee confirmed that —[a]ny substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.

5. Moreover, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has explained that the standard for legality certainly requires framing laws—in such a way that the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and [that] the law [be] formulated with sufficient precision so that the individual can regulate his or her conduct. Many of the laws that the Vietnamese government has frequently used to prosecute government critics appear purposefully vague so that the government can apply them to any action which it deems offensive. Without precise definitions it is impossible, for instance, to determine what expression the government might consider to be —propaganda or what acts might be considered to be an —abuse of democratic freedom. Not only does the range of potentially criminal acts include acts of expression, association or assembly which are protected under international law, but it is very difficult, perhaps by design, for a conscientious Vietnamese activist or journalist to determine exactly what acts might be risking criminal prosecution. This lack of legality certainly

not only enables the government to prosecute anyone for anything, it also casts a chill over all acts of expression, association or assembly.

6. Since the last periodic review (the 3rd UPR) in 2019, Vietnam's authoritarian regime has shown little interest in improving its human rights record despite many calls of the international community. It continues to restrict basic freedoms of expression, association, and assembly. It owns and controls all media in the country, blocks or shuts down critical websites, and prosecutes those using social media to criticize the ruling Communist Party of Vietnam (CPV) and its government. The CPV monopolizes the leadership of all public institutions and uses them to maintain its political monopoly. The courts and the all other state agencies are under the CPV control while independent trade unions are prohibited and social organizations, religious groups, and civil society are tightly regulated.

7. According to Defend the Defenders' statistics, Vietnam is holding at least 260 prisoners of conscience as of September 30, 2023: 63 were charged with or convicted of "conducting anti-state propaganda" under Article 88 of the Penal Code 1999¹ or Article 117 of the Criminal Code 2015², 55 were charged with or convicted of "infringing the unity policy" under Article 87 of the Penal Code 1999 or Article 116 of the Criminal Code 2015; and 44 were charged with or convicted of "abusing democratic freedom" under Article 258 of the Penal Code 1999 or Article 331 of the Criminal Code 2015.

Many of these individuals were arrested multiple times, interrogated and subjected to torture and ill-treatment.

Freedom of Expression

7. Vietnam frequently uses vaguely worded and loosely interpreted provisions in its Criminal Code and other laws to imprison peaceful political and religious activists. These include "Carrying out activities aimed at overthrowing the people's administration" (Article 109), "Undermining the unity policy" (Article 116), "Making, storing, disseminating or propagandizing information, materials and products that aim to oppose the State of the Socialist Republic of Vietnam" (Article 117), and "Disrupting security" (Article 118). Vietnam also uses other articles in the Criminal Code to target rights campaigners, including "Abusing the rights to democracy and freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or individuals" (Article 331) and "disrupting public order" (Article 318).

¹

8. Vietnam currently holds in prison at least 260 people for expressing critical views of the government, taking part in peaceful protests, participating in religious groups not approved by the authorities, or joining civil or political organizations that the CPV deems to be a threat to its monopoly on power. During the first nine months of 2023 alone, the government convicted and imprisoned at least 16 rights bloggers and activists under various abusive laws.

In recent years, Vietnam often uses Article 117 and 331 to silence the government critics, both online and offline.

Number of activists arrested in 2019-2023

Year	2019	2020	2021	2022	2023
Number of activists charged with Article 117	12	16	12	11	4

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Number of activists charged with Article 331	2	8	14	15	12
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Source: Vietnam Human Rights Defenders (vietnamhumanrightsdefenders.net)

9. The case of Pham Thi Doan Trang

Ms. Pham Doan Trang is an author, blogger, journalist, publisher, and democracy activist. Ms. Trang is the co-founder of the blog *Luat Khoa Tap Chi* (Journal of Law).

She is also the co-founder of the publishing house Nhà xuất bản Tự Do (Liberal Publishing House) which in 2020 was awarded the International Publishers Association's IPA Prix Voltaire. She received the 2017 Homo Homini Award from People In Need and 2019 RSF Press Freedom Prize for Impact for her advocacy for human rights and freedom of press.

Ms. Trang was detained under de facto house arrest in February 2018. On October 6, 2020, she was arrested by Hanoi police and the Ministry of Public Security Officers in Ho Chi Minh City for "making, storing, spreading information, materials, items for the purpose of opposing the State of the Socialist Republic of Vietnam." She was initially held incommunicado and transferred to Hanoi. She was charged under Article 88 of the 1999 Penal Code for "propaganda against the State."

She is prosecuted for her reports and articles on the human rights situation in Viet Nam, including an analysis of the 2016 Law on Religion, a 2016 report on the environmental disaster of Formosa, as well as interviews released to foreign media.

In late 2021, she was sentenced to nine years in prison.

10. The case of Nguyen Thuy Hanh

Nguyen Thuy Hanh is a human rights defender, who has been active in demonstrations in 2011 denouncing China's encroachment in the South China Sea and on various environmental issues, including opposing special economic zones and land grabs. She also joined activities to help victims of land grabbing and other human rights activists who were assaulted and jailed, and their families.

From 2011 to 2018, Ms. Hanh also helped raise funds to assist other activists who were experiencing financial difficulties, and those who were harassed or imprisoned. In the beginning, she used her own money to offer support, but as the number of political prisoners grew while she herself was retired, Hanh decided to start a fundraising campaign in 2018 called the 50K Fund, so she could continue to help out the families of political prisoners.

On 7 April 2021, Ms. Nguyen Thuy Hanh was arrested and charged with "making, storing, distributing or disseminating information, documents and articles to oppose the State of the Socialist Republic of Vietnam" as provided for in Article 117 of the Criminal Code, carrying a potential prison sentence of between five and twenty years. Ms. Hanh is currently being held in psychological hospital in Hanoi.

11. The case of Nguyen Thi Tam

Ms. Nguyen Thi Tam is a well-known woman human rights defender and land rights activist. Since 2008, she has been active in defending land rights in Duong Noi commune, fighting against land grabbing by the local authorities. She has provided commentary on land rights and human rights issues on Facebook and YouTube since 2016.

Tam was previously detained in June-November in 2016 on suspicion of "disturbing public order" under Article 318 of the Criminal Code.

On June 24, 2020, Tam was arrested by police whilst shopping, allegedly in connection to her work on the Dong Tam incident and later charged with "making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of

Vietnam” under Article 117 of the Criminal Code.

In late 2021, Ms. Nguyen Thi Tam was convicted and sentenced to 6 years in prison and 3 years of probation.

12. The case of Tran Duc Thach

Mr. Tran Duc Thach is a writer, poet, blogger, award-winning activist, and former political prisoner. He was first arrested in 2008 and served a three-year prison sentence on charges of “conducting propaganda against the state” under Article 88 of the 1999 Criminal Code. He was released from prison on August 30, 2011 and put under an additional three years of house arrest. Thach is a member of the Brotherhood for Democracy (BFD).

On April 23, 2020, he was arrested by the Nghe An province police. Prior to his arrest, he was questioned by security forces about BFD. A photo of him later published on state media shows he sustained facial injuries, indicating that he was most likely beaten by the police while in detention. He was reportedly not allowed to see his attorney until November 5, 2020.

On December 15, 2020, Mr. Tran Duc Thach was sentenced to 12 years in prison and three years’ probation by Nghe An province courts.

Mr. Thach was initially arrested for “activities against the people’s Government.” Authorities reportedly used several Facebook posts he published criticizing government corruption and human rights violations as the primary implicating evidence. During the trial, provincial prosecutors claimed that Thach’s activism and writings “threatened social stability, encroached upon national independence and socialism, reduced people’s trust in the political institution of the state of Vietnam, and infringed upon national security and social safety and order.”

His appeal was denied on March 24, 2021. His lawyer was reportedly not allowed to argue his case during the appeal trial.

13. The case of Nguyen Nang Tinh

Nguyen Nang Tinh is a music teacher and a human rights defender. On Facebook, he voiced support for political prisoners, and posted an image of a protest against a draft law on a special economic zone, and of protests against the Formosa Ha Tinh Steel after the Taiwanese company discharged a huge amount of industrial waste into Vietnam’s central coastal areas in 2016 which caused a devastating environmental disaster in the area.

On 29 May 2019, police in Nghe An province arrested Mr. Nguyen Nang Tinh, and charged him with “making, storing, disseminating or propagandizing information, materials and products that aim to oppose the State of the Socialist Republic of Vietnam,” under Article 117 of the 2015 Criminal Code.

State-owned media announced the charges related to Facebook posts, many of which are critical of the government and Communist Party of Viet Nam. On November 15, 2019, Nguyen Nang Tinh was sentenced to 11 years in prison.

In March 2021, his family was able to visit him in prison and reported that he is in poor health condition and is only taking medication sent by his family. He was also reportedly denied his requests to meet with a Catholic priest.

14. The case of Trinh Ba Phuong

Phuong was arrested on June 24, 2020, with his younger brother Trinh Ba Tu, and his mother Can Thi Theu, on charges of “creating, storing, and disseminating information, documents, items and publications opposing the Socialist Republic of Vietnam” under Article 117 of the Criminal Code.

The three family members had been outspoken in social media postings about the January 9, 2020 clash in Dong Tam commune in which 3,000 police stormed barricaded protesters' homes at a construction site about 25 miles south of the capital, killing a village elder.

In March 2021, Mr. Trinh Ba Phuong was reportedly moved temporarily from Prison No. 1 in Hanoi to the Mental Hospital Central 1 for a psychiatric evaluation. His family was not notified of the transfer nor informed of the reasons for the medical evaluation. He is now detained in Prison No. 1 in Hanoi.

The Hanoi police concluded the investigation against Trinh Ba Phuong in June 2021 and, he was officially charged under Clause 2 of Article 117 of the 2005 Criminal Code, which carries the penalty of 10 to 20 years in prison. In July 2021, over a year after his arrest, he was reportedly able to meet his lawyer for the first time.

In late 2021, Trinh Ba Phuong was sentenced to ten years in prison.

15. The case of Can Thi Theu and her second son Trinh Ba Tu

Ms. Can Thi Theu is a land rights activist and human rights defender in Vietnam. She became an activist after her family's land was confiscated by the authorities in 2010. She began advocating against forced evictions and became a leading figure of the land rights movement.

On June 24, 2020, police arrested Ms. Can Thi Theu, along with her second son, Mr. Trinh Ba Tu. They were charged with "making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam" under Article 117 of the 2015 Criminal Code.

On May 5, 2021, she and her son Trinh Ba Tu both were sentenced to eight years imprisonment followed by three years' probation after being convicted by the People's Court of Hoa Binh province.

All of the cases were covered by the UN Special Rapporteurs on the situation of human rights defenders, the UN Working group on arbitrary detention, and others.

Recommendations:

16. Immediately drop the charges and release all people imprisoned for simply expressing critical views of the government;

17. Repeal Articles 109, 116, 117, 118 and 331 and bring its Criminal Code in conformity with the International Covenant on Civil and Political Rights (ICCPR).

Freedom of Assembly and Association

18. During its previous 3rd UPR in 2019, Vietnam accepted recommendations to respect and promote or take measures to ensure freedom of association and/or assembly (38.168, 38.184, 38.200, 38.203), but the government continues to prohibit the establishment or operation of independent labor unions, human rights organizations, and political parties.

19. Independent union organizers face harassment, intimidation, and retaliation. The authoritarian regime continues to imprison labor activists Truong Minh Duc and Hoang Duc Binh. They were convicted in early 2018 to 12 years and 14 years in prison, respectively. Opinion from UN Special Rapport..

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20. In November 2019, authorities in Ho Chi Minh City arrested Dr. Pham Chi Dung on allegation of “conducting anti-state propaganda” under Article 117 of the Criminal Code. Mr. Dung, born in 1966 and former security officer, is a president of the unregistered professional group Independent Journalists Association of Vietnam (IJAVN). Six months later, the police arrested its Vice President Nguyen Tuong Thuy (1950) and editor Le Huu Minh Tuan (1989) on the same charge.

In a trial in January 2021, Dung was sentenced to 15 years in prison, the heaviest imprisonment given for the charge so far. Thuy and Tuan were given 11 years imprisonment each. Dung denied his right to appeal because he has no belief in Vietnam’s judicial system while Thuy was not allowed to submit his appeal. The three activists have been under inhumane treatment while serving their sentences in Xuan Loc Prison camp (in case of Dr. Dung) and An Phuoc Prison camp (in case of Mr. Thuy).

The arrest and conviction of the three activists are part of Vietnam’s suppression targetting the unregistered IJAVN- the efforts to form independent group of free journalists.

21. In September 2018, authorities in Ho Chi Minh City arrested eight members of the Constitution Group which advocates for rule of law by providing free copies of Vietnam Constitution 2013 to citizens in a bid to help them better understand their civil and political rights. Members of the group actively took part in the peaceful mass demonstration in HCM City on June 10, 2018 to protest two bills Special Economic Zone and Cyber Security. Their arrests were made after the group called for peaceful demonstration across Vietnam in early September. They were charged with “disrupting security” under Article 118 of the Criminal Code. In 2020, they were convicted and sentenced to between 2 years and 8 years in prison.

22. The case of Hoang Duc Binh

Hoang Duc Binh is a human rights defender and member of Viet Labor, an organisation of labour groups inside and outside Viet Nam to protect the rights of workers. He is also an active blogger and covered the environmental disaster caused by the Formosa steel plant in April 2016, its impact on local populations as well as protests against the pollution-causing company. He was the subject of an opinion by the Working Group on Arbitrary Detention, No. 45/2018. The Working Group on Arbitrary Detention found that Mr. Hoang Duc Binh is being arbitrarily deprived of his liberty and called for his immediate release.

On May 15, 2017, Mr. Binh was arrested while he was on his way to Vinh City in Nghe An Province with a group of environmentalist activists. On February 6, 2018, Hoang Duc Binh was sentenced to 14 years in prison for violating Article 330 and Article 331 of the 2015 Criminal Code.

23. The case of Truong Minh Duc

Truong Minh Duc is a human rights defender and a senior member of the Brotherhood for Democracy. Duc started his career as a journalist, writing about corruption, government mismanagement and land petitioners. He later joined the Democratic Bloc (Bloc 8406), and the Brotherhood for Democracy, an online organization working for human rights and multi-party democracy.

In March 2008 he was sentenced to five years imprisonment, on charges of “abusing democratic freedom” under Article 258 of the 1999 Criminal Code.

On 30 July 2017, Mr. Truong Minh Duc was arrested for the second time and charged with subversion under Article 79 of the Penal Code (equal to Article 109 of the Criminal Code). In April 2018, he was sentenced to 12 years of imprisonment and three years of house arrest in a

one-day trial.

24. The case of Pham Chi Dung

Pham Chi Dung is a journalist, writer and independent analyst who worked with various international news agencies. He is a member of the Civil Society Forum and the Former Vietnamese Prisoners of Conscience Association (FVPOC). He is also a co-founder of the independent Journalists Association of Viet Nam (IJAVN).

From 2014, Pham Chi Dung, as chairman of IJAVN, focused his writing on key human rights and legislative issues but had also engaged in other forms of human rights activities such as national advocacy on amending the Press Law to comply with Article 19 of the ICCPR. He was also actively involved in observing the negotiations between Vietnam's government and the European Union regarding the establishment of a European Union-Viet Nam Free Trade Agreement (EUVFTA). Additionally, he published numerous articles in Vietnamese raising human rights concerns, notably on freedom of expression, the detention of human rights defenders, the lack of independent unions and other labour rights, and the harassment of independent civil society.

Pham Chi Dung engaged with UN human rights bodies over a period of years. He also communicated with and provided information to other Vietnamese NGOs engaging with UN Special Procedures and Treaty Bodies.

On 21 November 2019, Pham Chi Dung was formally arrested, with a notice of arrest signed on November 18, 2019. He was charged with Article 117 of the 2015 Criminal Code.

On January 5, 2021 he was sentenced to 15 years of imprisonment and 5 years on house arrest for "making, storing or disseminating information, documents, materials and items against the Socialist Republic of Vietnam" under Article 117 of the 2015 Criminal Code following a trial that lasted four hours. He is currently held in Xuân Lộc prison, in Dong Nai province.

25. The case of Nguyen Tuong Thuy

Nguyen Tuong Thuy is vice chairman of the Independent Journalist Association of Viet Nam (IJAVN) and a human rights defender.

On March 7, 2018, Mr. Nguyen Tuong Thuy was reportedly confined at his residence by approximately twenty police officers to prevent him from meeting with an OHCHR delegation at the UN Representative's Office in Hanoi. His case was included in the 2021 report of the Secretary-General on cooperation with the UN, its representatives and mechanisms in the field of human rights.

On May 23, 2020, Mr. Nguyen Tuong Thuy was arrested at his family home in Hanoi on suspicion of "making, storing, or disseminating information, documents, materials and items against the Socialist Republic of Vietnam," under Article 117 of the 2015 Criminal Code, after he had written weblog commentaries on democracy and advocated for freedom of expression. The officers confiscated all mobile phones belonging to Mr. Nguyen Tuong Thuy and family members, despite his family members not being charged. Police also confiscated Mr. Thuy's computer and USB memory sticks.

In January 2021, Mr. Nguyen Tuong Thuy was sentenced to 11 years in prison and 3 years on probation under Article 117 following a trial that lasted half a day.

26. The case of Le Huu Minh Tuan

Le Huu Minh Tuan, also known as Le Tuan, is an independent journalist, a human rights defender and a member of the unregistered Independent Journalist Association of Viet Nam

(IJAVN).

On June 8, 2020, the investigating agency of the Ho Chi Minh City police recommended to prosecute Mr. Le Huu Minh Tuan on violation of Article 117 of the 2015 Criminal Code.

In the morning of June 12, 2020, Mr. Tuan was arrested by the police following a raid on a coffee shop in a home owned by a member of his family, located in the Province of Quang Nam. Prior to his detention Mr. Tuan was summoned at least four times by the police to answer questions relating to another journalist and a fellow member of the journalists' association. Mr. Tuan reportedly did not cooperate.

He was sentenced in January 2021 to 11 years in prison, following a trial that lasted half a day, under Article 117 of the 2015 Criminal Code.

Recommendations:

27. Free all prisoners who were convicted for joining political, social or religious groups disapproved by the government and drop all the charges against them;

28. Bring legislation regulating public gatherings and demonstrations into conformity with the rights of free assembly and association in Articles 21 and 22 of the ICCPR.

29. Cooperate with UN Special Rapporteurs on the situation of human rights defenders

30 Stop reprising people working with or reporting to UN human rights agencies as well as international rights groups./.