



FIDH – International Federation for Human Rights

Vietnam Committee on Human Rights (VCHR)

United Nations Human Right Committee (CCPR) – 123rd Session

Joint Submission for the adoption of the List of Issues

VIETNAM

Article 2 (Implementation of the covenant at the national level)

Domestic legislation inconsistent with ICCPR obligations

Human rights are guaranteed in the Vietnamese Constitution, which was last amended in 2013, and other domestic laws. However, the enjoyment of these rights is restricted by vaguely worded ‘national security’ provisions in the Constitution, Criminal Code, and other legislation that are incompatible with the International Covenant on Civil and Political Rights (ICCPR). Despite pledges made during its second Universal Periodic Review (UPR) in 2014 to amend or repeal these provisions, in 2015 Vietnam adopted an amended Criminal Code (that came into effect in January 2018) which not only failed to amend these clauses, but added new restrictive provisions, such as criminalizing the “preparation” of, or intent to commit a crime.

Moreover, given the Constitutional provisions enshrining the political monopoly of the Communist Party over state institutions (Article 4), the existence of a single, state-controlled trade union, and the absence of a national human rights institution and independent human rights NGOs, citizens are deprived of mechanisms which would allow them to seek remedy for violations of their human rights, in violation of Article 2(3) of the ICCPR.

Questions:

- *Clarify the status of the ICCPR in relation to domestic law and explain whether its provisions can be invoked directly before the courts, and provide examples.*
- *Provide statistics about the list of individuals who are currently detained on charges of crimes against ‘national security’.*
- *Explain how Vietnam ensures that the national security provisions in its domestic legislation are not used to stifle legitimate and peaceful dissent.*

Article 6 (Right to life)

Use of the death penalty in breach of ICCPR

Vietnam retains the death penalty for offenses that cannot be considered as “the most serious crimes” under Article 6 of the ICCPR. Following the entry into force of the amended

Criminal Code in January 2018, 18 offenses are still punishable by death.¹ They include: drug-related offenses, such as drug production and trade (Articles 248 and 251); economic crimes, such as embezzlement and receiving bribes (Article 353 and 354); and political crimes, in particular ‘national security’ offenses, such as ‘activities aiming to overthrow the government’ (Article 109) and ‘terrorist activities aimed at opposing the people’s administration’ (Article 113).

Statistics on the death penalty continue to be classified as ‘state secrets.’ According to a report posted on the Ministry of Public Security’s website in March 2017, Vietnam executed a total of 429 prisoners between August 2013 and June 2016. As of June 2016, 81 prisoners were awaiting execution, 80 had been granted a stay of execution and retrial because of wrongful convictions, and 36 prisoners had died while on death row between 2011 and 2016.

Questions:

- *Explain why all statistics regarding the use of the death penalty are classified as ‘state secrets.’*
- *Provide up-to-date statistics on death sentences imposed and executions carried out each year, and disclose the number of prisoners currently on death row. Provide such information disaggregated by gender and types of offenses.*
- *Clarify whether death row prisoners are subjected to detention conditions that differ from those of other inmates.*

Article 7 (Prohibition of torture or other cruel, inhuman or degrading treatment or punishment)

Human rights defenders subjected to aggression; torture and deaths in custody

VCHR and FIDH have extensive evidence of torture and ill-treatment of prisoners of conscience in detention; deaths in police custody resulting from torture; and physical attacks against human rights defenders by plainclothes security agents.

Blogger Nguyen Ngoc Nhu Quynh aka ‘Me Nam’ researched and compiled a list of 31 cases of torture and deaths in police custody based on reports in the official press. Police used this as evidence to arrest her for ‘spreading anti-state propaganda’ under Article 88 (now Article 117) of the Criminal Code. On 29 June 2017, she was sentenced to 10 years in prison in Khanh Hoa Province.

In many cases, human rights defenders who have been subjected to beatings in public places recognized their aggressors as officers who had been present during previous police interrogations. Physical assaults are often used as a warning to activists to cease their human rights advocacy. In February 2017, Pastor Nguyen Trung Ton was kidnapped by government-hired thugs, brutally beaten, and abandoned in a remote forest in Quang Binh Province. Afterwards, he continued his human rights advocacy and was subsequently arrested in July 2017. In 2014, land rights activist Tran Thi Nga was beaten with metal bars by five plainclothes

¹ VCHR, *The Death Penalty in Vietnam*, June 2016, available at: <http://queme.org/app/uploads/2016/06/The-Death-Penaltyin-Vietnam-VCHR-2016.pdf>

security agents, resulting in serious injuries. She also continued to speak out for human rights, and was sentenced to nine years in prison in July 2017.

Vietnam became a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2014, but, in its initial report to the UN Committee against Torture (CAT), the government claimed it faced difficulties in the implementation of the convention's provisions due to an "incomplete legal framework on human rights," among other reasons.

Questions:

- *Elaborate what concrete measures are being taken to improve the legal framework with regard to the elimination and prevention of acts of torture.*
- *Explain why police officials who are often involved in physical aggression against citizens are not subject to prosecution for their actions.*
- *Provide statistics on the prosecution of prison officials for "obtaining testimony under duress" (Article 374 of the amended Criminal Code).*

Article 10 (Humane treatment of persons deprived of their liberty)

Detention conditions far below international minimum standards

Political prisoners are frequently detained incommunicado during their pre-trial detention, which may last two years or more. After being convicted and sentenced, many are transferred to prisons far away from their homes, which effectively deprives them of visits from their families. In 2018 alone, this has been the case for prisoners of conscience Nguyen Ngoc Nhu Quynh and Tran Thi Nga (both mothers of young children), Nguyen Van Hoa, Nguyen Van Oai, and Phan Kim Khanh.

Political prisoners are also denied medical treatment. Dinh Nguyen Kha, serving a six-year prison term for distributing leaflets critical of Vietnam's response to China's territorial claims in the region, was denied follow-up treatment after an operation to remove a stomach tumor. Detained Hoa Hao Buddhist Tran Thi Thuy has been denied treatment for his serious medical conditions since April 2015.

Former political prisoners detained on 'national security' charges reported that they were subjected to harsher conditions in prison than common criminals (i.e. they were granted fewer family visits, had smaller food rations, and were under greater surveillance). They were detained separately from other inmates, and forced to wear clothes and use utensils stamped with the letters CT ("political"). They also suffered frequent punishments, including long periods in solitary confinement without any light or ventilation, with their feet in shackles.

Questions:

- *Clarify the prison regime that applies to prisoners of conscience and explain why they are subjected to a different regime from other prisoners.*
- *Provide information on the situation of persons placed under administrative detention in 'rehabilitation centers' for up to two years without trial for alleged breaches of 'national security' legislation.*

- *Explain what steps, if any, the government has taken to improve detention conditions as recommended by the UN Working Group on Arbitrary Detention after its visit to Vietnam in 1994.*

Article 12 (Freedom of movement)

Scores of activists routinely placed under house arrest, hit by travel bans, or forced to leave the country

The Vietnamese government has regularly restricted the freedom of movement of human rights defenders, activists, and government critics, in violation of Article 12 of the ICCPR. Authorities have routinely placed them under house arrest to prevent them from participating in human rights training and meeting with foreign government officials and representatives from the European Union (EU) and the United Nations (UN).

Authorities have frequently invoked Decree 136, adopted in July 2007, to prevent activists and human rights defenders from travelling abroad to participate in training, conferences, and UN-related advocacy events. Decree 136 empowers authorities to bar Vietnamese citizens from leaving Vietnam for “reasons to protect national security, social order, and safety.” As of January 2016, nearly 100 Vietnamese human rights defenders and activists had faced international travel restrictions as a result of the application of Decree 136. They had their passports confiscated, applications for passports rejected or unduly delayed, or were physically prevented from boarding flights.

In addition, the government has also forced activists and government critics, including newly-released political prisoners, into exile. On 12 January 2017, Dang Xuan Dieu, a 37-year-old Catholic activist, was forced on a plane to France shortly after being released from a prison camp where he was serving a 13-year sentence under Article 79 (now Article 109) of the Criminal Code. On 24 June 2017, Pham Minh Hoang, a 62-year-old dissident blogger with dual French-Vietnamese citizenship, was deported to France after being stripped of his Vietnamese nationality on 17 May 2017.

In many cases, authorities also harassed and detained Vietnamese activists and government critics upon their return to Vietnam following their participation in training, conferences, and UN-related advocacy events. The UN has acknowledged at least one case of reprisal against a Vietnamese activist for travelling abroad to cooperate with UN human rights monitoring mechanisms.²

Questions:

- *Provide up-to-date statistics on the number of individuals who have been barred from travelling abroad or from obtaining passports as a result of the application of Decree 136.*
- *Clarify the legal basis for the imposition of the frequent restrictions on Vietnamese citizens’ freedom of movement, such as placing them under house arrest without any form of judicial oversight.*

² UN Human Rights Council, 27th session, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 27 August 2014, UN Doc. A/HRC/27/3 Para. 40

- *Explain the reason for the arrest, detention, and interrogation of numerous human rights defenders, activists, and government critics upon their return to Vietnam.*

Article 14 (Right to equality before courts and tribunals, and right to fair trial)

Harsh sentences, unfair trials, and systematic denial of legal defense

In recent years, Vietnam has intensified arbitrary arrests and convictions of human rights defenders, bloggers, and civil society activists [See below, *Article 19 - Dissent heavily repressed amid tighter internet controls*]. Their trials consistently fell short of international human rights standards, in violation of Article 14 of the ICCPR.

In many cases, defendants were not allowed to call their witnesses. They were regularly denied access to defense counsel during the investigation, and had no opportunity to prepare their defense. The right to the presumption of innocence has been routinely undermined by smear campaigns in state-controlled media. Many trials were held *in camera*, especially trials concerning ‘national security’ offenses. For example, medical doctor Ho Van Hai was sentenced to four years in prison during a secret closed-door trial in Ho Chi Minh City on 1 February 2018 on charges of ‘spreading anti-state propaganda’ (Article 117 of the Criminal Code) for denouncing the toxic effects of the Formosa industrial waste spill. His family learned of the trial in the official press.

Lengthy pre-trial detention remains a typical feature of prosecutions involving activists, human rights defenders, and government critics. This is in violation of the right to be tried “without undue delay” (Article 14(3)(c) of the ICCPR). The Criminal Procedure Code, last amended in 2015, permits virtually unlimited pre-trial detention for “special cases of extremely severe crimes or breaches of national security.” In such cases, after an initial period of four months (which may be extended three times), the head of the Supreme People’s Procuracy has the authority to decide to maintain detention “until the investigation closes.” Human rights lawyer Nguyen Van Dai and his assistant Le Thu Ha were arrested in December 2015 and spent 26 months in pre-trial detention. They were eventually put on trial on 5 April 2018 and sentenced to 15 and nine years in prison respectively, on charges under Article 79 of the Criminal Code (now Article 109 - ‘carrying out activities aimed at overthrowing the people’s administration’). The two were also denied access to their lawyers and family members.

Questions:

- *Explain what criteria are used to determine the length of pre-trial detention for ‘national security’ offenses.*
- *Explain how the statement that the Supreme People’s Procuracy is responsible for protecting “the socialist regime” (Paragraph 12 of Vietnam’s report) is compatible with the covenant.*
- *Report on what steps the government intends to take to ensure the independence of the judiciary from the executive branch.*

Article 18 (Right to freedom of religion or belief)

Registration, recognition, and repression: Religions under state control

Vietnam's very first Law on Belief and Religion, which came into effect in January 2018, reinforces the state management of religions and legalizes intrusive interference into internal religious affairs by the state. Religious groups must follow a cumbersome process of registration and recognition to obtain the right to conduct their activities.³ No legal status is provided for religious groups that cannot, or choose not to, register with the authorities. Members of non-registered religious groups and communities, such as the Unified Buddhist Church of Vietnam (UBCV), Khmer Krom Buddhists, various Protestant house churches, Hoa Hao, and Cao Dai have suffered systematic repression, including arbitrary detention, harassment, and intimidation.

In January and February 2018, 10 Hoa Hao Buddhists were sentenced from two to 12 years in prison on baseless charges of disrupting public order. UBCV leader Thich Quang Do has remained under house arrest without charge since 2003 for refusing to apply for registration. Members of the UBCV and its affiliated Buddhist Youth Movement are subjected to consistent police threats to force them to renounce the UBCV. In February 2018, 24 Hmong Christians suffered beatings and threats from local officials who pressed them to renounce their faith.

A new administrative decree proposes fines of up to US\$2,650 for all activities deemed to "abuse the right to freedom of religion to infringe upon the interests of the state."

Questions:

- *Elaborate on what measures have been taken by the government to reduce administrative obstacles and registration requirements in order to guarantee freedom of religion or belief in compliance with Vietnam's obligations under Article 18 of the ICCPR.*
- *Explain to what extent non-recognized religious groups in Vietnam may carry out their religious activities without harassment by the authorities.*

Article 19 (Right to freedom of opinion and expression)

Dissent heavily repressed amid tighter internet controls

Violations of the right to freedom of opinion and expression are rife in Vietnam. No independent news outlets exist in the country. The government is intolerant of any forms of dissent and routinely uses repressive provisions of the Criminal Code that are incompatible with Article 19 of the ICCPR to arrest, prosecute, and imprison human rights defenders, activists, and bloggers who criticize the government or express support for democracy and human rights.

Between January 2017 and April 2018, the government crackdown on freedom of expression dramatically intensified. At least 59 individuals, including 12 women, were

³ Under the two-step process prescribed by the Law on Belief and Religion, religious groups are first required to register with the authorities. Then, they acquire recognition if they are able to operate for at least five years.

arbitrarily detained or sentenced to prison terms (ranging from one to 15 years) for exercising their right to freedom of opinion and expression.

Nearly all of those arbitrarily detained or imprisoned since January 2017 were arrested and charged under three of the most frequently used repressive provisions of the Criminal Code: 1) Article 79 (now Article 109 - 'carrying out activities aimed at overthrowing the people's administration'); 2) Article 88 (now Article 117 - 'spreading anti-state propaganda'); and 3) Article 258 (now Article 331 - 'abusing democratic freedoms to harm the interests of the state').

The internet is subjected to strict government monitoring and, in many cases, the above-referenced provisions of the Criminal Code have been used to crack down on online freedom of expression. At the end of 2017, the Vietnamese government stepped up measures to tighten monitoring of internet content. On 25 December 2017, Deputy Head of the People's Army Political Department Lt Gen Nguyen Trong Nghia announced that a new 10,000-strong military cyber unit, named 'Force 47,' had begun operating "to fight proactively against the wrong views."

Questions:

- *Provide a detailed legal reasoning on how prosecutions of human rights defenders, activists, bloggers, and government critics under Articles 79, 88, and 258 (now Articles 109, 117, and 331) of the Criminal Code conform with the ICCPR's provisions.*
- *Provide statistics on individuals currently detained or imprisoned under Articles 79, 88, and 258 (now Articles 109, 117, and 331) of the Criminal Code.*
- *Provide details on the steps taken to foster a pluralistic media environment and allow the establishment of independent news outlets in the country.*

Article 21 (Right to freedom of peaceful assembly)

Peaceful demonstrations suppressed amid legislative vacuum

The right to freedom of peaceful assembly is severely restricted in breach of Article 21 of the ICCPR. Police and government-backed thugs have routinely repressed peaceful demonstrations. Vietnam has no law on public assemblies and the introduction of a draft law on demonstrations in the National Assembly has been repeatedly delayed because of disagreement over the text.

Demonstrations are regulated by Decree 38/2005, which prohibits gatherings outside state agencies and public buildings and bans all protests deemed to "interfere with the activities" of Communist Party of Vietnam (CPV) leaders and state organs. Circular 09/2005/TT-BCA, issued by the Ministry of Public Security to implement Decree 38/2005, prohibits gatherings of more than five people without obtaining prior permission from the authorities. These anti-demonstration regulations were widely invoked in 2017 to quell protracted nationwide peaceful protests against the industrial pollution caused by the Taiwanese steel conglomerate Formosa.

Ministry of Public Security Circular 13/2016/TT-BCA, which came into effect in April 2016, contains instructions on the policing of "gatherings causing public disorder in the vicinity of

trials.” In such instances, Circular 13 authorizes police to “immediately deploy forces to prevent the disturbance of public order, isolate and arrest opposition elements, instigators and leaders of the disturbance.” Police have frequently invoked Circular 13 to violently attack and detain activists and human rights defenders who protested against unfair trials or gathered outside the courts to express solidarity with fellow activists.

In many cases, authorities used Article 245 of the Criminal Code (now Article 318 - ‘causing public disorder’) to arrest, prosecute, and imprison high-profile activists and human rights defenders for the mere exercise of their right to freedom of peaceful assembly. On 20 September 2016, land rights activist Can Thi Theu was sentenced to 20 months in prison under Article 245 for leading protests outside various government offices in Hanoi against land confiscation.

Questions:

- *Provide details on plans to enact legislation that regulates the right to freedom of peaceful assembly in line with the provisions of the ICCPR.*
- *Explain how the application of Article 245 (now Article 318) of the Criminal Code complies with Article 21 of the ICCPR with regard to cases involving the legitimate exercise of the right to peaceful assembly.*
- *Clarify how the frequent use of force to disperse public protests complies with international standards applicable to the policing of assemblies.*

Article 22 (Right to freedom of association)

Little space and no protection for civil society

Despite being guaranteed by the Constitution, the right to freedom of association is significantly restricted. All associative activity is controlled by the Communist Party of Vietnam (CPV) and the Vietnamese Fatherland Front (VFF), an umbrella of mass organizations that has a constitutional mandate to oversee the implementation of CPV policies at the grassroots level. The Constitution recognizes only one political party (the CPV) and one trade union (the Vietnam Confederation of Labor). In January 2018, CPV General-Secretary Nguyen Phu Trong commended the police for “preventing the establishment of political opposition groups.”⁴

Associations are regulated by a series of decrees that are inconsistent with Article 22 of the ICCPR. Article 4 of Decree 12 on international NGOs (INGOs) in Vietnam, enacted in 2012, forbids INGOs from “organizing or carrying out political, religious or other activities that are inconsistent with state interests or the security, defense and great unity of the Vietnamese people.” There is no Law on Associations. A draft bill presented to the National Assembly in 2016 was rejected because of its restrictive contents. Thousands of informal groups, associations, clubs, and charities have formed in recent years, but there is no legal framework to protect them, and their members risk harassment, travel bans, and detention at any moment. In April 2018, the founder and seven members of the Brotherhood for Democracy, a peaceful group that uses the internet to promote human rights, were

⁴ Nguyen Phu Trong, *Opening speech at the 73rd National Conference of Public Security, Hanoi*, 15 January 2018, available at: http://mps.gov.vn/web/guest/ct_trangchu/-/vcmsviewcontent/GbkG/2004/2102/39530 [in Vietnamese]

sentenced to prison terms ranging from seven to 15 years on charges of “attempting to overthrow the people’s government.”

Questions:

- *Report on a timeframe for the introduction of a new draft of the Law on Associations in the National Assembly and on plans to consult international experts to ensure that the draft conforms to international standards on freedom of association.*
- *Explain how the dominating role of the CPV in Vietnam’s political, social, and economic institutions is compatible with Article 22 of the covenant.*
- *Clarify what status non-governmental and international human rights organizations have in Vietnam, and provide statistics on their number and nature.*

Article 25 (Participation in public affairs and the right to vote)

Selections in lieu of elections in the one-party state

Vietnam is a one-party state, where all political institutions are dominated by the Communist Party of Vietnam (CPV). Parliamentary elections are held every five years. However, these polls are not genuine, inclusive, or participatory because the right to stand for election in the National Assembly is systematically violated. Citizens are allowed to vote only for candidates who are either handpicked by the CPV or screened and approved by the CPV-backed mass organization, the Vietnamese Fatherland Front (VFF).

This trend is illustrated by the latest parliamentary elections, which were held in May 2016. Ahead of those polls, authorities refused to approve more than 100 independent or self-nominated candidates – including activists and dissidents.⁵ According to a local election official, a handful of “fake” independent candidates – all with official backing – were allowed to run to create a facade of democracy.⁶ Other independent candidates reported facing threats and intimidation by local officials.⁷

Eventually, only 11% (or 97 of 870) of the candidates who ran for the 500 seats at stake were not CPV members.⁸ More than 90% of the National Assembly deputies who were elected were CPV members, and only two ‘independent’ candidates and 19 non-party members nominated by state institutions made it to the legislature.⁹

Questions:

- *Report on the measures taken to encourage and promote political pluralism.*
- *Elaborate on the measures taken to promote a multi-party political system and the right of individuals to stand for election without the approval of the CPV.*

⁵ AFP, *Vietnam thwarts dissidents, pop star election bid*, 26 Apr 2016; Reuters, *Vietnam communists tighten grip after victory in strictly vetted vote*, 9 June 2016

⁶ AFP, *Vietnam thwarts dissidents, pop star election bid*, 26 Apr 2016

⁷ AFP, *Vietnam thwarts dissidents, pop star election bid*, 26 Apr 2016; NYT, *Obama’s Vietnam Trip Follows Controlled Parliamentary Elections*, 20 May 2016

⁸ Xinhua, *870 candidates to run for 500 seats in Vietnamese parliament in May*, 26 April 2016

⁹ Reuters, *Vietnam communists tighten grip after victory in strictly vetted vote*, 9 June 2016; Xinhua, *Vietnam elects 496 deputies to new parliament*, 9 June 2016; CNA, *Vietnam declares election a success despite proxy voting allegations*, 9 Jun 2016

Article 27 (Rights of minorities)

Cultural, economic, and religious discrimination against minorities

Vietnam has over 50 ethnic communities with unique religious, linguistic, and cultural characteristics and identities. Ethnic minority communities (14.3% of the population, over 13 million people) are among the poorest people in Vietnam. They suffer serious human rights violations, including: expropriation of ancestral lands, forced evictions and displacement, suppression of cultural traditions, arbitrary arrest, and enforced disappearances. In addition, spontaneous or state-sponsored migration of Kinh (Vietnam's largest ethnic group) people into minority regions has often resulted in the forced implementation of unsuitable development programs, and religious persecution. The only complaint mechanism available to members of ethnic communities is the government's Committee on Ethnic Minority Affairs. However, this body has no authority to enforce decisions or implement measures that would benefit ethnic minorities.

The cultural activities of the ethnic minorities are determined by the CPV without consultation with local populations. There is no law to govern ethnic minority affairs and guarantee ethnic minority rights. Vaguely worded national security clauses in the Criminal Code have often been used to target ethnic minorities, such as Article 116 ('undermining the unity policy'), Article 320 ('performing superstitious practices'), or Article 121 ('organizing, coercing, instigating illegal emigration for the purpose of opposing the people's government'). Article 121 has been used to detain Montagnards and members of other ethnic communities fleeing Vietnam to escape persecution.

The government often accuses ethnic minorities of committing "evil practices" in order to suppress their cultural rights. In March 2014, seven ethnic Hmong followers of the Duong Van Minh faith in Tuyen Quang Province were sentenced to prison terms of up to two years because of their religious practices, on charges of 'abusing democratic freedoms to harm the interests of the state' under Article 258 (now Article 331) of the Criminal Code.

Ethnic Christian Montagnards in Vietnam's central highlands are also subjected to repression because of their religious beliefs. Over the past few years, several hundred Montagnards have been forced to flee to Cambodia. Khmer Krom Buddhists have been deprived of their lands and forbidden from teaching their native language.

Questions:

- *Provide statistics on the number of Montagnards, Hmong, Khmer Krom, and other members of ethnic minorities who are currently detained, as well as details about the crimes of which they are accused.*
- *Report on the steps taken by the government to compensate members of ethnic minorities who have been evicted from their land and resettled to make way for infrastructure and investment projects.*
- *Explain how the government equates the suppression of minorities' cultural practices with its obligations under Article 27 of the ICCPR.*