



Submission to the United Nations Human Rights Committee

Information on State Parties to be Examined – Vietnam

125th session (March 2019)

Freedom Now welcomes the opportunity to contribute information to the Human Rights Committee prior to its third period review of the Socialist Republic of Viet Nam (“Vietnam”).

Freedom Now is a non-partisan, non-governmental organization dedicated to protecting democratic principles and the rule of law by working to eliminate the politically motivated harassment and imprisonment of those who peacefully advocate and exercise fundamental rights.

Arbitrary detention in Vietnam is on the rise. Although government obfuscation makes these numbers difficult to confirm, it is estimated that by the end of 2017, over 100 prisoners of conscience populated Vietnam’s jail cells.¹ In 2017 alone the government arrested three times as many people for peacefully expressing their political or religious views as in 2016.² This submission documents the Vietnamese government’s use of arbitrary detention and politically-motivated prosecutions in violation of international law, as well as the attendant human rights violations. As outlined in detail below, Vietnam reportedly continues to silence human rights defenders, journalists, bloggers, and religious minorities through abuse and wrongful criminal detention. Such practice violates the government’s obligations under the International Covenant on Civil and Political Rights (“ICCPR”).

I. Freedom from Torture (Article 7 of the ICCPR)

The Vietnamese government has made some positive changes to its domestic law that brings the country more in line with international laws and obligations. The use of torture is prohibited by the Constitution and Vietnam has ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”). Nevertheless, the use of torture and ill treatment during interrogation and detention remains widespread. In a recent report issued by Freedom Now, 68% of Vietnamese refugees interviewed for research reported being subjected to torture.³

In addition to torture, detainees are often subjected to cruel and inhuman treatment, kept in prisons with poor sanitation, bad food, and limited access to medical care. The Human Rights Committee, the Human Rights Council, the High Commissioner for Human Rights, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have determined that poor prison conditions can also amount to cruel and inhumane punishment. The Committee against Torture has concluded that failure to provide medical care to detainees can amount to cruel and degrading treatment under the CAT.

Torture and mistreatment of detainees is particularly prevalent among persons arrested for peacefully exercising their rights to freedom of expression, association, assembly, or conscience. The Special Rapporteur on the situation of human rights defenders, for instance, has expressed deep concern about “a series of alarming trends detected in the situation of human rights defenders in Vietnam,” noting “a persistent pattern of physical assaults and intimidation which are perpetrated either by police officers or

¹ *Free Vietnam’s Political Prisoners!*, Human Rights Watch (Nov. 3, 2017), available at <https://www.hrw.org/video-photos/interactive/2017/11/03/free-vietnams-political-prisoners>.

² *Country Report on Human Rights Practices for 2017: Vietnam*, U.S. State Department at 6, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dldid=277131>.

³ *Legal Persecution: Vietnam’s Use of Law as a Weapon Against Civil Society*, Freedom Now and American University’s Washington College of Law (Nov. 2018), available at <http://www.freedom-now.org/wp-content/uploads/2018/11/Legal-Persecution-FINAL.pdf>, pg. 22.

unidentified individuals against human rights defenders, religious minorities, or those with dissenting voices, including government critics and social activists.”⁴ Yet, despite this alarming trend and despite Vietnam’s obligations under various international instruments, the government has largely ignored attempts by UN human rights mechanisms to engage it in discussion or amelioration of the problem.

Recommendations to Vietnam

- a) Thoroughly investigate all cases of deaths in custody and torture directed against human rights activists, journalists, government critics, and religious persons. Ensure that perpetrators of such abuses are held accountable and that victims of such abuses are appropriately rehabilitated and compensated.

II. The Right to Liberty and Security of the Person (Article 9 of the ICCPR)

The 2015 Criminal Procedure Code’s arrest provisions depart from due process standards under international law in several important ways. Articles 9(3) and (4) of the ICCPR require that detainees be brought “promptly” before a judicial authority to decide “without delay” on the lawfulness of such detention. The Human Rights Committee has interpreted the term “promptly” to be within about 48 hours, unless there are exceptional circumstances.⁵ This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights—such as freedom from torture—that are often at risk before a detention has been judicially sanctioned.⁶

Although Article 114(1) of the Criminal Procedure Code requires the arresting authority to make a determination whether to temporarily detain or discharge the arrestee within 12 hours, the procuracy, serving as the “independent” authority reviewing such decision, is not given a specific time frame in which to respond to this initial temporary detention determination; it is only when the investigating authorities request an extension of this temporary detention under Article 118 that the procuracy must respond within 12 hours. Thus, an arrestee may sit in detention for up to four days before the procuracy, by law, must adjudicate the legality of such person’s detention. Also problematic is that, with the procuracy’s blessing, an individual may sit in “temporary detention” for up to nine days.

In addition to orders of temporary detainment, Article 119 of the Criminal Procedure Code provides for extended pre-trial detention for a broad range of detainees, including those accused of perpetrating “a horrific or extremely severe felony”; or certain lesser felony or misdemeanor if there is a showing, *inter alia*, that such person is likely to reoffend, be difficult to find later, abscond, tamper with evidence or witnesses, or continue to be a danger to the public.⁷ The government can hold detainees in pre-trial detention for up to 24 months⁸ and prolonged pre-trial detention appears to be a particular problem for those accused of national security offenses.⁹

For both temporary detainment and extended pre-trial detention, the Criminal Procedure Code does not afford to a detainee the right to *habeas corpus*, as guaranteed under Article 9(3) and (4) of the ICCPR. Although the legality of temporary detainment order or an order for prolonged pre-trial detention may be

⁴ Michael Forst, *Report of the Special Rapporteur on situation of human rights defenders*, ¶ 474, U.N. Doc. A/HRC/34/52/Add.1, (Feb. 20, 2017).

⁵ *Human Rights Committee, General Comment No. 35*, ¶ 34, U.N. Doc CCPR/C/GC/35 (Dec. 16, 2014), available at goo.gl/p5Y8S6.

⁶ *Id.* at ¶ 34, 35

⁷ For the full list of persons against whom longer pre-trial detention may be applied, see Criminal Procedure Code, No. 101/2015/QH13, at arts. 119(1)-(3), (Nov. 27, 2015), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=446020.

⁸ *Country Report on Human Rights Practices for 2017: Vietnam*, *supra* note 2 at 9.

⁹ *Id.* at 8.

adjudicated by the procuracy, the Criminal Procedure Code does not grant to a detainee the right to challenge in court, with the assistance of counsel, the legal basis of his detention.

Moreover, the permissible reasons for prolonged pre-trial detention under Article 119 of the Criminal Procedure Code are far broader than those permitted under international law. Article 9(3) of the ICCPR makes it clear that “it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial.” The Human Rights Committee has found that “[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime... Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”¹⁰ Article 119 of the Criminal Procedure Code, however, authorizes pre-trial detention for a broader array of reasons, including that the detainee is accused of perpetrating heinous crimes or has “no definite place of residence.”¹¹

In addition to these issues with the law *de jure*, significant pre-trial detention abuses occur in *de facto* practice. For instance, Article 31 of the Constitution and Article 25 of the Criminal Procedure Code guarantee timely trials to defendants, however extended pre-trial detention periods necessarily mean that trials are unduly delayed. Detainees awaiting trial are also frequently held *incommunicado*, unable to communicate with either family or attorneys. Journalist Nguyen Van Hoa, for example, was arrested in January 2017 for his reporting on the Formosa disaster. He remained in pre-trial detention until his trial and conviction 11 months later—the first three months of which he was held *incommunicado*. Such *incommunicado* detention and delayed trials are violations of Articles 9(3)¹² and Article 14(3)(c).

As noted in section I above, torture remains prevalent throughout the Vietnamese criminal system. Although Articles 58(d) and 59(c) of the Criminal Procedure Code guarantee to detainees the right to remain silent, in practice detainees are often abused or tortured in order to obtain a confession and other information.¹³

A particularly common abuse appears to be unfounded arrests and custodial detention, in violation of Article 9(1) of the ICCPR. Local officials are known to abuse Criminal Procedure Code provisions that broadly allow arrest or “emergency custody” by frequently and repeatedly calling people in for “working sessions” in which they were questioned, interrogated, and abused for long periods of time.¹⁴

Recommendations to Vietnam

- a) Immediately and unconditionally release and rehabilitate the civil and political rights of human rights defenders, bloggers, journalists, religious minorities, and all other individuals detained under criminal or administrative charges for exercising their fundamental human rights.
- b) Thoroughly investigate all cases of arbitrary detention directed against human rights activists, journalists, government critics, and religious persons. Ensure that perpetrators of such abuses are held accountable and that victims of such abuses are appropriately rehabilitated and compensated.
- c) Amend the Criminal Procedure Code to ensure robust due process protections surrounding any deprivation of liberty and bring into compliance with Vietnam’s obligations under international human rights law, specifically Article 9 of the ICCPR. Ensure that such

¹⁰ *General Comment No. 35, supra* note 4 at ¶ 38.

¹¹ Criminal Procedure Code, *supra* note 6 at art. 119.

¹² *General Comment No. 35, supra* note 4 at ¶ 35.

¹³ Criminal Procedure Code, *supra* note 6 at arts. 58(d), 59(c).

¹⁴ *Legal Persecution: Vietnam’s Use of Law as a Weapon Against Civil Society, supra* note 3, at pg. 17.

- amendments bar arrest and temporary detention (such as “working sessions”) as a means of harassment and *incommunicado* detention.
- d) Amend the Criminal Code to eliminate provisions that criminalize activities protected by the right to liberty and security of the person, including, among others, Article 118. Bring the Criminal Code into compliance with Vietnam’s obligations under international human rights law, specifically Article 9 of the ICCPR.

III. The Right to Justice and a Fair Trial (Article 14 of the ICCPR)

Vietnamese trials consistently fail to meet international fair standards.¹⁵ Although Article 103 of the Constitution declares that “Judges and Assessors are independent and shall only obey the law; interference with the trials of the Judges and Assessors by bodies, organizations, and individuals is strictly prohibited,”¹⁶ in practice, the Communist Party of Vietnam (“CPV”) dominates the selection and the ideology of the judiciary. As has been reported, “the judicial system was opaque and lacked independence, and political and economic influences regularly affected judicial outcomes . . . most, if not all, judges were members of the Communist Party of Vietnam and underwent screening by the Party and local officials during their selection process to determine their suitability for the bench.”¹⁷

This lack of judicial independence from the CPV has resulted in clear bias in favor of the government in cases where the government’s interest appears to be at stake¹⁸ and is in violation of Vietnam’s obligations under Article 14(1) of the ICCPR, which entitles criminal defendants to “a fair and public hearing by a competent, independent and impartial tribunal established by law.” The Human Rights Committee has confirmed that this “[t]he requirement of independence refers, in particular, to . . . the actual independence of the judiciary from political interference by the executive branch and legislature.”¹⁹ In Vietnam, however, the judiciary’s dependence on and bias in favor of government interests ushers in a host of subsidiary fair trial violations and ensures that politically-sensitive trials have pre-determined outcomes.²⁰

For instance, Vietnamese courts regularly fail to uphold the principle of the presumption of innocence, in violation of Article 14(2) of the ICCPR. Although this presumption is guaranteed in both Article 31 of the Constitution (“a defendant shall be regarded as innocent until the crime is proved in accordance with legal procedure and the sentence of the Court has acquired full legal effect”)²¹ and Article 13 of the Criminal Procedure Code (“accused person is deemed innocent until his guilt is evidenced according to the procedures and formalities as defined in this Law and a Court passes a valid conviction”),²² courts—particularly in politically-motivated trials—frequently appear to presume a defendant’s guilt.²³

Another common occurrence is the denial of the right to legal counsel as well as the time and facilities needed to prepare for a defense, rights that are also guaranteed by Vietnamese law. Article 16 of the

¹⁵ See e.g., *Vietnam: Events of 2016*, Human Rights Watch (Sept. 20, 2016), available at <https://www.hrw.org/world-report/2017/country-chapters/vietnam>; *Country Report on Human Rights Practices for 2015: Vietnam* at 16, U.S. State Department, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252813>.

¹⁶ Constitution of the Socialist Republic of Vietnam, art. 103, (2013), available at http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf.

¹⁷ *Country Report on Human Rights Practices for 2015: Vietnam*, *supra* note 13 at 16.

¹⁸ *Country Report on Human Rights Practices for 2016: Vietnam* at 1, U.S. State Department, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265386>.

¹⁹ *General Comment No. 35*, *supra* note 4 at ¶ 29.

²⁰ *Country Report on Human Rights Practices for 2017: Vietnam*, *supra* note 2 at 15.

²¹ Constitution of the Socialist Republic of Vietnam, *supra* note 14 at art. 31; Criminal Procedure Code, *supra* note 6 at art.13.

²² Criminal Procedure Code, *supra* note 6 at art. 13.

²³ *Country Report on Human Rights Practices for 2017: Vietnam*, *supra* note 2 at 11; Civil Rights Defenders, *Human Rights in Vietnam*, (Sept. 25, 2016), available at <http://old.civilrightsdefenders.org/country-reports/human-rights-in-vietnam/>.

Criminal Procedure Code provides that “An accused person is entitled to defend himself or be defended by a lawyer or another person.”²⁴ Additionally, Article 31 of the Constitution states, “Any person who has been arrested, held in custody, prosecuted, investigated, charged, or brought to trial in violation of the law has the right to self-defend or to seek the assistance of defense from lawyers or other people.”²⁵

Unfortunately, despite these express guarantees codified in the law, Vietnam frequently impedes criminal defendants from accessing legal assistance through a variety of intimidation and coercive techniques. Credible reports suggest that authorities pressure defense lawyers not to represent religious or democracy activists.²⁶ Authorities have “restricted, harassed, arrested, disbarred, and, in some cases, detained human rights attorneys who represented political activists.”²⁷ This pressure has led to a widespread reluctance by lawyers to take on any human rights-related or politicized cases for fear of being targeted themselves, further exacerbating the issue of accessibility.²⁸

Though the law provides for access to counsel at the time of detention, authorities use bureaucratic delays to deny this right.²⁹ A detainee is often prevented from meeting his attorney outright or, if she or he is permitted to communicate with an attorney, is not given enough time to prepare for an adequate defense.³⁰ Defense lawyers “routinely reported having little time before trials to talk to their clients or examine the evidence against their clients.”³¹ By law, the government may prohibit a suspect being investigated under national security laws from accessing his attorney until after the officials have completed the investigation and formally charged such suspect with a crime.³²

There are also numerous reports that authorities have prevented detainees from communicating with and being defended by attorneys of their choosing. For instance, in the case of Nguyen Huu Quoc Duy, an online activist who was convicted to three years in prison in August 2016, Vietnamese authorities barred Duy from meeting with attorneys hired by his family until his appeal hearing; instead the government provided Duy with an attorney of its choosing during the trial of first instance.³³

In addition to this *de facto* denial of legal assistance, new amendments to the Criminal Code, which came into effect in 2018, have gravely infringed upon the sanctity of the attorney-client relationship. In particular, Article 19 of the amended Criminal Code has compromised the ability of individuals charged under vague national security laws to obtain effective legal representation. Article 19(3) requires lawyers to report crimes committed by clients where such crimes fall under the umbrella of national security or “other especially serious crimes.”³⁴ The Ho Chi Min Bar Association, which complained in a letter to the National Assembly, noted that the government considers everything to be a potential national security

²⁴ Criminal Procedure Code, *supra* note 6 at art. 16.

²⁵ Constitution of the Socialist Republic of Vietnam, *supra* note 14 at art. 31.

²⁶ *Country Report on Human Rights Practices for 2016: Vietnam*, *supra* note 16 at 11, 16.

²⁷ *Id.* at 16.

²⁸ *Freedom in the World: Vietnam 2015*, Freedom House, available at <https://freedomhouse.org/report/freedom-world/2015/vietnam>.

²⁹ *Country Report on Human Rights Practices for 2015: Vietnam*, *supra* note 13 at 11.

³⁰ Civil Rights Defenders, Human Rights in Vietnam, (Sept. 25, 2016), available at <http://old.civilrightsdefenders.org/country-reports/human-rights-in-vietnam/>.

³¹ *Country Report on Human Rights Practices for 2017: Vietnam*, *supra* note 2 at 12.

³² *Id.* at 8.

³³ *Petition to: United Nations Working Group on Arbitrary Detention, in the Matter of Nguyen Huu Quoc Duy*, at 26, Freedom Now (Sept. 19, 2017), available at <http://www.freedom-now.org/wp-content/uploads/2017/09/Nguyen-Huu-Quoc-Duy-Petition-to-the-UNWGAD-REDACTED-VERSION.pdf>.

³⁴ Criminal Code (2015), No. 100/2015/QH13, arts. 19(3), (Nov. 27, 2015), available at <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (“[When] the person who does not report [on people] is a lawyer, he/she is not held criminally accountable in accordance with clause 1 of this article, except for not reporting on national security crimes or other especially serious crimes which the person he/she is defending is preparing to carry out, is carrying out, or has carried out and the defender clearly knows about it while carrying out his/her defense duty”).

issue, and that the new law would essentially make lawyers “agents of the state.”³⁵ Lawyers need to be able to build trust among their clients, in part by guaranteeing that information provided by clients will be treated confidentially; in potentially putting attorneys at criminal risk for refusing to disclose their client’s crime, Article 19(3) not only chills the relationship between defendant and attorney, but will also likely reduce the numbers of attorneys willing to take on such representations. This chilling effect is particularly concerning when viewed in the context of the government’s tendency to prosecute human rights defenders and other activists under national security laws. Moreover, the fact that Article 19(3) undermines trusted legal assistance for criminal defendants accused of the most severe crimes is particularly egregious as it is precisely in such situations—where the risk of lengthy deprivation of liberty or the death penalty is high—that rigorous assistance of counsel is most crucial.

In addition to infringing upon defendants’ right to legal counsel, the government often prevents defendants from accessing the information they need to adequately prepare a defense. Defendants may not be given prompt notice of the charges against them.³⁶ In one egregious example, blogger Nguyen Huu Vinh was not informed that he had a trial scheduled until the day before it began.³⁷ The government also commonly prevents defendants and their lawyers from accessing government evidence before trial, including basic information such as who the prosecution’s witnesses will be.³⁸

The Human Rights Committee has confirmed that a defendant’s ability to confidentially communicate with and be defended by an attorney of his or her choosing is an “an important element of the guarantee of a fair trial.”³⁹ Such a right requires that a defendant have prompt access to counsel from the outset of their detention.⁴⁰ Article 14(3)(b) of the ICCPR also guarantees a defendant the right to “adequate time and facilities for the preparation of his defense” and Article 14(3)(a) specifies that a defendant has the right to be promptly informed of the charges against him.

Although Vietnamese law includes the presumption that trials should be held publicly,⁴¹ the Constitution does allow “special cases, which require the protection of state secrecy, fine customs and beautiful habits of the nation, the protection of youths and the protection of privacy according to the legitimate requirement of the persons concerned” to be held in private.⁴² The government regularly uses the protection of national security as a pretext to deny open trials to human rights activists and civil society leaders, where due process violations are often rife.

For example, online activist Nguyen Huu Quoc Duy was tried in a secret proceeding on August 23, 2016. Although Duy’s family attempted to attend the trial, police at the courthouse claimed that the family needed an invitation from the court to enter. Duy’s mother was not only denied access to the courtroom, but was physically detained by the police for the duration of the trial, taken to a local police station and told that she would only be able to leave once the trial had ended. (The trial lasted only one day; Duy was convicted of spreading anti-government propaganda under Article 88 of the 1999 Criminal Code.) Because Duy was not permitted a lawyer of his choice, other than the defendant, only court officials or government-approved attorneys were witness to the proceeding.⁴³

³⁵ See also *Vietnam: New Law Threatens Right to a Defense*, Human Rights Watch (June 21, 2017), available at <https://www.hrw.org/news/2017/06/21/vietnam-new-law-threatens-right-defense>.

³⁶ *Freedom House, Freedom in the World: Vietnam 2015*, available at <https://freedomhouse.org/report/freedom-world/2015/vietnam>.

³⁷ *Country Report on Human Rights Practices for 2016: Vietnam*, *supra* note 16 at 10.

³⁸ *Id.* at 16.

³⁹ Human Rights Committee, *General Comment No. 32*, ¶¶ 32, 34, U.N. Doc CCPR/C/GC/32 (Aug. 23, 2007), available at <http://undocs.org/CCPR/C/GC/32>.

⁴⁰ *General Comment No. 35*, *supra* note 4 at ¶ 35.

⁴¹ Constitution of the Socialist Republic of Vietnam, *supra* note 14 at art. 31.

⁴² *Id.* at art. 103.

⁴³ *Petition to the United Nations Working Group on Arbitrary Detention*, *supra* note 31 at 10.

In November 2017, Nguyen Van Hoa, a videographer for Radio Free Asia, was also tried secretly; neither members of Hoa's family nor defense attorneys of his own choosing were present.⁴⁴ After a half-day trial he was convicted to seven years in prison for spreading propaganda against the state under Article 88 of the 1999 Criminal Code.⁴⁵

Article 14(1) of the ICCPR guarantees a public trial to all criminal defendants. The Human Rights Committee has emphasized the importance of a public hearing as it "ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large."⁴⁶ Moreover, a public hearing requires not just that some individuals unconnected with the proceedings are permitted into the courtroom, rather the hearing must be open to the general public, including media, without limiting entrance to a select group of people.⁴⁷

Article 14(1) of the ICCPR does permit that a trial may be held in private for, *inter alia*, reasons of national security, however this allowance for a private trial is narrowly drawn. The Human Rights Committee has stated that "Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public."⁴⁸ In contrast to these principles, however, Vietnam is in the practice of holding the entire trial where an individual has been charged with a national security offense behind closed doors.

Recommendations to Vietnam

- b) Ensure that all detainees have immediate and confidential access to legal counsel of their own choosing, that trials are open to the public, that confessions are not obtained via use of torture or other undue pressure, that the presumption of innocence is respected and that all other procedural rights are fully respected.
- c) Thoroughly investigate all cases of fair trial abuse against human rights activists, journalists, government critics, and religious persons. Ensure that perpetrators of such abuses are held accountable and that victims of such abuses are appropriately rehabilitated and compensated.
- d) Amend the Criminal Procedure Code to ensure robust due process protections surrounding the trial process and bring into compliance with Vietnam's obligations under international human rights law, specifically Article 14 of the ICCPR. Ensure that such amendments provide for *habeas corpus* proceedings within 48 hours of detention, release pending trial (except in situations permitted by international law), fair and public trials adjudicated by an independent and unbiased judiciary, full and confidential access an attorney of the accused's choice at all stages of the legal proceedings, and sufficient time and facilities to prepare a defense.
- e) Amend the Criminal Code to eliminate provisions that criminalize activities protected by the right to fair trial, "preparatory" offenses, and require defense attorneys to breach confidentiality in certain situations, including, among others, Article 19(3). Bring the Criminal Code into compliance with Vietnam's obligations under international human rights law, specifically Article 14 of the ICCPR.

IV. Freedom of Belief (Article 18 of the ICCPR)

⁴⁴Profile: Nguyen Van Hoa, The 88 Project (last updated June 5, 2018), available at <https://vietnamprisoners.info/prisoner/36/nguyen-van-hoa>.

⁴⁵Vietnamese blogger Nguyen Van Hoa gets Seven Years in Prison, Reporters Without Borders (Nov. 27, 2017), available at <https://rsf.org/en/news/vietnamese-blogger-nguyen-van-hoa-gets-seven-years-prison>.

⁴⁶General Comment No. 32, *supra* note 37 at ¶ 28.

⁴⁷*Id.* at ¶ 29.

⁴⁸*Id.*

The Vietnamese government has a long history of restricting religious freedom, particularly in cases where it perceives certain religious groups as having ties to the West or criticizing repressive government practices.⁴⁹ Officially, the government attempts to promote an image of religious tolerance,⁵⁰ and the Constitution nominally guarantees religious freedom for all people.⁵¹ Nonetheless, the government engages in a massive effort to manage the practice of religion, favoring certain groups, while making it difficult for other groups to practice their faith.

This effort to suppress religious freedom has not gone unnoticed by the international community. The UN Special Rapporteur on freedom of religion or belief expressed concern about Vietnam's control over its citizens' religious beliefs during a 2014 mission to Vietnam.⁵² Vietnam received 10 recommendations from members of the UN Human Rights Council during its most recent Universal Periodic Review cycle relating to its suppression of religious belief, including one which specifically called for Vietnam to bring its regulatory and legal framework into compliance with international religious rights standards.⁵³

Despite this international criticism, Vietnam has not improved its respect for freedom of religion. On January 1, 2018, a new Law on Belief and Religion went into effect.⁵⁴ Rather than paving the way for greater religious freedom, this law expanded government control over religious groups, and imposed stronger penalties on those who violate the law.⁵⁵ The law codifies the right of the government to intervene in vetting and appointing clergy, as well as the dissemination of messaging and materials.⁵⁶ Article 5(5) of the Law on Belief and Religion explicitly reflects the concern (also embedded in the Constitution) that freedom of belief might be abused to mask anti-government activities, as the provision specifically prohibits taking advantage of religious freedom to, *inter alia*, harm national security, public order, or morality or tarnish the "image of national heroes and notables."

The government's extraordinarily restrictive understanding of religious freedom is evident in the way the Law on Belief and Religion defines key terms. For instance, Article 1(5) defines "Belief-based activities" as being limited to those activities that "express the worship of ancestors, commemoration of people with meritorious service to the nation and/or their community. Religious operations and other national religious activities must reflect beautifully our traditional, historical, cultural and ethical values of Vietnamese communities."⁵⁷ This definition is so vague as to allow the government broad discretion when determining whether to approve registration for a particular group—which is particularly problematic as Article 1(11) restricts the definition of "religions organization" to only those groups which have been recognized by the government.⁵⁸ Although not explicit in the law, these ill-defined terms allow the

⁴⁹ *Freedom of Religion or Belief in Vietnam: State Management of Religion*, at 7, Vietnam Committee on Human Rights (2016), available at <http://queme.org/app/uploads/2016/02/Report-VCHR-FoRB-in-Vietnam-State-management-of-religions-Feb-2016.pdf>.

⁵⁰ Ministry of Foreign Affairs, *Religion and Beliefs*, available at http://www.mofahcm.gov.vn/en/mofa/en/tt_vietnam/nr050324092159/.

⁵¹ Constitution of the Socialist Republic of Vietnam, *supra* note 14 at art. 24.

⁵² *Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Addendum: Mission to Viet Nam (21 to 31 July 2014)*, UN Doc. A/HRC/28/66/Add.2, (Jan. 30, 2015).

⁵³ See e.g., UPR Info, Database of Recommendations: Vietnam, available at goo.gl/sXScCJ.

(Specifically, UPR Cycle 2 recommendations from Chile, Singapore, United Arab Emirates, Italy, Canada, Belgium, Czechia, Poland, Cape Verde and Mexico).

⁵⁴ Law on Belief and Religion, No. 2016/QH13, (2016), available at <http://queme.org/app/uploads/2016/02/Report-VCHR-FoRB-in-Vietnam-State-management-of-religions-Feb-2016.pdf>; see also USCIRF, *Annual Report 2018*, 1, 3, available at http://www.uscirf.gov/sites/default/files/Tier1_VIETNAM.pdf.

⁵⁵ *Id.*

⁵⁶ Law on Belief and Religion, *supra* note 52 at arts. 36 and 37; see also USCIRF *Annual Report 2018* *supra* note 52 at 3; *Freedom in the World: Vietnam 2018*, Freedom House, available at <https://freedomhouse.org/report/freedom-world/2018/vietnam>.

⁵⁷ Law on Belief and Religion, *supra* note 52 at art. 1(5)

⁵⁸ *Id.* at art. 1(11).

government to continue to deny registration to religious groups that do not support the Communist Party of Vietnam and are seen as a threat to the power and control of the state when, for example members speak out in support of civil and political rights.

More than anything, the Law on Belief and Religion serves to bring religious organizations and activity under government control. Chapter III, Article 8 of the Law on Belief and Religion includes onerous registration requirements for all religious activities and operations, which include presenting detailed information about the religion's credo, purpose, yearly planned activities, and size as well as personal details of representatives.⁵⁹ Such strict registration requirements not only puts heavy administrative burdens on religious organizations, but also exposes to the government any activities a religious organization may wish to take in opposition to government interests. Because the government has the power to decline to register any religious organizations whose activities it deems to be harmful to its interests, such burdensome registration and reporting requirements severely curtail individuals' ability to freely practice their religious and associate with other believers.⁶⁰

Recommendations to Vietnam

- a) Amend or repeal the Law on Belief and Religion and all related laws, decrees and regulations to ensure robust protections for the freedom of belief and religion and to bring into compliance with Vietnam's obligations under international human rights law, specifically Article 18 of the ICCPR. Ensure that such repeal or amendment extends protection for adherents of all beliefs or religions and ends registration requirements.
- b) Amend the Criminal Code to eliminate provisions that criminalize activities protected by the right to freedom of belief. Bring the Criminal Code into compliance with Vietnam's obligations under international human rights law, specifically Article 18 of the ICCPR.

V. Freedom of Expression (Article 19 of the ICCPR)

During the reporting period, Vietnam's National Assembly passed several laws and ordinances that restrict freedom of expression.

Decree 72, issued in 2013, mandated that blogs and social websites could only be used to share personal information and prohibited the sharing of news articles and material that harmed national security or opposed the Vietnamese government.⁶¹

Decree 174, effective since 2014, imposed fines on anyone criticizing the government, defaming government leaders, or "spreading propaganda" on social media;⁶² it also includes a provision requiring internet service providers to place their primary servers inside Vietnam.

The 2015 Law on Cyber Information Security regulates network information systems to ensure the security of online information. Yet, the law also includes provisions that undermine the privacy of individuals by requiring businesses that provide encryption services to be based in Vietnam and to provide user data, when requested, to the Ministry of Public Security. Without any apparent restrictions on when and why the government can request such information, individuals risk having their private

⁵⁹ *Id.* at art. 8, Ch. III.

⁶⁰ *USCIRF Annual Report 2018*, *supra* note 52 at 3.

⁶¹ *Vietnam Internet Restrictions Come into Effect*, BBC News (Sept. 1, 2013), available at <https://www.bbc.com/news/world-asia-23920541>; *New Cybersecurity Law Threatens Press Freedom in Vietnam*, Committee to Protect Journalists (June 12, 2018), available at <https://cpj.org/2018/06/new-cybersecurity-law-threatens-press-freedom-in-v.php>.

⁶² *Freedom in the World: Vietnam 2017*, Freedom House, available at <https://freedomhouse.org/report/freedom-world/2017/vietnam>.

communications monitored.⁶³ The updated 2018 Law on Cyber Security contains a number of provisions designed to curtail free expression, including prohibiting the use of cyberspace to spread information “that has the content of propaganda opposing the State” and prohibiting the use of websites to provide information the government deems violations of “national sovereignty and security.”⁶⁴

The 2017 Law on the Press proscribes what the media should focus on; for example, according to Article 4(2), the press should “propagandize and disseminate, and contribute to the protection of, the line and policies of the Party...and build and promote socialist democracy, strengthen the great national unity bloc, and build and protect the socialist Fatherland of Vietnam.”⁶⁵

In addition, a number of provisions in Vietnam’s 2015 Criminal Code are worded vaguely enough to be interpreted as criminalizing expression that the government deems offensive, such as “carrying out activities aimed at overthrowing the people’s administration,”⁶⁶ “undermining the unity policy,”⁶⁷ “conducting propaganda against the state,”⁶⁸ “disrupting security,”⁶⁹ or “abusing democratic freedoms to infringe upon the interests of the state.”⁷⁰ Vietnam has used these laws to increasingly detain its critics, by, for example, arresting media activists repeatedly and handing them multi-year prison sentences as reprisal for their critical reporting. For instance, in October 2016, Nguyen Ngoc Nhu Quynh, a prominent environmental human rights defender known as “Mother Mushroom,” was detained and sentenced to ten years of imprisonment for allegedly spreading propaganda against the government through the Internet.⁷¹ During 2017, at least 21 bloggers and activists were arrested for exercising their right to freedom of expression.⁷²

Recommendations to Vietnam

- a) Amend or repeal the Law on the Press, the Law on Cyber Information Security, the Law on Cyber Security, Decree 72, and Decree 174 to ensure robust protections for the freedoms of expression and to bring into compliance with Vietnam’s obligations under international human rights law, specifically under Article 19 of the ICCPR. Ensure that such repeal or amendment ends surveillance, censorship, and harassment against all journalists, bloggers, human rights defenders and others.
- b) Amend the Criminal Code to eliminate provisions that criminalize activities protected by the right to free expression including, among others, Articles 116, 117, and 331. Bring the Criminal Code into compliance with Vietnam’s obligations under international human rights law, specifically Articles 19 of the ICCPR.

VI. Freedom of Association (Article 22)

Article 109 of the amended Criminal Code criminalizes the mere act of joining an organization that acts against the government.

⁶³ *The Trouble with Vietnam’s Cybersecurity Law*, The Diplomat, (Oct. 21, 2016), available at <https://thediplomat.com/2016/10/the-trouble-with-vietnams-cyber-security-law/>.

⁶⁴ *Vietnam: Withdraw Problematic Cyber Security Law*, Human Rights Watch (June 7, 2018), available at <https://www.hrw.org/news/2018/06/07/vietnam-withdraw-problematic-cyber-security-law>.

⁶⁵ Law on the Press, No. 103/2016/QH13, art. 4(2), (2016), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=447052

⁶⁶ Criminal Code, *supra* note 32 at art. 109.

⁶⁷ *Id.* at art. 116.

⁶⁸ *Id.* at art. 117.

⁶⁹ *Id.* at art. 118.

⁷⁰ *Id.* at art. 331.

⁷¹ *One Year After Mother Mushroom’s Imprisonment, Signs of Hope in Vietnam*, The Diplomat (June 29, 2018), available at <https://thediplomat.com/2018/06/one-year-after-mother-mushrooms-imprisonment-signs-of-hope-invietnam>.

⁷² *World Report 2018: Vietnam Country Summary*, Human Rights Watch (January 2018), available at <https://www.hrw.org/world-report/2018/country-chapters/vietnam>.

Membership in trade unions is heavily restricted. Workers cannot organize or join unions of their own choosing, as all unions must be approved by and affiliated with the Vietnam General Confederation of Labor and operate under its umbrella. The Confederation is under the leadership of the Communist Party of Vietnam. Individual unions can only affiliate with, join or participate in international labor bodies if approved by the Confederation.⁷³

Recommendations to Vietnam

- a) Amend the Criminal Code to eliminate provisions that criminalize activities protected by the right to free association, including, among others, Article 109. Bring the Criminal Code into compliance with Vietnam's obligations under international human rights law, specifically Article 22 of the ICCPR.

VII. Annex - Vietnam's Abuses Exemplified: Eight Activists Currently Imprisoned

Ho Van Hai

Ho Van Hai is a medical doctor who has operated the Asia Polyclinic since 2004. He is also a blogger and actively posted on Facebook and his blog under the names "BSHoHo" and "DrHoHo." Hoi posted about corruption in Vietnam's one-party Communist government and the Formosa environmental disaster. Hoi was arrested on November 2, 2016 at his clinic by the Ho Chi Minh City Police after they searched his computer and found 36 articles "disseminating anti-state information."⁷⁴ His trial began on February 1, 2018 – fifteen months after his initial arrest – and lasted one day. He was charged him with conducting propaganda against the state under Article 88 of the 1999 Criminal Code. The trial was replete with procedural violations. It was held in secret and Hoi was not able to hire a lawyer to defend him. The court sentenced him to four years in prison and an additional two years of house arrest.⁷⁵

Phan Kim Khanh

Phan Kim Khanh is a student and blogger. He ran two websites, three Facebook pages, and two YouTube accounts, which featured stories on corruption, politics, the economy, the environment, and other issues. His writings advocated for plural democracy, military de-politicization, free elections, and press freedom. On March 21, 2017, police issued an "urgent arrest warrant" for Khanh. He was charged with "propagating distorting or defaming the people's administration" and "producing, storing, and circulating documents and/or cultural products with contents against the state" under Article 88 of the 1999 Criminal Code.⁷⁶ Khanh reportedly confessed to running the blogs listed above, however it is unclear if he confessed freely. He was detained and held *incommunicado* for approximately seven months, until his trial began in October 2017. He was reportedly not allowed to see his family during this time and was denied a lawyer until September 20, 2017. His trial began on October 25, 2017 and lasted only four hours. He was sentenced to six years in prison followed by four years of house arrest.⁷⁷

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⁷³ *Annual Survey of Violations of Trade Union Rights: Vietnam 2012*, International Trade Union Confederation, at ¶ 3 available at <http://survey.ituc-csi.org/Vietnam.html?edition=336#tabs-3>.

⁷⁴ *Vietnam Police Arrest Anti-government Blogger*, Voice of America (Nov. 2, 2016), available at <https://www.voanews.com/a/vietnam-hai-blogger/3576718.html>

⁷⁵ *Vietnam Hands Blogger Ho Van Hai Four-Year Jail Term For 'Anti-State Propaganda'*, Radio Free Asia (Feb. 2, 2018), available at <https://www.rfa.org/english/news/vietnam/trial-02012018125824.html>.

⁷⁶ *Phan Kim Khanh*, Committee to Protect Journalists, available at <https://cpj.org/data/people/phan-kim-khanh/>

⁷⁷ *Vietnamese Blogger Phan Kim Khanh Given Six-Year Prison Term*, Radio Free Asia (Oct. 25, 2017), available at <https://www.rfa.org/english/news/vietnam/blogger-10252017154340.html>

Tran Hoang Phuc is a pro-democracy activist and law student. He was the President and Founder of Vietnamese Students for Human Rights as well as a member of the Young Southeast Asia Leadership Initiative, a United States Department of State initiative created under President Barack Obama. Vu Quang Thuan is a pro-democracy activist. In 2007, he joined a fellow activist in founding the National Movement to Revive Vietnam to advocate for a multi-party and democratic political system. After his colleague was arrested, Vu fled to Malaysia and applied for asylum. While waiting for his application to be processed, Vu organized protests in Malaysia and advocated for the rights of Vietnamese labor migrants. Vu was deported to Vietnam in February 2011. Nguyen Van Dien worked closely with Thuan as a leading member of the National Movement to Revive Vietnam. Nguyen maintained a popular YouTube page which contained videos in which Thuan openly criticized Vietnamese leaders for human rights violations, corruption, and a weak response to China's violations of Vietnam's sovereignty in the South China Sea.

On March 3, 2017, Vietnamese state media announced that Thuan and Dien had been arrested. A week later, the government officially acknowledged the arrest and charged the men with spreading propaganda for producing videos on their YouTube channel. On June 29, 2017, Phuc was arrested and charged with "possessing materials, producing and posting videos on the internet critical of the government." In the later indictment the government alleged that in January 2017, Phuc partnered with Thuan and Dien in video creation, editing, and uploading.⁷⁸ During their pre-trial detention all three men were kept *incommunicado*. Phuc was reportedly tortured and interrogated at night, while Thuan was told he would be locked in a psychiatric institution.

On January 31, 2018, the three men were formally tried for violating Article 88 of the 1999 Criminal Code. The trial was replete with procedural violations. The defendants were only allowed to speak with their attorneys for about an hour before their trial. The court did not allow the videos as evidence, instead it relayed on statements from the Ministry of Information and Communication as proof that the videos contained alleged anti-state activity. Furthermore, family members and members of the diplomatic community were not allowed to attend the proceedings. After a one-day trial, the three men were handed sentences of six years, eight years, and six and a half years in prison, respectively. Their sentences were upheld by an appeal court in July 2018.⁷⁹

Nguyen Hoang Quoc Hung

Nguyen Hoang Quoc Hung is a founding member of the United Farmers and Workers Organization, an independent Vietnamese labor union. Along with Do Thi Minh Hanh and Doan Huy Chuong, Hung helped organize a strike at a shoe factory in 2010. The three organizers were arrested after the peaceful conclusion of the strike and, in October 2010, after eight months in pre-trial detention, Hung was sentenced to nine years in prison after a trial replete with due process violations. Hung has been subjected to deplorable treatment throughout his incarceration; he has been beaten and had to endure prolonged periods of solitary confinement.⁸⁰

Nguyen Van Hoa

Nguyen Van Hoa is a journalist and videographer for the Vietnamese language division of Radio Free Asia. Among other reporting, he published video footage of the 2016 protests against the Formosa Steel company which caused an environmental catastrophe. Hoa was arrested in January 2017. In November

⁷⁸ *Vietnam Jails Three Democracy Advocates Over Online Postings*, Radio Free Asia (Jan. 31, 2018), available at <https://www.rfa.org/english/news/vietnam/postings-01312018165759.html>.

⁷⁹ *Id.*

⁸⁰ *Nguyen Hoang Quoc Hung: Vietnam*, Freedom Now, <http://www.freedom-now.org/campaign/doan-huy-chuong-do-thi-minh-hanh-and-nguyen-doan-quoc-hung/>.

2017, after 11 months in pre-trial detention (including three months *incommunicado*), he was sentenced to seven years in prison and three years house arrest for “disseminating propaganda against the state” after a closed-door trial which lasted only two and a half hours. Hoa was unrepresented by an attorney of his choosing during this trial.⁸¹

Father Thadeus Nguyen Van Ly

Father Ly is a Vietnamese Roman Catholic priest and activist who has been repeatedly arrested for political dissent. He is one of the country’s most prominent dissidents and has advocated for religious freedom and democracy in Vietnam for over 40 years. In March 2007, Father Ly was sentenced to eight years in prison for alleged national security crimes. During his imprisonment, Father Ly suffered three strokes and was regularly denied proper medical care. He was rearrested by Vietnam after having been granted a one-year and four-month temporary medical parole. Father Ly was granted amnesty in May 2016 and returned home where he is currently serving five years house arrest.⁸²

⁸¹ *Vietnamese blogger Nguyen Van Hoa gets seven years in prison*, Reporters Without Borders, (Nov. 27, 2017) <https://rsf.org/en/news/vietnamese-blogger-nguyen-van-hoa-gets-seven-years-prison>.

⁸² *Father Thadeus Nguyen Van Ly: Vietnam*, Freedom Now, <http://www.freedom-now.org/campaign/father-thadeus-nguyen-van-ly/>.