



UPR Submission

Vietnam

June 2013

Summary

Since the last periodic review in 2009, increasing popular activity in exercising fundamental human rights has met with intensifying government human rights violations. A now on-going process of amendment of Vietnam's constitution, while including an enhanced rhetorical commitment to human rights, appears likely to fall far short of ensuring promotion and protection of fundamental human rights.

Freedom of Expression, Information, Assembly and Movement

The authorities systematically suppress freedom of expression, association and peaceful assembly. During its previous UPR, Vietnam had accepted a recommendation to "work to ensure key pieces of national legislation, including the 1999 Penal Code, are consistent with its international human rights treaty commitments."¹ But the Penal Code still contains vaguely-worded national security and other legal provisions, as mentioned below.

The government does not allow independent or privately owned media outlets to operate. It exerts strict control over radio and TV stations and written publications. Criminal penalties apply to those who disseminate materials deemed to oppose the government, threaten national security, reveal state secrets, or promote "reactionary" ideas.

The government blocks access to politically sensitive websites and requires internet cafe owners to monitor and store information about users' online activities. The authorities or those believed to be acting on their behalf frequently attempt to shut down, block or hack bloggers' websites.

Vietnamese citizens are increasingly well-informed about the country's problems. This has led to a dynamic expansion of critical but overwhelmingly constructive commentary, almost entirely predicated on non-violence, expressed via digital and other media, questioning official policies, exposing official corruption, protesting land-grabbing, practicing religious beliefs in unauthorized ways, or calling for democratic alternatives to one-party rule. The government has responded with repression. Activists have simply redoubled their efforts, while new voices and networks dedicated to the promotion of human rights and peaceful political change continue to emerge.

Two currently pending government draft decrees, "On the Management, Provision and Use of Internet Services and Information on the Network" and "On Providing for Sanctioning of Administrative Violations in the Domains of Post, Telecommunications, Information Technology and Radio Frequency" contain vague provisions that will grant the authorities additional bases upon which to violate the rights to freedom of expression and information via the internet and other media. The former decree enables this via provisions which would legalise content-filtering, censorship and sanctions by the government against vaguely defined 'prohibited acts' and which would oblige internet companies and providers, including foreign ones, to cooperate with the government in the surveillance and tracking of internet dissidence; the latter via provisions against "disturbing social order and safety and national security," notions with the government has routinely applied to non-violent challenges to their policies and practices.²

Authorities arbitrarily arrest those deemed dissidents and hold them incommunicado for long periods without access to legal counsel or family visits, subject them to torture, and prosecute them in politically controlled courts that hand out long prison sentences for violating vaguely-worded national security and other legal provisions, such as penal code articles 79,³ 87,⁴ 88,⁵ 89,⁶ 91,⁷ and 258.⁸ In applying the elastic provisions of these and other laws, the courts preside over trials that fail to meet international fair trial standards.

The government is currently intensifying its routine practice of imposing long prison sentences, house arrest, “re-education” centres or involuntarily commitment to mental health institutions on people for the peaceful exercise of their right to freedom of expression, including by calling for the creation of a multi-party democracy in Vietnam. An escalation in political imprisonment is clear and worsening. The numbers sentenced in political trials have increased every year since 2010. In 2012, the figure was at least 40. In the first five months of 2013, it was at least 50, marking a sharp intensification of government attacks on critics. In two recent examples, Pham Nguyen Thanh Binh was sentenced on April 17, 2013 to three years’ imprisonment plus three years’ probation for writing and posting to the internet articles commenting negatively on government leadership and management; two young students, Dinh Nguyen Kha and Nguyen Phuong Uyen, were also sentenced on May 16, 2013 to eight and six years in jail, respectively, followed by three years’ probation each, for distributing leaflets critical of state policies. On May 26, 2013, the police arrested blogger Truong Duy Nhat and charged him under article 258 of the penal code with “abusing democracy and freedom rights to infringe upon the interests of the state.”

Legal and other provisions severely restrict exercise of the right to freedom of assembly. The authorities use requirements to seek official approval for public gatherings to prevent and punish any meeting, march or protest they deem politically or otherwise unacceptable. Such measures are applied to those wishing to question government domestic and foreign policies, demonstrate against alleged land-grabbing, carry out strikes in state-owned and private industries demanding better pay and conditions.

On May 5, 2013, authorities in three Vietnamese cities intervened with violence, temporary arrests, and concerted harassment to prevent and break up peaceful “human rights picnics” at which youthful bloggers and activists planned to disseminate and discuss the Universal Declaration of Human Rights and other human rights standards.

The government has repeatedly prevented critics from making trips outside Vietnam, citing “national security reasons.” On May 10, 2013, Huynh Ngoc Chanh, the 2013 winner of Reporters without Borders Netizen of the Year Award, was prevented from leaving Ho Chi Minh City (Saigon) to fly to the United States.

Torture, Cruel, Inhuman or Degrading Treatment and Death in Detention

Contrary to its previous UPR commitment, Vietnam failed to accede to the UN Convention Against Torture.

Police brutality in all regions of Vietnam, including torture in detention and fatal beating, has been reported by official media and credible unofficial sources. In some cases, detainees died after beatings inflicted while they were in the custody of the police, such as the death of Ngo Thanh Kieu in May, Nguyen Manh Son in June and Nguyen Mau Thuan in August 2012. On May 29, 2013, Nguyen Van Duc died in the custody of the police of Vinh Long province. An autopsy reported that he died from “brain bleeding with cracks on his skull, crushed right brain, blood-clotted left brain, two broken ribs and broken sternum.”

In other instances, victims were killed in public areas when police used what appears to have been excessive force. In some cases, police officers who caused the death of those held in detention were prosecuted and convicted, such as in the case of Nguyen Manh Son. But these are rare and in general police have impunity for their actions.

Numerous sources also paint a credible picture describing a pattern according to which prisoners imprisoned for peaceful exercise of their basic human rights are targeted by imposition of conditions of detention amounting to cruel, inhuman or degrading treatment, including intentional deprivation of medical care for prisoners who are seriously ill, such as political prisoners Ho Thi Bich Khuong and Do Thi Minh Hanh, as well as Hoa Hao Buddhist activist Mai Thi Dung and in some cases elderly and frail, such as Nguyen Huu Cau, a political prisoner since 1982.

Right to a Fair Trial

During its previous UPR, Vietnam noted a recommendation to “provide people detained under security or propaganda laws with...representation by legal counsel and a public trial,”⁹ stating this pertained to already implemented measures. This is rarely the case in practice. Vietnamese courts continue to lack the independence and impartiality required by international law. Where the party or government has an interest in the outcome, judges are instructed and trial outcomes are not determined by the facts or law. Trials are commonly marred by procedural and other irregularities committed in order to achieve the politically pre-determined outcome.

The practice of law to vigorously defend human rights remains hazardous for those who attempt it, sometimes resulting in detention on trumped-up charges, as in the case of lawyer Le Quoc Quan, arrested on December 27, 2012 and currently awaiting trial. Vietnam’s Bar Association is subject to official political interference and restrictions to deter people from entering the profession, leading to a lack of lawyers. In cases deemed political or otherwise sensitive, the authorities apply legal and bureaucratic provisions arbitrarily to prevent prompt and proper access to their clients and the evidence against them.

Restrictions on observation of political trials by family members, human rights defenders, the media, diplomats and others often effectively mean the right to a public trial is breached. Attempts by bloggers and others deemed politically dangerous by the authorities to observe and report on political trials are regularly thwarted by police and other security forces, and by sometimes violent obstructive tactics conducted by vigilante or other elements operating on behalf of the authorities.

Forced Labor, Labor Rights and Land Rights

Laws and regulations in force continue to authorize large-scale administrative detention without trial and the imposition of forced labor upon drug users and alleged drug users without any due process for so-called “labor therapy.” The growing number of people held reached more than 40,000 in 2012. Some 123 centers across the country hold people, including children, pursuant to this regime, which is not subject to any form of due process or judicial oversight. It is characterized by severe ill-treatment and forced cultivation and processing of agricultural and other products.

The government bans all unions and other labor organizations except those it authorizes, creating a situation in which most of the hundreds of strikes occurring annually are illegal.

Current law, policy and practices enable involuntary evictions of people enjoying land tenure. Forced evictions have led to violent confrontations between people alleging violation of their land rights and the authorities.

Freedom of Religion

During its previous UPR in 2009, Vietnam noted a recommendation to “Step up efforts to ensure the full respect of freedom of religion and worship, including by reviewing laws,”¹⁰ stating this pertained to already implemented measures.

However the government restricts religious freedom through legislation and registration requirements and by harassing and intimidating unsanctioned religious groups. Reinforcing previous powers, government Decree No 92, which entered into force on January 1, 2013, prohibits “manipulation of freedom of belief and religion” to “conduct propaganda against the state” or “undermine ... national unity.” The inclusion of onerous requirements for official permission to practice religious belief and vague prohibitions on expression effectively allow the authorities to selectively prohibit any religious activities they desire, reinforcing their practice of repeatedly targeting religious groups deemed politically subversive or otherwise undesirable. These include Catholic groups in Hanoi, Ho Chi Minh City, and Nghe An province; Protestant and Catholic groups among “national minorities” in upland areas of central and northern Vietnam and other locations, including Montagnard Christians, the outlawed Unified Buddhist Church, certain Cao Dai and Hoa Hao groups and certain congregations among Khmer Krom Theravada Buddhists in the Mekong Delta.

Constitutional Reform

Current discussions about amending the constitution formally opened for public comment on January 2, 2013. Officially proposed amendments include bans on discrimination on political, economic, cultural or social grounds (article 17),¹¹ acts of gender discrimination (article 27)¹² and acts which violate the rights of the child (article 40).¹³

However, multiple qualifications and other loopholes weaken human rights proclamations, making it easily possible to use existing or proposed legislation to violate human rights:

- Draft article 15’s affirmation that “human rights and citizens’ rights are recognized, respected, protected and guaranteed by the state and the society according to the Constitution and law” is seriously undermined by the vague caveat that they can be “restricted in the case of necessity for the purpose of national defence, national security, social order, social safety, ethics and the community’s health.”¹⁴
- Draft article 16’s affirmation of a constitutional “obligation of respecting the rights of others” is greatly weakened by its qualification that prohibition of the abuse of such rights might only be invoked under certain circumstances, such as when the abuse is deemed “to violate the interests of the country and the nation.”¹⁵
- Draft article 23’s proclamation of rights to inviolability of personal privacy, personal information and personal communication is brought into doubt by its provision for “the opening, control and seizure” of personal communications whenever “stipulated by law.”¹⁶
- Draft article 24’s declaration of freedom of movement inside and outside the country raises the same uncertainty, as this can also be contradicted by unlimited “provisions of the law.” Potentially negating qualifications also appear in draft article 24’s provision that “the citizen shall enjoy freedom of belief and of religion,” but only if he or she does not “misuse beliefs and religions to contravene” unspecified laws.¹⁷
- Draft article 26’s declaration that “the citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assembly, form associations and hold strikes” is qualified by a statement that these are subject to undefined “provisions of the law.”¹⁸

The government has invited public comments on amending the constitution, but it has retaliated against some critics and democracy activists who have done so. This appears to have been a factor in the recent arrest of Le Quoc Quan and the harassment and intimidation of other non-violent commentators, such as the journalist Nguyen Dac Kien, Buddhist activist Le Cong Cau, and the Anh Ba Sam website.

Key Recommendations to the Government of Vietnam

- Release all people imprisoned, detained, or placed under house arrest, administrative detention, or involuntary commitment to mental hospitals or Social Protection Centers for the peaceful expression of political or religious beliefs, for exercise of socio-economic or cultural rights, or for promoting or protecting the rights of journalists, lawyers, bloggers, religious believers, workers and other persons exercising their rights. It should also drop all charges against and put a stop to harassment or intimidation of all such people.
- End criminalization of peaceful dissent, including by amending or repealing domestic laws and other texts that effectively outlaw such dissent and certain religious activities on the basis of imprecisely defined “national security” crimes, notably penal code articles 79, 87, 88, 89, 91, and 258.
- Abolish all legal justifications for forced labor and detention without trial for so-called “labor therapy” and instead bring forth legislation creating voluntary, evidence-based health and social services in the community that respect human rights of drug users.
- Repeal the Ordinance on Religion, Decree 92 and other legislation that enable authorities to prevent independent religious organizations from freely conducting peaceful religious activities, in accordance with international legal standards.
- Adopt legislation authorizing the publication of independent, privately-run newspapers and magazines, while removing filtering, surveillance, and other restrictions on internet usage, dropping pending decrees aimed at controlling the internet in violation of human rights and replacing them by regulations that are consistent with international human rights standards.
- Adopt legislation recognizing independent labor unions and ensure that regulation of public gatherings and demonstration, including those raising grievances about land issues and corruption, is done in conformity with international human rights norms.
- Drop all provisions that make possible land confiscation without due process, just compensation, and independent and impartial means of review.
- Include a general clause in the Constitution directly incorporating into Vietnamese law human rights as defined by international treaties ratified by Vietnam.
- Affirm in the constitution that customary international law and the general rules of international law have the force of law within Vietnam, and that no passage of it shall be interpreted or implemented in a manner that is inconsistent with or undermines international human rights standards.
- Include in the amended constitution a general clause stating that the rights and freedoms affirmed by it can only be restricted in the following ways: by a clear law; that the limitation is necessary in a democratic society for the protection of legitimate aims; and that the scope of a limitation referred to in the constitution shall not be interpreted so as to jeopardize the essence of the right concerned.
- Include in the Constitution explicit affirmation that judicial independence must be effected by mechanisms that will shield judges from external political pressures, in their appointment, discipline and assignment to cases and that does not give political authorities decisive powers over their careers.
- Enshrine in the Constitution the right to form political parties, specifying that any law on political parties should be drawn so as to allow the state to prohibit parties only on the grounds that they advocate violence or the overthrow of democracy.
- Become party to the Convention Against Torture and its Optional Protocol; the ILO Forced Labour Convention; the Conventions relating to the Status of Refugees and the Status of Stateless Persons; the Rome Statute; and the Convention on Transnational Organized Crime and its Protocol to prevent, suppress and punish trafficking in persons.
- Issue a standing invitation to all special procedures of the HRC.

Annex: Endnotes

¹Paragraph 99.11, Report of the Working Group on the Universal Periodic Review: Viet Nam, Universal Periodic Review, 5 October 2009, A/HRC/12/11: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/163/82/PDF/G0916382.pdf>.

²For 2009-2012 cases, see: Human Rights Watch World Report 2013, January 2013: <http://www.hrw.org/world-report/2013/country-chapters/vietnam>; Human Rights Watch World Report 2012, January 2012: <http://www.hrw.org/world-report-2012/world-report-2012-vietnam>; Human Rights Watch World Report 2011, January 2011: <http://www.hrw.org/world-report-2011/vietnam>; Human Rights Watch World Report 2010, January 2010: <http://www.hrw.org/world-report-2010/vietnam>.

³Penal Code, Article 79.- Carrying out activities aimed at overthrowing the people's administration

Those who carry out activities, establish or join organizations with intent to overthrow the people's administration shall be subject to the following penalties:

1. Organizers, instigators and active participants or those who cause serious consequences shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment;
2. Other accomplices shall be subject to between five and fifteen years of imprisonment.

For 2013 cases using this provision, see <http://www.hrw.org/news/2013/01/09/vietnam-release-convicted-activists>.

⁴Penal Code, Article 87.- Undermining the unity policy

1. Those who commits one of the following acts with a view to opposing the people's administration shall be sentenced to between five and fifteen years of imprisonment:

- a) Sowing division among people of different strata, between people and the armed forces or the people's administration or social organizations;
- b) Sowing hatred, ethnic bias and/or division, infringing upon the rights to equality among the community of Vietnamese nationalities;
- c) Sowing division between religious people and non-religious people, division between religious believers and the people's administration or social organizations;
- d) Undermining the implementation of policies for international solidarity.

2. In case of committing less serious crimes, the offenders shall be sentenced to between two and seven years of imprisonment.

⁵Penal Code, Article 88.- Conducting propaganda against the Socialist Republic of Vietnam

1. Those who commit one of the following acts against the Socialist Republic of Vietnam shall be sentenced to between three and twelve years of imprisonment:

- a) Propagating against, distorting and/or defaming the people's administration;
- b) Propagating psychological warfare and spreading fabricated news in order to foment confusion among people;
- c) Making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Vietnam.

2. In the case of committing less serious crimes, the offenders shall be sentenced to between ten and twenty years of imprisonment.

For 2013 cases using this provision, see Human Rights Watch, Vietnam: Drop Charges for Leafleting, 15 May 2013: <http://www.hrw.org/news/2013/05/15/vietnam-drop-charges-leafleting>.

⁶Penal Code, Article 89.- Disrupting security

1. Those who intend to oppose the people's administration by inciting, involving and gathering many people to disrupt security, oppose officials on public duties, obstruct activities of agencies and/or organizations, which fall outside the cases stipulated in Article 82 of this Code, shall be sentenced to between five and fifteen years of imprisonment.

2. Other accomplices shall be sentenced to between two and seven years of imprisonment.

⁷Penal Code, Article 91.- Fleeing abroad or defecting to stay overseas with a view to opposing the people's administration

1. Those who flee abroad or defect overseas with a view to opposing the people's administration shall be sentenced to between three and twelve years of imprisonment.

2. Organizers, coercers and instigators shall be sentenced to between five and fifteen years of imprisonment.

3. In the case of committing particularly serious crimes, the offenders shall be sentenced to between twelve and twenty years of imprisonment or life imprisonment.

⁸Penal Code, Article 258.- Abusing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens

1. Those who abuse the rights to freedom of speech, freedom of press, freedom of belief, religion, assembly, association and other democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens, shall be subject to warning, non-custodial reform for up to three years or a prison term of between six months and three years.

2. Committing the offense in serious circumstances, the offenders shall be sentenced to between two and seven years of imprisonment.

⁹Paragraph 101.1, Report of the Working Group on the Universal Periodic Review: Viet Nam, Universal Periodic Review, 5 October 2009, A/HRC/12/11: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/163/82/PDF/G0916382.pdf>.

¹⁰ Paragraph 101.4, Report of the Working Group on the Universal Periodic Review: Viet Nam, Universal Periodic Review, 5 October 2009, A/HRC/12/11: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/163/82/PDF/G0916382.pdf>.

¹¹ Article 17 (article 52 amended and supplemented)

1. All citizens are equal before the law.
2. No one is discriminated in the political, economic, cultural and social life for any reasons.

¹² Article 27 (article 63 amended and supplemented)

1. Female and male citizens are equal and have equal rights in all political, economic, cultural, social fields and in the family.
2. The State has the policy of equality between female and male citizens in all fields. The State, society and family shall create conditions for women to raise their qualifications in all fields and fully play their roles in society.
3. All acts of gender discrimination are strictly banned.

¹³ Article 40 (article 65 amended and supplemented)

1. Children enjoy protection, care and education by the family, the school and the State.
2. All acts of torture, maltreatment, abandonment, labour abuse and exploitation and other acts which violate the rights of the child are strictly prohibited.

¹⁴ Article 15 (article 50 amended and supplemented)

1. In the Socialist Republic of Vietnam human rights and citizens' rights are recognized, respected, protected and guaranteed by the state and the society according to the Constitution and the law.
2. Human rights and citizen' rights are only restricted in case of necessity for the purpose of national defense, national security, social order, social safety, ethics and community's health.

¹⁵ Article 16 (new)

1. Every person has the obligation of respecting the rights of others.
2. The abuse of human and citizens' rights to violate the interests of the country and the nation, the rights and lawful interests of other people is prohibited.

¹⁶ Article 23 (article 73 amended and supplemented)

1. Everyone is entitled to the inviolability of his private life, family and personal privacy; and honor and prestige protection. The collection, keeping, use and dissemination of information on private life, family and personal privacy of a person without his consent is forbidden.
2. Everyone has the right to secret of correspondence, telephone conversations, telegrams and other forms of personal communication. The opening, control and seize of correspondence, telephone conversations, telegrams and other forms of personal communication of the citizen are stipulated by law.

¹⁷ Article 24 (Article 68 unchanged)

The citizen shall enjoy freedom of movement and of residence within the country; can freely travel abroad and return home from abroad in accordance with the provisions of the law.

¹⁸ Article 26 (article 69 amended and supplemented)

The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold strikes in accordance with the provisions of the law.