

# VIETNAM COMMITTEE ON HUMAN RIGHTS QUÊ ME: ACTION FOR DEMOCRACY IN VIETNAM

Ủy ban Bảo vệ Quyền làm Người Việt Nam

**fich**

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## Human Rights mechanisms and the Asia-Pacific: the case of Vietnam

Submission to the Human Rights Sub-Committee of the Australian Parliament

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In terms of human rights compliance, the Asia-Pacific is a region of great contrast. It embraces a wide diversity of nations ranging from the world's best to the world's very worst human rights protectors. The same diversity obviously applies to mechanisms to prevent and redress rights abuses. Whereas some countries possess sophisticated national human rights mechanisms, others have none, and some remain even hostile to the very concept of human rights. The "Asian values" argument, which emerged at the 1993 Bangkok Regional Preparatory Conference for the UN World Conference on Human Rights, remains prevalent in many Asia-Pacific countries. This paper examines human rights mechanisms regarding a country where international obligations and domestic laws and practices are in fierce contradiction: the Socialist Republic of Vietnam.

### Background: domestic laws and human rights practices

Vietnam is a one-Party state, controlled by the Communist Party of Vietnam (CPV) whose political monopoly is enshrined in the Constitution: *"The Communist Party (...) acting upon Marxist-Leninist doctrine and Ho Chi Minh's thought, is the force leading the State and society"* (Article 4). In itself, this provision restricts the exercise of basic human rights, because it excludes all forms of pluralism or alternative thought outside the CPV. Moreover, whereas the Constitution formally guarantees human rights such as freedom of expression, religion, assembly and association, it restricts their exercise by conditioning them on compliance with State policies and interests. For example, Article 70 states that *"All citizens shall enjoy freedom of belief and religion"*, but that *"no-one can misuse beliefs and religions to contravene the laws and State policies"*. Since State policies are established and enforced by the one-Party State which has extensive control over the executive, legislative and judiciary powers, these provisions gravely limit the scope and exercise of human rights.

In particular, Vietnam uses broadly-defined "national security" provisions in the Criminal Code, which make no distinction between acts of violence – such as terrorism – and peaceful acts of expression to stifle freedom of expression and religion. In 1995, an Australian Parliamentary Delegation which visited Vietnam observed in its report: *"As with freedom of expression, the Vietnamese authorities are prepared to interpret national security provisions in the law broadly so as to preclude any religious activity that they consider might call into question the Communist Party's monopoly on power"<sup>1</sup>*. Over 14 years later, the situation remains unchanged. Indeed, it is this broad interpretation of the law that enables Vietnam to declare in international fora that: *"there are no political prisoners in Vietnam, only people who violate the law"*.

The Vietnamese National Assembly, or parliament, does not play a key role in the prevention of human rights violations. Although it has become increasingly vocal on many issues, it rarely exercises a veto on questions decided by the CPV. Many of the restrictive human rights laws (such as censorship of

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the press and internet, laws on administrative detention, bans on demonstrations etc.) are not debated or voted in the National Assembly, but merely rubber-stamped by its Standing Committee, issued directly by the Prime Minister's Office, or issued as "Decisions", "Directives", "Regulations" etc. by the relevant ministries.

### International Human Rights Obligations

Vietnam is a state party to 7 core UN human rights treaties, including the UN International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which it acceded in 1982. It is playing an increasing role in regional and international affairs. Vietnam joined ASEAN in 1995, is a member of the World Trade Organization (2006), non-permanent member of the UN Security Council (2008-9). Vietnam has hosted major gatherings such as the ASEM (2004) and APEC Summit (2006) in Hanoi. It therefore has binding international human rights obligations. In the absence of any national human rights mechanisms, we identify four mechanisms which could have a positive impact on redressing human rights violations in Vietnam;

- a) The United Nations human rights system, notably the Universal Periodic Review, the Special Rapporteurs and Treaty Bodies;
- b) The ASEAN Human Rights Body (AHRB);
- c) The Australia-Vietnam human rights dialogue;
- d) "Human Rights clauses" in bilateral cooperation agreements.

### The United Nations Human Rights System

As a state party to major human rights instruments, Vietnam has obligations to incorporate human rights guarantees into its domestic legal system, comply with reporting requirements and extend invitations to UN Special Rapporteurs. In fact, Vietnam lacks behind on all three counts. It has not received any visits from Special Rapporteurs since 1998, when the Special Rapporteur on Religious Intolerance published a critical report on his visit. Vietnam then announced that it would *"never accept any individuals or organizations coming to investigate religious freedom or human rights"*. Since 2002, five Special Procedures have asked to visit Vietnam, without any answer.

Nevertheless, such visits can have a very positive impact. It is important to impress upon Vietnam that visits by Special Rapporteurs are in their interest, not the contrary, and that they should extend standing invitations. It is also important to encourage Vietnam to comply with the UN treaties it has ratified. The UN Human Rights Committee, for example, made some very important recommendations after examining Vietnam's periodic report on the ICCPR in 2002, notably in urging Vietnam to bring its domestic legislation into line with UN treaties. The Vietnam Committee on Human Rights has asked for visits by the Special Rapporteur on Human Rights Defenders and Freedom of Expression at the very minimum, and hopes that this request could be supported.

The **Universal Periodic Review** (UPR) could be a useful mechanism, providing that certain reforms are made to make it more effective. Vietnam's first UPR review in May 2009 showed the strengths and weaknesses of this process. Firstly, UPR preparation is supposedly based on consultation with civil society. In Vietnam, where there is no independent civil society, it was prepared with para-governmental bodies or "mass organizations" controlled by the CPV, thus giving a biased view of human rights practices and realities. Secondly, Vietnam lobbied its regional partners and other members of the "Axis of Sovereignty" (formerly the "Like Minded Group") to restrict their comments to "complimentary speeches" - one NGO has called this the "Mutual Praise Society". Last but not least, although some 15 countries made very specific and positive recommendations to genuinely advance human rights, the Vietnamese delegation rejected them all. Australia, for example, urged Vietnam to consider strengthening press freedom and ensure that its Penal Code and Criminal Procedures Code are consistent with its international treaty commitments, points

which my organization, the Vietnam Committee on Human Rights, had recommended in our stakeholders submission to Vietnam's UPR review (*see appendix*).

Unfortunately, since only proposals accepted by the state under review are retained in the final report, which will be voted at the UN Human Rights Council in September 2009, Vietnam will escape with very few obligations to fulfil before its next review in 2013. This is a major obstacle in the UPR process which needs serious reconsideration by Australia and its UN partners.

### **The ASEAN Human Rights Body**

Following the adoption of a Charter by the 10-nation Association of Southeast Asian Nations in 2007 which stressed the need for a regional human rights mechanism, a high-profile committee is currently finalizing the Terms of Reference (ToR) for the **ASEAN Human Rights Body (AHRB)**, which is soon to be approved. It will be Southeast Asia's first regional human rights mechanism. This is a major development, and there is great hope that this new body could decisively help to address human rights violations in the sub-region. However, there is great concern about the scope of its mandate. Vietnam, Laos, Myanmar and Cambodia – amongst ASEAN's worst human rights abusers – have strongly opposed crucial issues such as (a) endowing the body with powers to investigate human rights violations in member countries, apply sanctions or seek prosecution of human rights violators; (b) having independent human rights experts on the body; and (c) holding regular reviews of human rights in the region<sup>2</sup>. Civil society organizations are also concerned that the AHRB will adhere to ASEAN's traditional policy of "non-interference" in members' internal affairs, which would totally undermine its efficiency. The "Asian values" concept is also re-surfacing. Vietnam's Prime Minister Nguyen Tan Dung recently stressed that the AHRB should "*attend to the distinct characteristics and diversity of the region in terms of culture, economics, society, customs and traditions.*" This is simply an excuse to derogate from the universality of human rights, a concept that Vietnam accepted when signing UN human rights treaties. Whilst there is still time, it is important to vigorously encourage ASEAN members to enlarge the ToR of this body to enable it to effectively prevent and redress human rights violations in its member countries.

### **The Australia-Vietnam Human Rights Dialogue**

Australia is the only Asia-Pacific country to have a bilateral human rights dialogue with Vietnam (the others are the European Union, the United States, Switzerland and Norway). The dialogue presents an important opportunity to discuss ways to strengthen human rights protection and encourage progress on specific issues. But dialogue can only be effective if it is a two-way process – Vietnam must be prepared to take concrete steps forward, and not use the dialogue as a "cover" to escape its responsibilities. We fear that this is currently the case. In its UPR review in May 2009, the Vietnamese delegation told the UN that the very fact that it accepts to engage in human rights dialogue with Australia and other countries "proves" that it respects human rights. This is obviously not Australia's perspective. It is very important, therefore, if this dialogue is to be effective, for Australia to make it a more transparent process. Civil society and members of the Australian Parliament should be entitled to make more input and be informed about the dialogue's content and progress. There should be a time-frame and benchmarks by which progress can be measured. Dialogue should not be an end in itself, but a process that leads to genuine advancement of human rights protection in Vietnam.

### **"Human Rights clauses" in bilateral trade and cooperation agreements**

Australia has bilateral free trade agreements with several Asian nations, including Vietnam. Although this may not be classed as a "mechanism", "human rights clauses" in these agreements are important tools for achieving human rights protection. Academic research has shown that, in many circumstances, the mere invocation of human rights clauses – without resorting to sanctions or punitive actions – can obtain specific results. Vietnam is very sensitive to this approach, and on the contrary, tends to step up abuses when it feels it can conduct "business as usual" with impunity. A recent illustration of how such pressure can work is Japan's withdrawal of official development aid (ODA) to Vietnam last year

because of official corruption. This prompted Vietnam to take special measures, such as ratification of the UN Convention against Corruption. Japan, which is Vietnam's largest ODA donor, has since resumed aid. Given that many Asian democracies, and certainly the ASEAN bloc, pursue a 'non-interference' policy especially concerning trade, Australia has a special role to play in this domain. It should ensure that core labour rights and standards in particular, but also internationally-recognized human rights in general, are upheld in its trade agreements.

On the question of labour standards, the **Australian Council of Trade Unions** could contribute to preventing and redressing human rights in Vietnam. Since Vietnam opened its economy to the free-market system under the policy of "*doi moi*" (renovation) in the late 1980s, economic liberalization and competition to provide cheap labour has led to serious abuses of worker rights. There are no free trade unions in Vietnam. All unions come under the umbrella of the "Vietnam Confederation of Labour" controlled by the Communist Party. The Labour Code restricts the right to strike in 54 sectors, and during the recent economic crisis, Vietnam introduced regulations obliging workers staging wild-cat strikes to pay 3 months wages in compensation to their employers (*see appendix*). The ACTU and other regional trade union mechanisms could press Vietnam to improve labour rights and adhere to ILO Conventions and standards.

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<sup>1</sup> *Australia-Vietnam Dialogue : the Currents of Change*, Report of the visit of the Australian Parliamentary Consultative Delegation to Vietnam, Australian Government Publishing Service, Canberra, 1995.

<sup>2</sup> Terraviva United Nations : Southeast Asia's Human Rights Body dismissed as « toothless », Bangkok, 28 June 2009.

# fidh

Fédération Internationale  
des Ligues des Droits de l'Homme



Vietnam Committee  
on Human Rights

## Human Rights Violations in the Socialist Republic of Vietnam

**A Parallel NGO Report by  
Vietnam Committee on Human Rights and  
International Federation of Human Rights (FIDH)**



*Submitted in advance of the*  
**Universal Periodic Review of Vietnam**  
*Fifth Session of the UPR Working group of the Human Rights Council*  
*Geneva, May 2009*

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## EXECUTIVE SUMMARY

Despite Vietnam's accession to core human rights treaties and its adoption of extensive new legislation, serious gaps remain between international norms and Vietnamese laws and practices. Vietnam continues to adopt laws that restrict the exercise of human rights and imprisons peaceful critics under vague "national security" provisions in violation of its international obligations. Administrative detention, religious repression, crackdowns on human rights defenders, stifling of press freedom, widespread use of the death penalty, are serious concerns, as are abuses of women's rights, including sex trafficking and coercive birth control policies – Vietnam's abortion rate is one of the highest in the world.

The FIDH and the Vietnam Committee on Human Rights' submission to the UPR on Vietnam focuses on several pressing concerns summarized below with relevant recommendations:

### KEY AREAS OF CONCERN AND RECOMMENDATIONS

- Bring **domestic legislation into line with the international human rights treaties** to which Vietnam is State party, particularly the ICCPR; close the gap between **international obligations** and actual practice;
- Revise **national security provisions** in the Penal Code, seven of which carry the death penalty, and all other laws used to suppress peaceful dissent by conditioning human rights on compliance with the interests of the one-Party State. These laws make no distinction between violent acts such as terrorism and acts of peaceful expression, and seriously undermine Vietnam's **constitutional and legislative framework for protecting human rights**;
- **Release all prisoners** detained merely for the peaceful exercise of their rights to freedom of religion, expression, association or peaceful assembly in violation of the ICCPR;
- Revise Article 80 of the Penal Code on "**espionage**" which extends not only to State secrets but to "*other information and materials*" and is widely used to suppress citizens expressing views over the Internet. This article carries the death penalty as maximum sentence ;
- Abrogate Ordinance 44 which legalizes **detention without trial**; abolish the "legal limbo" created by unlimited pre-trial detention, probationary detention and the practice of house arrest on "oral orders" with arbitrary restrictions on freedom of movement and communication;
- Abolish the three-fold control mechanism of the **household registration permit** (*ho khai*), precinct security warden and curriculum vitae which creates obstacles for rural-to-urban migrants in accessing education, health and other social services and is used to **discriminate against religious, political and ethnic minority groups**;
- Cease censorship by repealing articles in the Press and Publications Laws, as well as Decrees on the Internet and Blogs that restrict **freedom of expression and the press**; authorize the **publication of independent newspapers**;
- Re-establish the legitimate status of the **Unified Buddhist Church of Vietnam (UBCV)** and all other non-recognized religious organizations and guarantee their full freedom of activity;
- Allow the establishment of **independent political parties** and abrogate legal provisions that could impede their scope of activities, notably Article 4 of the Constitution on the mastery of the Communist Party;
- Revise the Labour Law to reduce restrictions on the right to strike; authorize the establishment of **free trade unions** outside the Communist Party's Vietnam Confederation of Labour;

- Revise Decree 88 on Associations in order to allow the **establishment of independent civil society** outside the framework of the Communist Party and the Vietnam Fatherland Front;
- Reduce sentences that incur the **death penalty**, cease classifying statistics on executions and death sentences as “State secrets” and move towards the abolishment of capital punishment;
- Improve **women’s rights** by enforcing anti-trafficking legislation, ceasing coercive birth control by abortion, and implementing provisions in the Land Law that ensure women’s entitlement to the right to land;
- **Cooperate with international human rights mechanisms** by extending a standing invitation to the UN Special Rapporteurs on Human Rights Defenders, Freedom of Expression, Freedom of Religion and Belief, and the UN Working Group on Arbitrary Detention; allow the participation of independent Vietnamese voices in international mechanisms.



# Human Rights Violations in the Socialist Republic of Vietnam

## **Compliance with international human rights instruments and cooperation with UN Special Procedures**

Whilst Vietnam became party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1982 and is party to several other core human rights treaties, it falls far short of compliance with reporting mechanisms. Its periodic report on the ICESCR is overdue since 1995. Vietnam also fails to cooperate with the UN Special Procedures. Since 2002, five Special Procedures have requested to visit Vietnam, following repeated allegations of human rights violations without any answer. Indeed, Vietnam has allowed no visits since 1998, when the Special Rapporteur on Religious Intolerance raised concerns on religious freedom abuses. Vietnam then announced it would never again “accept any individuals or organizations coming to investigate religious freedom or human rights”.

## **The Restrictive Legal Framework**

The protection of human rights is guaranteed by the 1992 Vietnamese Constitution and several other legislative provisions. However, the exercise of these rights is severely curtailed, even nullified, by extensive domestic legislation which conditions human rights on compliance with “*the policies and interests of the State*”. Since state policies are established by the Communist Party of Vietnam (CPV) whose political monopoly is enshrined in the Constitution as the “*force leading the State and society*” (Article 4), such legislation is invariably inconsistent with international human rights standards. While Vietnam has ratified international treaties, it has adopted an arsenal of restrictive laws, directives, and other domestic regulations criminalizing the peaceful exercise of freedom of opinion, expression, religion, assembly and association. These laws enable Vietnam to convict dissidents as common criminals, and claim that “*there are no political prisoners in Vietnam, only people who violate the law*”. The UN Human Rights Committee expressed particular concern that the provisions of these laws impede the enjoyment of individual rights and contravene Vietnam’s binding obligations under the ICCPR<sup>1</sup>.

## **National Security Legislation**

A whole chapter of vaguely-defined “national security” provisions in the Penal Code is widely invoked to detain dissidents and human rights defenders, in gross violation of the ICCPR. They include ambiguous offenses such as “*undermining national solidarity, sowing divisions between religious and non-religious people*”, (article 87), “*conducting propaganda against the Socialist Republic of Vietnam*” (Article 88), “*abusing democratic freedoms to encroach on the interests of the state*” (article 258). In recent years, Vietnam has routinely used charges of “*espionage*” (Article 80) to detain “cyber-dissidents” for peacefully circulating their views via the Internet. These crimes, which make no distinction between violent acts such as terrorism and the peaceful exercise of freedom of expression, are punishable by harsh prison terms, including life imprisonment. Seven of them carry the death penalty. Despite strong recommendations by the UN Human Rights Committee (2002), the UN Working Group on Arbitrary Detention (1995) and the UN Special Rapporteur on Religious Intolerance (1998), Vietnam has made no attempt to revise or repeal these national security laws, which remain the principle tool of political repression.

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<sup>1</sup> Concluding observations of the Human Rights Committee: Vietnam. 26/07/2002. CCPR/CO/75/VNM)

**Administrative detention:** Last year, Vietnam repealed Decree 31/CP on “Administrative Detention” in a move hailed by the international community as a step towards the rule of law. However, Vietnam had already replaced it by the more repressive Ordinance 44 on “Regulating Administrative Violations”, which empowers local officials not only to arrest and detain citizens, as Decree 31/CP, but also to commit them to mental hospitals or “rehabilitation camps” without any due process of law. The Ordinance is particularly used against political and religious dissidents, and legalizes the arbitrary practice of detention without trial.

**Unlimited Pre-trial Detention:** Under the amended 2004 Criminal Procedures Code (Article 120), suspected “national security” offenders may be held in custody pending investigation for four months. This period may be extended four times by the Chairman of the Supreme People’s Procuracy, after which the authorities must either release detainees or “if deeming it necessary, apply other deterrent measures”.

**Probationary Detention:** *Quan che*, or “probationary detention” (Article 30 of the Penal Code) is a second punishment inflicted on former political prisoners. It enables the State to place “national security” offenders “under the supervision and re-education of the local authority” for a period of 1-5 years’ probation after their release. During this time, they are forbidden to leave their homes, deprived of their civic rights and maintained under constant Police surveillance. In theory, *quan che* cannot be applied without a Court decision, but in practice it is automatically applied to political and religious prisoners after their release for many years.

## **The Right to Freedom Expression, Opinion and the Press**

There is no independent media in Vietnam. The Communist Party of Vietnam (CPV) mobilization and propaganda department controls all media and sets press guidelines. Editors meet regularly with representatives of the state’s Ideology Committee to discuss which stories the government wants emphasized and which are off-limits.

Constitutional guarantees of press freedom (Article 69) are nullified by a whole range of laws which strictly prohibit all publications with contents deemed to “violate the interests of the State”. Censorship is extremely severe. A 1999 law requires journalists to pay damages to persons harmed by their articles, even if their reports are true. Decree 56 passed in July 2006 provides for crushing fines and suspension of licenses for media and journalists who defame and attack the “prestige of the state”.

In October 2008, two journalists from the State-controlled press were sentenced respectively to 2 years in prison and two years non-custodial re-education for reporting on a corruption scandal involving government officials. They were convicted of breaching “national security” under Article 258 of the Penal Code. Following their arrest, the deputy editors of their newspapers were also suspended and at least seven journalists had their press cards revoked as part of a wider pattern of the government’s use of criminal law to muzzle free expression

**The Internet:** similar restrictions are used to control the Internet, a fast-growing sector in Vietnam. Under Directive 71 (2004) Internet café owners are responsible for their customers’ on-line activities, and must keep records of users’ ID. The Ministry of Public Security has set up a unit of “cyber-police” to track down the posting of banned material, and firewalls to block access to overseas sites advocating human rights and democracy. New regulations on “blogs” were introduced in 2008 in order to “constrain propagandas against the state and limit using blogs to smear the image of the party and its governance apparatus”. Several cyber-dissidents were arrested in 2007-8 and sentenced to harsh prison terms on charges of “espionage” or “conducting propaganda against the Socialist Republic of Vietnam” (Articles 80 and 88 of the Penal Code).

## The Death Penalty

The use of the death penalty is frequent in the Socialist Republic of Vietnam. Capital punishment is applied for 29 offences, including murder, armed robbery, drug trafficking, rape, sexual abuse of children, and a range of economic crimes. FIDH and the Vietnam Committee are deeply disturbed by Vietnam's use of the death penalty to sanction vaguely-defined "national security" crimes in Chapter XI of the Vietnamese Criminal Code. These include treason, carrying out activities to overthrow the government, espionage, banditry, terrorism, undermining peace. Conditions on death row are particularly inhumane. 3-4 prisoners are detained in each cell. The cells are extremely unhygienic, with one latrine bucket and no ventilation. Prisoners are not allowed to leave their cells except to receive visits, which are extremely rare. Their legs are chained to a long pole, and they are generally lined up in order of execution.

## The Right to Freedom of Religion and Belief

Repression on religious grounds is widespread in Vietnam. Article 70 of the Vietnamese Constitution guarantees religious freedom. However, it also states that no one may *"misuse beliefs and religions to contravene the law and State policies"*. As the former UN Special Rapporteur on Religious Intolerance Mr. Abdelfattah Amor observed, *"this provision establishes the principle of the priority of the policies of the State, a vague and extendable concept" which "impede[s] freedom of religion or reduce[s] it to very little indeed."*

Religions are subjected to a system of recognition and control. With the exception of the Roman Catholic Church, only State-sponsored religious bodies are allowed to practise their activities, and "non-recognised" organisations are illegal. In 2004, an *"Ordinance on Beliefs and Religions"* came into effect, which has been hailed as sign of progress by the international community. In fact, this Ordinance is incompatible with international human rights standards and it places tighter controls on religions. Under the Ordinance, religious education is subordinated to the *"patriotic"* dictates of the Communist Party; worship may only be carried out in approved religious establishments; it is forbidden to *"abuse"* religious freedom to contravene prevailing Communist Party policies (article 8§2). Religious activities deemed to *"violate national security... negatively affect the unity of the people or the nation's fine cultural traditions"* are banned (art. 15).

**The Unified Buddhist Church of Vietnam (UBCV):** The situation of the UBCV, adhered to by the majority of the Vietnamese population, is of particular concern. Banned effectively in 1981 following the creation of the State-sponsored Vietnam Buddhist Church, its leaders and members are subjected to detention, intimidation and constant harassment. Despite repeated appeals from the international community, Vietnam has not re-established its legal status. In 2008, the authorities intensified repression against UBCV members in the run-up to UN Vesak Day, hosted by the Vietnamese government and the State-sponsored Buddhist Church in Hanoi. Police seized UBCV pagodas to use for State-sponsored events, evicted and harassed UBCV monks, nuns and lay-followers. UBCV monk Thich Tri Khai was evicted from his pagoda in Lam Dong province and subjected to intensive Police interrogations.

UBCV leader **Thich Quang Do**, 79, who replaced Patriarch Thich Huyen Quang after his death in July 2008, remains under effective house arrest at the Thanh Minh Zen Monastery in Saigon. He has spent 26 years in detention for his peaceful advocacy of religious freedom and human rights and remains under constant Police surveillance. Ten years after his release in a 1998 government amnesty, he has still not been issued the obligatory *"ho khai"* (residence permit), without which he is an illegal citizen.

**The Roman Catholic Church:** In September 2008, Vietnam used tear gas and electric batons to disband peaceful Catholic prayer vigils in Hanoi to call for the return of Church properties confiscated by the State, and bulldozed Catholic properties. During a series of massive peaceful

rallies, including one of 10,000 people, protesters were hospitalised and many arrested in grave violation of the right to peaceful assembly guaranteed in the Vietnamese Constitution and in the ICCPR.

**Protestants:** Despite regulations to streamline the registration process, hundreds of Christian house church organizations that tried to register in 2006 were either rejected, ignored, or had their applications returned unopened. These included 500 ethnic minority churches in the Northwest Highlands.

## **Discrimination against Indigenous Peoples**

**The Montagnards** in the Central and Northern Highlands of Vietnam suffer discrimination including social exclusion, confiscation of ancestral lands, state-sponsored migration of ethnic Vietnamese into highland areas and the undermining of traditional culture. Religious persecution is also a key issue, since many Montagnards have converted to Protestantism. In 2001 and 2004, the government violently quelled demonstrations of Montagnards protesting religious persecution and land confiscation, and over 300 Montagnards remain in detention. Over 200 Montagnards are reportedly detained in Ba Sao Camp (northern Vietnam) in extremely harsh conditions. Many bear marks of beatings and torture.

**The Khmer Krom** minority in southern Vietnam suffer religious persecution and land confiscation. In 2007, the authorities arrested 20 Khmer Krom Buddhist monks for participating in a peaceful protest calling for religious freedom. Five received prison sentences. Excessive force has been used against Khmer Krom farmers petitioning for resolution of land conflicts.

## **The Right to Peaceful Assembly**

Although this right is guaranteed by the Constitution (Article 69), Vietnam systematically suppresses peaceful demonstrations and punishes protesters under criminal law. In September 2008, Police forcefully disbanded demonstrations by students in Hanoi protesting Chinese claims of sovereignty over Vietnamese territory. Scores of students and activists were arrested and many are still in custody. Peaceful demonstrations by farmers and peasants, known as the “Victims of Injustice”, many of them women, have also been brutally repressed. This rural protest movement, in which dispossessed farmers march to Hanoi or Saigon to file petitions and camp outside government buildings protesting state confiscation of lands for development projects and lack of compensation, has reached explosive proportions, with over 2 million complaints filed over the past 10 years. Police routinely beat and arrest demonstrators or forcibly return them to their homes. To stem these protests, the government adopted Decree 38/2005 prohibiting demonstrations outside public buildings.

## **The Rights of Women**

Grave violations of women’s rights persist in Vietnam, despite legal commitments taken by the government to promote gender equality. Abuses include domestic violence, prostitution and trafficking of women and girls – often with the connivance of Party and Police officials – violations of reproductive rights. Lack of implementation and awareness, official power abuse and corruption result in mass abuses of women’s right to land. Despite revisions in the Land Law that entitle women to register Land User Certificates along with their husbands, only 3% are registered in women’s names, and 3% joint-held. Widows find themselves completely destitute after working for decades on their husband’s lands. Recommendations made by the CEDAW Committee to address these abuses have been ignored.

## Violations of Labour Rights

Economic liberalisation and competition to provide cheap labour has led to serious abuses of labour rights. In 2008, as Vietnam suffered its worst economic crisis, with inflation rocketing to 27% and the price of rice up 72%, hundreds of thousands of workers staged wildcat strikes denouncing low pay and sweat-shop working conditions.

As a reaction, the government adopted a new decree obliging workers to pay their employers 3 months salary in compensation if their strike is deemed illegal. Whilst the 1995 Labour Code authorizes the right to strike, strikes are prohibited in 54 sectors considered to be of “public service” or important to the national economy or defence (including the post office, public transport, banking). The Prime Minister can “terminate” any strikes perceived to be “*detrimental to the national economy or public safety*”.

The Labour Code does not authorize freedom of association. All labour unions are under the umbrella of the “Vietnam General Confederation of Labour” (VGCL) controlled by the CPV. Free trade unions are prohibited. In 2007, several people who set up an unofficial United Worker-Farmers Organization (UWFO) were arrested and sentenced to harsh prison terms simply for seeking to protect workers’ rights and demanding the right to form free trade unions.

## Detention Conditions and Ill-treatment of Prisoners

Detention conditions are extremely harsh. Beatings and torture are routine. Prisoners, including the sick and elderly must perform hard labour. Prisons are overcrowded and filthy, and food rations are grossly insufficient. Medical care is available only to those who can pay. Vietnam has not implemented the recommendations made by the UN Working Group on Arbitrary Detention after their 1994 visit, and has not extended an invitation for a follow-up visit as planned.

## Recommendations

The FIDH and the Vietnam Committee on Human Rights call on the Vietnamese Government to take urgent-steps to:

1. immediately and unconditionally release human rights defenders and prisoners of conscience detained for the peaceful exercise of their political opinions or religious beliefs;
2. implement the recommendations of the UN Human Rights Committee<sup>2</sup> by bringing domestic legislation into line with international human rights law, especially by immediately repealing Ordinance 44 on “Regulating Administrative Violations”, revising “national security” provisions in the Penal Code and repealing all legislation restricting the exercise of rights enshrined in the ICCPR;
3. guarantee that the Vietnamese Constitution conforms with the International Covenant on civil and political rights and ensure that Vietnamese law guarantees the effective protection of all Covenant rights, in accordance with the recommendations of the Human Rights Committee<sup>3</sup>;
4. ensure that the definition of certain acts such as “opposition to order” and “national security violations”, for which the death penalty may be imposed, is clear and consistent with article 6 paragraph 2 of the Covenant, in accordance with the recommendations of the Human Rights Committee<sup>4</sup>;

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<sup>2</sup> *Concluding observations of the Human Rights Committee: Viet Nam* », CCPR/CO/75/VNM, 26/07/2002.

<sup>3</sup> *Ibid*, § 5

<sup>4</sup> *Ibid*, § 7

5. establish an immediate moratorium as first step of abolishment of the capital punishment under all circumstances;
6. re-establish the legitimate status of the Unified Buddhist Church of Vietnam and all other non-recognized religious organisations and allow them full freedom of religious activity;
7. cease arbitrary Police harassment, surveillance and censorship (on telephones, Internet, post etc) of perceived critics and dissidents;
8. guarantee the right to freedom of assembly; guarantee freedom of association and allow the establishment of trade unions independent of the Communist Party of Vietnam;
9. guarantee freedom of media, authorize the publication of independent newspapers and cease legal sanctions and harassment against journalists and citizens expressing peaceful views through the printed media, Internet or radio;
10. implement the recommendations of the UN Committee on the Elimination of Discrimination against Women, in particular with regard to the Land Law, by taking the necessary steps to remove any administrative obstacles that may prevent the issuance of joint land use certificates to husbands and wives<sup>5</sup>.

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<sup>5</sup> Concluding Comments of the CEDAW, CEDAW/C/VNM/CO/6, 2 February 2007, §9

## ANNEXE 1

### List of Journalists from the Official Press Detained or Sanctioned in 2008

**Nguyen Viet Chien** of *Thanh Nien* (Young People) sentenced to 2 years in prison 14-15 October 2008 on charges of "abusing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens" (Article 258 of the Penal Code). He was released after strong international pressure, but is still under effective house arrest.

**Nguyen Van Hai** of *Tuoi Tre* (Youth) sentenced to 2 years non-custodial re-education at the same trial. His sentence was lighter than his colleagues because he pleaded guilty. Both journalists were arrested on 12 May 2008 for reporting since 2005 on a million-dollar corruption scandal in the Transport Ministry (known as the PMU 18 Affair) in which several senior officials were arrested for corruption.

**Ly Tien Dung**, Editor in Chief of *Dai Doan Ket* (Great Solidarity, official organ of the Vietnam Fatherland Front, an umbrella of "mass" organisations controlled by the Communist Party), dismissed from his post by a Decision of 23.10.2008 for "violating the press law" by publishing three stories that conflicted with government and Communist Party policies.

**Dang Ngoc**, Deputy Editor of *Dai Doan Ket*, also dismissed by the Decision on 23.10.2008, along with the newspaper's entire editorial board.

**Nguyen Quoc Phong**, Deputy Editor-in-Chief and **Huynh Kim Sanh**, Editorial General Manager of *Thanh Nien* (Young People), **Bui Van Thanh**, Deputy Editor-in-Chief of *Tuoi Tre* (Youth), **Duong Duc Da Trang**, Head of *Tuoi Tre*'s Hanoi Bureau, **Tran Dinh Dung**, journalist for *Khoa hoc va Doi song* (Science and Life) had their press cards revoked by decision of the Ministry of Information and Communication in August 2008 for "serious violations of regulations on media operation and information".

**Ms Nguyen Thi Thanh Thuy**, Deputy Editor-in-Chief of *Nguoi Cao Tuoi* (Elderly People) and journalist **Hoang Tuyet Oanh** have also had their press cards revoked for alleged charges of "corruption" and "lack of responsibility causing serious consequences".

## ANNEXE 2

### Related Vietnamese Laws and Regulations

**The Press Law:** The 1990 Press Law provides: *“The press in the Socialist Republic of Vietnam constitutes the voice of the Party, of the State and social organizations”* (Article 1). *“No one shall be allowed to abuse the right to freedom of the press and freedom of speech in the press to violate the interests of the State, of any collective group or individual citizen”* (Article 2:3). Article 15 on the *“rights and obligations of journalists”* provides that journalists have the obligation *“to defend the Party’s lines, directions and policies and the State’s laws”*. Chapter V of the Press Law on *“State management over Press”* defines the contents of State management, such as: *“organizing the provision of information for the press; managing the press’s information”* (Article 17:3).

**The Publishing Law.** The 1993 Publishing Law provides: *“Publications with the following contents are strictly prohibited: “opposing the State of the Socialist Republic of Vietnam; destroying the people’s solidarity block; disseminating reactionary ideas and culture...; destroying fine customs and habits; divulge secrets of the Party, State, and security...; distorting history, denying revolutionary achievements, hurting our great men and national heroes, slander or hurting the prestige of organisations, honour and dignity of citizens”* (Article 22).

**The role of the domestic media:** The domestic media is a force to combat *“the false ideas and plans of enemy forces and other political opportunists, and to protect the ideas, agenda and fundamental leadership of the party.”* Do Quy Doan, Deputy Minister of Culture, 20 June 2008.

**Ordinance 44:** Ordinance 44 was adopted by the National Assembly’s Standing Committee shortly after the UN Human Rights Committee called for the repeal of Decree 31/CP, and became effective as of 1<sup>st</sup> October 2002. It empowers provincial and district-level People’s Committees to detain without trial, for periods of 6 months to 2 years, citizens *“who have violated laws on security, public order and social safety, but whose offence is not serious enough to justify prosecution”*. Whereas Decree 31/CP allowed for administrative detention only, Ordinance 44 authorizes detention in *“educational institutions”* (Article 25); internment in *“medical facilities”* (Article 26), or administrative detention (Article 27). *“Educational institutions”* are usually rehabilitation camps or Social Protection Centres where *“bad social elements”* such as prostitutes, drug addicts, street children or dissidents may be held without charge, often in inhumane conditions. *“Medical facilities”* include mental hospitals and psychiatric institutions.