



**FIDH – International Federation for Human Rights**

*and*

**Vietnam Committee on Human Rights (VCHR)**

## **Assessment of Vietnam’s implementation of the UN Human Rights Committee’s recommendations on key priority issues**

**UN Human Rights Committee - 136<sup>th</sup> session**

**18 July 2022**

FIDH and VCHR regret that the Vietnamese government failed to take any steps towards the implementation of key recommendations made by the United Nations (UN) Human Rights Committee (CCPR), after the review of the situation of civil and political rights in Vietnam on 11-12 March 2019.

In its Concluding Observations, adopted on 25 March 2019, the CCPR asked the Vietnamese government to provide information on the implementation of recommendations concerning: 1) the death penalty; 2) freedom of expression; and 3) human rights defenders.

The CCPR gave the Vietnamese government a 29 March 2021 deadline to provide such information, as part of the committee’s follow-up procedure. The Vietnamese government’s submission, received by the CCPR on 29 March 2021, contains a profusion of plans, roadmaps, studies, workshops, and reports that seem to be aimed solely at vindicating the government’s adherence to a restrictive national legislative framework that is totally incompatible with the International Covenant on Civil and Political Rights (ICCPR). In reality, the government’s submission has failed to provide any evidence of significant action taken towards the implementation of the recommendation made by the CCPR.

The FIDH-VCHR joint follow-up submission details the government’s failure to take any steps towards the implementation of the recommendations made by the CCPR on all three key priority issues. In addition, FIDH and VCHR submit that, since March 2019, the government has taken measures that are, in fact, contrary to the recommendations made by the CCPR. As a result, FIDH and VCHR recommend the CCPR give the lowest grade (E) in its assessment of the government’s implementation of the three priority recommendations.<sup>1</sup>

<sup>1</sup> The follow-up assessment criteria of the Human Rights Committee are as follows:

A - Reply/action largely satisfactory

*The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.*

B – Reply/action partially satisfactory

*The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary.*

C – Reply/action not satisfactory

*A response has been received, but action taken or information provided by the State party is not relevant or does not implement the recommendation.*

D – No cooperation with the Committee

*No follow-up report has been received after the reminder(s).*

E – Information or measures taken are contrary to or reflect rejection of the recommendation

## Death penalty: Death sentences on the rise amid secrecy

**Recommended grade: E**

*The Committee reiterates its recommendation (CCPR/CO/75/VNM, para. 7) that the State party should:*

- (a) Consider introducing a moratorium on the application of capital punishment and ratifying or acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;*
- (b) Until a moratorium is in place, amend the Penal Code to further reduce the number of crimes subject to the death penalty and ensure that such punishment is retained only for the most serious crimes, that is, for crimes of extreme gravity involving intentional killing;*
- (c) Ensure that the death penalty is not a mandatory sentence for any crimes and, if imposed, is never in violation of the Covenant's provisions, including with regard to fair trial procedures, and give reasonable advance notice of the scheduled date and time of execution to the affected death row inmates and their families;*
- (d) Ensure that pardons or commutations of death penalty sentences are effectively available in all cases, and regardless of the crimes committed;*
- (e) Publish official figures regarding death sentences and executions, disaggregated by sex, age, ethnicity, religion and crime.*

With regard to the death penalty, none of the recommendations made by the CCPR have been implemented by the Vietnamese government. Since March 2019, the use of the death penalty in Vietnam has continued to be characterized by a systematic lack of due process of law and lack of transparency concerning death sentences, executions, and prison conditions for death row inmates.

Contrary to Vietnam's assertion that "data on death penalty sentences have been published in accordance to the law,"<sup>2</sup> information on death sentences and executions remains a state secret under the 2018 Law on State Secrets.<sup>3</sup>

Despite the lack of official statistics, internal government reports revealed an increase in the number of death sentences since the CCPR review. In a report to the National Assembly covering the period from 1 October 2020 to 31 July 2021, the government stated that the number of death sentences had "increased rapidly" by over 34%, with a total of 440 more death sentences imposed during that period, compared to 2019.<sup>4</sup> The report also revealed that facilities for prisoners sentenced to death were grossly overcrowded, especially in Cao Bằng, Sơn La, Thanh Hóa, Lạng Sơn, Điện Biên, Hà Tĩnh, and Hà Nội, and delays in executing sentences were "extremely long."<sup>5</sup>

Vietnam's courts have continued to apply the death penalty for offenses that are not considered as the "most serious crimes" under Article 6(2) of the ICCPR. A total of six national security crimes in the Criminal Code, last amended in 2015, remain punishable by death: high treason (Article 108); carrying out activities aimed at overthrowing the people's administration (Article 109, formerly Article 79); spying (Article 110, formerly Article 80); Rebellion (112); terrorist activities aimed at opposing the

<sup>2</sup> UN Human Rights Committee, *Information received from Viet Nam on follow-up to the concluding observations on its third periodic report*, 8 April 2021; UN Doc. CCPR/C/VNM/FCO/3, para. 12

<sup>3</sup> Such policy was reiterated during Vietnam's third Universal Periodic Review (UPR) in January 2019, when the Vietnamese government declared that "Vietnam will not publicize the data concerning the death penalty" because "data concerning the death penalty are related to other legal regulations involving the protection of state secrets in our country."

<sup>4</sup> Directives on the death penalty remain insufficient, Pháp Luật (Law), 16.10.2020. <https://plo.vn/quy-dinh-ve-thi-hanh-an-tu-hinh-con-bat-cap-post597361.html>, accessed 30 June 2022.

<sup>5</sup> *Ibid.*

people's administration (113); and sabotaging the material-technical foundations of the Socialist Republic of Vietnam (114). Such provisions make no distinction between violent acts and the peaceful exercise of the rights to freedom of expression. For example, Article 109 carries the death penalty for individuals who "establish or join organizations with intent to overthrow the people's administration [...] or cause serious consequences." Under this broad and vague language, dissidents can be sentenced to death for the mere "intent" to criticize the government or form opposition movements. There is no legal definition of causing "serious consequences."

There are serious concerns about the executions by lethal injection. Under the government's Decree 43/2020/NĐ-CP, which came into effect in April 2020,<sup>6</sup> lethal executions are conducted by the administration of three drugs: one that causes unconsciousness; another that paralyzes the musculoskeletal system; and another that stops the heart from beating. Three doses of each drug are prepared for the execution, two of which are back-ups. If the convict's heart is still beating 10 minutes after the first dose, a second dose is administered, and a third dose if the second dose fails. If the person is still alive 10 minutes after the third dose, the execution will be temporarily suspended. The fact that the government was obliged to legislate on this procedure raises concerns that this may be a frequent occurrence. Security Police officials who take part in administering the lethal injections are paid a triple salary and given 10 days of leave for each execution.<sup>7</sup>

Lastly, the government has neither introduced a moratorium on the application of capital punishment nor ratified the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty. It must be noted that, on 16 December 2020, Vietnam abstained on the UN General Assembly resolution on the moratorium on the use of the death penalty.<sup>8</sup>

### **Freedom of expression: Increasing restrictions introduced, online and offline**

#### ***Recommended grade: E***

*The State party should, as a matter of urgency, take all necessary steps, including revising legislation, to end violations of the right to freedom of expression offline and online, and ensure that restrictions do not go beyond the strictly defined limitations set forth in article 19 of the Covenant, taking into account Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. It should also promote pluralistic media that can operate free from undue State interference.*

Since March 2019, not only has the government failed to bring existing legislation on freedom of expression into line with the ICCPR, but it has adopted new laws that further restrict the right to freedom of expression, offline and online. Below are some of the new laws cited by the government in its follow-up submission to the CCPR.<sup>9</sup>

<sup>6</sup> Decree 43/2020/NĐ-CP on the execution of death sentences by lethal injection, <https://luatvietnam.vn/hinh-su/nghi-dinh-43-2020-nd-cp-thi-hanh-an-tu-hinh-bang-hinh-thuc-tiem-thuoc-doc-182316-d1.html> [in Vietnamese]

<sup>7</sup> Questions and Answers on executions by lethal injection, Department of Justice, Hue, 18.4.2022, accessed 28 June 2022. <https://stp.thuathienhue.gov.vn/?gd=12&cn=28&tc=6840> [in Vietnamese]

<sup>8</sup> UN General Assembly, 75<sup>th</sup> session, *Resolution adopted by the General Assembly on 16 December 2020 - Moratorium on the use of the death penalty*, 28 December 2020; UN Doc. A/RES/75/183; voting record available at: <https://digitallibrary.un.org/record/3894866?ln=en>

<sup>9</sup> UN Human Rights Committee, *Information received from Viet Nam on follow-up to the concluding observations on its third periodic report*, 8 April 2021; UN Doc. CCPR/C/VNM/FCO/3, paras. 14 and 15

Decree 119/2020/ND-CP on “Penalties for Administrative Violations in Journalistic and Publishing Activities,” which came into effect on 1 December 2020, imposes fines ranging from five million VND (approx. 210 EUR) to 200 million VND (approx. 8,350 EUR) for vaguely-defined violations such as “posting news, photos that do not suit Vietnam’s fine customs or information that encourages bad tradition, superstition; posting false information that causes extremely serious consequences; posting information that is not suitable to the interests of the country and the people; that is distorted, fabricated or causing confusion among people; that affects the independence, sovereignty and territorial integrity of the Socialist Republic of Vietnam; that distorts history, denies revolutionary achievements, or offends the nation, national heroes; that affects the great national unity bloc.”<sup>10</sup>

Decree 15/2020/ND-CP on penalties for administrative violations in the fields of telecommunications, postal services, and information technology also contains provisions that limit the scope freedom of expression online.<sup>11</sup> The Decree, which came into effect in April 2020, provides for new and increased penalties against persons who post content on websites or social networks containing diverging political views. Article 102 imposes fines of up to 70 million VND (approx. 2,940 EUR) for vaguely-worded violations such as “disseminating reactionary information; providing information/images infringing upon national sovereignty; distorting history, denying revolutionary achievements; offending the nation, famous persons or national heroes.” Article 99 extends fines for similar activities on websites, including the “the sabotage of traditional good traditions and customs.”

In December 2021, two UN human rights experts said that “these provisions could seriously infringe of the freedoms of expression and opinion online.” The two added that to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political system espoused by the government was “inconsistent with Article 19(3) [of the ICCPR].”<sup>12</sup>

The government also planned to introduce more restrictions to limit the free flow of online information. In April 2022, it was reported that the government was in the process of amending the restrictive Decree 72/2013-ND-CP, which came into effect in September 2013, to impose more draconian curbs on online platforms. The proposed rules would require social media companies to remove content the government deems illegal within 24 hours. According to the new rules, the 24-hour time frame to remove “illegal content and services” will not have a grace period, while active “illegal live streams” must be blocked within three hours. Companies that do not meet the deadlines could see their platforms banned in the country.<sup>13</sup>

Lastly, the government has failed to promote free and pluralistic media. Media has remained tightly controlled by the government and press freedom has continued to be severely restricted under the

<sup>10</sup> Decree No. 119/2020/ND-CP dated October 7, 2020 on penalties for administrative violations in journalistic and publishing activities, <https://vanbanphapluat.co/decree-119-2020-nd-cp-penalties-for-administrative-violations-in-journalistic-and-publishing-activities>

<sup>11</sup> Decree No. 15/2020/ND-CP dated February 03, 2020 on penalties for administrative violations against regulations on postal services, telecommunications, radio frequencies, information technology and electronic transactions; <https://vanbanphapluat.co/decree-15-2020-nd-cp-penalties-for-administrative-violations-against-regulations-on-postal-services>

<sup>12</sup> Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *OL VNM 7/2021*, 10 December 2021; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26885>

<sup>13</sup> Reuters, *EXCLUSIVE Vietnam plans 24-hour take-down law for “illegal” social media content –sources*, 20 April 2022; <https://www.reuters.com/business/media-telecom/exclusive-vietnam-plans-24-hour-take-down-law-illegal-social-media-content-2022-04-20/>

Press Law (amended in 2017), which raised the number of “prohibited acts” from four to 13, including some that are unduly vague, such as “sowing divisions between the people and the State” or “defaming the people’s government.”

### **Human rights defenders: More arrested and imprisoned**

#### ***Recommended grade: E***

*The State party should ensure that human rights defenders and other civil society actors are protected against threats, intimidation and physical attacks and investigate, prosecute and convict perpetrators of such acts. It should also allow them the necessary latitude to carry out their activities, including engaging with the United Nations, without fear of restrictions or reprisal.*

Since March 2019, the government has not taken steps to ensure an enabling environment for human rights defenders and civil society. On the contrary, the government has pursued an unabated crackdown, subjecting civil society actors and human rights defenders to intimidation, threats, physical attacks, arbitrary arrest, and imprisonment.

Between April 2019 and July 2022, at least 95 activists, government critics, and human rights defenders - including 17 women - were arrested. During the same period, 113 (including 17 women) were sentenced to prison terms of up to 15 years.

Among the persons convicted were independent journalist Ms. Phạm Đoan Trang, sentenced to nine years in prison; land rights activist Ms. Can Thị Thêu and her son Trịnh Bá Tú (eight years each); anti-corruption activist Đỗ Nam Trung (10 years); writer Phạm Chí Thành (five years and six months); blogger Mr. Vũ Tiến Chi (10 years); Mr. Lê Viết Hoà, Ms. Ngô Thị Hà Phương, and Ms. Nguyễn Thị Cẩm Thúy (five, seven, and nine years respectively); journalist Ms. Trần Thị Tuyết Diệu (eight years); Cao Văn Dũng (nine years); Nguyễn Văn Lâm (nine years); Trần Quốc Khánh (six years and six months); Nguyễn Trí Giảo (seven years); and Lê Trọng Hùng (five years).

Most activists and human rights defenders remain detained under “national security” provisions the Criminal Code, notably: Articles 109; 116 (“undermining the unity policy”); 117 (“making, storing or disseminating information, documents, materials and items against the Socialist Republic of Vietnam”); and 331 (“abusing democratic freedoms to harm the interests of the state”). In December 2021, three UN human rights experts deplored the government’s abuse of these provisions: “Using such laws to detain, prosecute and harshly punish human rights defenders and civil society members, who are working for a freer and more just society, is an attempt not only to silence these individuals and organizations but also to impose a climate of fear leading to self-censorship and inhibiting others from speaking out and cooperating with the United Nations human rights and other mechanisms.”<sup>14</sup>

For the first time in Vietnam, environmental rights defenders have become the target of government repression. Since January 2022, four prominent environmentalists, Mai Phan Lợi, Bạch Hùng Dương, Đặng Đình Bách, and Ngụy Thị Khanh have been sentenced to prison terms ranging from two to five years on charges of “tax evasion” (Article 200 of the Criminal Code). Ms Ngụy Thị Khanh is an internationally-acclaimed activist, winner of the Goldman Prize. She is also a symbol of a peaceful campaign against Vietnam’s reliance on coal power. In the past, Vietnam has often invoked charges

<sup>14</sup> OHCHR, *Viet Nam: UN experts appalled by the conviction of four human rights defenders*, 23 December 2021; <https://www.ohchr.org/en/press-releases/2021/12/viet-nam-un-experts-appalled-conviction-four-human-rights-defenders>

of “tax evasion” as a means of silencing its critics. The four imprisoned environmental rights defenders did not demand political change, but advocated for cleaner energy – a position that could put them at odds with the Communist Party of Vietnam’s policies, and could be interpreted as “infringing on national interests.”

Contrary to the government’s claims that it respects due process of law,<sup>15</sup> the four environmental rights defenders were denied the right to a fair trial. Đặng Đình Bách, lawyer and Chair of the Law and Policy of Sustainable Development Research Center (LPSD), who received a five-year sentence, said he was denied access to his lawyer during detention. His family was not allowed to attend the court hearing. The court ignored evidence presented by his lawyers, as well as their submission that the prosecution had failed to present any compelling evidence.

Also contrary to the government’s statement that “[i]ndividuals or organizations in Vietnam shall not be threatened, intimidated or attacked for their participation in activities,”<sup>16</sup> human rights defenders and civil society actors are frequently harassed for engaging with international bodies. In November 2019, independent journalist Phạm Chí Dũng engaged with international institutions by launching an appeal to the European Parliament to postpone ratification of the European Union (EU) - Vietnam Free Trade Agreement, pending concrete progress on human rights. He was arrested two days after sending the appeal, and sentenced on 5 January 2021 to 15 years in prison on charges of writing “anti-state articles” and “cooperating with foreign media to deliver distorted information” under Article 117 of the Criminal Code.

In addition, activities of civil society organizations have faced increasing obstacles, following the enactment of new laws that are inconsistent with the ICCPR. These include Decree 80/2020/ND-CP, dated 8 July 2020, and Decree 56/2020/ND-CP, dated 25 May 2020, on the activities and funding of national and international nongovernmental organizations (NGOs). In December 2021, two UN human rights experts found that such laws established “unreasonably burdensome requirements for their reporting, registration of funding and projects, meetings and other public activities, especially for issues related to human rights.”<sup>17</sup> In addition, Prime Minister’s Decision 06/2020/QĐ-TTg, dated 21 February 2020, imposed new requirements on the organization of international conferences and seminars in Vietnam, notably on issues such as religious freedom and human rights.<sup>18</sup> The UN human rights experts concluded that this legislative framework imposed “undue restrictions on civil society organizations, particularly with regards to their access to legal foreign funding.”<sup>19</sup>

<sup>15</sup> UN Human Rights Committee, *Information received from Viet Nam on follow-up to the concluding observations on its third periodic report*, 8 April 2021; UN Doc. CCPR/C/VNM/FCO/3, para. 25

<sup>16</sup> UN Human Rights Committee, *Information received from Viet Nam on follow-up to the concluding observations on its third periodic report*, 8 April 2021; UN Doc. CCPR/C/VNM/FCO/3, para. 20

<sup>17</sup> Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *OL VNM 7/2021*, 10 December 2021; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26885>

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*