

# **Report submitted by Project88 to the United Nations Human Rights Committee**

In consideration of the List of Issues to be adopted for the Fourth Report of the Socialist Republic of Viet Nam during the 140<sup>th</sup> session (4-28 March 2024)

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## **Introduction**

Project88 is a human rights organization that conducts research and advocacy on Vietnam. We are submitting this report to inform the List of Issues to be adopted for Vietnam's fourth periodic report by the UN Human Rights Committee (HRC) in the HRC's 140<sup>th</sup> session from 4 to 28 March 2024.

Vietnam's review by the HRC provides an opportunity to examine whether the country has made any progress in implementing the International Covenant on Civil and Political Rights (ICCPR). Our analysis of the evidence suggests that Vietnam has made little progress and even regressed across several key indicators.

Since Vietnam's last review, the government has continued to violate the civil and political rights of its citizens. Vietnam kills more of its own citizens than almost any other country. Between 2013 and 2016, the most recent time period for which data is available, the government went on a killing spree, executing 429 people.<sup>1</sup> This puts Vietnam behind only China and Iran in its use of the death penalty.<sup>2</sup> Globally, use of the death penalty is at an all-time low. At the end of 2022, 112 countries had abolished the death penalty for all crimes.<sup>3</sup> In spite of this trend, last year Vietnam handed down 102 death sentences.<sup>4</sup>

On July 13, 2023, Vietnam's senior leadership enacted Directive 24 'on ensuring national security in the context of comprehensive and deep international integration'.<sup>5</sup> Directive 24 frames all forms of international cooperation and commerce as threats to national security and articulates a disturbing plan to deal with these perceived threats by systematically violating the rights of the country's 100 million citizens.

In the directive, Vietnam's leaders lay bare their plan to, among other things, prevent the formation of coalitions by civil society groups, prevent activists from shaping state policy and promoting legal reform, prevent the formation of domestic political opposition groups, and prevent organizations from

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<sup>1</sup> Mike Ives (2017, Aug. 12). 'It's very easy to die there': How prisoners fare in Vietnam. *New York Times*.

<https://www.nytimes.com/2017/08/12/world/asia/vietnam-prison-abuses.html>

Ministry of Justice. (2017). 05/BC-BCA-C81, *BÁO CÁO Tổng kết 05 năm thi hành Luật Thi hành án hình sự trong Công an nhân dân (2011 - 2016)*, Retrieved Mar. 31, 2017 from

[http://www.moj.gov.vn/qt/tintuc/Lists/ChiDaoDieuHanh/Attachments/1976/Bao%20cao%20tong%20ket%205%20nam\\_chinh\\_Tong%20ket%20Bo.doc](http://www.moj.gov.vn/qt/tintuc/Lists/ChiDaoDieuHanh/Attachments/1976/Bao%20cao%20tong%20ket%205%20nam_chinh_Tong%20ket%20Bo.doc)

<sup>2</sup> Amnesty International (2023, May 16). Death sentences and executions, 2022.

<https://www.amnesty.org/en/documents/act50/6548/2023/en/>

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Swanton, Ben & Altman-Lupu, Michael (2024, Feb. 20). Vietnam's leaders declare war on human rights as a matter of official policy: An analysis of secret Directive 24. Project88. <https://the88project.org/wp-content/uploads/2024/02/D24-report-final.pdf>

receiving foreign funding. In short, Directive 24 aims to dismantle any semblance of an independent civil society in Vietnam.

Directive 24 aims to subvert democratic control over public policy and the economy, while shoring up one-party rule. If implemented as intended, the directive will lead to systematic and widespread human rights violations, including impermissible restrictions on assembly, association, speech, the media, and movement. It will also result in violations of the right to participate in public affairs, and the right of workers to form independent trade unions and syndicates.

The directive reveals that Vietnam has no genuine intention to fulfill its human rights commitments. Rather, Vietnamese senior leaders merely want to project the appearance of respecting rights on the world stage in order to advance the country's other interests. It is clear from the directive, as well as the situation in the country, that Vietnam's formal ratification of international agreements does not indicate that the human rights situation in the country has improved.

Directive 24 was enacted amid a brutal crackdown on activism, dissent, and civil society, which has intensified after General Secretary of the Communist Party of Vietnam Nguyen Phu Trong extended his term in 2021. During this crackdown, scores of dissidents and human rights activists have been arbitrarily imprisoned on vaguely worded national security or defamation charges. At the beginning of 2024, Vietnam had close to 200 political prisoners.<sup>6</sup> This figure, however, masks the number of people who have been persecuted into silence or forced into exile.

State actors continue to persecute, harass, arbitrarily detain, and physically attack human rights defenders (HRDs) while surveilling and intimidating HRD's families. On 8 January 2021, UN experts voiced concerns over Vietnam's use of 'vaguely defined laws' to arbitrarily detain HRDs as part of an 'increasing clampdown' on the freedom of expression in the country.<sup>7</sup> In a disturbing twist, the government has now started targeting the lawyers who represent these activists when they face criminal prosecution.

The targets of this crackdown extend beyond human rights and democracy activists—who have long been persecuted by the state—to include new actors, such as NGO administrators working on ostensibly safe issues that are policy priorities of the government. A series of criminal prosecutions of civil society leaders has led to their imprisonment and the dissolution of their

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<sup>6</sup> Project88. *Database*. Retrieved Jan. 8, 2024, from <https://the88project.org/database/>

<sup>7</sup> OHCHR, Press briefing notes on Viet Nam, <https://www.ohchr.org/en/2021/01/press-briefing-notes-vietnam?LangID=E&NewsID=26644>

organizations. Over the past two years, Vietnam has arrested or imprisoned six key leaders of the country's climate change movement on false criminal charges. Other leaders of NGOs have also been arrested by, or faced persecution from, Vietnamese authorities. For instance, Nguyen Thi Kieu Vien, the founder and executive director of Towards Transparency, the only anti-corruption NGO then-operating in Vietnam, was forced into exile and her organization forced to close.

As a matter of policy, the Vietnamese government has enacted a series of legal and extra-legal measures designed to limit the autonomy and impact of civil society. These measures included a code of conduct that prohibits communist party members from promoting the development of civil society, as well as policies that tighten restrictions on international conferences and foreign funding of NGOs, while preventing these organizations from forming alliances and networks.<sup>8</sup> According to a joint statement by 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, these measures 'raise serious concerns regarding the rights to freedom of peaceful assembly and of association, as well as to freedom of opinion and expression.'<sup>9</sup>

This report will provide an overview of some of the most egregious violations of the ICCPR by Vietnam and will provide recommendations on what the Human Rights Committee should include in the List of Issues to be adopted for Vietnam's fourth periodic report.

## **Compliance with the ICCPR**

### Article 6: the right to life

*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

#### *Death penalty*

Article 6 of the ICCPR protects the right to life and prohibits the arbitrary deprivation of life by a state party. The right to life is perhaps the most

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<sup>8</sup> See Swanton, Ben (2023). Weaponizing the law to prosecute the Vietnam Four. Project88.

<https://the88project.org/wp-content/uploads/2023/04/Weaponizing-the-law-report-Project-88-ENG.pdf>

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 (Dec. 10, 2021). UN Ref. OL VNM 7/2021. Retrieved Jan. 8, 2024 from

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26885>

<sup>9</sup> Ibid.

fundamental of all human rights. While the ICCPR does not prohibit the use of the death penalty, it does set strict limitations on its use.<sup>10</sup>

In Vietnam's 4<sup>th</sup> Periodic Report, the government listed 'drug-related crimes' and 'crimes of infringing upon the national security' among the 'extremely serious crimes' for which the death penalty can be imposed.<sup>11</sup> National security crimes, including Article 117 of the 2015 Criminal Code, are among the most common charges in political prosecutions. It is therefore quite troubling that Vietnam includes the umbrella of 'crimes of infringing upon the national security' as a category that can permissibly be punishable by death. It is unacceptable that political prisoners might face the death penalty in Vietnam, and therefore it is imperative that Vietnam clarify which national security crimes are punishable by death and in what circumstances the death penalty can be imposed. In addition, in recent years the OHCHR has stressed that 'imposing the death penalty for drug offenses is incompatible with international norms and standards.'<sup>12</sup> The HRC must ensure that the death penalty is applied to only the most serious crimes in Vietnam.

Due to a lack of transparency, not much is known regarding Vietnam's imposition of the death penalty. What is known is that between 2013 and 2016, the most recent time period for which data is available, the government executed 429 people.<sup>13</sup> This trend has continued to the present. In 2022, for instance, Vietnam handed down 102 death sentences.<sup>14</sup> Only seven countries imposed more death sentences than Vietnam that year.<sup>15</sup>

### *Deaths in prisons due to willful medical neglect*

In addition, since Vietnam was last reviewed in 2019, at least six political prisoners died in prison due to the alleged willful medical neglect of Vietnamese authorities. Allegations of the deaths of individuals in custody in Vietnam are well documented in recent years.<sup>16</sup>

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<sup>10</sup> ICCPR at Art. 6.

<sup>11</sup> Vietnam's 4<sup>th</sup> Periodic Report, CCPR/C/VNM/4/8894/E, at para. 33.

<sup>12</sup> OHCHR (2022, Nov. 22). Saudi Arabia: Resumption of executions for drug offences 'deeply regrettable', UN rights office says. Retrieved Jan. 5, 2024 from <https://news.un.org/en/story/2022/11/1130917>

<sup>13</sup> Mike Ives (2017, Aug. 12). 'It's very easy to die there': How prisoners fare in Vietnam. *New York Times*.

<https://www.nytimes.com/2017/08/12/world/asia/vietnam-prison-abuses.html>

Ministry of Justice. (2017). 05/BC-BCA-C81, BÁO CÁO Tổng kết 05 năm thi hành Luật Thi hành án hình sự trong Công an nhân dân (2011 - 2016), Retrieved Mar. 31, 2017 from

[http://www.moj.gov.vn/qt/tintuc/Lists/ChiDaoDieuHanh/Attachments/1976/Bao%20cao%20tong%20ket%205%20nam\\_chinh\\_Tong%20ket%20Bo.doc](http://www.moj.gov.vn/qt/tintuc/Lists/ChiDaoDieuHanh/Attachments/1976/Bao%20cao%20tong%20ket%205%20nam_chinh_Tong%20ket%20Bo.doc)

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Public Insecurity: Deaths in Custody and Police Brutality in Vietnam, (2014, Sept. 16). Human Rights Watch. Retrieved Aug. 12, 2023, from <https://www.hrw.org/report/2014/09/16/public-insecurity/deaths-custody-and-police-brutality-vietnam>.

Official statistics from the Vietnamese government detail an alarming number of deaths in custody. A 2017 report from the Ministry of Public Security, which oversees prisons in Vietnam, stated that over the preceding five years, the remains of 2,812 people were returned to the families of prisoners, without detailing the conditions under which these prisoners died.<sup>17</sup> The same report also details much worse health outcomes for prisoners than members of the general population. In 2016, for instance, 8.3% of the total prison population was HIV+. Among the general population of Vietnam, just 0.4% of people aged 15-49 were HIV+.<sup>18</sup>

In 2022, citizen journalist Do Cong Duong, who had been imprisoned on political charges, died in prison after repeated requests by Duong and his family for medical attention had allegedly been ignored by Vietnamese authorities.<sup>19</sup> Duong had been arrested on January 24, 2018 for filming residents of Tu Son Commune being evicted from their land by Bac Ninh provincial police and was sentenced to eight years in prison for ‘disturbing the peace’ and ‘abusing democratic freedoms.’<sup>20</sup>

In April 2022, Duong told his family he was suffering from heart failure. Between April and August 2022, Duong’s family repeatedly requested that he receive medical treatment, but their requests were allegedly ignored.<sup>21</sup> The family had no choice but to buy medication for him without knowing exactly what treatment his health condition required. Their requests for medical treatment were eventually acted on, but by then, it was too late.

On August 2, 2022, after finally being admitted to Huu Nghi Nghe An Hospital in Vinh City, Duong died. Duong’s daughter, Lan Anh, reported that her father told her he suffered from heart failure.<sup>22</sup> The condition was reportedly diagnosed by doctors from a local clinic near the prison where he was incarcerated, and was also confirmed by doctors of the hospital in Vinh City

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<sup>17</sup> Ministry of Justice. (2017). 05/BC-BCA-C81, *BÁO CÁO Tổng kết 05 năm thi hành Luật Thi hành án hình sự trong Công an nhân dân (2011 - 2016)*, Retrieved Mar. 31, 2017 from <http://www.moj.gov.vn/qt/tintuc/Lists/ChiDaoDieuHanh/Attachments/1976/Bao%20cao%20tong%20ket%205%20nam%20chinh%20Tong%20ket%20Bo.doc>

<sup>18</sup> Ibid.

APCOM (2023). Vietnam Snapshot. Retrieved Jan. 8, 2023 from [https://www.apcom.org/wp-content/uploads/2023/02/Country-summary-HIV-KP-snapshot-Vietnam\\_v1.pdf](https://www.apcom.org/wp-content/uploads/2023/02/Country-summary-HIV-KP-snapshot-Vietnam_v1.pdf)

<sup>19</sup> Project88 (2023, Dec. 19). Human Rights Report Vietnam January 2022-June 2023. Retrieved Jan. 5, 2024 from [https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23\\_121523.pdf](https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23_121523.pdf)

<sup>20</sup> Ibid.

<sup>21</sup> Project88 (2022, Sept. 16). Interview with Lan Anh.

<sup>22</sup> Ibid.

that treated Duong.<sup>23</sup> Officially, however, Duong's cause of death was not disclosed, and prison authorities denied the family's request to bring Duong's body home for burial.

In addition to Do Cong Duong, religious leader Phan Van Thu, who was serving a life sentence at Gia Trung Prison in Gia Lai Province, also died from unknown reasons in prison in November 2022.<sup>24</sup> Phan Van Thu is one of 22 members of the An Dan Dai Dao Buddhist sect who were arrested in February 2012.<sup>25</sup> The group was charged with subversion and accused of writing documents critical of the government and for setting up two companies and investing in an eco-tourism park as a cover for recruiting supporters.<sup>26</sup> Those affiliated with the group maintained that the activities of the group were purely religious and that the authorities interpreted their religious teaching in political terms. As in the case of Do Cong Duong, the authorities did not disclose Thu's cause of death to the family.<sup>27</sup>

Do Cong Duong and Phan Van Thu's cases illustrate not only the lack of proper healthcare in Vietnam's prisons, particularly for political prisoners, but also a lack of transparency and accountability by the authorities. In Duong's case, as in many others, his health deteriorated rapidly, his family's requests for assistance were ignored, and the family was not updated about his condition. Though Duong sometimes received medical treatment outside of the prison, he was taken only to a local clinic, and his family was not notified of the intermittent medical treatment.

### **Recommendations:**

- Investigate the use of the death penalty in Vietnam to ensure that all instances of its imposition are permissible under international law.
- Encourage Vietnam to publish up-to-date statistics on executions and use of the death penalty that were carried out each year and disclose the number of prisoners currently on death row. Ensure that this information is disaggregated by gender and the type of offense.
- Clarify when drug and national security offenses are punishable by death.
- Urge Vietnam to abolish the death penalty.

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<sup>23</sup> Ibid.

<sup>24</sup> Project88 (2023, Dec. 19). Human Rights Report Vietnam January 2022-June 2023. Retrieved Jan. 5, 2024 from [https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23\\_121523.pdf](https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23_121523.pdf)

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

- Investigate thoroughly all reported instances of deaths of prisoners while detained and all allegations of willful neglect and denial of medical care, in particular against political prisoners.

### Article 7: Cruel, inhuman or degrading treatment

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

Vietnam's 2013 Constitution guarantees that '[e]veryone ... is protected against torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health.'<sup>28</sup> On February 14, 2023, Vietnam approved a plan to implement the UN Convention Against Torture (CAT) and relevant recommendations of the Committee against Torture. In practice, however, torture and other ill-treatment of prisoners, particularly political prisoners, is still common in Vietnam.

In 2022 and 2023, Project88 has documented credible allegations of torture and beatings, the forced commitment of political prisoners to psychiatric institutes as a form of punishment, and the widespread use of solitary confinement and incommunicado detention.<sup>29</sup> Human rights defenders and their families have also reported unclean food, overcrowding, a lack of access to clean water, poor sanitation, and lack of lighting in prisons. Moreover, political prisoners are often disciplined and retaliated against if they try to petition for improved prison conditions for themselves or others.

#### *Torture and beatings*

Project88 has documented the systematic mistreatment of Vietnamese political prisoners. In 2018 and 2019, Project88 identified at least 15 individuals who were subjected to psychological or physical abuse while in prison.<sup>30</sup> Many of these cases were inflicted by prison authorities for the purpose of coercing

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<sup>28</sup> Article 20 of the Constitution of the Socialist Republic of Vietnam

<sup>29</sup> See Project88 (2023, Dec. 19). Human Rights Report Vietnam January 2022-June 2023. Retrieved Jan. 5, 2024 from [https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23\\_121523.pdf](https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23_121523.pdf)

<sup>30</sup> Project88. Torture and inhumane treatment of political prisoners in Vietnam. Retrieved Jan. 5, 2024, from [https://the88project.org/wp-content/uploads/2020/11/Torture-Report\\_final.pdf](https://the88project.org/wp-content/uploads/2020/11/Torture-Report_final.pdf)



confessions, obtaining information, or punishing political dissidents for their opinions.<sup>31</sup> In addition, activists Nguyen Ngoc Nhu Quynh, Tran Thi Nga, Nguyen Ngoc Anh, Hoang Duc Binh, and Nguyen Van Tuc were harassed by cellmates, often at the apparent urging of prison authorities.<sup>32</sup> Huynh Truong Ca was physically abused after refusing to reveal information about his friends during his interrogation.<sup>33</sup>

From March 8-23, 2023, Le Quoc Anh, a dissident who works with SBTN, a US-based Vietnamese media organization that reports on human rights violations in Vietnam, was detained by police and held without charge.<sup>34</sup> According to Anh, at the time of his detention, he had pink eye, but the police did not allow him to take his prescribed medication, even when his parents brought it to the police station.<sup>35</sup> Anh alleges that, during his interrogation on March 8, the police forced him to strip naked and questioned him in that state for at least one hour. According to Anh, during that time, the police made insulting and degrading comments towards him.<sup>36</sup> In addition, Anh alleges that police accused him of being a member of Viet Tan—a group considered to be a terrorist organization by the Vietnamese government—and physically beat him in an effort to coerce a confession from him.<sup>37</sup> After he was released from detention, Anh fled the country. Subsequently, Anh has been charged under Article 117 of the criminal code, which criminalizes ‘making, storing, distributing or disseminating information, documents and items against the Socialist Republic of Vietnam.’<sup>38</sup>

On June 24, 2020, Trinh Ba Phuong, a land rights activist who was well known for his advocacy surrounding the deadly police raid in Dong Tam, was arrested under Article 117 of the criminal code.<sup>39</sup> Phuong was sentenced to ten years’ imprisonment. In August 2022, the first time his family was allowed to see him since his arrest 26 months prior, Phuong told his wife that he had been tortured during his pre-trial detention period.<sup>40</sup> Phuong reported that he was severely beaten on multiple occasions, and even kicked in the groin, in an effort

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Project88 (2023, Dec. 14). Interview with Le Quoc Anh.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Project88, *Profile: Trinh Ba Phuong* (26 Oct 2023), available at <https://the88project.org/profile/449/trinh-ba-phuong/>

<sup>40</sup> Project88 (2022, August). Interview with Thu Do.

to extract a confession from him. Since then, Phuong also reportedly suffered from an unspecified kidney injury while in prison.<sup>41</sup>

Phuong's experience follows a common pattern in Vietnam. According to a 2016 report by Amnesty International, 'for many of the former prisoners Amnesty International spoke to, the torture and ill-treatment was especially intense during pre-trial detention, as authorities aimed to extract a "confession."<sup>42</sup>

### *Solitary confinement and incommunicado detention*

Holding political prisoners in solitary confinement as well as in incommunicado detention, is widespread in Vietnam. A 2016 report by Amnesty International found that all former Vietnamese political prisoners the organization interviewed had been 'subjected to a lengthy period of incommunicado detention—ranging from a month to two years.'<sup>43</sup> Project88's data indicates that the use of incommunicado detention is the norm in political cases in Vietnam—the majority of political prisoners arrested in 2022 were held incommunicado prior to trial, some for nearly a year.<sup>44</sup>

In Vietnam's 4<sup>th</sup> Periodic Draft Report, the government stated, 'There is no such thing as prolonged incarceration without trial, arbitrary imprisonment, or solitary confinement in Viet Nam. The term "solitary confinement" is not defined in Vietnamese law.'<sup>45</sup> Regardless of whether the term is defined in Vietnamese law, it is simply untrue that prolonged incarceration without trial and solitary confinement do not occur in Vietnam.

Incommunicado detention is a common practice used by the government against activists who are prosecuted for national security crimes. Article 31(4) of the 2013 Constitution stipulates that all people may defend themselves or have lawyers or other persons defend them.<sup>46</sup> In national security cases, however, Article 74 of the 2015 Criminal Procedure Code allows the head of the

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<sup>41</sup> Ibid.

<sup>42</sup> Inside Viet Nam's secretive and torturous world of 'prisons within prisons' (2016, July 12). Amnesty International. Retrieved Aug. 12, 2023, from <https://www.amnesty.org/en/latest/press-release/2016/07/the-secretive-world-of-vietnam-torturous-prisons/>

<sup>43</sup> Ibid.

<sup>44</sup> Project88 (2023, Dec. 19). Human Rights Report Vietnam January 2022-June 2023 at page 23. Retrieved Jan. 5, 2024 from [https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23\\_121523.pdf](https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23_121523.pdf)

<sup>45</sup> Vietnam's 4<sup>th</sup> Periodic Report, CCPR/C/VNM/4/8894/E, at para. 48.

<sup>46</sup> Article 31(4) of the Constitution of the Socialist Republic of Vietnam

procuracy (the prosecutor) to prevent defense lawyers from speaking to the defendant until after the police have finished their investigation—a process that often lasts a year or longer. The government claims that this is necessary to protect the confidentiality of criminal investigations.

Though this exception is ostensibly only for cases involving national security, Vietnamese authorities have held political prisoners in incommunicado detention even when arrested on charges not covered by Article 74 of the 2015 Criminal Procedure Code. For instance, Dang Dinh Bach, who was arrested for alleged tax evasion, was held in incommunicado detention for seven months.<sup>47</sup> It appears that incommunicado detention is used when convenient, even when there is no legal basis for the detention.

Solitary confinement and incommunicado detention can worsen the physical and mental health of prisoners, which is already of concern due to poor prison conditions, and, in some instances, the intentional deprivation of medical care experienced by political prisoners. Moreover, the long-term isolation of prisoners from their friends and family has an adverse effect on a person's emotional and psychological well-being. Finally, the deprivation of access to legal counsel makes political prisoners more vulnerable to mistreatment, as abuses are more likely to go unreported.

As an example of the dangers associated with solitary confinement and incommunicado detention, Vu Quang Thuan, a democracy and human rights blogger and a leading member of the Phong Trào Dân Tộc Chấn Hưng Nước Việt (the “National Movement to Revive Vietnam”) who was arrested in 2017 and sentenced to eight years' imprisonment, allegedly contracted tuberculosis due to the conditions of his imprisonment, including extended periods of solitary confinement.<sup>48</sup>

Thuan was allegedly kept in solitary confinement several times, the longest period lasting 14 months, from March 2021 to May 2022. Allegedly, the conditions in solitary confinement worsened his health, eventually leading him to contract tuberculosis. According to Project88 sources, Thuan asked for medical assistance on many occasions from his prison cell, often multiple

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<sup>47</sup> Swanton, Ben (2023). Weaponizing the law to prosecute the Vietnam Four. Project88. <https://the88project.org/wp-content/uploads/2023/04/Weaponizing-the-law-report-Project-88-ENG.pdf>

<sup>48</sup> Project88, *Profile: Vu Quang Thuan* (26 Oct 2023), available at: <https://the88project.org/profile/16/vu-quang-thuan/>

times in the same week. However, Thuan was taken to the hospital only once and was sent back to prison the same day. In addition to tuberculosis, Thuan has suffered from lung and throat infections and asthma as a result of his imprisonment.<sup>49</sup>

### *Forced commitment in psychiatric facilities*

A form of psychological abuse that has become more common in recent years is the forced commitment of HRDs in mental health institutions against their will, even when they have no history of mental illness. At least five political prisoners allege they have been subjected to this type of forced mental health treatment in recent years.<sup>50</sup> Those who have been committed involuntarily have reported that they have been forced to take drugs and subjected to medical tests while detained in psychiatric facilities.

For example, Trinh Ba Phuong was sent to a psychiatric facility for a month while imprisoned.<sup>51</sup> In a five-page handwritten letter he later sent to his wife, Phuong detailed his one-month stay at the Central Psychiatric Evaluation Center.<sup>52</sup> He said that he was kept in a small cell almost the entire time, was always under watch by the police, and, unlike the other patients, he was not allowed outside. He refused to take the daily medication, which he said was prescribed without any examination.<sup>53</sup> He also claimed he was subjected to unwanted tests.<sup>54</sup> After one month, Phuong was given a clean bill of mental health and was sent back to prison.

Similarly, journalist Le Anh Hung, who was convicted of ‘abusing democratic freedoms’ under Article 331 of the criminal code and sentenced to five years’ imprisonment, was forcibly held from April 2019 to May 2022 at the Central Psychiatric Evaluation Center in Hanoi.<sup>55</sup> In his three years detained there against his will, Hung alleges he was often bound and injected with a

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<sup>49</sup> Project88 (2023, Oct 8). Interview with Nguyen Viet Dung.

<sup>50</sup> Nguyen Trung Linh, Pham Chi Thanh, Trinh Ba Phuong, Le Anh Hung, and Nguyen Thuy Hanh.

<sup>51</sup> Ibid.

<sup>52</sup> Bức thư của chồng tôi kể về một tháng bị đưa đi giám định tâm thần (4 Feb., 2023). Bao Tham Nhung. Retrieved Nov. 5, 2023 from <https://baothamnhung.com/buc-thu-cua-chong-toi-ke-ve-mot-thang-bi-dua-di-giam-dinh-tam-than/>

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Project88 (2023, July 20). Interview with Le Anh Hung.

psychoactive medication which induced prolonged periods of an altered mental state.<sup>56</sup> He staged multiple hunger strikes in protest of this treatment.

Hung believes that he was subjected to forced mental health treatment to punish him for reporting on corruption and as a means of discrediting him and his work.<sup>57</sup> He had also been briefly detained in a mental health facility in 2013 after police took him away from his workplace.

Finally, Nguyen Thuy Hanh, an activist who was charged under Article 117 for ‘conducting propaganda against the state’ in April 2022, was likewise committed to a psychiatric institute.<sup>58</sup> On April 27, 2022, according to her husband, Hanh was transferred from pre-trial detention to the Central Psychiatric Hospital in Hanoi.<sup>59</sup> According to her family, Hanh was still held in the mental health facility as of December 2023. She is given medication twice a day and, allegedly, is tied up and forced to take the medication if she refuses.<sup>60</sup>

### *Threats and reprisals against the family members of political prisoners*

Families of political prisoners that have attempted to sound the alarm about the mistreatment of their detained relatives have reported threats from state authorities. For example, in March 2022, Thanh Hoa provincial police summoned Trinh Thi Nhung, the wife of political prisoner Bui Van Thuan, for questioning.<sup>61</sup> Nhung had posted information about her husband’s imprisonment on social media. She told Project88 that police asked her to limit how much she posts about her husband and threatened to arrest her if she did not comply with their demands.<sup>62</sup> Nhung was summoned for questioning a second time in July 2022. In addition to reiterating their previous warning, the police also warned her not to post information about these police interrogations.<sup>63</sup> Finally, Nhung was harassed by unknown people at her home

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<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Project88, Profile: Nguyen Thuy Hanh (26 Oct 2023), available at: <https://the88project.org/profile/350/nguyen-thuy-hanh/>

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Công an dọa bắt vợ ông Bùi Văn Thuận nếu còn đấu tranh cho chồng (2022, Mar. 21). Radio Free Asia Vietnamese. Retrieved Aug. 12, 2023, from <https://www.rfa.org/vietnamese/news/vietnamnews/thanh-hoa-police-threatens-to-arrest-detained-activist-bui-van-thuan-s-wife-if-she-continues-to-voice-his-case-03212022083144.html>

<sup>62</sup> Project88 (2022, November). Interview with Trinh Thi Nhung.

<sup>63</sup> Police soon to wrap up investigation into Vietnamese Facebooker (2022, July 6). Radio Free Asia. Retrieved Aug. 12, 2023, from <https://www.rfa.org/english/news/vietnam/police-soon-to-wrap-up-investigation-into-vietnamese-facebooker-07062022014148.html>

in 2022 and filed two complaints to the local police, even submitting video evidence of one of the incidents.<sup>64</sup> Thus far, the police have refused to investigate the incidents.<sup>65</sup>

Likewise, Tran Phuong Thao, the wife of Dang Dinh Bach, experienced harassment after she publicly advocated on Bach's behalf.<sup>66</sup> On January 18, 2023, a government official called Bach's wife informing her that if the money that Bach is alleged to have evaded in tax was not repaid, then the department would confiscate property belonging to the family.<sup>67</sup> Thao also was under surveillance and discovered that the government was listening in on her phone calls.<sup>68</sup> On February 8, the Dong Da District Tax Department sent a letter to the LPSD Group Joint Stock Co., of which Thao is the director, stating that Bach had incorrectly declared his personal income tax for the year of 2020, and instructed the company to pay a fine of \$1,054 and ordered Thao to report to the tax office.<sup>69</sup> Over the next two weeks, an officer from the district tax department called Thao many times, threatening to refer the matter to the police if the fine was not paid.<sup>70</sup>

### **Recommendations:**

- Investigate all allegations of torture, solitary confinement, incommunicado detention, forced commitment in psychiatric facilities, and threats against family members of political prisoners.
- Push Vietnam to implement the concrete actions stated in CAT's Concluding Observations in the Initial Report of Vietnam and accept visits by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, as well as visits by states' consular representatives to conduct investigations of prison conditions.
- Urge Vietnam to amend or repeal Article 74 of the 2015 Criminal Procedure Code to prevent the arbitrary incommunicado detention of political prisoners.
- Work to ensure that prisoners in Vietnam are able to access family, healthcare professionals, and lawyers to act as a safeguard against

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<sup>64</sup> Project88 (2022, November). Interview with Trinh Thi Nhung.

<sup>65</sup> Ibid.

<sup>66</sup> Swanton, Ben (2023). Weaponizing the law to prosecute the Vietnam Four. Project88. <https://the88project.org/wp-content/uploads/2023/04/Weaponizing-the-law-report-Project-88-ENG.pdf>

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

torture and ill treatment and ensure that those detained are able to have due process.

Articles 9 & 14: freedom of liberty and due process under the law

*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

In Vietnam's 4<sup>th</sup> Periodic Report, the government stated, 'There is no such thing as prolonged incarceration without trial, arbitrary imprisonment, or solitary confinement in Viet Nam.'<sup>71</sup> Despite this claim, political prisoners are often held in pre-trial detention without access to a lawyer for as long as Vietnamese officials deem appropriate. Between January 2019 and October 2023, at least 51 human rights defenders have been held in incommunicado pre-trial detention for eight months or longer.<sup>72</sup> At the time of submission, Project88 estimates that there are at least 23 individuals still in pre-trial detention.<sup>73</sup>

Human rights defenders are often denied legal representation during the investigation and even during their trials. In recent years, at least 28 people have been denied legal representation after their arrest. When denied legal representation, political prisoners are less likely to receive a fair trial and are often less aware of their rights and lack a critical communication channel to their families and the outside world.

In addition, families often do not know about trial dates well in advance. At times, their families learn nothing about court proceedings until after sentencing. For example, blogger Le Anh Hung, was charged under Article 331 of the criminal code for posting a letter critical of the government and its proposed law on special economic zones. He was tried in secret on August 30, 2022, four years after his arrest, and sentenced to five years in prison without the knowledge of either his lawyers or his family.<sup>74</sup> It wasn't until his mother,

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<sup>71</sup> Vietnam's 4<sup>th</sup> Periodic Report, CCPR/C/VNM/4/8894/E, at para. 48.

<sup>72</sup> Project88 (2023, Dec. 19). Human Rights Report Vietnam January 2022-June 2023. Retrieved Jan. 5, 2024 from [https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23\\_121523.pdf](https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23_121523.pdf)

<sup>73</sup> Ibid.

<sup>74</sup> Project88 (2023, July 20). Interview with Le Anh Hung.

Tran Thi Niem, called government officials in early September 2022 that she learned that the trial had taken place.

Finally, Vietnamese authorities have also targeted human rights lawyers representing political prisoners. Since late 2022, the Vietnamese government has questioned at least five human rights lawyers after they defended a high-profile freedom of expression case involving members of a Buddhist monastery.<sup>75</sup> Three of the lawyers were forced to flee Vietnam after warrants were issued for their arrests.<sup>76</sup>

These due process violations are also evident in the recent arrests of climate activists. Vietnamese authorities have arrested or imprisoned five key leaders of the country's climate change movement on false charges of tax evasion. Nguy Thi Khanh, Dang Dinh Bach, Mai Phan Loi, Bach Hung Duong, and Hoang Thi Minh Hong were all imprisoned on spurious tax evasion charges since 2021.<sup>77</sup>

Project88 has documented clear evidence that these prosecutions were politically driven and designed to criminalize policy activism with regards to the country's energy transition.<sup>78</sup> The activists' efforts to influence Vietnam's energy policies, and to participate in the implementation of the country's energy transition, brought them into conflict with the Communist Party of Vietnam. The common thread in these cases is that all of the individuals involved ran organizations that conducted advocacy on energy policy, and all received foreign funding to carry out this work.

Bach, Khanh, Loi, and Duong were kept in pre-trial detention until their trials, even though they posed no danger to society and such detention is extremely uncommon in cases of tax evasion.<sup>79</sup> Dang Dinh Bach, the only one of the four who did not plead guilty to the charge of tax evasion, was also held in incommunicado detention and was unable to meet with his lawyer for seven months, thereby preventing him from adequately preparing his defense.<sup>80</sup> The activists also experienced long delays before their cases were brought to trial—delays that were not justified by the complexity of the charges.<sup>81</sup>

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<sup>75</sup> Project88 (2023, Dec. 19). Human Rights Report Vietnam January 2022-June 2023. Retrieved Jan. 5, 2024 from [https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23\\_121523.pdf](https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23_121523.pdf)

<sup>76</sup> Ibid.

<sup>77</sup> Swanton, Ben (2023). Weaponizing the law to prosecute the Vietnam Four. Project88. <https://the88project.org/wp-content/uploads/2023/04/Weaponizing-the-law-report-Project-88-ENG.pdf>

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.



**Recommendations:**

- Ensure that political prisoners in Vietnam are not held in pre-trial detention without cause.
- Ensure that political prisoners are able to access legal counsel.
- Ensure that lawyers are not targeted for defending accused human rights defenders.

Article 19: freedom of expression

*Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression.*

Vietnam has a long history of restricting speech, and the government's crackdown on activism and dissent has continued to intensify in recent years. Scores of dissenters and human rights activists have been imprisoned on vaguely worded national security or defamation charges.

Between 2018 and 2022, Project88 recorded arrests of at least 298 human rights activists and dissidents. Most of those arrested in this period were sentenced to five years or more in prison.<sup>82</sup> There are also currently at least 60 political prisoners serving 10 or more years in prison and at least 17 people serving 15 years or more. Numerous activists were also detained for questioning, fined, put under surveillance, and even physically assaulted, creating a chilling effect that silences activism. This coordinated campaign against dissent in recent years has effectively destroyed most independent civil society and journalism in the country. Now, the government is increasingly targeting activists outside of those movements, such as bloggers with large online followings, individuals involved in policy activism and climate change research, and human rights lawyers.

*Suppression of online speech*

In Vietnam, there has been an increased criminalization of political speech, which can be seen due to the uptick in criminal prosecutions of dissidents with no prior known history of activism. In Directive 24, which was promulgated last

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<sup>82</sup> Sixty-four of 112 arrests from 2019-2022 resulted in a prison sentence of five or more years, per Project88 data.

year, Vietnam's senior leadership called for the entire party apparatus to strictly control social media and online communications to stop speech critical of the party and government.<sup>83</sup> This order continues the trend of repression against online speech that has been ongoing.

In 2022, the Vietnamese government arrested at least 28 people for their speech. The vast majority of these arrests can under Article 331 of the criminal code ('abusing democratic freedoms'), which is the most common charge for political prosecutions in Vietnam and Article 117 ('making, storing or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam').<sup>84</sup>

Article 331, an article criminalizing criticism of the government and public figures similar to antiquated seditious libel offences in other contexts, first overtook Article 117, an article dealing with national security crimes, as the most common charge in 2021. This change is the result of an increase in arrests for online political speech. Most people arrested under Article 331 have no known history of activism. They were arrested solely for their political speech online.<sup>85</sup>

Arrests are not the only means the government uses to suppress online political speech. The government has also developed an elaborate policy framework to limit political speech in digital spaces, including laws regulating internet service providers themselves (such as the Law on the Press and the Law on Telecommunication); public opinion-shaping brigades (under Resolution 35); and the expansion of police powers to summon dissidents.<sup>86</sup> A conservative estimate puts government-issued administrative fines for online speech at least 114 incidents from January to August 2022, with the total amount of fines reaching 1.9 billion dong (\$81,000).<sup>87</sup>

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<sup>83</sup> Swanton, Ben & Altman-Lupu, Michael (2024, Feb. 20). Vietnam's leaders declare war on human rights as a matter of official policy: An analysis of secret Directive 24. Project88. <https://the88project.org/wp-content/uploads/2024/02/D24-report-final.pdf>

<sup>84</sup> Nine people were charged under Article 117 and one person under Article 88, a precursor to Article 117 from the prior version of the Criminal Code (1999).

<sup>85</sup> Project88 (2023, Dec. 19). Human Rights Report Vietnam January 2022-June 2023. Retrieved Jan. 5, 2024 from [https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23\\_121523.pdf](https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23_121523.pdf)

<sup>86</sup> Two government-issued instruments, Decree 15/2020/NĐ-CP and Decree 14/2022/NĐ-CP, provide the legal basis for these sanctions. Following these policies, any prohibited act of online expression is subject to a fine. Prohibited acts include a wide range of vaguely-defined activities, such as "providing and sharing fake information, or information that distorts, slanders, or insults the reputation of governmental agencies or organizations, honor and dignity of individuals" and "providing and sharing links to online information with prohibited content."

<sup>87</sup> Tình trạng tán phát tin giả, tin sai sự thật đang diễn biến rất phức tạp, (2022, Aug. 9). Xay Dung Chinh Sach, Phap Luat. Retrieved Aug. 12, 2023, from <https://xaydungchinhhsach.chinhphu.vn/tinh-trang-tan-phat-tin-gia-tin-sai-su-that-dang-dien-bien-rat-phuc-tap-119220809093329549.htm>

The silencing of online dissent is one goal of new policies in Vietnam, including Decree 53, the guiding implementation for the Cybersecurity Law and the Third Draft of the Cybersecurity Administrative Sanctions Decree.<sup>88</sup>

### *Criminalization of policy activism*

In the past two years, there has been a shift in who the Vietnamese government has targeted for arrest. In recent years, there has been an intensified persecution of activists. The government has begun targeting directors of non-governmental development organizations and policy activists, many of whom had worked previously with the government and were aligned with the government's policy goals on various issues.<sup>89</sup> These arrests are emblematic of a recent trend by Vietnamese authorities to criminalize policy activism and civil society movements.

Vietnamese authorities have arrested or imprisoned six key leaders of the country's climate change movement—five on false charges of tax evasion and one for allegedly misappropriating government documents. Nguy Thi Khanh, Dang Dinh Bach, Mai Phan Loi, Bach Hung Duong, and Hoang Thi Minh Hong were all imprisoned on spurious tax evasion charges since 2021.<sup>90</sup> In addition, Vietnam arrested Ngo Thi To Nhien, the head of an energy policy think-tank, in September 2023.<sup>91</sup>

The common thread in these cases is that each of the climate activists ran organizations that conducted advocacy on energy policy, each received foreign funding to carry out this work, and each participated in civil society coalitions. Directive 24 explicitly frames these activities as national security threats. Project88 has documented clear evidence that these prosecutions were politically driven and designed to criminalize policy activism and ensure that civil society cannot serve as a watchdog to monitor Vietnam's compliance with its international obligations.<sup>92</sup>

The government's criminalization of policy activism has made it almost impossible for civil society to participate in key decisions about the country's energy transition. Despite overtures made by the Vietnamese government

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<sup>88</sup> Project88 (2023, Dec. 19). Human Rights Report Vietnam January 2022-June 2023. Retrieved Jan. 5, 2024 from [https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23\\_121523.pdf](https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23_121523.pdf)

<sup>89</sup> Frontline Defenders & Project88 (2023, Oct. 10). Vietnam UPR Submission. [https://www.frontlinedefenders.org/sites/default/files/vietnam\\_upr\\_submission\\_-\\_fld\\_the\\_88\\_project.pdf](https://www.frontlinedefenders.org/sites/default/files/vietnam_upr_submission_-_fld_the_88_project.pdf)

<sup>90</sup> Swanton, Ben (2023). Weaponizing the law to prosecute the Vietnam Four. Project88. <https://the88project.org/wp-content/uploads/2023/04/Weaponizing-the-law-report-Project-88-ENG.pdf>

<sup>91</sup> Swanton, Ben & Altman-Lupu, Michael (2023). Understanding the arrest of energy think tank chief Ngo Thi To Nhien. Project88. <https://the88project.org/wp-content/uploads/2023/11/Understanding-the-arrest-of-energy-policy-researcher-Ngo-Thi-To-Nhien-Project88-compressed.pdf>

<sup>92</sup> Swanton, Ben & Altman-Lupu, Michael (2024, Feb. 20). Vietnam's leaders declare war on human rights as a matter of official policy: An analysis of secret Directive 24. Project88. <https://the88project.org/wp-content/uploads/2024/02/D24-report-final.pdf>

regarding the importance of transparency and participation in the country's energy transition, state authorities have continued to restrict the civic space with regards to environmental activism. This crackdown on civil society puts into jeopardy the efficacy of the energy transition as a whole and makes it impossible that the transition will be just.

### *Restrictions on bloggers and journalists*

The criminalization of journalism and blogging by the Vietnamese government is far-reaching. Due to the large number of arrests of journalists and bloggers since 2018, there is now almost no independent media left inside the country to report on human rights violations. In 2020, for instance, all of the leading members of the Independent Journalists Association of Vietnam, the only association of independent journalists in the country, were convicted and sentenced to over 10 years' imprisonment.<sup>93</sup>

In 2022, at least five bloggers and journalists were arrested.<sup>94</sup> In addition, an additional 11 journalists were tried and convicted in 2022.<sup>95</sup> One of those arrested was Nguyen Lan Thang, who was arrested on July 5, 2022 and charged under Article 117 for allegedly conducting 'anti-state propaganda'.<sup>96</sup> Thang had previously worked with online activists to provide photographs and videos of events such as demonstrations against land confiscations—incidents which state-owned media are prohibited from reporting on. Luan Le, one of his lawyers, later said Thang's arrest was based on 12 interviews with BBC News Vietnamese between 2017 and 2020.<sup>97</sup>

Upon his arrest, the police searched Thang's house and confiscated his laptops, mobile devices, and books. Thang was held in incommunicado detention from July 2022 to February 2023.<sup>98</sup> In April 2023, in a closed trial that lasted only a few hours, Nguyen Lan Thang was convicted of 'making, storing or spreading

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<sup>93</sup> Project88. Incident Group: Crackdown against members of the Independent Journalists Association of Vietnam. Retrieved Jan. 5, 2024 from <https://the88project.org/incident-group/30/crackdown-against-members-of-the-independent-journalists-association-of-vietnam/>

<sup>94</sup> Project88 (2023, Dec. 19). Human Rights Report Vietnam January 2022-June 2023. Retrieved Jan. 5, 2024 from [https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23\\_121523.pdf](https://the88project.org/wp-content/uploads/2023/12/Annual-Report-2022-23_121523.pdf)

<sup>95</sup> Ibid.

<sup>96</sup> Project88, *Profile: Nguyen Lan Thang* (26 June 2023), available at: <https://the88project.org/profile/291/nguyen-lan-thang/>

<sup>97</sup> Luan Le Facebook Post, (15 April 2023). Retrieved Aug. 12, 2023, from <https://www.facebook.com/100007013826421/posts/pfbid023iWfTwm6LnwCPZS5qbvW8ku53Ly553iiLqy42HOKEpxwRUnENreuVmUCUvrrOxl/?mibextid=5zvaxg>

<sup>98</sup> Project88 (2023, April). Interview with Le Bich Vuong.

information, materials or items for the purpose of opposing the State' and sentenced to six years in prison and two years of probation.

In a different case, Le Manh Ha was arrested in January 2022 and later sentenced to eight years in prison.<sup>99</sup> Ha was accused of posting 21 video clips on his YouTube channel and posting 13 articles on Facebook about land rights issues, including interviews with victims of land grabs.<sup>100</sup>

### **Recommendations:**

- Ensure that Vietnam immediately and unconditionally release all political prisoners and commit to a moratorium on arrests of anybody prosecuted for merely exercising their right to freedom of expression.
- Urge Vietnam to repeal or amend Articles 117 and 331 of the country's criminal code, the Law on the Press, the Law on Telecommunication, Resolution 35, Decree 53, the Third Draft of the Cybersecurity Administrative Sanctions Decree, and any other laws that the government uses to criminalize dissent.
- Ensure that Vietnamese civil society can fully participate in the country's energy transition free from threats of intimidation, harassment, and reprisals.
- Ensure a thorough, prompt, impartial and independent investigation into every report of human rights violations against human rights defenders.

### Article 22: freedom of association

*Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*

Vietnam has also taken measures to limit the autonomy and impact of civil society organizations. Vietnamese authorities have created a climate of fear surrounding policy activism that has made members of civil society organizations unwilling to weigh into policy discussions, even when possible.

According to the United Nations High Commissioner for Human Rights, Marta Hurtado, the chilling effect of the government's arrests and repression of

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<sup>99</sup> Project88, *Profile: Le Manh Ha* (26 June 2023), available at: <https://the88project.org/profile/567/le-manh-ha/>

<sup>100</sup> Nhà báo tự do Lê Mạnh Hà bị kết án tám năm tù vì "cất tiếng nói cho dân oan" (2022 Oct. 25). Radio Free Asia Vietnamese. Retrieved Oct. 26, 2023 from <https://www.rfa.org/vietnamese/news/vietnamnews/independent-journalist-le-manh-ha-jailed-for-voicing-to-support-land-petitioners-10252022065724.html>

activists ‘is palpable among civil society in Vietnam, and risks stifling debate on issues of importance to society as a whole.’<sup>101</sup> Because of the threats to civil society, Vietnamese organizations have become reluctant to receive foreign funding and engage with international institutions such as the United Nations. In the fourth cycle of the Universal Periodic Review of Vietnam, for instance, very few NGOs chose to engage with the Human Rights Council for fear of arrest.<sup>102</sup>

In addition to the arrests and imprisonments of the climate activists stated above, each of the environmental organizations that the activists ran were forced to shut down. This pattern has made other NGOs reluctant to weigh in on matters of public import, for fear of closure. As explained by Trịnh Hữu Long, co-founder of the nonprofit Legal Initiatives for Vietnam, the closure of NGOs ‘reflects a top-down move to make coercive closure an open secret as a way to spread fear. . . From an observer’s perspective, the way they ceased to exist suggests that it causes more harm than good for them to announce it, to make public the reasons why they closed.’<sup>103</sup>

Other leaders of NGOs have also faced persecution from Vietnamese authorities, On December 16, 2022 Hoang Ngoc Giao, head of the Institute for Research on Policy, Law and Development, was arrested for allegedly committing tax evasion after he made numerous comments critical of the government concerning land rights.<sup>104</sup> In July 2023, Nguyen Son Lo, the former director of the Southeast and North Asia Institute of Research and Development, was sentenced to five years’ imprisonment under Articles 331 and 356 of the criminal code.<sup>105</sup> Lo was a voice against governmental corruption in Vietnam. Similarly, Nguyen Thi Kieu Vien, the founder and executive director of Towards Transparency, the only anticorruption NGO then-operating in Vietnam, was forced into exile.<sup>106</sup>

### *Fear of foreign influence*

The crackdown on civil society is an explicit goal of the senior leadership of Vietnam. On July 13, 2023, the Communist Party of Vietnam issued a directive in July 2023 that frames all forms of international cooperation as threats to

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<sup>101</sup> Hummer, Lucy and Champenois, Flora (2023, June). PDP8: Vietnam inches closer to commissioning its last new coal plant, but key coal phase out and participation questions remain. Global Energy Monitor. Retrieved Oct. 20, 2023, from <https://globalenergymonitor.org/wp-content/uploads/2023/06/GEM-PDP8-Vietnam-June2023.pdf>

<sup>102</sup> Radio Free Asia (2023, Sept. 22). Vietnamese NGOs shy from UN engagement fearing government reprisal. <https://www.rfa.org/english/news/vietnam/ngos-0922202311250.html>

<sup>103</sup> Hường Thiện (2023, Feb. 13). Vietnam’s environmental NGOs face uncertain status, shrinking civic space. *Mongabay*. Retrieved Oct. 20, 2023, from <https://news.mongabay.com/2023/02/vietnams-environmental-ngos-face-uncertain-status-shrinking-civic-space/>

<sup>104</sup> Project88. Hoang Ngoc Giao. <https://the88project.org/profile/602/hoang-ngoc-giao/>

<sup>105</sup> Project88. Nguyen Son Lo. <https://the88project.org/profile/591/nguyen-son-lo/>

<sup>106</sup> Sustainable Vietnam (Jan. 10, 2020). Meet Sustainable Vietnam contributor: Nguyen Thi Kieu Vien. <https://sustainablevietnam.com/2020/01/10/meet-sustainable-vietnam-contributor-nguyen-thi-kieu-vien/>

national security and articulates a disturbing plan to deal with these perceived threats by systematically violating the constitutional and human rights of the country's 100 million citizens.

In Directive 24, Vietnam's senior leadership make clear their goal to end foreign interference in policymaking and to stop foreign powers, as well as groups within Vietnam, from using increased international cooperation as a means to promote an independent civil society and domestic political opposition groups.<sup>107</sup>

Directive 24 claims that 'hostile and reactionary forces' have taken advantage of international cooperation efforts by 'impacting policymaking and legislative development . . . [and] forming civil society alliances and networks, independent trade unions, and . . . domestic political opposition groups' (p. 1). This foreign interference is possible, so says the directive, because foreign aid and funding is not strictly regulated. Foreign powers, often in collaboration with local organizations, have 'taken advantage of international institutions and commitments that Vietnam has signed to mobilize and form opposition political organizations.'<sup>108</sup>

Another consequence of the implementation of Directive 24 will be a continuation of Vietnam's crackdown on organizations that rely on foreign funding to conduct their work. Any organization that receives foreign funding and attempts to influence public policy will be stamped out.

In the last few years, Vietnam has taken measures to restrict and securitize foreign funding. Decree 80 and Decree 56, both enacted in 2020, regulate the activities and funding of NGOs operating in Vietnam. The decrees impose onerous requirements on the registration of NGOs and the funding of projects, while increasing the power of the Ministry of Public Security in approving development projects. In addition, Decision 06, which was also announced in 2020, requires that organizations receive approval from a number of government agencies, as well as the Prime Minister, to host any conference or seminar that relates to national sovereignty, security, human rights, ethnicity, or religion. These decrees and decisions have significantly weakened the ability of Vietnamese organizations to operate.<sup>109</sup> Directive 24 makes clear that the country's leaders believe these regulations are not nearly restrictive enough,

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<sup>107</sup> Swanton, Ben & Altman-Lupu, Michael (2024, Feb. 20). Vietnam's leaders declare war on human rights as a matter of official policy: An analysis of secret Directive 24. Project 88. <https://the88project.org/wp-content/uploads/2024/02/D24-report-final.pdf>

<sup>108</sup> Swanton, Ben & Altman-Lupu, Michael (2024, Feb. 20). Vietnam's leaders declare war on human rights as a matter of official policy: An analysis of secret Directive 24. Project 88. <https://the88project.org/wp-content/uploads/2024/02/D24-report-final.pdf>

<sup>109</sup> Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the right to freedom of opinion and expression (2021, Dec. 10). Ref: OL VNM 7/2021. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26885>

and a host of new restrictions on foreign funding are sure to be enacted as the directive is implemented.<sup>110</sup>

The communist party fear of foreign interference has been known for some time. Past statements and actions by the party indicate that much of the government's suppression of civil society stems from this concern.<sup>1</sup> In 2016, for instance, the party leadership passed Resolution 04-NQ/TW, which expresses hostility to the very concept of civil society.<sup>111</sup> A guidance note on the implementation of the resolution warned that the 'enemy and reactionary forces have stepped up activities against us', singling out 'the US and other western countries [that] are using aid to shape [Vietnam's] law and policy', while 'providing aid to domestic "non-governmental" organizations to promote a western model of "civil society"'.<sup>112</sup>

In Directive 24, rather than merely expressing their fears, Vietnam's leaders have laid out a comprehensive plan of action to deal with them by violating the rights of the country's citizens.<sup>113</sup> In this sense, Directive 24 provides the missing link between past party policy statements and the government's crackdown on activism, dissent, and civil society. Though this crackdown has unfolded in broad daylight, up until now it has not been clear who or what is driving it. Directive 24 dispels any ambiguity on the matter, implicating the most senior members of the party and the state, including those that western governments have embraced.

In Vietnam, foreign funding is essential for civil society to effectively carry out its activities, monitor government activities, and conduct advocacy. The legitimate and important role of civil society should not be undermined merely because it is funded by foreign sources. Nevertheless, the statements by the government, as well as the attacks on environmental activists who have received foreign funds, indicate that there is a concerted effort in Vietnam to limit the ability of Vietnamese organizations to receive foreign funding, and to punish any organization or activists that both receives foreign funding and engages in policy advocacy. It appears likely that this effort is an effort to stop what Vietnamese authorities view as efforts by foreign governments to

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<sup>110</sup> Swanton, Ben & Altman-Lupu, Michael (2024, Feb. 20). Vietnam's leaders declare war on human rights as a matter of official policy: An analysis of secret Directive 24. Project88. <https://the88project.org/wp-content/uploads/2024/02/D24-report-final.pdf>

<sup>111</sup> Swanton, Ben & Altman-Lupu, Michael (2024, Feb. 20). Vietnam's leaders declare war on human rights as a matter of official policy: An analysis of secret Directive 24. Project88. <https://the88project.org/wp-content/uploads/2024/02/D24-report-final.pdf>

<sup>112</sup> Trần, Đắc Lợi (2017, Jan. 16). Hướng Dẫn Quán Triệt Và Triển Khai Thực Hiện Ý Kiến Chỉ Đạo Của Ban Bí Thư Về Sơ Kết 5 Năm Và Tiếp Tục Thực Hiện Chỉ Thị Số 04-CT/TW Ngày 06/7/2011 Của Ban Bí Thư Khóa XI 'Về Tiếp Tục Đổi Mới Và Nâng Cao Hiệu Quả Công Tác Đối Ngoại Nhân Dân Trong Tình Hình Mới, N° 02-HD/BĐNTW. Thư Viện Pháp Luật. Retrieved Dec. 6, 2022, from <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Huong-dan-02-HD-BDNTW-2017-doi-moi-va-nang-cao-hieu-qua-cong-tac-doi-ngoai-nhan-dan-364089.aspx>

<sup>113</sup>



interfere with Vietnam's internal decision-making regarding the country's energy transition.

**Recommendations:**

- Ensure that the Vietnamese government does not forcibly shut down organizations that work on environmental issues, anticorruption issues, or receive foreign funding.
- Ensure that Vietnam facilitates an enabling environment for associations to form and freely operate.
- Push for Vietnam to amend or repeal all burdensome regulations that act to suppress civil society organizations, including Directive No. 24, Decree No. 58/2022/ND-CP, Decree 80/2020/ND-CP, Decree 56/2020/ND-CP and Decision 06/2020/QD-Ttg.

Article 25: right to participate in public affairs

*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives.*

The Human Rights Committee has stressed the importance of free expression in the political sphere.<sup>114</sup> In General Comment No. 25, concerning participation in public affairs, the HRC wrote, 'the free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint.'<sup>115</sup>

Instead, however, the Vietnamese government has taken action to shrink the civic space and, in doing so, has made it nearly impossible for the Vietnamese people, or members of Vietnamese civil society to effectively participate in public affairs.

For example, as part of the country's energy transition, Vietnam is obligated to consult with NGOs and the media and ensure that the implementation of the

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<sup>114</sup> Aduayom et al. v. Togo, Comm. Nos. 422–424/1990, U.N. Doc. CCPR/C/51/D/422/1990, 423/1990, 424/1990, para. 7.4 (Hum. Rts. Comm. July 12, 1996); Park v. Republic of Korea, Comm. No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, para. 10.3 (Hum. Rts. Comm. Nov. 3, 1998); Human Rights Committee, Summary Record of the 128<sup>th</sup> Meeting, para. 20 (statement by Mr. Tomuschat), U.N. Doc. CCPR/C/SR.128 (April 16, 1979).

<sup>115</sup> Human Rights Comm., General Comment No. 25 (57), para. 25, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 27, 1996).

country's energy transition is transparent and fully participatory.<sup>116</sup> As of now, however, this has not been the case. While the government has made overtures regarding the importance of a robust civil society in ensuring that the transition is just, the implementation of Vietnam's energy transition has largely taken place behind closed doors without much, if any, participation from Vietnamese civil society. There has been little effort by the government to promote transparency and ensure that Vietnamese civil society has a voice in the energy transition.

According to the Resource Mobilization Plan for Vietnam's Just Energy Transition Partnership (JETP):

'There are currently no existing mechanisms through which the representatives of youth, women, the elderly, migrants, formal and informal sector workers, and ethnic minority groups, and social political and professional organizations (such as the Youth League, Trade Union, Farmers Union or the Women's Union) can participate actively in dialogues on aspects of the energy transition...' (p. 90).<sup>117</sup>

That is, while the Political Declaration for the JETP emphasized the need for regulation consultation with different stakeholders, including with NGOs, the Vietnamese government has made no significant effort to ensure that this consultation is possible, and the IPG has not insisted that civil society be included in the decision-making process. The RMP does not offer any concrete solution to ensuring the inclusion of civil society in the implementation of the JETP, but instead offers vague reasons for why consultations are important. According to the RMP, 'To forge social consensus, government agencies should set up and support consultation mechanisms in which relevant issues can be addressed.'<sup>118</sup> However, the RMP does not offer any timeline or plan to set up these mechanisms moving forward.

In Directive 24, Vietnam's leaders have made clear that efforts by civil society to participate in public affairs are off limits.<sup>119</sup>

In Vietnam's 4<sup>th</sup> Periodic Report, the government has painted a false picture of the right of Vietnamese civil society to participate in policymaking. The report

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<sup>116</sup> The Government of the Socialist Republic of Viet Nam et al., (2022, Dec. 14). Political Declaration on establishing the Just Energy Transition Partnership with Viet Nam. European Commission. Retrieved Oct. 20, 2023, from [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_22\\_7724](https://ec.europa.eu/commission/presscorner/detail/en/statement_22_7724)

<sup>117</sup> Socialist Republic of Viet Nam (2023, November). Resource Mobilisation Plan. Retrieved Dec. 10, 2023, from [https://climate.ec.europa.eu/system/files/2023-12/RMP\\_Viet%20Nam\\_Eng\\_%28Final%20to%20publication%29.pdf](https://climate.ec.europa.eu/system/files/2023-12/RMP_Viet%20Nam_Eng_%28Final%20to%20publication%29.pdf)

<sup>118</sup> Ibid.

<sup>119</sup> Swanton, Ben & Altman-Lupu, Michael (2024, Feb. 20). Vietnam's leaders declare war on human rights as a matter of official policy: An analysis of secret Directive 24. Project88. <https://the88project.org/wp-content/uploads/2024/02/D24-report-final.pdf>

states, ‘In implementing the European–Viet Nam Free Trade Agreement (EVFTA), Viet Nam has set up the Domestic Advisory Group (DAG) Viet Nam. DAG members include associations and non-profitable NGOs that have been legally established and run in Viet Nam in the areas of trade and sustainable development.’<sup>120</sup>

In reality, however, this was not the case. To ensure that civil society was able to participate in the implementation of the EVFTA, Vietnamese NGOs on the EVFTA (VNGO-EVFTA Network), was established to ensure that Vietnamese civil society had a voice in the implementation of the EVFTA. Soon after, two of the executive board members of the VNGO-EVFTA Network—Mai Phan Loi and Dang Dinh Bach—were arrested for alleged tax evasion.<sup>121</sup>

As a result of these arrests, civil society groups were prevented from playing a role in the implementation of the EVFTA and were therefore unable to advocate for workers’ rights, land rights, and the environment. Given these arrests, it appears that any attempt by civil society to serve as a governmental watchdog or to interfere with the implementation of international agreements will be met with severe persecution by the state.

In addition, Vietnamese authorities crushed attempts by citizens to nominate themselves to run as candidates independent of the communist party in national assembly elections of 2016 and 2021.<sup>122</sup> Though Article 27 of the Constitution and Article 2 of the Election Law permits any Vietnamese citizen over 21 years old to run for the national assembly, laws pertaining to elections in Vietnam only recognize candidates who are nominated through the communist party.<sup>123</sup> Moreover, many independent candidates were threatened by plainclothes police, local authorities and government supporters.<sup>124</sup>

### ***Recommendations:***

- Take all steps necessary to ensure that members of Vietnamese civil society are able to fully participate in the public affairs of the country.
- Ensure that independent candidates are able to run in national assembly elections without fear or arrest or harassment.

### **List of issue recommendations**

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<sup>120</sup> Vietnam’s 4<sup>th</sup> Periodic Report, CCPR/C/VNM/4/8894/E, at para. 121.

<sup>121</sup> Ibid.

<sup>122</sup> Pham Doan Trang (2019). Unfair elections in Vietnam: how the communist party manipulates the process. Project88. Retrieved Jan. 5, 2024 from <https://the88project.org/wp-content/uploads/2019/08/UNFAIR-ELECTIONS-IN-VIETNAM.pdf>

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

Given the information above, Project88 proposes that the HRC include in its list of issues in relation to the fourth periodic report of Vietnam:

1. The right to life;
  2. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment against persons deprived of their liberty, including political prisoners and imprisoned human rights defenders;
  3. The liberty and security of persons;
  4. The right to a fair trial;
  5. Freedom of expression;
  6. human rights defenders;
  7. Freedom of association and peaceful assembly; and
  8. The right to participate in public life.
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