



FIDH – International Federation for Human Rights

and its member organization for Vietnam

Vietnam Committee on Human Rights (VCHR)

EU-Vietnam human rights dialogue

1 December 2017

Joint briefing paper on key human rights issues of concern

FIDH and **Vietnam Committee on Human Rights (VCHR)** express grave concern about persistent violations of the rights to freedom of expression, assembly, and religion or belief over the past year. An alarming escalation of arrests, unfair trials, harsh prison sentences, and physical violence against human rights defenders, bloggers, and civil society continued unabated in 2017. Vietnam currently holds at least 130 political prisoners.

This systematic repression is incompatible with Vietnam's binding international obligations as a state party to core United Nations (UN) human rights treaties, and with its pledge to the European Union (EU) under the Partnership and Cooperation Agreement to uphold democratic freedoms and human rights as an essential element of EU-Vietnam relations.

The recent detention of activists who met with EU officials as part of their consultations with civil society ahead of the EU-Vietnam human rights dialogue demonstrates the Vietnamese government's cynical disrespect of its commitments to the EU and its lack of sincerity concerning the dialogue. On 16 November 2017, police in Hanoi detained blogger Phạm Đoan Trang, activist Nguyễn Quang A, and former political prisoner Bùi Thị Minh Hằng for several hours after the three briefed EU representatives on the human rights situation in Vietnam.

The detention of these activists in conjunction with the EU-Vietnam human rights dialogue is not uncommon. In December 2015, police arrested human rights lawyer Nguyễn Văn Đài [See below *Crackdown on freedom of expression, peaceful assembly reaches unprecedented levels*] as he was preparing to meet EU delegates attending the fifth EU-Vietnam human rights dialogue in Hanoi

FIDH and VCHR urge the EU to seriously reconsider the merits of this closed-door process that lacks benchmarks, monitoring mechanisms, and follow-up procedures. In its current form, the human rights dialogue does not contribute to human rights progress in Vietnam and merely enables the Vietnamese government to claim in international circles that it fully complies with the country's human rights obligations.

1. 2017: Vietnam's leadership implements zero-tolerance policy on criticism and dissent

The current crackdown is the result of deliberate policy decisions made at the highest levels of the Vietnamese Communist Party and the state. Vietnam's new leadership, appointed during the Vietnamese Communist Party's 12th Congress in January 2016, has displayed zero-tolerance policy towards criticism and dissent. Immediately after taking office, President Trần Đại Quang, a military general and the former Minister of Public Security, announced that his government's immediate priority would be to combat "sabotage" and "wrong and distorted allegations from hostile and reactionary forces" by mobilizing the military, police, and public security forces to fight against critics of the party and government.¹ In August 2017, President Quang urged tougher action against "hostile forces" that used the internet to undermine "the prestige of the leaders of the party and the state."²

Abuses committed by the authorities in 2017 included: police intimidation and harassment of human rights defenders and activists; police brutality against journalists; systematic suppression of peaceful protests against land seizures or environmental degradation (such as the Formosa disaster); politically-motivated arbitrary arrests and imprisonment; unfair trials; and ill-treatment of detainees.

2. Violations of the right to freedom of opinion and expression

Crackdown on freedom of expression, peaceful assembly reaches unprecedented levels

At least 130 political prisoners remain behind bars in prisons across Vietnam. Since the previous EU-Vietnam human rights dialogue in December 2016, the crackdown on government critics, bloggers, activists, and human rights defenders dramatically intensified. At least 29 individuals, including two women, were arbitrarily arrested for the exercise of their rights to freedom of expression or freedom of peaceful assembly.³ In addition, seven activists and human rights defenders were sentenced to prison terms ranging from five to 13 years.⁴

Prominent human rights defenders arbitrarily arrested or imprisoned prior to December 2016 remain behind bars. These cases include:

Nguyễn Văn Đài, a human rights lawyer and defender of religious freedom, has been held in pre-trial incommunicado detention since 16 December 2015 under Article 88 of the

¹ Saigon Liberation, *President Trần Đại Quang: On the resolute struggle against moral degradation within the ranks of the Party and military*, 11 December 2016

² Reuters, *Vietnam's president calls for tougher internet controls*, 20 August 2017

³ Trần Thị Nga (F), Vũ Quang Thuận, Nguyễn Văn Điền, Phan Kim Khánh, Bùi Hiếu Võ, Hoàng Đức Bình, Trần Hoàng Phúc, Lê Đình Lượng, Phạm Văn Trội, Nguyễn Trung Tôn, Trương Minh Đức, Nguyễn Bắc Truyền, Nguyễn Văn Túc, Nguyễn Văn Oai, Đào Quang Thực, Trần Thị Xuân (F), Nguyễn Trung Trực, Nguyễn Văn Hoá, Nguyễn Viết Dũng, Vương Văn Thả, Vương Văn Thuận, Nguyễn Nhật Trường, Nguyễn Nhật Thương, Nguyễn Hoàng Nam, Nguyễn Danh Dũng, Nguyễn Hữu Đăng, Trần Tuấn Kiệt, Bùi Văn Trung, and Bùi Văn Tâm.

⁴ Nguyễn Ngọc Như Quỳnh (F), Trần Thị Nga (F), Phan Kim Khánh, Trần Anh Kim, Lê Thanh Tùng, Nguyễn Văn Oai, and Nguyễn Văn Hoá.

Criminal Code [See below, *Draconian laws fuel repression*]. In July 2017, his charge was changed to ‘subversion’ (Article 79 of the Criminal Code), which is a capital crime.

Nguyễn Ngọc Như Quỳnh, aka ‘Mother Mushroom’, is serving a 10-year prison sentence following her conviction under Article 88 of the Criminal Code on 29 June 2017. She has been incarcerated since 10 October 2016. Her appeal trial, which is scheduled for 30 November 2017, may not conform to international legal standards. On 26 November 2017, the Bar Association of Phú Yên Province revoked the license of her lawyer Võ An Đôn. He will not be able to defend her at the appeal hearing.

Thích Quảng Độ, a Buddhist monk and leader of the Unified Buddhist Church of Vietnam (UBCV), is under house arrest without charge at Thanh Minh Zen Monastery in Ho Chi Minh City [See below *Restrictions on the right to freedom of religion or belief*].

Trần Thị Nga is serving a nine-year prison sentence following her conviction under Article 88 of the Criminal Code on 27 July 2017. She has been incarcerated since 27 January 2017.

Draconian laws fuel repression

Nearly all of those arbitrarily detained or imprisoned since December 2016 [See above] were arrested and charged under three of the most-frequently used repressive provisions of Vietnam’s Criminal Code: 1) Article 79 (‘carrying out activities aimed at overthrowing the people’s administration’); 2) Article 88 (‘spreading propaganda against the Socialist Republic of Vietnam’); and 3) Article 258 (‘abusing democratic freedoms to harm the interests of the State’).

Other draconian provisions of the Criminal Code that have been routinely used to detain government critics and member of ethnic minorities are: Article 87 (‘undermining the unity policy’); and Article 89 (‘disrupting security’).

All of the above-referenced provisions are inconsistent with international standards related to freedom of expression and peaceful assembly, including under the International Covenant on Civil and Political Rights (ICCPR), to which Vietnam is a state party.

Attacks and restrictions on human rights defenders continue

In 2017, brutal physical attacks and other acts of harassment and intimidation against human rights defenders, activists, bloggers, members of ethnic minorities, and members of religious groups have continued across the country. Severe cases in 2017 included the aggression against Pastor **Nguyễn Trung Tôn** and his colleague **Nguyễn Việt Tú** in Quảng Bình Province in February 2017 and **Trần Hoàng Phúc** and **Huỳnh Thanh Phát** in Nghệ An in June 2017. Most of these physical attacks were carried out by plainclothes police officers and government-backed thugs.

In addition, Hanoi continued to force government critics, including newly released political prisoners, into exile.

On 12 January 2017, **Đặng Xuân Diệu**, a 37-year-old Catholic activist, was forced on a plane to France shortly after being released from a prison camp where he was serving a 13-year sentence under Article 79 of the Criminal Code.

On 24 June 2017, **Phạm Minh Hoàng**, a 62-year-old dissident blogger with dual French-Vietnamese citizenship, was deported to France after being stripped of his Vietnamese nationality on 17 May 2017.

Authorities have also continued to harass and impose restrictions on activists and human rights defenders who have sought to participate in human rights workshops and trainings inside and outside of Vietnam. These restrictions are inconsistent with Vietnam's obligations under Article 19 of the ICCPR, which grants everyone the right to freedom of opinion and expression. In addition, many activists and human rights defenders remain barred from travelling overseas to participate in human rights conferences, events, trainings, and other events, in contravention of Vietnam's obligations under Article 12 of the ICCPR, which grants the right for everyone to leave his/her own country.

Recommendations to Vietnam:

- Immediately and unconditionally release all individuals who have been arrested, detained, or imprisoned under repressive provisions of the Criminal Code for the exercise of their rights to freedom of expression or freedom of peaceful assembly, in particular: UBCV Patriarch **Thích Quảng Độ**; bloggers **Nguyễn Hữu Vinh** and **Nguyễn Ngọc Như Quỳnh**; human rights defender **Trần Thị Nga**; and human rights lawyer **Nguyễn Văn Đài**.
- Drop all charges against individuals who are being prosecuted under repressive provisions of the Criminal Code for the exercise of their rights to freedom of expression or freedom of peaceful assembly.
- Cease all physical attacks and other acts of harassment and intimidation against human rights defenders, activists, bloggers, and members of ethnic minorities and religious groups.
- Urgently amend the vague and overly broad provisions of Articles 79, 88, and 258 of the Criminal Code to bring them in line with international standards related to freedom of opinion and expression and freedom of peaceful assembly, including under the ICCPR.
- End all restrictions on, and acts of harassment against activists and human rights defenders.
- Enable the emergence of independent, privately-run media.
- Cease state censorship, surveillance, filtering, and other restrictions on the use of the internet.

3. Restrictions on the right to freedom of peaceful assembly

The right to freedom of peaceful assembly and association, guaranteed by Article 25 of the Constitution, continues to be severely restricted. Vietnam has no law on public assemblies. A draft law on demonstrations introduced in the National Assembly has been repeatedly delayed because of disagreement on the text. Demonstrations are regulated by Decree 38/2005, which prohibits gatherings outside state agencies and public buildings and bans all protests deemed to "interfere with the activities" of Communist Party leaders and state

organs. Public Security Circular 09/2005/TT-BCA on the implementation of Decree 38/2005 prohibits gatherings of more than five people without obtaining prior permission from the authorities.

These anti-demonstration regulations were widely invoked in 2017 to quell nationwide protests against the industrial pollution caused by the Taiwanese steel conglomerate Formosa, which ruined the livelihood of thousands of Vietnamese fishermen. This ecological disaster sparked peaceful demonstrations to claim adequate compensation for communities affected by the disaster. Vietnamese police responded by heavily repressing most of these protests. On 14 February 2017, police violently dispersed a demonstration of at least 600 Catholics in Hà Tĩnh Province. On 5 March 2017, police disbanded a demonstration in Ho Chi Minh City and prevented dissidents from joining demonstrations in Hanoi. On 17 October 2017, Catholic activist Trần Thị Xuân, who participated in protests in 2016 against the pollution caused by Formosa, was arrested at her home in Hà Tĩnh Province under Article 79 of the Criminal Code ('subversion').

Vietnamese authorities also violently repressed anti-China demonstrations. On 19 January 2017, police repressed a peaceful commemoration for Vietnamese soldiers killed in 1974, during the Chinese occupation of the Paracel Islands. Twenty demonstrators were briefly detained. Demonstrations by victims of land grabbing (a rural protest movement named *Dân Oan* - Victims of Injustice) are regularly suppressed by police or government-backed thugs. FIDH and VCHR remain very concerned that the suppression of farmers' right to demonstrate could result in more violence. In April 2017, in Dong Tam commune, villagers held 38 officials and police officers hostage for one week over a land dispute.

On 11 November 2017, Police arrested musician and pro-democracy activist Mai Khôi (known as the "Vietnamese Lady Gaga") and escorted her to her home after she staged a demonstration against US President Donald Trump's visit to Hanoi. She was not allowed to leave her house for several hours. The next day, she was evicted from her home.

Recommendations to Vietnam:

- Enact legislation that regulates the right to freedom of peaceful assembly in line with the provisions of the ICCPR.

4. Restrictions on the right to freedom of religion or belief

New law places a straight-jacket on religions

In November 2016, the National Assembly adopted Vietnam's very first Law on Belief and Religion, which replaced the string of ordinances and decrees that previously regulated religious affairs. The law marked a hardening of Vietnam's policies on freedom of religion or belief. During the legislative drafting and review process, Vietnam systematically disregarded proposals submitted by religious communities in Vietnam and NGOs such as FIDH and VCHR to bring the law into line with international standards.

Under the new law, the registration of religious organizations remains mandatory, although the process is accelerated (it will take five years instead of 23 years to obtain state

recognition). It makes no provisions for religious groups that do not register with the state, such as the Unified Buddhist Church of Vietnam (UBCV), Khmer Krom Buddhists, and independent Hoa Hao and Cao Dai. The new law violates Article 18 of the ICCPR and exposes members of non-recognized religions to arbitrary arrest and imprisonment. Mandatory registration is a violation of Article 18 of the ICCPR, as then-UN Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt stressed after his visit to Vietnam: *“the right to freedom of religion or belief is a universal right which can never be “created” by administrative procedures. Rather, it is the other way around: registration should be an offer by the state but not a compulsory legal requirement.”*

Following the adoption of this law, which becomes effective in January 2018, Vietnam embarked on the adoption of a series of advance measures to ensure the law's implementation. In March 2017, Prime Minister Nguyễn Xuân Phúc introduced two 'implementation plans' to be supervised by the Communist Party's Mobilization Department, the Prime Minister's Office, and several ministries, including the Ministry of Justice and the Ministry of Public Security. The plans coordinate the training and deployment of "religious party cadres" and "religious police" to enforce the new law and call for vigilance and sanctions against those who "violate regulations on religion or belief." A Decree on "administrative sanctions in the domain of belief and religion" was issued in July 2017, which prescribes heavy fines for "violators." In September 2017, a top-level security official, Major-General Vũ Chiến Thắng, was appointed Chairman of the Government Board of Religious Affairs (GBRA), the body that oversees religious affairs in Vietnam.

Religious groups still targeted

Religious groups such the UBCV, Vietnam's oldest and largest religious organization, remain a prime target of repression because they refuse to comply with the state's registration process.

Over the past five years, members of 22 UBCV Representative Boards in Vietnam's provinces have been subjected to intensified police interrogations, intimidation, public "denunciation sessions," and the expulsion of monks and nuns from their pagodas. In many cases, police have hired local thugs to vandalize UBCV property and assault monks and nuns. Lay-followers have also suffered threats and harassment. Local authorities and security police punish Buddhists who frequent UBCV pagodas by refusing to deliver vital administrative papers, making them lose their jobs or expelling their children from school. The UBCV Representative Board in Danang (Giác Minh Pagoda) and its Superior monk **Thích Thanh Quang**, 79, have been subjected to continuous harassments by the local authorities and plainclothes local militia. In addition, the local authorities have systematically prohibited him from celebrating Buddhist festivals such as Tết (Lunar New Year) or Vesak (Buddha's Birth).

Thích Quảng Độ, 89 year-old Buddhist monk and UBCV Supreme Patriarch, remains under house arrest at the Thanh Minh Zen Monastery in Ho Chi Minh City without any due process of law. He is Vietnam's longest-detained human rights defender, having been arbitrarily deprived of liberty for over 30 years for his advocacy of religious freedom and human rights. Thích Quảng Độ has no key to the iron gate that blocks the staircase to his upper-floor room, his communications are closely monitored, and he is under constant police

surveillance. He is not even allowed to preach in the monastery. In May 2017, police prevented Thích Quảng Độ from travelling to Hue to visit the UBCV's Long Quang Pagoda. They told UBCV Secretary-General Lê Công Cầu the UBCV leader was "not welcome" in the city and banned Lê Công Cầu from travelling to Ho Chi Minh City to help the UBCV Patriarch. Lê Công Cầu held a week-long hunger strike to protest this arbitrary police action. In September 2017, when a US Embassy official tried to visit Lê Công Cầu to monitor his situation, police created a "fake" incident outside his home to prevent the meeting from taking place.

The Buddhist Youth Movement (BYM) also remains a target of repression. UBCV Secretary-General **Lê Công Cầu**, who is also the BYM leader, suffered frequent acts of harassment in 2017. He is currently under police investigation for advocating the right to existence of the UBCV and has been subjected to repeated interrogation sessions by the authorities. His communications are constantly monitored and he is frequently banned from travelling to meet the UBCV Patriarch Thích Quảng Độ.

In 2017, several BYM youth camps were the target of police repression. In July, police cracked down on the BYM's "Hạnh" and "Hiếu" camps at the Long Quang Pagoda in Hue. On 10 July, BYM leaders **Lê Văn Khá** and **Lê Văn Thọ** were summoned for interrogation sessions and pressured not to allow their young members to attend the camps. The next day, almost all BYM leaders in Hue Province were also summoned for interrogations sessions. During the night of 11 July, police surrounded the homes of **Văn Đình Tất**, BYM leader of Quảng Điền District, and **Trương Phiên**, leader of the Hiếu Hạnh camps, and prohibited them from leaving. In many localities, police visited BYM members' homes and ordered parents not to let their children attend the camps. On the morning of 12 July, Hue BYM leaders **Ngô Đức Tiến**, **Nguyễn Văn Đê**, **Hoàng Tấnh**, **Văn Đình Tất** (Quảng Điền District), **Lê Thị Kim Thông** (Phong Điền District), **Nguyễn Văn Lành** and **Tôn Thất Kỳ Nam** (Phú Lộc District) were all intercepted by police and prohibited from attending the youth camps.

Recommendations to Vietnam:

- Amend the Law on Belief and Religion to bring it in line with Article 18 of the ICCPR.
- Guarantee the right of all religious communities, regardless of their registration status, to freely conduct religious activities and operate independently.
- Cease the harassment of, and discrimination against members of non-recognized religious bodies.
- Repeal or amend all legislative provisions that restrict the right to freedom of religion or belief that are inconsistent with the ICCPR, to which Vietnam is a state party.

5. Use of the death penalty escalates

Vietnam has retained the death penalty for offences that cannot be considered as "serious crimes." Eighteen offenses in the amended Criminal Code are punishable by death⁵. They include economic and political crimes, in particular "national security" offences such as

⁵ VCHR, *The Death Penalty in Vietnam*, June 2016; <http://queme.org//app/uploads/2016/06/The-Death-Penalty-in-Vietnam-VCHR-2016.pdf>

Article 79 ('activities aiming to overthrow the government') or Article 80 ('espionage') – now respectively Articles 109 and 110 in the amended Code, which comes into force on 1 January 2018. In Vietnam, people may incur the death sentence simply for sending an e-mail abroad or expressing critical views of the Communist Party and the state.

In 2017, the use of the death penalty escalated disturbingly. Vietnam is now the world's 5th top executioner.⁶ According to a report posted on the Ministry of Public Security's website in March 2017, Vietnam executed a total of 429 prisoners between August 2013 and June 2016. As of June 2016, 81 prisoners were awaiting execution, 80 were granted stay of execution and retrial because of wrongful convictions, and 36 prisoners died on death row in the five-year period. Another section of the report, referring to the period from 2011 to 2016, said 261,840 inmates had received 'vocational training' - a term that rights activists claim is a euphemism for 'forced labor'. In addition, it reported that the remains or ashes of 2,812 prisoners were approved for collection by family members, suggesting a high rate of deaths in custody for a prison population that the government says numbers less than 150,000.

Recommendations to Vietnam:

- Establish a moratorium on the death penalty as a first step towards the abolition of capital punishment for all crimes.
- Amend the 'national security' provisions of the Criminal Code to ensure that no one may incur the death penalty simply for expressing dissenting views.
- Lift the classification of 'state secrets' on capital punishment and make public the number of death sentences and executions each year to allow for an informed public debate on the matter.
- Bring detention conditions on death row into line with the UN Standard Minimum Rules for the Treatment of Prisoners (also known as the Nelson Mandela Rules).

⁶ VCHR, *Vietnam is the World's 5th Top Executioner*, 16 February 2017
<http://queme.org/en/death-penalty-vietnam-worlds-5th-worst-executioner>