



FIDH - International Federation for Human Rights

and its member organization for Vietnam

Vietnam Committee on Human Rights (VCHR)

VIETNAM: ASSAULT ON CIVIL SOCIETY CONTINUES UNABATED

Briefing paper for the 9th EU-Vietnam human rights dialogue (Hanoi, 19 February 2020)

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Human rights violations reach a peak in Vietnam in 2019

Over the past year, Vietnam's human rights situation has remained abysmal. The country holds more than 200 political prisoners.¹ It ranked near the bottom of Reporters Without Borders' 2019 World Press Freedom Index (176th out of 180 countries surveyed)² and Freedom House's Freedom on the Net 2019 (61st out of 65 countries surveyed).³ It was also considered the world's sixth most-censored nation according to the Committee to Protect Journalists (CPJ).⁴ It remained rated 'Not Free' by Freedom House's Freedom in the World 2019 with regard to the situation of political rights and civil liberties.⁵

In 2019, two important UN human rights reviews of Vietnam underscored Hanoi's ongoing failure to address key human rights issues. In March 2019, during the review of Vietnam's first periodic report on its implementation of the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee observed that 35 years after Vietnam's accession to the ICCPR, there remained an "incompatibility between the domestic legal framework and the Covenant" and "overly broad restrictions on the Covenant rights, including, on the basis of national security." In January 2019, during Vietnam's third Universal Periodic Review (UPR), numerous UN member states pressed the Vietnamese government to urgently revise or abrogate broadly defined "national security" clauses in the Criminal Code to ensure that they are not used to "prevent peaceful debate and dissent."

Escalating crackdown on dissent

Since the previous EU-Vietnam human rights dialogue, held on 4 March 2019, Vietnamese authorities have continued to harass, assault, and detain human rights defenders, labour rights defenders, land and environmental rights defenders, bloggers, journalists, government critics, and religious followers. Many activists were accused of "attempting to overthrow the government" and

¹ Defend the Defenders, *Vietnam Human Rights Defenders' Weekly Report for December 30, 2019-January 5, 2020: Vietnam Holds 239 Prisoners of Conscience*, 5 January 2020, available at: <https://www.vietnamhumanrightsdefenders.net/2020/01/05/vietnam-human-rights-defenders-weekly-report-for-december-30-2019-january-5-2020-vietnam-holds-239prisoners-of-conscience/>

² Reporters Without Borders, 2019 World Press Freedom Index, available at: https://rsf.org/en/ranking_table

³ Freedom House, *Freedom on the Net 2019*, available at: https://www.freedomonthenet.org/sites/default/files/2019-11/11042019_Report_FH_FOTN_2019_final_Public_Download.pdf

⁴ CPJ, *Eritrea, North Korea, Turkmenistan top CPJ's 10 most censored list*, 10 September 2019, available at: <https://cpj.org/2019/09/eritrea-north-korea-turkmenistan-top-most-censored-list.php>

⁵ Freedom House, *Freedom in the World 2019*, available at:

https://freedomhouse.org/sites/default/files/Feb2019_FH_FITW_2019_Report_ForWeb-compressed.pdf

were sentenced to up to 12 years in jail for the legitimate and peaceful exercise of their right to freedom of opinion and expression.

<i>Year</i>	<i>Individuals detained</i>	<i>Individuals sentenced to prison</i>	<i>Longest prison sentence(s)</i>
<i>2017</i>	51 (12)	22 (8)	14
<i>2018</i>	35 (8)	50 (10)	20
<i>2019</i>	46 (6)	42 (5)	12

Between 5 March 2019 and 2 February 2020, Vietnamese authorities arrested 29 human rights activists (including three women) and sentenced 42 (including five women) to prison terms of up to 12 years.

In the last week of November 2019 alone, Vietnam sentenced **nine dissidents to a total of 48 years in prison and seven years of house arrest**. On 21 November 2019, independent journalist **Phạm Chí Dũng** was arrested shortly after sending a [video message to VCHR](#) that urged Members of the European Parliament (MEPs) to postpone consent to the European Union (EU) – Vietnam Free Trade Agreement (EVFTA) and the Investment Protection Agreement (IPA), pending human rights improvements in Vietnam. If prosecuted and convicted, Dũng could be sentenced to up to 20 years in prison. In a letter responding to the European Commission’s expression of concern over his arrest, the Vietnamese Ambassador to the EU in Brussels said that Phạm Chí Dũng was not arrested for his appeal, but for founding an illegal association, the Independent Journalists’ Association of Vietnam (IJAV). The Ambassador did not explain why Dũng was arrested in November 2019, whereas the IJAV was founded in 2014.

Repressive “national security” laws remain in place

The Vietnamese government has justified its ongoing crackdown by invoking clauses in the 2015 Criminal Code that criminalize activities deemed to threaten “national security.” These vaguely-worded provisions make no distinction between violent crimes and the peaceful and legitimate exercise of the right to freedom of opinion and expression. Six of them carry the death penalty as maximum sentence.

In January 2020, Prime Minister Nguyễn Xuân Phúc stated that crimes against national security were “the worst of all crimes.”⁶ The Supreme People’s Procuracy told the National Assembly that arrests and convictions for national security crimes had increased 58.8% in 2019 from the previous year. “In particular, hostile forces and reactionary organizations in Vietnam and overseas are working together and increasing activities to oppose our Party and government, with the aim of overthrowing the regime,”⁷ the Supreme People’s Procuracy said.

Nearly all of those who were arbitrarily detained or imprisoned in 2019 were arrested and charged under “national security” provisions such as **Article 109** (“carrying out activities aimed at overthrowing the people’s administration”); **Article 117** (“making, storing or disseminating information, documents, materials and items against the Socialist Republic of Vietnam”); **Article 331** (“abusing democratic freedoms to harm the interests of the state”).⁸ Other draconian provisions of the Criminal Code that the authorities used to detain government critics and member of ethnic minorities are **Article 116** (“undermining the unity policy”); and **Article 118** (“disrupting security”).⁹

⁶ Vietnam Times, *PM Nguyễn Xuân Phúc addresses Public Security Conference*, 11 January 2020, available at [in Vietnamese]: <https://thoidai.com.vn/thu-tuong-phai-giu-vung-an-ninh-quoc-gia-va-trat-tu-an-toan-xa-hoi-96759.html>

⁷ VNEconomy, *National Security crimes are on the rise*, 3 September 2019, available at [in Vietnamese] - <http://vneconomy.vn/toi-pham-xam-pham-an-ninh-quoc-gia-tang-trong-nam-2019-20190903132748145.htm>

⁸ Articles 109, 117, and 331 of the 2015 Criminal Code (which came into effect on 1 January 2018), correspond to Articles 79, 88, and 258 in the previous Criminal Code.

⁹ Article 116/ Article 118 of the 2015 Criminal Code (which came into effect on 1 January 2018), correspond to Articles 87 and 89 of the previous Criminal Code.

In 2019, the new crime of “terrorism against the state” (**Article 113**), which carries the death penalty as maximum sentence, was used for the first time since the entry into force of the 2015 Criminal Code. Australian citizen **Châu Văn Khâm** was sentenced to 12 years in prison under Article 113.

Abuses committed by the authorities in 2019 included: politically-motivated and arbitrary arrests and imprisonment of government critics; unfair trials; ill-treatment of detainees; intimidation and harassment of human rights defenders and activists; police brutality against journalists; systematic suppression of peaceful protests against land seizures and environmental degradation; and lengthy jail terms against demonstrators who protested against the adoption of the controversial Cybersecurity Law in June 2018.¹⁰

Labour rights inconsistent with international standards

Vietnam has assured the EU that it has been moving forward on labour reforms, with the adoption of an amended Labour Code in November 2019 and plans to ratify International Labour Organization (ILO) Conventions No. 105 (Abolition of Forced Labour Convention) and No. 87 (Freedom of Association and Protection of the Right to Organize Convention) in 2020-2023. In a letter to the European Parliament in December 2019, the Minister of Labour, Invalids and Social Affairs (MOLISA) said that although ILO Convention 87 had not yet been ratified, “its key substances” had been incorporated into the revised Labour Code, particularly clauses concerning workers’ organizations and their activities. This statement is contradicted by the fact that the revised Labour Code does not allow the creation of independent unions. While it provides for the establishment of “local level representative organizations” outside the framework of the state-controlled Vietnam General Confederation of Labour (VGCL), these groups must obtain a license from a relevant government agency in order to operate. The state controls the whole process of approval, refusal, and disbandment of these groups, including the choice of their leadership. It remains a process wholly regulated by the Communist Party of Vietnam (CPV) and the state, with no safeguards to protect worker rights. Problematic provisions of the amended Labour Code include:

Article 172.1, which states that workers may form or join “local-level representative organizations” - a kind of local trade union - outside the VGCL framework. However, these local unions may only operate legally after having been “granted registration by a competent state agency.” This means that they can only be considered lawful if they register and obtain a license from the government. This form of obligatory registration is contrary to ILO Convention 87.

Article 172.4, which states that the government has the sole power to regulate the operations of local unions, including application, issuance or revocation of registration, management of the organizations’ assets and their rights to associate or form affiliations. This gives the government full powers of control over these organizations, especially since the Labour Code establishes no criteria for granting or refusing their registration, nor any appeal mechanism to contest their disbandment.

Article 173.2, which states that the leadership of local unions must not include anyone who has a past history of “crimes against national security, crimes of encroaching on people’s freedoms or on the democratic freedoms of citizens” and other crimes stipulated in the Criminal Code. In the context of Vietnam, where these overly-vague “national security” provisions in the Criminal Code are systematically used to prosecute human rights defenders and government critics, this clause effectively excludes a significant number of individuals from the leadership of local unions.

Land disputes trigger grave human rights abuse

Land disputes remain a major source of human rights abuses in Vietnam. The authorities have consistently adopted a vicious and violent approach to the resolution of these disputes - a trend that has been illustrated by the Đồng Tâm incident.

¹⁰ For example, on 28 June 2019, 56-year-old activist **Trương Hữu Lộc** was sentenced to eight years in prison for taking part in the demonstrations.

On 9 January 2020, violent clashes broke out over land rights in the commune of **Đồng Tâm**, 40km south of Hanoi, which resulted in the death of at least one civilian and three police officers.¹¹ According to media reports, at 4:00am, thousands of police stormed the village with tear gas, explosives, grenades and pepper spray, forcefully reclaimed a plot of 59 hectares of land, and began to build a wall around it. The farmers resisted, throwing grenades and petrol bombs. Police then broke into the home of Lê Đình Kinh, an 84-year-old village elder, arrested his grandchildren, two sons and daughter-in-law, destroyed his home with explosive charges, and fatally shot Mr. Kinh. Local authorities confiscated the body, then returned it to the family the next day. A video filmed by Mr. Kinh's daughter and posted on [Facebook](#) shows evidence of beatings on Mr. Kinh's body, a broken leg and bullet wounds near his heart.

Hanoi police announced that 20 villagers had been charged with murder, which carries the death penalty, although the circumstances of the police officers' deaths remained unclear. No one has been held accountable for the killing of Lê Đình Kinh. On 11 January 2020, blogger Chung Hoàng Chương was arrested for posting news on Đồng Tâm on his Facebook. He was accused of "undermining the prestige of state agencies" and charged with "abusing democratic freedoms to harm the interests of the state" (Article 331 of the Criminal Code).

On 13 January 2020, the state-controlled TV channel *VTV1* aired "confessions" of Mr. Kinh's son and grandsons. All of their faces were bruised. Mr. Kinh's wife told Hanoi-based activists that she had been kicked and beaten by police in an effort to force her to admit that she has possessed hand grenades, but could not do so because she did not know what a hand grenade looked like. The confessions on TV violated Vietnam's Criminal Procedure Code, which guarantees the right to the presumption of innocence.

The violence in Đồng Tâm is not an isolated event. Under the 2013 Land Law, the land "belongs to the people, but is managed by the state". Private land ownership is not recognized by the authorities, and compensation is decided by local officials. As a result, arbitrary confiscation of land for investment and infrastructure projects without adequate compensation, abuse of power and corruption, and forced displacements are widespread, resulting in deep popular frustration and discontent. Authorities have also seized land on which Buddhist temples, Catholic and Protestant churches, and cultural sites were built, with little warning and inadequate compensation. Those who complain risk lengthy prison sentences under vaguely-defined "national security" provisions in the Criminal Code.

Inhumane prison conditions and deaths in custody

Despite being a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Vietnam has failed to improve detention conditions. Reports of torture, ill-treatment, and deaths in police custody continued to be widely reported in 2019. In March 2019, the UN Human Rights Committee reported "prolonged solitary confinement, shackling, abuses by other prisoners at the instigation of prison officials, intentional exposure of prisoners to HIV infection, denial of medical care and punitive transfer of prisoners" to places far from their homes.

Several prisoners died in 2019 as a result of harsh detention conditions that may have amounted to torture or ill-treatment. Prisoner of conscience **Đoàn Đình Nam**, 68, member of the Ân Dân Đại Đạo Buddhist group, died in October 2019 while serving a 16-year sentence in Xuyên Mộc prison, Bà Rịa - Vũng Tàu Province. He suffered from kidney failure, but was refused medical treatment. **Đào**

¹¹ Tensions in Đồng Tâm began in 2017 when the Vietnamese government seized farmland for the Viettel Telecommunications Group, owned by the Vietnam's Army, without adequate compensation. Villagers said their families had tilled the land for generations and paid taxes to the government. In April 2017, the villagers kidnapped 38 police and local officials and held them hostage, releasing them after the Mayor of Hanoi promised to settle the dispute peacefully and not to take legal action. In June 2017, however, the Mayor reneged on his promise and stepped up harassment against the villagers.

Quang Thúc, 58, also a prisoner of conscience, died on 10 December 2019 while serving a 13-year sentence in Prison Camp No. 6 in Nghệ An. He had suffered frequent torture in the camp, and staged hunger strikes to protest poor detention conditions.

An official from the Ministry of Public Security official told the UN Human Rights Committee that the high rate of deaths in prison (266 between 2011 and 2014, according to a Ministry report) was the result of prisoners “committing suicide because they were unhappy” and “regretted their crimes.”

Death penalty stats remain secret

Vietnam continues to apply the death penalty for a range of offenses that do not meet the threshold of the “most serious crimes”- a practice that is inconsistent with the prevailing interpretation of Article 6(2) of the ICCPR. Statistics on death sentences and executions continue to be classified as “state secrets.” During Vietnam’s third UPR in January 2019, the representative of Vietnam’s Ministry of Justice insisted that Vietnam would not publicize data concerning the death penalty. She claimed that executions in Vietnam had “always been transparent and public”, but did not explain why executions are public, whereas the death penalty statistics remain classified as “state secrets.”

Recommendations

VCHR and FIDH urge the EU to recommend the Vietnamese government commit to take the following steps at the upcoming human rights dialogue:

- Undertake a thorough reform of the Criminal Code within a determined timeframe. This entails amending the vaguely-worded “national security” provisions to bring them into line with international standards and to ensure that they are not used to arbitrarily arrest and imprison peaceful dissidents.
- Revise the Labour Code to bring it into line with core ILO standards and ensure that local level representative organizations are allowed to operate independently, including to petition their employers on issues of worker rights without fear of reprisals under “national security provisions” in the Criminal Code.
- Immediately and unconditionally release all persons detained for the exercise of their rights to freedom of opinion and expression and freedom of religion or belief.
- Cease all acts of harassment, assaults, and arbitrary arrests of human rights defenders, bloggers, government critics, and religious followers.
- Conduct an immediate and impartial inquiry into the events of Đồng Tâm, with the participation of international experts who should have unfettered access to the area to investigate events.
- Revise the Law on Belief and Religion to bring it into line with Article 18 of the ICCPR.
- Repeal provisions in domestic laws, including the Law on Belief and Religion, which condition the exercise of rights and freedoms on the interests of the CPV and the state.
- Improve detention conditions in conformity with the UN Standard Minimum Rules for the Treatment of Prisoners (“Nelson Mandela Rules”).
- Ensure that perpetrators of torture are held accountable and that victims receive reparation and compensation.

Cases of prisoners of conscience of particular concern



Phạm Chí Dũng, a journalist and founder of the Independent Journalist Association of Vietnam (IJAVN) was arrested on 21 November 2019 by security officers at his home in Ho Chi Minh City and charged with “making, storing or disseminating information, documents, materials and items against the Socialist Republic of Vietnam” (Article 117 of the Criminal Code). If found guilty, Mr. Phạm Chí Dũng faces a sentence of five to 20 years of prison. On 10 November 2019, Phạm Chí Dũng sent a petition to the European Parliament to urge its members to postpone ratification of the EU-Vietnam Free Trade Agreement (EVFTA) until human rights issues – including worker rights issues - are addressed. On 18 November 2019, he sent a video message of his appeal to VCHR. According to the police, Dũng wrote “anti-state articles” and “cooperated with foreign media to deliver distorted information.” Shortly after his arrest, IJAVN’s website (www.vietnamthoibao.org) was shut down by the authorities. Phạm Chí Dũng is a former member of the CPV. He left the CPV in 2013 and created the IJAVN on 4 July 2014. IJAVN now has over 70 members. As an independent journalist, Phạm Chí Dũng has written articles criticizing the Vietnamese government’s human rights record, and collaborated with several foreign media, such as *Voice of America* and the *BBC*, under various pen names.



Phan Văn Thu, 71, leader of a peaceful ecological group, is in very poor health. In February 2013, he was sentenced to life imprisonment along with 21 members of his group who received prison terms ranging from 10 to 17 years on charges of “carrying out activities aimed at overthrowing the people’s administration” under Article 109 of the Criminal Code (formerly Article 79). The group ran an eco-tourist company at the Đa Bia Tourist Resort in Phú Yên Province. They signed a contact with the local authorities to engage in protecting the forest and environment. The group believed in the prophecies of Nguyễn Bình Khiêm, a 16th-century oracle or Vietnamese equivalent of Nostradamus, and dreamed of building a new “utopia” in which science, nature, and humankind would be harmoniously balanced. They organized conferences and produced leaflets to disseminate their beliefs. According to reports in the state-run media, the group had several hundred members and sections in several central and southern provinces of Vietnam. According to the official daily *Saigon Giai Phóng* [*Saigon Liberation*], the group “chose the method of nonviolence” to “try to win the confidence of the masses against the leadership of the Party and state.”



Trương Minh Đức, born in 1960, is a citizen journalist and the Deputy Head of the Brotherhood for Democracy in the southern region of Vietnam. A former prisoner of conscience, in 2007 he was sentenced to five years in prison on charges of “abusing democratic freedoms and rights to harm the interests of the state”, under Article 258 of the 1999 Criminal Code. After his release in 2012, he was harassed and repeatedly assaulted by unidentified people working for the government. He was arrested on 30 July 2017 and stood trial along with Nguyễn Văn Đài, Lê Thu Hà, and other members of the Brotherhood for Democracy on 5 April 2018. He received a 12-year prison sentence, and five years of house arrest. His sentence was upheld on appeal on 4 June 2018. The UN Working Group on Arbitrary Detention has declared Trương Minh Đức’s deprivation of liberty “arbitrary” and called for his release.



Trần Thị Xuân, 43, is a human rights defender and member of the Brotherhood for Democracy. She was actively engaged in charity work in her local Catholic community, and spoke out against the pollution disaster caused by the Formosa Steel plant in 2016. She was arrested in Hà Tĩnh Province on 17 October 2017 and charged under Article 79 (now 109) of the Criminal Code for “carrying out activities aimed at overthrowing the people’s administration.” She was held incommunicado for five months before her trial on 12 April 2018, and had no lawyer or means to prepare her defense. The closed-door trial was held without any prior communications to her family. Trần Thị Xuân was sentenced to nine years in prison and five years of house arrest. She is currently detained in No. 5 Prison, Thánh Hóa Province. She suffers from a kidney disorder, and is reportedly in poor health.