



VIETNAM: CRACKDOWN ON CIVIL SOCIETY INTENSIFIES

Briefing paper for the 10th EU-Vietnam human rights dialogue

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FIDH and the Vietnam Committee on Human Rights (VCHR) express grave concern about persistent violations of the rights to freedom of expression, association, assembly, movement and religion or belief in Vietnam. Since the last EU-Vietnam human rights dialogue, which was held in February 2020, an alarming escalation of arrests, unfair trials, harsh prison sentences, and physical violence against human rights defenders, bloggers, environmental rights leaders, and members of civil society has continued unabated.

Vietnam holds one of the largest number of political prisoners (more than 200) in Southeast Asia. It is the world's third largest jailer of journalists and bloggers according to Reporters sans Frontières (RSF), and ranks near the bottom of RSF's 2021 World Press Freedom Index (175th out of 180 countries surveyed).¹

The numerous human rights violations committed by the Vietnamese authorities are incompatible with Vietnam's obligations as a state party to the International Covenant on Civil and Political Rights (ICCPR). It is also particularly disturbing in light of its binding commitments to the EU. In January 2020, in order to obtain ratification of the landmark EU-Vietnam Free Trade Agreement (EVFTA), the Vietnamese government pledged to uphold democratic freedoms and human rights as an essential element of the EVFTA, and make a number of concrete reforms. However, since the EVFTA came into force in August 2021, the government has failed to deliver on its promises. For example, the creation of independent Worker Representative Organizations outside the state-led Vietnam General Confederation of Labour, as promised in the amended Labour Code. The establishment of a Domestic Advisory Group (DAG) of civil society representatives in Vietnam to monitor the EVFTA's Trade and Sustainable Development chapter was blocked for over a year. It has only six members (compared to over 20 for the corresponding EU DAG), and most of these members are, by no means, independent. Most disturbingly, several prominent environmental rights defenders have recently been arrested and sentenced to harsh prison terms because of their involvement in promoting awareness of EVFTA and the role of civil society organizations (CSOs) in advancing sustainable development in Vietnam.

In its Urgent Resolution in January 2021, the European Parliament harshly condemned the "intensifying crackdown on dissent." The 2020 EU Annual Report on Human Rights and Democracy raised serious concerns about arbitrary detention, violations of freedom of expression, and other civil and political rights. Vietnam's sole response was a blanket denial. Hanoi's Foreign Ministry spokesperson stated that the EU report was "not objective" and "based on information not reflecting the reality in Vietnam."

¹ RSF, 2021 World Press Freedom Index, available at: https://rsf.org/en/ranking_table

FIDH and VCHR urge the EU to seriously reconsider the merits of the human rights dialogue, which is portrayed by the Vietnamese government as a demonstration that it fully complies with the country's human rights obligations. In its current form, the process, which is held behind closed doors and lacks benchmarks, monitoring mechanisms, and follow-up procedures, does not contribute to strengthening human rights in Vietnam.

New Communist Party leadership dominated by Public Security officials

In January 2021, the 13th National Congress of the Communist Party of Vietnam (CPV) appointed a new leadership. For the first time since Vietnam's reunification in 1976, over one third of the 18 members of the Politburo – Vietnam's highest political body – are high-ranking police or officials from the Public Security apparatus. General Nguyễn Trọng Nghĩa, who will head the Propaganda and Education Commission, is a former head of Force 47, the Defense Ministry's unit of 10,000 "cyber-warriors". The new Prime Minister, Phạm Minh Chính, is a three-star general and former Deputy Minister of Public Security. The new leadership pledged as a priority to struggle against "the presence of hostile forces trying to overthrow the government" and is actively pursuing the zero-tolerance policy towards criticism and dissent adopted at the CPV's 12th Congress in 2016.

In March 2021, in the run-up to the May elections for the 500-member National Assembly, scores of independent candidates were harassed and intimidated before being disqualified by CPV screening committees. At least two were arrested and convicted – journalist Mr. Lê Trọng Hùng was sentenced to five years in prison and five years' probation on charges under Article 117 of the Criminal Code and Mr. Trần Quốc Khanh was sentenced to six and a half years in prison and two years probation on the same charges.

Repressive "national security" laws - A pretext to suppress freedom of expression

The government has justified its ongoing crackdown by invoking clauses in the 2015 Criminal Code, which 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 provisions in the code carry the death penalty as the maximum sentence.

Nearly all of those who were arbitrarily detained or imprisoned since the last EU-Vietnam human rights dialogue in February 2020 were charged under "national security" provisions of the Criminal Code contained in **Article 117** ("making, storing or disseminating information, documents, materials and items against the Socialist Republic of Vietnam") and **Article 331** ("abusing democratic freedoms to harm the interests of the state"). Other draconian provisions of the Criminal Code that the authorities have used to detain government critics and member of ethnic minorities are **Article 109** ("carrying out activities aimed at overthrowing the people's administration"), **Article 116** ("undermining the unity policy"), and **Article 118** ("disrupting security").²

In January 2022, 117 prominent intellectuals and civil society organizations in Vietnam sent a petition to the Vietnamese leadership calling for the abolition of Articles 109, 117, and 331 of the Criminal Code, which they said violated the Vietnamese Constitution. "The vagueness of Articles 109, 117, and 331 of the Criminal Code has opened up an avenue for law enforcement agencies to

² Articles 109, 116, 117, 118, and 331 of the 2015 Criminal Code (which came into effect on 1 January 2018), correspond to Articles 79, 87, 88, 89, and 258, respectively, of the previous Criminal Code.

trample on the International Covenants on Civil and Political Rights,” they wrote, noting that Article 331 on “abusing democratic freedoms to harm state interests” was “most bizarre.”³

In December 2021, several UN human rights experts deplored the Vietnamese government’s abuse of “national security” provisions and declared: “Using such laws to detain, prosecute and harshly punish human rights defenders and civil society members, who are working for a freer and more just society, is an attempt not only to silence these individuals and organizations but also to impose a climate of fear leading to self-censorship and inhibiting others from speaking out and cooperating with the United Nations human rights and other mechanisms.”⁴

Harsh prison sentences for human rights defenders

The crackdown on civil society continued in 2021. Between 1 January and 31 December, at least 30 people - including three women, activists, government critics, and human rights defenders - were arrested. During the same period, 32 (including seven women) were sentenced to prison terms of up to 15 years.

Prison sentences imposed during this period were particularly long, with women often receiving some of the harshest jail terms. Among the persons convicted were independent journalist Ms. **Phạm Đoan Trang**, sentenced to nine years in prison; land rights activist Ms. **Can Thị Thêu** and her son Mr. **Trịnh Bá Tú** (eight years each); anti-corruption activist Mr. **Đỗ Nam Trung** (10 years); writer Mr. **Phạm Chí Thành** (five years and six months); blogger Mr. **Vũ Tiến Chi** (10 years); Mr. **Lê Viết Hoà**, Ms. **Ngô Thị Hà Phương**, and Ms. **Nguyễn Thị Cẩm Thúy** (five, seven, and nine years respectively); journalist Ms. **Trần Thị Tuyết Diệu** (eight years); Mr. **Cao Văn Dũng** (nine years); Mr. **Nguyễn Văn Lâm** (nine years); Mr. **Trần Quốc Khanh** (six years and six months); Mr. **Nguyễn Trí Gioän** (seven years); and Mr. **Lê Trọng Hùng** (five years).

Most recently, on 23 March 2022, prominent social commentator Mr. **Lê Văn Dung** (aka Lê Dung VoVa) was sentenced to five years in prison under Article 117 of the Criminal Code for posting videos on the Internet deemed to “offend the honor and prestige of the party and state leaders.”

Several prominent human rights defenders arrested in 2021 are currently awaiting trial. These include Ms. **Nguyễn Thúy Hạnh**, arrested on 7 April 2021 on charges of “disseminating anti-State documents.” Ms. Hanh is well-known for her humanitarian actions [See below, *Cases of prisoners of conscience of particular concern*].

FIDH and VCHR reiterate their deep concern about Mr. **Phạm Chí Dũng**, sentenced to 15 years in prison in January 2021 for launching an appeal to the European Parliament to postpone ratification of EVFTA pending concrete human rights progress in Vietnam. Phạm Chí Dũng’s colleagues, Mr. **Nguyễn Tường Thụy** and Mr. **Lê Hữu Minh Tuấn**, were sentenced to 11 years each in the same trial. They were all charged with “making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam” under Article 117 of the Criminal Code.

Heavy prison sentences were frequently handed down for apparently absurd charges, in total violation of Vietnam’s obligations as a state party to the ICCPR. Ms. **Đinh Thị Thu Thúy**, an

³ Petition 117 - <https://baotiengdan.com/2022/01/01/kien-nghi-117-yeu-cau-huy-bo-3-dieu-cua-bo-luat-hinh-su-2015/>

⁴ <https://www.ohchr.org/en/press-releases/2021/12/viet-nam-un-experts-appalled-conviction-four-human-rights-defenders>

aquaculture expert, was sentenced to an astonishing seven years in prison for allegedly “satirizing and ridiculing” the CPV leadership in poems posted on Facebook. Journalist Mr. Lê Trọng Hùng, the self-appointed National Assembly candidate, was sentenced to five years in prison for “anti-state propaganda.” According to his lawyer, the “anti-state” documents in question were copies of the 2013 Vietnamese Constitution that he had bought with his own money and distributed within his local community to inform people of their rights. In April 2021, ethnic Khmer Krom activist Mr. Dương Khai was arrested for possession of translated copies of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Responding to a complaint by UN experts in June, the Vietnamese authorities admitted that Mr. Khai was indeed arrested for possession of copies of the UNDRIP. However, they claimed the arrest was justified in order to maintain “national unity” because, they said, “indigenous peoples do not exist” in Vietnam.

Criminalization of environmental rights leaders through the use of tax laws

FIDH and VCHR are equally concerned about the recent arrests and imprisonment of prominent environmental rights defenders in Vietnam on charges of “tax evasion” (Article 200 of the Criminal Code). The arrests indicate an emerging and disturbing pattern in the use of Vietnam’s tax laws to criminalize environmental leaders, and follows the broader targeting of civil society leaders, as well as shrinking civil society space. This has serious implications for the implementation of the EVFTA and its chapter on Trade and Sustainable Development.

Since June 2021, at least four leading environmentalists have been arrested on tax-related charges. In general, non-profit organizations are exempt from corporate income tax in Vietnam. However, civil society activists report that the tax laws are unclear, and that the authorities are using loopholes in these laws to stifle civil society voices. Three of the four environmental rights defenders were arrested in June 2021 and sentenced to prison terms ranging from two-and-a half to five years by the Hanoi People’s Court in January 2022. The fourth person under detention, an award-winning environmental rights defender, was arrested in January 2022 and is currently awaiting trial.

The heaviest prison sentence was handed down on Mr. Đặng Đình Bách, lawyer, Chair of the Law and Policy of Sustainable Development Research Centre (LPSD). Arrested on 2 July 2021, he was sentenced to five years in prison on 24 January 2022. He was denied access to his lawyer during detention, and staged a hunger strike to call for the respect of his rights. His family was not allowed to attend the court hearing. The court ignored evidence presented by his lawyers, as well as their submission that the prosecution had failed to present any compelling evidence. Mr. Bách has appealed against the sentence. The date of the appeal trial has not yet been announced.

None of these four activists can be identified as political dissidents. Over the past decade and beyond, their activities have focused uniquely on building a clean environment and a better life for the people of Vietnam. According to their organizations, their arrests were prompted by their actions to promote civil society engagement in EVFTA, and their participation along with other environmental civil society organizations in advocacy campaigns for cleaner energy in Vietnam.

Đặng Đình Bách, EVFTA, and environmental advocacy

Đặng Đình Bách is a Steering Committee member of the VNGO-EVFTA, a network of seven NGOs created in 2020 to raise awareness on the EVFTA and promote participation in the Vietnam DAG. VNGO-EVFTA is funded by the EU as part of VM066, a project coordinated by the Center for Sustainable Rural Development (SRD). Đặng Đình Bách was working on forestry projects under VM066, as well as coal mining issues with funding from the European Climate Foundation. The Center for Media Educating Community (MEC), another VNGO-EVFTA member, organized workshops and chat shows on its TV channel to highlight civil society's role in EVFTA. MEC was closed down during the crackdown.

In June 2021, Đặng Đình Bách and LPSD joined 353 NGOs from 58 countries in signing a [letter to the G7 Summit](#) that called on world leaders to “stop all fuel finance from bilateral and multilateral funding sources, and encourage other governments to do the same.” In May 2021, LPSD was also one of 10 co-signatories on a Greenpeace letter to the President of South Korea (one of the main investors in coal power in Vietnam), urging him to reduce financing of international coal projects ahead of the P4G summit later that month.

In October 2021, several environmental rights leaders sent a joint letter to the Vietnamese Prime Minister urging him to urgently revise Vietnam’s Draft National Power Development Plan 8, which announced an increase in production of coal-fired power plants in 2021-2030. The plan was “in stark contrast” to the Prime Minister’s commitments to reduce fossil fuels, they said. In October 2019, 12 Vietnamese NGOs, including Oxfam Vietnam, signed the “Hanoi Statement,” which called on the government to stop funding coal-fired power plants. The statement also urged the government to “guarantee implementation of provisions in the 2013 Constitution and related texts concerning grass-roots democracy, which require consultations with the people and people’s representatives on energy projects from the very moment of their conception.”

FIDH and VCHR fear that the arrests of these environmental rights leaders may be the tip of the iceberg in a new assault on civil society in Vietnam. While these activists are not demanding political change, they are advocating for cleaner energy that could put them at odds with the CPV’s policies and ambitions. They are thus in danger of arrest for “infringing on national interests,” a provision that is enshrined in the Constitution (Article 15) and is punishable by harsh prison sentences under Vietnam’s Criminal Code.

Denial of due process and unfair trials – No independent justice in Vietnam

Vietnam’s judiciary is not independent. Chief justices and judges are party members and bound to the decisions made by party committees. The chief justice of the People’s Supreme Court is currently a member of the CPV Secretariat. The selection and nomination of judges is screened and verified by the party committees where they are employed. They are subsequently approved by the CPV-controlled National Assembly and appointed by the state president.

Lengthy pre-trial detention remains a typical feature of prosecutions involving activists, human rights defenders, and government critics. The 2015 Criminal Procedures Code (CPC) permits virtually unlimited pre-trial detention for “special cases of extremely severe crimes or breaches of national security.” In such cases, after an initial period of four months (which may be extended three times),

the head of the Supreme People's Procuracy has the authority to decide to maintain detention "until the investigation closes" (Articles 172 and 173). Under Article 74 of the CPC, persons accused of "national security" crimes may be detained incommunicado during the whole investigation period to "keep the secrets of the investigation."

Persons charged under national security legislation are thus deprived of the right to receive visits from their lawyers during pre-trial detention, in violation of the Constitution (Article 30), which guarantees the right to a fair trial for all with no discrimination on national security grounds. In most cases, lawyers are only permitted to access their clients once the investigation has been completed, and thus have no opportunity to prepare their defense. This was the case for journalist Phạm Chí Dũng, Nguyễn Tường Thụy, Lê Hữu Minh Tuấn, Phạm Đoan Trang, Đặng Đình Bách, and other human rights defenders cited in this report.

Former prisoners of conscience state that the denial of access to one's lawyer during investigation is a deliberate and cynical policy to "break" detainees, induce them to make statements that they would never have made if a lawyer had been present to advise them, and finally to accept the accusations laid against them. During their many months in detention, they are subjected to intense psychological pressure, often detained in solitary confinement, and held under harsh conditions. The investigation is only concluded when the prosecution is sure that they can obtain a guilty verdict in court.

Recommendations

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

- Immediately and unconditionally release all persons detained for the peaceful and legitimate exercise of their right to freedom of expression, peaceful assembly, association, and freedom of religion or belief.
- Cease all physical assaults, arbitrary arrests, and other attacks and acts of harassment of human rights defenders, bloggers, government critics, religious followers, and advocates of environmental rights.
- 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 ensure that they are not used to arbitrarily arrest and imprison peaceful dissidents.
- Urgently reform the complex tax laws to ensure that all registered NGOs can readily comply with them and ensure that they are not used to target environmental leaders and human rights defenders.
- Ensure human rights defenders and civil society organizations have access to funds, including from foreign sources, for the purpose of defending environmental and human rights.
- 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 through the use "national security" provisions in the Criminal Code.
- Revise the Law on Belief and Religion to bring it into line with Article 18 of the International Covenant on Civil and Political Rights (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 Communist Party of Vietnam and the state.
- Ensure that all persons deprived of their liberty have the right to a fair trial, including the right to communicate in a timely manner with a defense counsel of their own choosing, in conformity with Articles 9 and 14 of the ICCPR.
- Ensure that EU officials and representatives are allowed to visit prisoners and observe trials.
- Improve detention conditions in conformity with the Standard Minimum Rules for the Treatment of Prisoners (“Nelson Mandela Rules”).
- Ensure that perpetrators of torture are held accountable and that families of the victims receive reparation and compensation.

Concerning the EU-Vietnam Trade Agreement (EVFTA), FIDH and VCHR urge the EU to:

- Strongly condemn the arbitrary detention of human rights defenders and civil society representatives and actively seek to obtain their immediate release.
- Stress the importance of civil society in the implementation of EVFTA, and work closely with Vietnam to ensure civil society can act freely, participate in public affairs, and monitor and document the implementation of the EVFTA.
- Raise concerns, pointing expressly to the violations of EVFTA commitments, including those laid out in the Trade and Sustainable Development chapter and in the essential elements clause of the Partnership and Cooperation Agreement, ~~read~~ in conjunction with Articles 17.18 and 17.22 of the EVFTA.
- Impress upon Vietnam that the EU is ready to mobilize the human rights clause, envisaging dedicated conditionality and adequate measure on this basis, including the setting up of a dedicated human rights monitoring body to assess the respect of human rights commitments under the EVFTA and to provide recommendations to the parties - as was already requested in February 2020 by the European Parliament when it provided its consent to the EVFTA.
- Keep civil society, including the Domestic Advisory Groups (DAGs) regularly informed and updated on all steps undertaken and progress made.

Cases of prisoners of conscience of particular concern



Phạm Chí Dũng, born in 1960, is serving a 15 years sentence in Xuân Lộc prison camp, Đồng Nai Province. A journalist and founder of the Independent Journalist Association of Vietnam (IJAVN), Dũng was arrested on 21 November 2019 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” under Article 117 of the Criminal Code. In November 2019, he had sent a video message via VCHR and a petition to the European Parliament urging the body to postpone ratification of the EU-Vietnam Free Trade Agreement (EVFTA) pending concrete progress in human rights in Vietnam. Shortly after his arrest, IJAVN’s website (www.vietnamthoibaobao.org) was shut down by the authorities. Phạm Chí Dũng is a former member of the Communist Party of Vietnam (CPV). He left the CPV in 2013 and founded the IJAVN on 4 July 2014. IJAVN now has over 70 members. As an independent journalist, Phạm Chí Dũng has written articles criticizing the government’s human rights record, and collaborated with several foreign media, such as *Voice of America* and the *BBC*, under various pen names.



Nguyễn Thúy Hạnh, born in 1963, was arrested on 7 April 2021 and is currently in pre-trial detention in Hanoi charged with “disseminating anti-state propaganda” (Article 117 of the Criminal Code). She is well-known for her humanitarian actions and support of human rights defenders. In 2016, she nominated herself as an independent candidate for Hanoi City in the National Assembly elections. In 2017, she set up the 50K Fund to cover travel costs for the families of prisoners of conscience jailed far from their homes. The authorities froze the account after she raised over US\$21,600 to support the family of octogenarian Lê Đình Kinh, who was killed by police in Đồng Tâm Village, about 30 km southwest of Hanoi, during a land dispute in January 2020. Her husband, blogger Hùynh Ngọc Chênh, reports that Hạnh was interned in a mental hospital in Hanoi for a month during her detention between December 2021 and January 2022. Her family members were not informed of this, and were not allowed to visit her. They are deeply concerned about her health.



Phan Văn Thu, born in 1948, is serving a life sentence in Gia Trung prison camp, Gia Lai Province. He has lost almost all his teeth and is in very poor health, but the prison authorities deny him medical treatment, and refuse to let him take medicine sent by his family. Phan Văn Thu was sentenced in February 2013 to life in prison on charges of “activities aimed at overthrowing the people’s administration” (Article 109 of the Criminal Code, formerly Article 79). Twenty-one members of his group also received sentences from 10 to 17 years. The group ran an eco-tourist company at the Đa Bìa Tourist Resort in Phú Yên Province. They signed a contact with the local authorities to protect the forest and environment. They believed in the prophecies of Nguyễn Bỉnh Khiêm, a 16th century oracle (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. According to the official daily *Saigon Giải 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 currently serving a 12-year prison sentence. He is a citizen journalist and the Deputy Head of the independent 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 infringe upon the interests of the state” (Article 258 of the 1999 Criminal Code). After his release in 2012, he was harassed and repeatedly assaulted by government-hired thugs. He was arrested on 30 July 2017 and stood trial with Nguyễn Văn Đài, Lê Thu Hà, and other members of the Brotherhood for Democracy on 5 April 2018. He was sentenced to 12 years in prison and 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.”