



**FIDH – International Federation for Human Rights  
Vietnam Committee on Human Rights (VCHR)**

**United Nations Human Rights Committee (CCPR) – 140th Session  
Joint Submission for the adoption of the List of Issues**

## **VIETNAM**

*5 January 2024*

### **ICCPR Article 2 (Implementation of the covenant at the national level)**

#### ***Domestic legislation inconsistent with ICCPR obligations***

Respect for human rights is guaranteed by the 2013 Constitution and other domestic laws. However, the enjoyment of these rights is severely restricted or negated by vaguely-worded “national security” provisions in the Constitution, Criminal Code, and other domestic laws that are incompatible with Vietnam’s obligations under the International Covenant on Civil and Political Rights (ICCPR). In particular, Articles 109, 117, 318, and 331 of the 2015 Criminal Code<sup>1</sup> are regularly invoked to criminalize the peaceful activities of human rights defenders, government critics, civil society activists, and members of non-recognized religious groups for merely exercising their legitimate rights to freedom of opinion, expression, association, assembly, and religion or belief.

Implementation of the ICCPR is also undermined by provisions in the Constitution and other domestic laws that make the exercise of human rights contingent on compliance with “national interests.” In addition, given constitutional provisions enshrining the political monopoly of the Communist Party of Vietnam (CPV) (Article 4), the existence of a single, state-controlled trade union, the lack of an impartial and independent judiciary, and the absence of independent human rights non-governmental organizations (NGOs), citizens are deprived of important avenues to obtain remedy for many abuses of their rights, in violation of Article 2(3) of the ICCPR.

#### **Questions to the government:**

- *Clarify the status of the ICCPR in relation to Vietnam’s Constitution and domestic laws, and explain whether the ICCPR’s provisions can be invoked directly before the courts, and provide examples.*
- *Provide statistics and lists of names and whereabouts of individuals who are currently detained on charges of crimes against “national security.”*
- *Provide a clear definition of “national security” and provide examples of the types of conduct that amount to offenses against “national security.”*
- *Explain how Vietnam ensures that “national security” provisions in its domestic legislation are not used to stifle legitimate and peaceful exercise of fundamental human rights guaranteed by the ICCPR.*
- *Explain how individuals can obtain remedy for violations of their rights in Vietnam.*

### **Article 6 (Right to life)**

#### ***Use of the death penalty in breach of ICCPR***

Vietnam retains the death penalty for 18 offenses, many of which do not meet the threshold of “the most serious crimes” under Article 6 of the ICCPR. They include drug-related offenses and economic crimes, such as embezzlement and receiving bribes, as well as political crimes, including six “national security”

offenses that make no distinction between violent acts and the peaceful exercise of the right to freedom of expression. Data on the death penalty are classified as “state secrets.” A government report revealed that death sentences increased by over 34% in 2020, with 440 more death sentences imposed in comparison to 2019.<sup>2</sup> Wrongful convictions are frequent as “confessions” are often extracted under torture. For instance, Lê Văn Mạnh, who was executed in September 2023, claimed to have confessed under torture, but the court refused his lawyers’ request to examine him for physical evidence of beatings at his trial in 2005. Detention conditions on death row are particularly inhumane. Prisoners are detained in shackles, which are removed for only 15 minutes per day. Prisoners may spend years, or decades, in shackles, awaiting execution.

Questions to the government:

- Explain the reason why all data on the death penalty are classified as “state secrets.”
- Provide up-to-date statistics on death sentences imposed, executions carried out each year since Vietnam’s previous review in 2019, and the number of prisoners currently on death row. Provide such information disaggregated by gender and type of offense.
- Explain what measures the government will take to avoid wrongful convictions in capital trials and to ensure procedures for appeal and retrial, especially in cases where confessions were extracted through the use of torture.

**Article 7 (Prohibition of torture or other cruel, inhuman or degrading treatment or punishment)**

***Human rights defenders subjected to attacks, torture, and deaths in custody***

VCHR and FIDH have extensive evidence of torture and ill-treatment of prisoners of conscience in detention, deaths in custody resulting from torture, and physical attacks against human rights defenders by plainclothes security agents. In many cases, activists subjected to beatings recognized their aggressors as officers who had been present during previous police interrogations. Independent journalist Phạm Đoan Trang, arrested in October 2020, was beaten frequently during interrogations in police custody, resulting in serious injuries. Disciplinary measures against prisoners who file complaints against violations of their rights are cruel and inhumane, in violation of Article 7 of the ICCPR. Under the 2019 Law on Execution of Criminal Judgements, lawful punishments include shackling offenders in solitary “disciplinary cells” for up to 10 days (Article 43). Since his arrest in 2020, land rights activist Trịnh Bá Tư was shackled and detained in such cells several times in Prison No. 6 in Nghe An Province and was forced to urinate and defecate on the spot, as punishment for writing letters of complaint about poor detention conditions. In September 2023, his brother, Trịnh Bá Phương, was also beaten, shackled, and detained for 10 days in solitary confinement for staging a protest with other prisoners in An Diem Prison, Quang Nam Province.

Questions to the government:

- Explain how the authorities will ensure that disciplinary measures are not applied to detainees who are legitimately exercising their rights.
- Clarify the discrepancy between the government’s assurance that disciplinary measures are not cruel or inhumane (Paragraph 48 of the state’s report to the CCPR), and allegations of torture and ill-treatment made by detainees and their families.
- Explain the difference between “disciplinary cells” and solitary confinement.
- Explain how the government will ensure that detainees have access to effective complaint mechanisms without being subjected to acts of reprisals.

**Article 10 (Humane treatment of persons deprived of their liberty)**

***Detention conditions far below international minimum standards***

Guarantees to protect the “lives, health, assets and dignity” of prisoners, enshrined in the 2019 Law on Execution of Criminal Judgements, are not respected in practice. Each prison has its own internal rules. Prison oversight by government authorities is scarce, and prison officials who violate or fail to implement relevant legislation are rarely investigated and prosecuted. Access to medical care is grossly insufficient, and

prisoners who are seriously ill or need surgery are often not treated until conditions are life threatening. Independent journalist Lê Hữu Minh Tuấn, sentenced in January 2021 for “conducting propaganda against the state,” is critically ill in Xuyen Moc Prison in Ba Ria–Vung Tau Province, but has been denied medical care despite appeals from his family. Deaths in prison due to the withholding of medical treatment are frequent. Political prisoners are often detained far from their homes, thus limiting access to visits from families and subjecting them to psychological abuse. For example, land rights activist Nguyễn Thị Tâm and journalists Phạm Đoàn Trang, Nguyễn Tường Thụy, and Trương Minh Đức are all currently detained in prisons over 1,000 kilometers from their homes.

The government has also increased the disturbing practice of interning human rights defenders in pre-trial detention in psychiatric institutions. In 2021, land rights activist Trịnh Bá Phương was interned for a month in Hanoi National Psychiatric Hospital No. 1. The prison authorities said he was “abnormal” because he refused to answer their questions or look his interrogators in the eye. Other interned prisoners include writer Phạm Thành and human rights defenders Nguyễn Thị Thúy Hạnh and Lê Anh Hùng. The latter spent four years in Hanoi Psychiatric Hospital before his trial in August 2022. Released in July 2023, he said the psychiatric ward was “more terrifying than prison.”

Questions to the government:

- Clarify the rules and regulations that apply to detained government critics, civil society activists, and human rights defenders and explain why they are subjected to a different regime from other detainees.
- What steps will the government take to ensure that national legislation protecting the rights of detainees is implemented in practice, in particular the right to healthcare?
- Clarify the government’s policy of detaining prisoners far from their homes, and explain why such fact is denied by the state’s report to the CCPR (Paragraph 62 of the state’s report to the CCPR).

**Article 14 (Right to equality before courts and tribunals and right to a fair trial)**

***Harsh sentences, unfair trials, and systematic denial of legal defense***

In Vietnam, courts are not independent from the executive, and trials of human rights defenders, bloggers, and civil society activists have consistently failed to comply with Vietnam’s human rights obligations under Article 14 of the ICCPR. The 2015 Criminal Procedure Code (CPC) authorizes virtually unlimited pre-trial detention for persons charged with “national security” offenses, giving the Supreme People’s Procuracy full authority to extend pre-trial detention “until the investigation closes” (Articles 172 and 173 of the CPC), which may last for up to two years or more. Suspected national security offenders are detained incommunicado and denied family visits and access to their lawyers “to keep the secrets of the investigation” (Article 74 of the CPC), thus depriving them of the right to prepare their defense. During trials, defendants are often not allowed by the courts to call their witnesses. The right to the presumption of innocence has been routinely undermined by smear campaigns in state-controlled media. Although trials are generally open to the public, the Constitution provides for closed-door trials in “special cases” to protect “state secrets” or the “fine customs and traditions of the nation” (Article 103). These overly broad definitions are regularly invoked to hold trials of human rights defenders behind closed doors.

Questions to the government:

- Explain how the government ensures that procedures applied to persons charged with “national security” offenses do not undermine their right to a fair trial.
- Report on what steps the government intends to take to ensure the independence of the judiciary from the executive branch.
- Explain why the government has not accepted recommendations made by various UN human rights monitoring mechanisms to amend the Criminal Procedures Code and the Criminal Code to bring them into line with international human rights law.

**Article 19 (Right to freedom of opinion and expression)**

## **Human rights and environmental rights defenders severely repressed, media stifled**

The government is intolerant of all forms of peaceful dissent and routinely uses repressive provisions of the Criminal Code that are incompatible with Article 19 of the ICCPR to arrest, prosecute, and imprison individuals who criticize the government or express their support for democracy and human rights. Between January 2019 and September 2023, at least 154 activists, government critics, human rights defenders, and members of ethnic and religious minorities (including 28 women) were arrested. During the same period, 145 individuals (including 22 women) were sentenced to prison terms of up to 15 years. Extensive legislation has been recently introduced to further limit freedom of expression, both online and in the print media, on the pretext of combating “fake and malicious news.”

In an ongoing and highly disturbing trend, authorities have targeted environmental rights defenders who have publicly challenged Vietnam’s climate change policies and reliance on fossil fuels. Between January 2021 and May 2023, at least five leaders of registered environmental NGOs - namely Mai Phan Lợi, Bạch Hùng Dương, Đặng Đình Bách, Nguyễn Thị Khanh, and Hoàng Thị Minh Hồng - were convicted on politically-motivated charges of “tax evasion” (Article 200 of the Criminal Code) and sentenced to prison terms ranging from two to five years.

### Questions to the government:

- Explain how prosecutions of human rights defenders, activists, and government critics under Articles 109, 117, and 331 of the Criminal Code conform to the ICCPR’s provisions.
- Explain the definition of “fake and malicious news” (Paragraph 97 of the state’s report to the CCPR).
- Provide a clear explanation of the application of tax laws to registered civil society organizations and explain why rules and regulations concerning non-profit organizations have not been established.
- Explain how the use of “tax evasion” charges against civil society organizations is consistent with Vietnam’s obligations under the ICCPR.

## **Article 21 (Right to freedom of peaceful assembly)**

### ***Peaceful demonstrations suppressed amid legislative vacuum***

The right to freedom of peaceful assembly is systematically violated, in breach of Article 21 of the ICCPR. Police and government-backed thugs have routinely repressed peaceful demonstrations. Vietnam has no law on public assemblies, and the consideration of a draft law on demonstrations, introduced in the National Assembly several times since 2011, 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 Circular 9 (2005), which prohibits gatherings of more than five people without obtaining prior permission from the authorities. Ministry of Public Security Circular 13 (2016) empowers police to disband gatherings outside courts, by force if necessary. Circular 13 has been frequently used to violently attack and arrest persons peacefully protesting unfair trials or gathering outside courts to express solidarity with fellow activists. In the wake of nationwide protests against draft laws on Cybersecurity and Special Economic Zones in 2018, the government stepped up measures to suppress protests at a local level. Squads of specialized anti-riot police have been set up all over the country to crack down on “illegal protests” and acts of “disturbing public order.” Scores of demonstrators arrested in the aftermath of the 2018 protests were prosecuted and sentenced to long prison terms.

### Questions to the government:

- Detail plans to enact legislation that guarantees the right to freedom of peaceful assembly in line with the Article 21 of the ICCPR.
- Clarify how the frequent use of force to disperse public protests complies with international standards on the management of assemblies.
- Explain the steps taken to prohibit excessive use of force and other human rights violations against those who exercise their right to freedom of peaceful assembly and to hold the perpetrators accountable.

- Provide information on whether human rights training for law enforcement officials on the management of assemblies has been conducted by relevant domestic and international institutions.

## **Article 22 (Right to freedom of association)**

### ***Lack of legal framework exposes non-profit organizations to government repression***

Although freedom of association is guaranteed by Article 25 of the Constitution, there is no legal framework, and no specific law on associations, to protect this right. Associative activity is regulated by a series of decrees that unnecessarily and disproportionately limit their scope, in violation of Article 22 of the ICCPR. Several restrictive decrees were adopted in 2020. There is no legal concept of “non-profit” organizations. The authorities are exploiting this legal vacuum to silence the voices of NGO leaders and forcing their NGOs to close down, as was the case for CHANGE, the NGO led by Hoàng Thị Minh Hồng. The recent crackdown on environmental rights defenders on tax evasion charges [See above, *Article 19*] highlights the increasing vulnerability of civil society organizations in Vietnam.

### ***Questions to the government:***

- Provide a timeframe for adopting a law on associations that is in compliance with Article 22 of the ICCPR.
- Provide a clear legal framework for the operations of non-profit civil society organizations in Vietnam.

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<sup>1</sup> Article 109 sanctions “activities aimed at overthrowing the people’s administration;” Article 117 on “making, storing, disseminating information, document, materials, items against the Socialist Republic of Vietnam;” Article 318 on “disrupting public order;” and Article 331 on “abusing democratic freedoms to infringe upon the interest of the state, the legitimate rights and interests of organizations and/or citizens.”

<sup>2</sup> Pháp Luật (Law), *Directives on the death penalty remain insufficient*, 16 October 2020 [in Vietnamese]; <https://plo.vn/quy-dinh-ve-thi-hanh-an-tu-hinh-con-bat-cap-post597361.html>