

## **FIDH & Vietnam Committee on Human Rights : Vietnam and Free trade Agreement negotiations: NGOs urge the EU to carry out a human rights impact assessment**

*Brussels, 30 April 2013*

Dear Commissioner de Gucht,  
Dear HR/VP Ashton,  
Dear Mr. Lambrinidis,  
Dear Members of the Working Party on Human Rights,  
Dear Members of the Working Party on Asia,  
Dear Members of the Trade Policy Committee,

The International Federation for Human Rights (FIDH) and its member organisation, the Vietnam Committee on Human Rights (VCHR), would like to ask the European Union to conduct an impact assessment that adequately encompasses the human rights situation before continuing the negotiations of the Free Trade Agreement launched in March 2013 with Vietnam.

### **EU commitments concerning the trade-human rights articulation**

The EU has an obligation to ensure that its trade agreements do not harm human rights abroad. Such obligation, grounded in International Law as well as in Primary European Law, was translated into concrete commitments in June 2012 in the EU Strategic Framework and Action Plan on human Rights and Democracy. FIDH has welcomed (1) the strategic evolution represented by the Framework and the EU's ambition to "*integrate the promotion of human rights*" "*in all areas of its external action without exception*" and to make an "*effective use and interplay of EU external policy instruments*" ensuring "*the best articulation between dialogue, targeted support, incentives and restrictive measures*" (2).

Concerning trade more specifically, the EU has committed itself through the Action Plan to "*insert human rights in all Impact Assessments*" (therefore including those carried out when launching trade agreements negotiations) and to develop "*a methodology to aid consideration of the human rights situation in third countries in connection with the launch or conclusion of trade and/or investment agreements*".

### **Current practice does not meet commitments**

The current practice concerning negotiations with Vietnam unfortunately does not comply with this encouraging conceptual framework. The position of the European Commission is that the Trade Sustainability Impact Assessment (TSIA), conducted in 2009 to assess the impacts of a regional free trade agreement EU/ASEAN, is sufficient. FIDH and VCHR firmly reject this view and believe that the abandoning of regional ASEAN negotiations for bilateral ones with ASEAN member states call for the conduction of national Human Rights Impact Assessments (HRIA).

The regional TSIA does indeed not offer enough country focus to properly indicate possible impacts in specific countries like Vietnam. Ecorys itself, the contractor in charge of the TSIA, indicated that this regional assessment could at most be considered as a framework and a “starting point” for more detailed national level analysis (3).

In addition, the ASEAN TSIA fails to assess human rights impacts. This is all the more concerning than the Vietnamese authorities continue violating human rights, especially in the domains of freedoms of expression, religion, assembly and violations linked to land evictions.

### **Violations could increase if FTA impacts are not assessed**

The European Parliament adopted on 18 April 2013 a Resolution urging the Vietnam authorities to cease these violations (4). This call reflects VCHR’s concerns, as expressed notably in its Report to the Committee on the Elimination of Racial Discrimination (CERD) (5) in February 2012. The Report exposed the following pattern of violations, which might be increased by the future FTA in the absence of a proper assessment of the Agreement’s impacts on these areas, and the adoption of accompanying mitigation measures:

- There are no independent trade unions in Vietnam. All unions are under the umbrella of the “Vietnam General Confederation of Labour” (VGCL) which functions under the control of the Communist Party. Free trade unions outside VGCL structures are prohibited. The 1995 Labour Code gives workers a restricted right to strike, principally in foreign-owned factories. During a grave financial crisis in 2008, when inflation reached 27% and prices of food, housing and fuel rocketed, many workers staged strikes to demand better pay and working conditions. In response, the government adopted Decree 11 which obliges workers to pay three months wages to their employers if their strike is deemed to violate the Labour Code.

- The policy of renovation (doi moi) has seriously restricted the access of poor

people – especially the ethnic minorities – to basic social services such as health and education. Ethnic minority children are three times as likely as Kinh-Hoa people to die before their first and fifth birthdays.

- The UN Independent Expert on Minority Issues noted that ethnic minorities have *“not been sufficiently targeted by credit schemes, receive smaller loans and are vulnerable to predatory lending.”*

- Government-enforced policies in the Central and Northern Highlands, including population displacement and State-sponsored migration of Kinh people have deprived ethnic minorities of the right to free choice of employment and created serious inequalities in income, employment and pay. The average ethnic minority worker earns 15% less than the average ethnic majority worker.

- The right to land ownership is one of the basic problems facing ethnic minority groups today. Under Vietnam’s socialist system *“land is the property of the entire people”* but it is *“uniformly managed by the State”*. The State thus owns the land and leases it to the people through a system of “Land Use Rights Certificates” (LURC).

- The UN Expert on Minority Issues, Ms. Gay McDougall, expressed concern about the displacement of minorities and the confiscation of ancestral lands on which their livelihoods depend. She noted that *“large areas of fertile lands have been turned over to industrial crops, including coffee and rubber, whilst massive in-migration of ethnic Kinh has put additional pressure on scarce available land.”* Forestry land is a particular problem. Major government programmes to protect the forests and prevent deforestation, such as the Forest Strategy 2006-2020 have also negatively impacted ethnic minorities. Decided at a national level with very limited consultation with local residents in these areas, these programmes take little or no account of poverty and livelihood improvement. Many ethnic minorities live in forests which are now under strict protection. They find themselves deprived of their livelihood, with very few alternatives to survive. Overall, the government’s policies of forced resettlement, State-appropriation of land, expropriation and population displacement have effectively deprived the ethnic minorities of the right to own and inherit ancestral homelands. This widespread policy, coupled with the spontaneous and State-sponsored migration of ethnic Vietnamese into highland areas, is undermining the traditional culture and social organisation of ethnic minorities. The State confiscation of ancestral Montagnard lands to plant cash crops such as coffee is also a discriminative policy, since the profits from these crops enrich ethnic Kinh rather than the Montagnards.

According to credible reports, since the adoption of the 2003 Land Law up till today, Vietnamese authorities have illegally confiscated the rice-fields and lands of 500,000 farmers and peasants; violent incidents that involve farmers who are victims of confiscations, corruption and denial of justice are increasing, as shown by riot police repression of the dispossessed farmers' protest movement named Dân Oan (Victims of Injustice) in Vinh Yen in March 2013.

## **A HRIA must allow mitigation measures during trade negotiations**

Given that the 2009 ASEAN TSEA does not take those issues into account, FIDH and VCHR fear that the EU is deprived of a proper evaluation tool to analyse potential negative impacts which could particularly affect fragile sectors and populations in Vietnam. Trade liberalisation which ignores the specific situation of vulnerable groups, poor segments of the population, farmers, etc. risks aggravating their situation. It is also fundamental for the EU to obtain a proper analysis of the potential risks represented by tariffs reduction on the curtailing or inhibition of Vietnam's capacity to conduct public policies to ensure the full realisation of human rights.

The ASEAN TSEA indicates that the FTA could have potential positive effects in some areas, e.g. price reduction on goods expected to benefit to poor urban consumers, access to employment opportunities, access to better social benefits. However these positive effects are presented as depending on access to micro-credit. The TSIA also mentions the theoretical *"indirect positive effects on education arising from the fact that the FTA with overall increases in wages for parents"* without deep analysis (6).

Therefore, in the ASEAN TSEA, potential negative human rights impacts are ignored while positive impacts are conditional. Nothing allows a proper assessment of risks to the full enjoyment of human rights by the whole of the Vietnamese population nor to identify specific sectors demanding the setting-up of safeguards clauses in the Treaty and flanking measures to secure human rights.

FIDH and VCHR believe that the EU should, in conformity with the Human Rights Strategic Framework, conceive trade negotiations with Vietnam in a strategic manner to obtain tangible results. This strategic approach should not only allow to avoid human rights violations through trade, but also to use the negotiation phase as an incentive to set up the necessary safeguards to address the potential human rights negative effects identified during a proper Impact Assessment.

In addition, FIDH and VCHR believe that the above exposed limitations of the regional TSEA call for the conduction by the EU of a proper Human Rights Impact Assessment,

in conformity with the Union's obligations and commitments. As stressed by the UN Special Rapporteur on the right to food, Human Rights Impact Assessments differ from other impact assessments (such as social, environmental or sustainability impact assessments). The HRIA *"should be based explicitly on the normative content of human rights"* and *"references in impact assessments to development goals or to poverty, therefore, are not a substitute for a reference to the normative components of human rights"* (7).

The Human Rights Impact Assessment we call for must allow the EU to identify areas where potential impacts call for changes in domestic law and practice and the inclusion of safeguards mechanisms in the Agreement. Negotiations should not be terminated as long as these changes have not been made.

Yours sincerely,

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Members of the European Parliament Trade Commission  
Members of the European Parliament Delegation for Relations with South East Asia

- (1) FIDH, [The new EU human rights policy: A determination to marry human rights objectives with the EU's economic weight](#), 26 June 2012.
- (2) Council of the European Union, [EU Strategic Framework and Action Plan on human Rights and Democracy](#), 25 June 2012.
- (3) Ecorys, [Trade Sustainability Impact Assessment of the FTA between the EU and ASEAN - FR Volume I](#), p. xxiv.
- (4) [European Parliament resolution of 18 April 2013 on Vietnam](#), in particular freedom of expression (2013/2599(RSP)).
- (5) Vietnam Committee on Human Rights, [Violations of the Rights of Ethnic and Religious Minorities in the Socialist Republic of Vietnam, Alternative Report on the Implementation of the UN International Convention on the Elimination of All Forms of Racial Discrimination \(ICERD\)](#), 20 February 2012.
- (6) Ecorys [Trade Sustainability Impact Assessment of the FTA between the EU and ASEAN Final Report Volume I - Main Findings and Recommendations](#), 19 June 2009, pp. xv, and following & [Commission services' position paper on the trade sustainability impact assessment of the free trade agreement between the EU and ASEAN](#), June 2010, p. 4.
- (7) A/HRC/19/59/5, Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum, Guiding principles on human rights impact assessments of trade and investment agreements, December 2011, §§2, 5.1.