

Legal Persecution

Vietnam's Use of Law as a Weapon Against Civil Society



FREEDOM NOW



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About the Authors

Freedom Now is a non-partisan non-governmental organization that works to free individual prisoners of conscience and address systemic arbitrary detention worldwide through legal, political, and public relations advocacy efforts. The organization supports individuals who are detained as a consequence for peacefully exercising their fundamental rights, such as expression, association and assembly, religion and belief, and the right to participate in government. Working across institutions and mobilizing international partners, Freedom Now looks to make a substantial effect in people's lives, marshalling resources to address human rights violations, and improving human rights for all.¹

The **International Human Rights Law Clinic** ("IHRLC") is one of 10 law clinics within the Clinical Program at the American University Washington College of Law ("WCL"). The Clinical Program provides students the opportunity to represent real clients with complex legal problems, to handle litigation from beginning to end, to explore and address pressing legal and policy issues with institutional clients, and to learn lawyering skills at both a practical and theoretical level. The collaboration with the co-author in producing this report exemplifies IHRLC's commitment to giving students the opportunity to represent non-U.S. citizens and non-profit organizations working to defend the human rights of foreign nationals in the U.S. and abroad.²

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¹ Additional information about Freedom Now can be found at <http://www.freedom-now.org>.

² Additional information about the International Human Rights Law Clinic can be found at <https://www.wcl.american.edu/academics/experientialedu/clinical/theclinics/ihrclc/>.

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Glossary

AHRD	ASEAN Human Rights Declaration
ASEAN	Association of Southeast Asian Nations
CAT	UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
CPV	Communist Party of Vietnam
Criminal Code	Penal code compiling all of Vietnam's criminal law provisions
Criminal Procedure Code	Code setting forth the adjudication process of the Criminal Code
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-governmental organization
UDHR	Universal Declaration of Human Rights
USCIRF	US Commission for International Religious Freedom

Executive Summary

Vietnam's record of respect for its peoples' civil and political rights remains poor and the government continues to take harsh action against individuals or groups perceived to act in opposition to its interests. Although Vietnam holds elections, these elections are neither free nor fair, but serve to cement the power of the Communist Party of Vietnam ("CPV") over state institutions including the National Assembly, judiciary, law enforcement, and security. To ensure that the CPV's vision of national unity is not undermined by an individual's exercise of his or her civil and political rights, the government has enacted a network of laws and promoted a series of practices that close civil society space, curtail religious freedoms, and criminalize dissent. Individuals who speak out against the government are often detained and convicted to lengthy prison terms; it is estimated that by the end of 2017, over 100 prisoners of conscience populated Vietnam's jail cells.

Within the past few years this crackdown on civil society has worsened as the government has passed new laws and amendments to enable its repression. These laws attempt to legitimize practices that violate Vietnam's obligations to safeguard freedom of expression, association, assembly, and religious practice under international law—specifically, under the International Covenant on Civil and Political Rights, the Universal Declaration on Human Rights, and the ASEAN Human Rights Declaration.

The framework of legal repression starts with the highest law of the land. The Constitution of Vietnam does guarantee certain rights, however those rights are specifically demarcated as existing only within certain restrictive boundaries. For instance, the government may restrict the human rights of its citizens in the interest of national defense, national security, public order, the security of society, or social morality, exceptions that may be—and are—interpreted very broadly by the government.

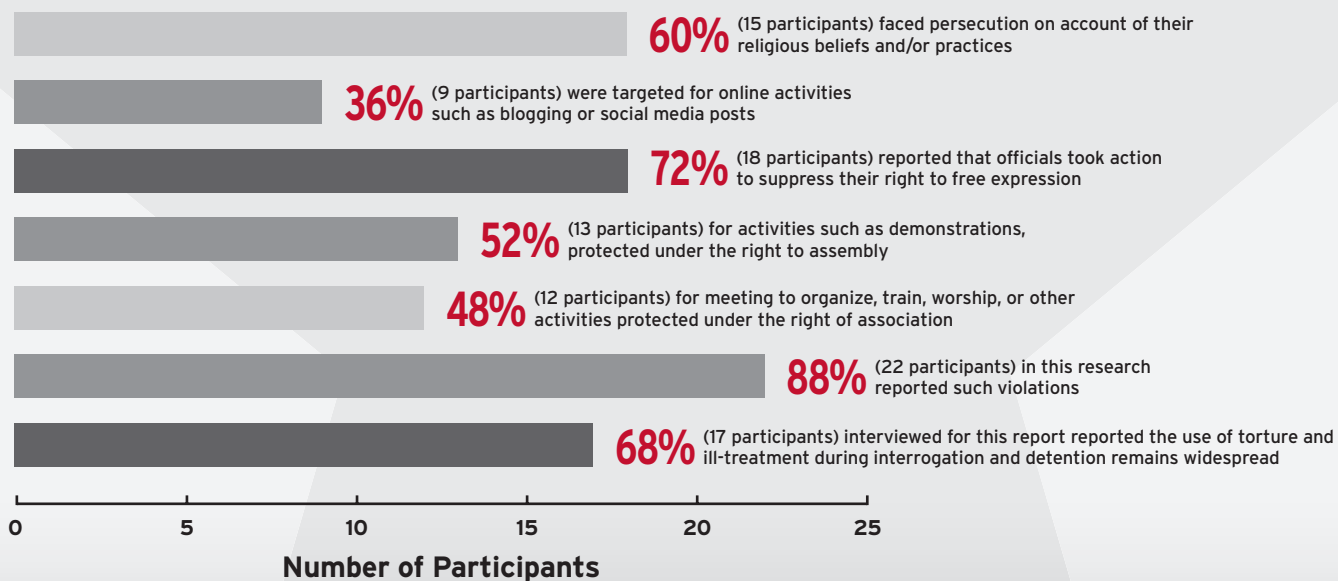
In January 2018, an amended Criminal Code came into effect which included harsher penalties and more expansive provisions for the crimes with which government critics are most commonly charged. The amended Criminal Code kept in place all of the provisions worded vaguely enough to permit criminal prosecution for a range of speech, religion, association, and assembly-related activities and additionally increased the sentence length for such offenses. The amended Criminal Code also included a new slate of ambiguous "preparatory" offenses. Other amendments deteriorated defendants' procedural rights, for instance by requiring defense attorneys to report their clients "serious" or national security crimes. These amendments violate

international law both by overtly criminalizing protected speech, religion, association, and assembly-related activities *and* by their vagueness, making it impossible for anyone to reasonably foresee what actions are criminal.

The government has also enacted a number of new laws and ordinances, ostensibly in the interest of national security or press freedom, but that actually serve to restrict freedom of expression. Online and media expression have been particularly targeted. The 2015 Law on Cyber Information Security included provisions that undermine the privacy of individuals and enable government monitoring of private communications. Decree 72, issued in 2013, prohibited sharing news articles and material deemed harmful to national security or in opposition to the government. Decree 174, effective since 2014, imposed fines on anyone criticizing the government or "spreading propaganda" on social media. A new cybersecurity law set to come into effect in 2019 will require online businesses to store their data inside Vietnam and turn over user data to certain government ministries; other provisions serve to criminalize online expression that counters government narratives. The Law on the Press, in force since 2017, aims to ensure that the media does not publish or promote ideas seen as threatening to the status quo and shifts the media's focus to aggrandizing the policies of the government.

Religious freedom has also been under assault, particularly with the new Law on Belief and Religion which expands government control over religious groups and imposes harsh penalties on those attempting to maintain independence. The law, which limits legitimate belief-based activities to traditional religions, codifies the right of the government to intervene in vetting and appointing clergy and disseminating religious material. The law also imposes onerous registration requirements for all religious activities and operations.

Although several of the new laws and amendments analyzed here came into effect after the Vietnamese refugees interviewed for this report fled the country, interviews with those refugees revealed an environment of harsh repression and disrespect for basic human rights even before the latest round of legal restrictions. The refugees provided numerous firsthand accounts of harassment, intimidation, arrest, detention, and conviction on account of such person's deemed opposition to government interests or membership in a minority religious group. ★ Of the 25 participants in this research, 15 participants (60%) faced persecution on account of their religious beliefs and/or practices; 9 participants (36%) were targeted for online activities such as blogging or social media posts; and 18 participants (72%)



reported that officials took action to suppress their right to free expression. Additionally, authorities targeted 13 participants (52%) for activities such as demonstrations, protected under the right to assembly, and 12 participants (48%) for meeting to organize, train, worship, or other activities protected under the right of association.

In addition to laws which attack substantive rights, individuals' due process rights are often at risk during legal processes; 22 participants (88%) in this research reported such violations. Common due process violations, highlighted both by participants in this research and through Freedom Now's casework, include arbitrary deprivation of liberty through repeated "working sessions" (informal and extra-legal interrogations), lack of *habeas corpus* proceedings, prolonged pre-trial detention (often with the detainee held *incommunicado*), delayed and unfair trials adjudicated by a biased judiciary, presumptions of guilt, coerced confessions, secret trials, and the lack of legal representation and the time and facilities needed to prepare a defense. Several of these due process abuses are codified into law while others occur in violation of the protections which exist in the Constitution and Criminal Procedure Code.

With respect to torture and other ill-treatment of persons within judicial process, the government has made some positive changes to its domestic law that brings the country more in line with international laws and obligations. Nevertheless, the use of torture and ill-treatment during interrogation and detention remains widespread and was reported by 17 participants (68%) interviewed for this report. In addition to torture, detainees are often subjected

to cruel and inhuman treatment and held in prisons with poor sanitation, bad food, and limited access to medical care. Torture and mistreatment of detainees is particularly prevalent among persons arrested for peacefully exercising their rights to freedom of expression, association, assembly, or conscience.

This report paints an alarming picture of the state of human rights in Vietnam and illustrates a trend of *de jure* and *de facto* repression which appears to be worsening. In response, this report recommends to the government of Vietnam that it amend or repeal certain laws to bring them into compliance with Vietnam's obligations under international human rights law; that it ensure that such rights are rigorously protected in practice; that it publicly condemn any acts of human rights abuse against individuals; that it provide human rights training to all actors involved in legal processes and end the culture of impunity; that it encourage a robust media and civil society landscape; that it release all prisoners of conscience; and that it allow the UN human rights procedures to visit the country. This report also recommends to concerned countries and international organizations that they make human rights a centerpiece of any high-level dialogue with the government of Vietnam; that they support civil society by taking certain concrete acts; that they condition closer bilateral relationships with Vietnam on measurable improvement of its human rights record; that the United States takes certain punitive measures against the government of Vietnam and individual human rights abusers; and that multinational technology corporations resist demands by the Vietnamese government that would enable persecution of human rights defenders.

I. Introduction

Vietnam's record of respect for its peoples' civil and political rights remains poor and the government continues to take harsh action against individuals or groups perceived to speak or act in opposition to its interests. Although Vietnam holds elections, these elections have been criticized by numerous human rights groups and governments as being neither free nor fair, in violation of Vietnam's international law obligations.³ Specifically, Vietnam's 2016 election was considered to have violated Article 25 of the International Covenant on Civil and Political Rights ("ICCPR"), which gives citizens the right to choose their representatives, and to vote freely in a secret ballot, without state interference.⁴ In this election, the CPV restricted access to the ballot by heavily vetting and disqualifying candidates, and was criticized for stuffing ballot boxes, organizing group voting, and using state media to criticize independent candidates.⁵

In so skewing elections, CPV is able to cement its power over the one-party state and its influence throughout all national, provincial, and local institutions.⁶ The CPV essentially controls all branches of the government and makes certain that the passage and implementation of laws reflect its priorities. To ensure that the CPV's vision of national unity is not undermined by an individual's exercise of his or her civil and political rights, the government has enacted a network of laws and promoted a series of practices aimed at closing civil society space, curtailing religious freedoms, and jailing government critics.

Such unchallenged control by a non-democratic government has enabled significant human rights abuses. Civil society groups have documented the many ways in

which the government restricts the rights of individuals to demonstrate, express dissenting political views, assemble, associate, advocate for labor, environmental, and women's rights, use the internet without being monitored or otherwise restricted, and freely practice one's religion.⁷ This is not an exhaustive list of government repression, but illustrates the wide reach of the government in suppressing vocalized opposition and independent voices.

Individuals who dare to speak or act out against the government often find themselves facing lengthy prison sentences. Although government obfuscation makes these numbers difficult to confirm, it is estimated that by the end of 2017, over 100 prisoners of conscience populated Vietnam's jail cells.⁸ As discussed in detail in section III.b below, in 2018 an amended Criminal Code went into effect which broadened provisions frequently used by the government to target human rights defenders, journalists, bloggers, and other independent voices and imposed harsher penalties for such offenses. Given this new Criminal Code and the government's unrelenting crackdown on its critics, it is therefore likely that the number of prisoners of conscience has grown substantially in the past few months.

Although Vietnamese and international law prohibit torture and ill treatment, human rights groups, corroborated through this research, have identified numerous cases where individuals were arrested, detained in deplorable conditions, interrogated, abused, and tortured. In some cases, individuals reportedly died while in police or security custody.⁹ Torture is illegal under the Criminal Code, including the use of torture to obtain confessions,¹⁰ however

³ Freedom House, *Freedom in the World: Vietnam 2017*, available at <https://freedomhouse.org/report/freedom-world/2017/vietnam> (hereinafter "Freedom in the World: Vietnam 2017").

⁴ International Covenant on Civil and Political Rights, art. 25, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 (hereinafter "ICCPR"); See also Human Rights Watch, *Vietnam: Hold Elections for Country's Leaders*, (Jan. 19, 2016), available at <https://www.hrw.org/news/2016/01/19/vietnam-hold-elections-country-leaders>.

⁵ US Department of State, *Country Report on Human Rights Practices for 2016: Vietnam*, 1, 34, available at <https://www.state.gov/documents/organization/265598.pdf> (hereinafter "US Dep't of State Report on Human Rights: 2016").

⁶ US Department of State, *Country Report on Human Rights Practices for 2017: Vietnam*, 1, 15, available at <https://www.state.gov/documents/organization/277375.pdf> (hereinafter "US Dep't of State Report on Human Rights: 2017").

⁷ See generally US Dep't of State Report on Human Rights: 2017, *supra* note 6; see also Amnesty International, *Viet Nam 2017/2018*, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/> (hereinafter "Amnesty International, *Vietnam 2017/2018*"); Human Rights Watch, *No country for Human Rights Activists*, (June 18, 2017), available at <https://www.hrw.org/report/2017/06/18/no-country-human-rights-activists/assaults-bloggers-and-democracy-campaigners>.

⁸ Human Rights Watch, *Free Vietnam's Political Prisoners!*, (Nov. 3, 2017), available at <https://www.hrw.org/video-photos/interactive/2017/11/03/free-vietnams-political-prisoners>.

⁹ Amnesty International, *Viet Nam: President Hollande Must Back One Woman's Fight for Justice*, (Sept. 6, 2016), available at <https://www.amnestyusa.org/press-releases/viet-nam-president-hollande-must-back-one-womans-fight-for-justice/>.

¹⁰ Criminal Code (2015), No. 100/2015/QH13, arts. 373-74, (Nov. 27, 2015), available at <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>.

there is widespread impunity when officials engage in torture and other abuses that lead to grave harm.¹¹

The Vietnamese legislature has passed laws ostensibly to ensure the protection of its citizens' civil and political rights, however these rights are often impermissibly restricted in law and officials commonly abrogate their duty to implement even those limited protections which do exist. As discussed further in section III.a below, the Vietnamese Constitution (the "Constitution") does include important rights, such as the right to freedom of religion, expression, association and assembly;¹² however, those rights are specifically demarcated as existing only within certain boundaries. Individuals often face harassment, intimidation and threats for engaging in actions that, formally at least, Vietnamese law protects. Additionally, the Criminal Procedure Code includes certain crucial due process guarantees, such as the right of criminally accused persons to a timely, fair, and public trial and the right to a lawyer;¹³ unfortunately, defendants are often denied these rights in practice.¹⁴

The government has ratified a number of relevant international treaties, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ICCPR. Vietnam is also bound by the Universal Declaration of Human Rights ("UDHR") and the ASEAN Human Rights Declaration (the "AHRD"). While the government should be credited for formally incorporating certain important provisions of international law into domestic law, much more work needs to be done to eliminate domestic legal provisions and practices that circumscribe these human rights obligations, and to promote implementation of positive laws that guarantee and uphold civil and political rights.

Considering the continuing crackdown on civil society and the number of new laws passed in the past few years which further serve to restrict rights and imprison those who speak out against such restrictions, this report crucially serves to document and analyze the worsening state of *de jure* and *de facto* repression within Vietnam.

This report is based primarily on interviews conducted with 25 Vietnamese refugees who fled the country after they experienced various forms of persecution and an analysis of the cases of current and former Freedom Now clients. It is difficult for human rights groups to meet with activists and other individuals who the government targets inside Vietnam without placing researchers and, more importantly, participants at risk. Therefore, this research, conducted outside of the country, contributes significantly by corroborating and adding to the research and human rights documentation that currently exists.

The individuals who were interviewed for this report all faced government harassment and persecution. Some had served lengthy prison sentences for peaceful activities, while others had fled to avoid being detained wrongly. This report's findings support what other organizations and local activists have been highlighting: that the Vietnamese government continues to engage in systematic repression of its people, applying the law in a way that violates individual freedoms.

¹¹ US Dep't of State Report on Human Rights: 2017, *supra* note 6 at 1; see also *President Hollande Must Back One Woman's Fight for Justice*, *supra* note 9; Amnesty International, *Prisons Within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam*, (July 8, 2016), available at <https://www.amnestyusa.org/reports/prisons-within-prisons-torture-and-ill-treatment-of-prisoners-of-conscience-in-viet-nam/>.

¹² Constitution of the Socialist Republic of Vietnam, arts. 24, 25, (2013), available at http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf; Que Me, *New restrictions on the right to demonstrate in Vietnam*, (Mar. 30, 2016), available at <http://queme.org/en/new-restrictions-on-the-right-to-demonstrate-in-vietnam/?v=7516fd43adaa>.

¹³ Criminal Procedure Code, No. 101/2015/QH13, arts.16, 214, (Nov. 27, 2015), available at <http://lawfirm.vn/?a=doc&cid=2745>.

¹⁴ US Dep't of State Report on Human Rights: 2017, *supra* note 6 at 11.

II. The Communist Party of Vietnam and the Government Structure¹⁵

The CPV wields enormous power over the Vietnamese people through its control of state institutions, including the National Assembly, judiciary, law enforcement, and security. The CPV also restricts the flow of information by controlling the media and all mediums of communication from print, television, and online content. The CPV ensures that members who demonstrate support for CPV policies are appointed to a wide range of government positions from the local to national, and within all state-run institutions. Through a complex system of managing officials and policy, the CPV and the Fatherland Front, which consists of smaller groups that implement the CPV agenda, monitor and regulate a wide range of activities of Vietnamese people.

The Fatherland Front is an umbrella group¹⁶ comprised of organizations that supposedly represent the interests of the people, yet in practice is an extension of the CPV.¹⁷ The National Assembly passed the Law on the Vietnam Fatherland Front which lays out in detail the rules governing member associations. For example, the Fatherland Front vets candidates for the National Assembly elections,¹⁸ and is partly responsible for selecting judges.¹⁹ Though not explicit in the law, in practice the Fatherland Front vets candidates for their Communist Party credentials, severely curtailing the participation of independent individuals.²⁰

According to the Constitution, the National Assembly, composed of 500 members, decides significant matters of national affairs and oversight over state activities, although in practice the National Assembly serves to rubberstamp such decisions already made by the CPV.²¹ The legislative term is five years, which may be shortened or extended for up to 12 months in certain circumstances.²² The National Assembly has the authority to elect, relieve from duty



or remove from office the President and Vice-President, the Chairperson, Vice Chairperson and members of the Standing Committee of the National Assembly, the Prime Minister, the Chief Justice of the Supreme People's Court, the Procurator General of the Supreme People's Procuracy, the Chairperson of the National Election General, and the State Auditor General—among other important state positions.²³

Phuong, a pro-democracy activist, worked with others to nominate independent people to the National Assembly in an effort to challenge the Fatherland Front's control. She was arrested and interrogated four times for her activism:

I was one of the coordinators for campaign for the National Assembly election. We only have a one party state and the CPV makes it difficult for anyone to self-nominate for the assembly. I was one of the coordinators for the group. We had to create applications for each

¹⁵ See generally Nguyen Van Canh, *Vietnam Under Communism, 1975-1982*, (Hoover Institution Press, 1983) for more detailed information on the CPV and overall government structure.

¹⁶ See Law on the Vietnam Fatherland Front, No. 75/2015/QH13 (2015), available at <http://vietnamlawmagazine.vn/the-2015-law-on-the-vietnam-fatherland-front-4931.html>.

¹⁷ *Id.* at art. 7 (articulating the relationship between the Fatherland Front and the state as one of coordination), art. 8 (defining the Fatherland Front's relationship to the people as representing their interests and rights) (However, the proximity of the Fatherland Front to the CPV is evident upon an examination of the 41 articles that detail extensive responsibilities under the new law. For example, the law gives the Fatherland Front broad responsibilities to gather and report on information regarding social criticism under Chapter VI, which can easily open people up to repressive tactics once they are encouraged to come forward, and then do so with views contrary to the party and state); see also Freedom House, *Freedom in the World: Vietnam 2018*, available at <https://freedomhouse.org/report/freedom-world/2018/vietnam> (hereinafter "Freedom in the World: Vietnam 2018").

¹⁸ Law on the Vietnam Fatherland Front, *supra* note 16 at art. 19.

¹⁹ *Id.* at art. 20.

²⁰ Brian J.M. Quinn, *Legal Reform and its Context in Vietnam*, Columbia J. of Int'l L., 221, 245 n.64 (2001).

²¹ Constitution of the Socialist Republic of Vietnam, *supra* note 12 at art. 69.

²² *Id.* at art. 71.

²³ *Id.* at art. 70(7).

candidate and had to submit it to the Committee for the election. No one won but we brought a lot of attention of the people to self-nominating as an independent, and not with the CPV.

The President is essentially a ceremonial role with its duties prescribed in Chapter VI of the Constitution. The President is responsible for, *inter alia*, recommending candidates for Vice President or Prime Minister, President of the Supreme People's Court and the Head of the Supreme People's Procuracy²⁴ and, under the purview of the National Assembly Standing Committee, commanding the armed forces.²⁵ The President is also entitled to attend the Standing Committee and Government's sessions, to raise issues of concern, and to issue orders and decisions that will enable him or her to execute his or her duties.²⁶

According to Article 113 of the Constitution, the People's Council oversees local affairs to ensure that the CPV state policies are implemented at the local level. The People's Council is supposed to be a body that represents the interests of the people, however the People's Councils also provide a place where people can denounce or report on others, enabling wide latitude to abuse their authority and harass and conduct surveillance of local communities.

Pursuant to Article 102(3) of the Constitution, the People's Court is responsible for protecting justice and human and citizens' rights, along with the socialist regime, interests of the state, and the rights and legitimate interests of organizations and individuals. However, in practice the judiciary is not independent, and many courts fail to follow laws that guarantee due process. The CPV screens all judges and local officials before they are appointed.²⁷ Judges are appointed to five-year terms and must seek re-appointment for each new term, putting them at risk of losing their position if they make decisions that are perceived to be unfavorable to the interests of the state.²⁸

The People's Prosecutor is responsible for prosecuting crimes as well as reviewing government decisions and policies to ensure they do not violate the law.²⁹ The office of the People's Prosecutor has broad powers to investigate private behaviors that are perceived to violate the law, which is particularly problematic when the laws themselves condition certain rights and freedoms on their exercise within the vaguely defined limits of the state's interests.

The Ministry of Justice is administratively separate from the People's Court or the offices of the People's Prosecutor. Along with the Supreme People's Court, the Ministry of Justice is responsible for administering the lower courts, including managing their budgets.³⁰ Provincial level Departments of Justice are able to influence the lower courts by managing administration and financing, and by leveraging their role in nominating judges.³¹

Given the dominance of the CPV in all official institutions, several of the refugees interviewed for this report highlighted the role of CPV specifically in chilling civil society and creating an atmosphere where officials and society leaders must be responsive to CPV interests. For example, Hieu, a pro-democracy activist, participated in a training that focused on the need for democratic reforms, including opening up space for a multi-party system. He reported on the difficulty of even discussing the benefits of multi-party state: "[The training organization] has a Facebook page. This organization pushed for democracy and having more than one party, and the CPV wants to keep it a one-party system. Anything regarding politics would never be allowed by the government so they wouldn't even try to register [the organization] because they would be monitored."

Hoang, another interviewee, suggested that the CPV even has a hold over large religious communities, "They control the leader of Buddhism. The leader is controlled by the CPV. The monks don't dare raise their voices. When they raise their voices, they can be shut down."

Anh, a farmer from the central highlands of Vietnam explained how the party discriminated against his village because of their minority ethnic affiliation, Protestant religious beliefs, and opposition to government confiscation of indigenous lands: "All of the people in the village do not have identification documents. Some of them have identification, but it's really, really, really hard to do it. They make it really hard to get papers." Anh went on to explain the detrimental effect such practices had on children who could not attend school, because their parents could not register their marriages, and the government would not issue children's birth certificates or other documentation.

²⁴ *Id.* at arts. 88(2), 88(3).

²⁵ *Id.* at art. 89; *see infra* at 12 (giving examples of how the vague language, i.e. "special duties," of art. 89 of the Constitution gives this Council *carte blanche* powers to do as it pleases in the name of "national defense").

²⁶ Constitution of the Socialist Republic of Vietnam, *supra* note 12 at arts. 90, 91.

²⁷ US Dep't of State Report on Human Rights: 2016, *supra* note 5 at 14, 34.

²⁸ Quinn, *supra* note 20 at 240.

²⁹ *Id.* at 241-243. The People's Prosecutor also has a limited ability to investigate crimes.

³⁰ *Id.* at 229.

³¹ *Id.* at 245.

III. Laws Restricting Civil and Political Rights

International law guarantees rights to freedom of expression, association, assembly, and religion.³² It has been noted by a number of human rights observers, and confirmed by our research, that in practice the Vietnamese government does not respect these rights, and that those who attempt to exercise their rights face a range of repressive and abusive practices by government officials.³³ Such *de facto* restrictions on the Vietnamese peoples' right to free expression, association, assembly, and religious belief have been widely documented.³⁴ Troublingly, however, the past few years have witnessed the increased codification of such repression into Vietnamese statute, with new laws passed to restrict civil society space, increase surveillance of and crackdown on online and media activity, and criminalize a broad range of what should be protected activities.



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This report does not cover every law that touches on these issues, but highlights key provisions that are used to target activists, religious minorities and others seeking to exercise democratic rights. Even when individuals are not formally prosecuted for violating these laws, their existence provides a pretext for local officials to engage in harassing and abusive behavior.

These new laws, and the resulting repression they enable, violate Vietnam's human rights obligations under the UDHR, the AHRD, and the ICCPR.³⁵ Although the relevant provisions of the ICCPR do allow for restrictions to these rights for the protection of national security, public order, public health or morals, or the rights and freedoms of others, these exceptions are to be interpreted narrowly. The UN Human Rights Committee—the body which oversees the implementation of the ICCPR, has noted that such restrictions “may not put in jeopardy the right itself.”³⁶ As such, any limitation on such rights must be provided by law, for the protection of one of the enumerated purposes, and necessary to achieve that purpose.³⁷ A government seeking to limit such rights must present and specify the “precise nature of the threat” which it believes is posed by an individual's exercise of his rights.³⁸

In enacting laws that broadly restrict individuals' freedoms of expression, association, assembly, and religion wherever inimical to government interest, Vietnam is not narrowly tailoring such limitations to comply with its human rights obligations. To the contrary, these laws have further enabled the government's chilling of civil society's rights and repression of government critics.

a. Constitutional Framework

Chapter II of Vietnam's 2013 Constitution guarantees a number of important rights to its citizens and includes 35 articles under the heading “Human Rights and Citizens Rights and Duties.”³⁹

³² Constitution of the Socialist Republic of Vietnam, *supra* note 12 at arts. 24, 25; ICCPR, *supra* note 4 at arts. 18, 19, 21, 22.

³³ See Freedom in the World: Vietnam 2018, *supra* note 17.

³⁴ See e.g. US Department of State, *Country Report on Human Rights Practices for 2015: Vietnam*, 1, 22-31, available at <https://www.state.gov/documents/organization/253025.pdf> (hereinafter “US Dep't of State Report on Human Rights: 2015”); Amnesty International, *Viet Nam 2017/2018*, *supra* note 7.

³⁵ Universal Declaration of Human Rights, arts. 18, 19, 20, G.A. Res. 217A (III), U.N. Doc A/810 (1948) (hereinafter “UDHR”); ICCPR, *supra* note 4 at arts. 18, 19, 21, 22; Association of Southeast Asian Nations (ASEAN), *ASEAN Human Rights Declaration*, arts. 22, 23, 24 (Nov. 18, 2012), available at <http://asean.org/asean-human-rights-declaration/> (hereinafter “ADHR”). The UDHR, the ADHR and the ICCPR broadly guarantee the rights to free expression, assembly and religion and the UDHR and the ICCPR also protect the right to free association.

³⁶ Human Rights Committee, *General Comment No. 34*, art. 19 ¶ 21, U.N. Doc CCPR/C/G/34 (Sept. 27, 1993).

³⁷ *Id.* at 14 n.65 (citing to *Shin v. Republic of Korea*, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000 (adopted Mar. 16, 2004)).

³⁸ *Id.* at 14.

³⁹ See Constitution of the Socialist Republic of Vietnam, *supra* note 12.

Applicable rights under the Vietnamese Constitution (2013)

Article 14 – rights in political, civic, economic, cultural and social fields

Article 24 – freedom of belief and religion

Article 25 – freedom of opinion and expression, freedom of the press, freedom of information, freedom of assembly, association and protest

Article 27 – right to political participation

At first blush, the rights contained within the Constitution—which includes the rights to political participation, free expression, association, assembly, and religious practice—appear to be robust protections; for instance, Article 24 not only guarantees freedom of belief and religion, it also specifically requires that the state “respect and protect” such right. Unfortunately, other constitutional provisions expressly operate to limit these rights. Article 14 allows the government to restrict the human rights of citizens where it is determined by law to be in the interest of national defense, national security, public order, the security of society, or social morality. Certain constitutional provisions also reveal the government’s distrust of individual rights; Article 24(3), for example, which cautions that “no one has the right . . . to take advantage of belief and religion to violate the laws” suggests a government concern that exercise of one’s right to belief might be used as a pretext for illegal activity.

Additionally, the salient role of the CPV as the most powerful party is established in various provisions of the constitution, such as Article 4, which states that the CPV is the “leading force for the State and society.” Article 9, which confirms that the “Vietnam Fatherland Front constitutes the political base of the people’s government; represents and protects legal and legitimate rights and interests of the People” also operates to solidify the power of a single political entity.

Thus, while purporting to guarantee individual’s rights, the Constitution serves instead to provide a framework in which

such rights can only be exercised when not in opposition to the CPV’s interests.

b. Amended Criminal Code

In 2015 the National Assembly revised Vietnam’s Criminal Code to include harsher penalties and more expansive provisions for the crimes with which government critics are most commonly charged; this amended Criminal Code came into effect on January 1, 2018.⁴⁰

The Criminal Code previously included broad provisions that were worded vaguely enough to criminalize a range of protected speech, religion, association, and assembly-related activities. A civil society activist peacefully protesting or a journalist or blogger reporting on government policy might be charged with some combination of: “carrying out activities aimed at overthrowing the people’s administration,”⁴¹ “undermining the unity policy,”⁴² “conducting propaganda against the state,”⁴³ “disrupting security,”⁴⁴ “abusing democratic freedoms to infringe upon the interests of the state,”⁴⁵ “resisting persons in the performance of their official duties,”⁴⁶ or a number of other national security or public order related provisions.

The amended Criminal Code preserved all of these problematic provisions and generally increased the length of the sentences. The punishment for “undermining the unity policy,” for example, was increased from a range of five to 15 years to a range of 10 to 20 years for serious cases and from a range of two to seven years to a range of five to 12 years for less serious cases. Likewise, the punishment for “conducting propaganda against the state” rose its minimum time of imprisonment from three years to five years.

The amended Criminal Code also included a new range of “preparatory” offenses, which criminalized “any person who makes preparation for the commitment of this criminal offense”; this new category of offense was added to, *inter alia*, the crimes of “carrying out activities aimed at overthrowing the people’s administration,”⁴⁷ “undermining the unity policy,”⁴⁸ “conducting propaganda against the state,”⁴⁹ and “disrupting security.”⁵⁰ The amended Criminal Code does not include any requirement that such person has either

⁴⁰ Criminal Code (2015), *supra* note 10.

⁴¹ Criminal Code (1999), No. 15/1999/QH10, art 79, (Dec. 21, 1999), *available at* http://www.wipo.int/wipolex/en/text.jsp?file_id=385615. This provision was included in the amended criminal code (2015) *supra* note 10 at art. 109.

⁴² Criminal Code (1999) *supra* note 41 at art. 87. This provision was included in the amended Criminal Code (2015) *supra* note 10 at art. 116.

⁴³ Criminal Code (1999) *supra* note 41 at art. 88. This provision was included in the amended Criminal Code (2015) *supra* note 10 at art. 117.

⁴⁴ Criminal Code (1999) *supra* note 41 at art. 89. This provision was included in the amended Criminal Code (2015) *supra* note 10 at art. 118.

⁴⁵ Criminal Code (1999) *supra* note 41 at art. 258. This provision was included in the amended Criminal Code (2015) *supra* note 10 at art. 331.

⁴⁶ Criminal Code (1999) *supra* note 41 at art. 257. This provision was included in the amended Criminal Code (2015) *supra* note 10 at art. 330.

⁴⁷ Criminal Code (2015), *supra* note 10 at art. 109.

⁴⁸ *Id.* at art. 116.

⁴⁹ *Id.* at art. 117.

⁵⁰ *Id.* at art. 118.

specific intent to commit a crime or has taken direct action towards such crime's completion for such "preparation" to have occurred, a vagueness which thus allows the government to prosecute anyone for any speech or action deemed to be preparatory. In theory, these provisions would permit prosecution not just for a person protesting or writing a critical blog post, but also for a person who is merely walking towards a demonstration or into a cybercafé.

Certain amendments to the amended Criminal Code also impact defendants' procedural rights. For example, as detailed in section IV.a below, new Article 19(3) requires a defense attorney to report his clients' "serious" or national security crimes—a provision which has a significant impact on a defendant's right to confidentially communicate with counsel.

On their face, several of these laws are clearly in violation of international law's protection for freedom of expression, religion, association, and assembly. Article 109 of the amended Criminal Code criminalizes the mere act of joining an organization that acts against the government, a blatant violation of Article 22 of the ICCPR's guarantee of freedom of association. In violation of an individual's right to "seek, receive and impart information and ideas of all kind" under Article 19(2) of the ICCPR, Articles 116 and 117 of the amended Criminal Code criminalize the making, storing, or dissemination of materials that, *inter alia*, defame or contain distorted information about the government. Infamously, Article 331 of the amended Criminal Code even criminalizes the "[abuse of] freedom of speech, freedom of the press, freedom of religion, freedom of association and other democratic freedoms to infringe upon the interests of the state, lawful rights and interests of organizations and/or citizens" which impermissibly restricts all civil and political rights within the bounds of the government's interest.

In addition to these overt violations of human rights, the vagueness of many of these provisions makes it impossible for an individual to foresee what actions are criminalized, in violation of the principle of legality embedded in Article 15(1) of the ICCPR, Article 11(2) of the UDHR, and Article 20(2) of the AHRD; these provisions prohibit prosecution for a crime "which did not constitute a[n] offense, under national or international law, at the time when it was committed." The UN Human Rights Committee has confirmed that "[a]ny substantive grounds for arrest or detention must be prescribed by law and should

be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application."⁵¹ Moreover, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has explained that the standard for legal certainty requires framing laws "in such a way that the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and [that] the law [be] formulated with sufficient precision so that the individual can regulate his or her conduct."⁵²

Many of the laws frequently used to prosecute government critics appear purposefully vague so that the government can apply them to any action which it deems offensive. Without precise definitions it is impossible, for instance, to determine what expression the government might consider to be "propaganda" or what acts might be considered to be an "abuse" of democratic freedom. Not only do the range of potentially criminal acts include acts of expression, association or assembly which are protected under international law, but it is very difficult, perhaps by design, for a conscientious Vietnamese activist or journalist to determine exactly what acts might risk criminal prosecution. This lack of legal certainty not only enables the government to prosecute anyone for anything, it also casts a chill over *all* acts of expression, association, assembly, or religion.

c. Laws Restricting Freedom of Expression

Vietnam's National Assembly has passed several laws and ordinances, ostensibly in the interest of national security or press freedom, but that actually restrict online or media freedom of expression. The 2015 Law on Cyber Information Security regulates network information systems to ensure the security of online information. Yet, the law also includes provisions that undermine the privacy of individuals by requiring businesses that provide encryption services to be based in Vietnam and to provide user data, when requested, to the Ministry of Public Security. Without any apparent restrictions on when and why the government can request such information, human rights defenders risk having their private communications monitored and used in nefarious ways.⁵³

Nine participants (36%) reported that the government monitored their online email and social media accounts such as Facebook.

⁵¹ Human Rights Committee, *General Comment No. 35*, ¶ 22, U.N. Doc CCPR/C/GC/35 (Dec. 16, 2014), available at goo.gl/p5Y8S6; see also Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Russian Federation*, ¶ 24, U.N. Doc CCPR/C/RUS/Co/6 (Nov. 24, 2009), available at <http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.RUS.CO.6.pdf> (noting the pattern of Governments using vaguely worded laws to pursue politically motivated claims).

⁵² See Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, ¶ 46, U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005).

⁵³ Michael L. Gray, *The Trouble with Vietnam's Cybersecurity Law*, *The Diplomat*, (Oct. 21, 2016), available at <https://thediplomat.com/2016/10/the-trouble-with-vietnams-cyber-security-law/>.

The Law on Cyber Information Security is just one in a long line of recent regulations that aimed to crack down on online speech. Among others passed in the last five years,⁵⁴ Decree 72, issued in 2013, notoriously mandated that blogs and social websites could only be used to share personal information and prohibited the sharing of news articles and material that harmed national security or opposed the Vietnamese government.⁵⁵ Decree 174, effective since 2014, imposed fines on anyone criticizing the government, defaming government leaders, or “spreading propaganda” on social media;⁵⁶ it also includes a provision requiring internet service providers to place their primary servers inside Vietnam.

In June 2018, the National Assembly passed another cybersecurity law that will come into effect in 2019. This law reiterates that online businesses, such as Google and Facebook must store their data inside Vietnam, and turn over user data to the Ministry of Public Security or the Ministry of Information and Communications.⁵⁷ Equally concerning are provisions that make it illegal to, “distort history, deny revolutionary achievements, [or] undermine national solidarity.”⁵⁸ These vague terms allow the government tremendous leeway to use these laws to target those who use the internet or communication applications to discuss political and religious views.⁵⁹ Effectively, the law gives the government enhanced authority to “to surveil the internet, including the ability to force international technology companies with operations in the country to reveal their users’ personal information and censor online information on demand.”⁶⁰

The CPV controls the media, and of great concern is the Law on the Press that went into effect in January 2017. Presented as a law that “prescribes citizens’ rights to freedom

of press and freedom of speech in the press,”⁶¹ the Law on the Press actually aims to manage the field of journalism to ensure that the media does not publish or promote ideas that are seen as threatening to the status quo.⁶² The Law on the Press goes into considerable detail about what the media should focus on; for example, according to Article 4(2), the press should “propagandize and disseminate, and contribute to the protection of, the line and policies of the Party... and build and promote socialist democracy, strengthen the great national unity bloc, and build and protect the socialist Fatherland of Vietnam.”⁶³

The government’s attempts to impose ever greater restrictions by passing laws that curtail the right to free expression, online and through other media outlets is an attempt to silence government critics under the pretext of national security. Although human rights defenders and journalists continue to use online platforms such as blogs, forums, and Facebook groups, to express their political opinions, expose corruption, and draw attention to the government’s abuse of power, research independent news sources, disseminate information, or engage in dialogue, activists who do so now face substantial risk of government retribution.

i. Violations of Rights to Free Expression, Association, and Assembly in Practice

The laws restricting civil society space and expression in the media and online, and the over-criminalization of protected activities have fed into a climate of comprehensive government repression. Participant interviews revealed government persecution for their advocacy on labor, environmental, and democratic rights.

⁵⁴ International Federation for Human Rights (FIDH), *Bloggers and Netizens behind Bars*, 1, 9-10, available at https://www.fidh.org/IMG/pdf/bloggers_report_in_english.pdf (examining the pre-2013 cyber regulations which restricted online speech).

⁵⁵ BBC News, *Vietnam Internet Restrictions Come into Effect*, (Sept. 1, 2013), available at <https://www.bbc.com/news/world-asia-23920541>; Committee to Protect Journalists (CPJ), *New Cybersecurity Law Threatens Press Freedom in Vietnam*, (June 12, 2018), available at <https://cpj.org/2018/06/new-cybersecurity-law-threatens-press-freedom-in-v.php>.

⁵⁶ Freedom in the World: Vietnam 2017, *supra* note 3.

⁵⁷ IFEX, *Vietnam’s Cybersecurity Law Threatens Free Speech and Digital Economy*, (June 26, 2018), available at <https://www.ifex.org/vietnam/2018/06/25/cybersecurity-law/> (noting that article 26 of the cybersecurity law requires companies to verify user information, and provide user information to the Ministry of Public Security upon request); see also Mai Nguyen, *Vietnam Lawmakers Approve Cyberlaw Clamping Down on Tech Firms, Dissent*, Reuters, (June 12, 2018), available at <https://www.reuters.com/article/us-vietnam-socialmedia/vietnam-lawmakers-approve-cyber-law-tighten-rules-on-google-facebook-idUSKBN1J80AE>; Asian Correspondent, *Vietnam Passes Law Requiring, Google, Facebook to Reveal User Data*, (June 12, 2018), available at <https://asiancorrespondent.com/2018/06/vietnam-passes-law-requiring-google-facebook-give-user-data/#8iVQGlajBPOoks2I.97>.

⁵⁸ Human Rights Watch, *Vietnam: Withdraw Problematic Cyber Security Law*, (June 7, 2018), available at <https://www.hrw.org/news/2018/06/07/vietnam-withdraw-problematic-cyber-security-law> (citing to Article 8 of the law).

⁵⁹ *New Cybersecurity Law Threatens Press Freedom in Vietnam*, *supra* note 55; see also Bao Ha, *Vietnam says Cybersecurity Law Needed to Ensure National Security*, VN Express International, (June 12, 2018), available at <https://e.vnexpress.net/news/news/vietnam-says-cybersecurity-law-needed-to-ensure-national-security-3762377.html>.

⁶⁰ *New Cybersecurity Law Threatens Press Freedom in Vietnam*, *supra* note 55.

⁶¹ Law on the Press, No. 103/2016/QH13, art. 1, (2016), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=447052; see also Vietnam Law & Legal Forum, *Revised Law on Press*, (Nov. 1, 2017), available at <http://vietnamlawmagazine.vn/revised-law-on-press-5693.html>.

⁶² Law on the Press, *supra* note 61; see also Feliz Solomon, et al., *Press Freedom is Under Attack Across Southeast Asia: Meet the Journalists Fighting Back*, Time, (June 22, 2018), available at http://amp.timeinc.net/time/longform/press-freedom-southeast-asia?__twitter_impression=true.

⁶³ Law on the Press, *supra* note 61 at art. 4(2).

Three participants targeted by Vietnamese authorities identified themselves as environmental and human rights activists. Binh, Linh and Hai engaged in protest, online messaging, and organizing to support various environmental causes. Hai protested the Formosa factory environmental crisis when the factory released chemicals into the local water. Hai, who did much of his own research into the negative effects of the factory, said, “I want the government to work toward empowering the country to make it a better place.” His online activities included posting his observations on society and sharing his views on the Communist system and how the government is running. In response to his protesting, blogging, and Facebook posts, the government continually harassed and threatened Hai.

They took my laptop and phone and logged into my Gmail, Facebook and changed the password in front of me so I was locked out of all my social media and emails. They went through all my text messages and emails and they wrote them out and made me sign them. They made me sign a paper that I voluntarily gave my accounts away to assist in the investigation process. Also, they constantly made mental threats to me by calling my family. They told me I was expelled [from school]. Regarding the Formosa incident, I was in Ho Chi Min City and after they arrested me they made my landlord kick me out.

In Vietnam, there is a cyber-force that is against online activism. They made a subgroup and they targeted me and tried to diminish my online reputation. A lot of videos from activists get reported, and YouTube doesn't take them down. The most common tactic is to bring up people's personal lives. Somehow they investigate. For example, if you're an activist and you're gay, they would post about that. The government uses different tactics, for example, they would directly message and harass people, they use profanities to put us down, and they post on new sites.

Linh was harassed because her husband demonstrated in favor of religious freedom and against China's claims on the South China Sea. Linh stated, “The police monitored us. They refused to let us leave the house. They sent thugs and gangsters to destroy things in our house. When my son who is small got sick, we wanted to take him to the hospital but they wouldn't let us.”

The government targeted several individuals for supporting democratic principles and reform. Many of these individuals were arrested multiple times, interrogated and subjected to torture and ill-treatment.

Phuong, a female pro-democracy activist, believed strongly in the right to peaceful assembly. She said, “I was very committed to activism. I realized I needed to be equipped with skills and knowledge otherwise I could

not be effective.” Phuong organized trainings and protests via Facebook, and also physically participated in protests. In 2015, Phuong, along with her mentor and friend, stood at the gate in front of a police station to protest the arbitrary arrest and detention of a fellow online activist. In retaliation, Phuong was harassed, arrested, and attacked for her pro-democracy activism; the authorities also contacted her parents to pressure them to stop Phuong's activism. Like Hai, the officials attempted to undermine her reputation online:

There were several articles about me online. One time they used a picture of me with a fellow activist. He has a wife and children, and we were hugging at an event like friends. And they used it and said I was a bad girl. They take photographs at protests and use them against people.

Huong, a political and human rights activist, was monitored and detained over several years.

I used to be a businessman who dealt with building materials, but in 2011 I started participating in anti-China demonstrations. After this the government started surveillance on me. I don't know why they chose me; they were peaceful demonstrations. Plain-clothes police would stand near my house to ask neighbors about me. They followed me everywhere; sometimes they forced me to [come to] the police station. In 2014, I started doing private trainings. I invited people to organize human rights gatherings. Human rights was a dangerous word. The first time, I gathered 20 people in a coffee shop and we were surrounded by police. My father was tortured and killed in 2011. My wife and I started to focus on torture. By 2016, I could no longer stay in one place and moved around the country to avoid being arrested.

Bao was a labor union activist, working to demand rights for workers, including their right to their salary and land, which was often confiscated by officials. He was sentenced to two prison terms, the first for one and a half years, and the second for seven years. As discussed in more detail in section IV.b below, he was denied his due process rights during his trials.

Nguyen started fighting for freedom and human rights in 2007, participating in public demonstrations against the Chinese killing of Vietnamese fishermen. As a Catholic, Nguyen also demonstrated against the confiscation of Christian peoples' land by authorities. In addition to participating in demonstrations, Nguyen was a blogger and encouraged others to be educated and engaged around issues like the Formosa environmental crisis. The government arrested and detained Nguyen multiple times; they also prosecuted him and subjected him to torture while he was detained, as detailed in sections IV.b and V below.

d. Law on Belief and Religion⁶⁴

The Vietnamese government has a long history of restricting religious freedom, particularly in cases where it perceives certain religious groups as having ties to the West or criticizing repressive government practices.⁶⁵ Officially, the government attempts to promote an image of religious tolerance,⁶⁶ and, as discussed above in section III.a, the Constitution nominally guarantees religious freedom for all people.⁶⁷ Nonetheless, the reality is that government engages in a massive effort to manage the practice of religion, favoring certain groups, while making it difficult for other groups to practice their faith.

This effort to suppress religious freedom has not gone unnoticed by the international community. The UN Special Rapporteur on freedom of religion or belief expressed concern about Vietnam's control over its citizens' religious beliefs during a 1998 mission to Vietnam;⁶⁸ this same concern was reiterated again during the Special Rapporteur's more recent 2014 mission.⁶⁹ As early as 2001, the U.S. Commission on International Religious Freedom⁷⁰ recommended that Vietnam be added to the list of "countries of particular concern", which demarcates religious freedom violators subject to U.S. action under the International Religious Freedom Act.⁷¹ Vietnam also received 10 recommendations from members of the UN Human Rights Council during its most recent Universal Periodic Review cycle relating to its suppression of religious belief, including one which specifically called for Vietnam to bring its regulatory and legal framework into compliance with international religious rights standards.⁷²

Despite this international criticism, Vietnam has increased its assault on religious rights of late. On January 1, 2018, a new Law on Belief and Religion went into effect.⁷³ Rather than paving the way for greater religious freedom, this law expanded government control over religious groups, and imposed stronger penalties on those who violate the law.⁷⁴ The law codifies the right of the government to intervene in vetting and appointing clergy, as well as the dissemination of messaging and materials.⁷⁵ Article 5(5) of the Law on Belief and Religion explicitly reflects the concern (also embedded in the Constitution) that freedom of belief might be abused to mask anti-government activities, as the provision specifically prohibits taking advantage of religious freedom to, *inter alia*, harm national security, public order, or morality or tarnish the "image of national heroes and notables."⁷⁶

The government's extraordinarily restrictive understanding of religious freedom is evident in the way the Law on Belief and Religion defines key terms. For instance, Article 1(5) defines "Belief-based activities" as being limited to those activities that "express the worship of ancestors, commemoration of people with meritorious service to the nation and/or their community. Religious operations and other national religious activities must reflect beautifully our traditional, historical, cultural and ethical values of Vietnamese communities."⁷⁷ This definition is so vague as to allow the government broad discretion when determining whether to approve registration for a particular group—which is particularly problematic as Article 1(11) restricts the definition of "religions organization" to only those groups which have been recognized by the government.⁷⁸ Although not explicit in the law, these ill-defined terms allow the government to continue to deny registration to religious groups that do not support

⁶⁴ For an in-depth analysis of the treatment of religion in Vietnam, see Vietnam Committee on Human Rights, *Freedom of Religion or Belief in Vietnam: State Management of Religion*, (2016), available at <http://queme.org/app/uploads/2016/02/Report-VCHR-FoRB-in-Vietnam-State-management-of-religions-Feb-2016.pdf>.

⁶⁵ *Id.* at 7.

⁶⁶ Ministry of Foreign Affairs, *Religion and Beliefs*, available at http://www.mofahcm.gov.vn/en/mofa/en/tt_vietnam/nr050324092159/.

⁶⁷ Constitution of the Socialist Republic of Vietnam, *supra* note 12 at art. 24.

⁶⁸ Abdelfattah Amor, *Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1998/18: Addendum, Visit to Vietnam*, UN Doc. E/CN.4/1999/58/Add.2 (Dec. 29, 1998).

⁶⁹ Heiner Bielefeldt, *Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Addendum: Mission to Viet Nam (21 to 31 July 2014)*, UN Doc. A/HRC/28/66/Add.2, (Jan. 30, 2015).

⁷⁰ The U.S. Commission on International Religious Freedom ("USCIRF") is an independent federal government agency created by the US Congress to monitor religious freedom around the world.

⁷¹ USCIRF, *CPCs: USCIRF Applauds Designation of Saudi Arabia, Vietnam, and Eritrea*, (Sept. 15, 2014), available at <http://www.uscirf.gov/news-room/press-releases/cpcs-uscirf-applauds-designation-saudi-arabia-vietnam-and-eritrea>.

⁷² See e.g., UPR Info, Database of Recommendations: Vietnam, available at goo.gl/sXScJ. (Specifically, UPR Cycle 2 recommendations from Chile, Singapore, United Arab Emirates, Italy, Canada, Belgium, Czechia, Poland, Cape Verde and Mexico).

⁷³ Law on Belief and Religion, No. 2016/QH13, (2016), available at <http://queme.org/app/uploads/2016/02/Report-VCHR-FoRB-in-Vietnam-State-management-of-religions-Feb-2016.pdf>; see also USCIRF, *Annual Report 2018*, 1, 3, available at http://www.uscirf.gov/sites/default/files/Tier1_VIETNAM.pdf.

⁷⁴ *Id.*

⁷⁵ Law on Belief and Religion, *supra* note 73 at arts. 36 and 37; see also USCIRF *Annual Report 2018 supra* note 73 at 3; Freedom in the World: Vietnam 2018, *supra* note 17.

⁷⁶ See *infra* at section III.d.i.

⁷⁷ Law on Belief and Religion, *supra* note 73 at art. 1(5)

⁷⁸ *Id.* at 1(11).

the CPV and are seen as a threat to the power and control of the state when, for example members speak out in support of civil and political rights.

More than anything, the Law on Belief and Religion serves to bring religious organizations and activity under government control. Chapter III, Article 8 of the Law on Belief and Religion includes onerous registration requirements for all religious activities and operations, which include presenting detailed information about the religion's credo, purpose, yearly planned activities, and size as well as personal details of representatives.⁷⁹ Such strict registration requirements not only puts heavy administrative burdens on religious organizations, but also exposes to the government any activities a religious organization may wish to take in opposition to government interests. Because the government has the power to decline to register any religious organizations whose activities it deems to be harmful to its interests, such burdensome registration and reporting requirements severely curtail individuals' ability to freely practice their religious and associate with other believers.⁸⁰

i. Violation of Religious Rights and Freedoms in Practice

Aside from the law, the participants interviewed for this report provided deeply disturbing information about local officials pressuring them to stop practicing their faith. These tactics of harassment, intimidation, and abuse were not necessarily based on any legal foundation and suggest that local CPV officials perceive the practice of religion as undermining the communist and atheist identity of the state and country – perhaps because religious communities have become an essential voice of civil society in Vietnam's one-party state. The government allows security forces discretionary authority to shut down activities seen as a threat to the furtherance of the “great national unity” or “national security.”⁸¹ Believers are often accused of engaging in “anti-socialist” or “American” activities when they meet at homes or churches without being registered⁸² and several participants described incidents in which they were subjected to government monitoring, police brutality, harassment, and arbitrary detention.

Dat, for example, explained, “The communist regime in Vietnam is atheist—there is no God. They refuse or reject my religion. That is my belief, my religion. The first thing the communist government did is confiscate my land in my village. They beat me and tortured me many times. They

were from the People's Committee office, and they brought their families to my village.”

The local People's Committee detained Dat at its commune three times for his activism.

They told me that I was breaking the law against the government, so I have go to prison. I was told was that if I break the law; there was only one way, to go to jail only. Not to the court yet, but only [to be] held at the commune. That time, they told me that I broke the law; when I was still alert I didn't sign a confession. But, they beat me a lot. When I came to the official room, they asked me to sign [a confession], but I didn't sign because I didn't do anything wrong. But they saw that I had really strong opinions, so they beat me. After I fell down because I fainted, I think they used my hand to sign, but I don't know. They beat me in a small room. There were five officials. They took turns beating me. After they beat me, they moved me to a really dark room. After moving from the dark room, I noticed my head was bleeding. After that they pulled me by my shirt and threw me out of the office.

Phong faced harassment as a Christian, stating, “before, the Vietnamese authorities thought that we do not believe in God but in the religion of America. They thought we do not have a good education so we believed that Americans will do something to turn us against the government.” Phong was a pastor, and faced significant opposition to his religious activities and leadership. He recounted:

In 2001, the public security from the north was looking for me and wanted to arrest me because I wanted to celebrate Christmas. I fled to the south of Vietnam, and I established a church in the province. I moved with 200 members and I was the leader of the church. In 2002, the public security had a list of all the people who moved to the South and gave that list to the authorities there.

Huy, had been a doctor and a member of the village police before he began practicing Christianity. In response to Huy's beliefs, the authorities first removed Huy from his post with the village police, then stopped him from practicing medicine. These government tactics escalated to threats and then violence.

I refused to renounce my faith, so they beat me. The first time they beat me was in November 2009. They beat me in the evening. Four police came from the district. They took me to the village leader's home. The police asked me then to renounce my faith. I said “I will not.” The

⁷⁹ *Id.* at art. 8, Ch. III.

⁸⁰ USCIRF Annual Report 2018 *supra* note 73 at 3.

⁸¹ See *Freedom of Religion or Belief in Vietnam*, *supra* note 64 at 8-9 (explaining the administration of religious affairs, and how these organs of the government enforce “national security” through, for example, the Security Police or special “Religious Police” force which have “extra-judicial powers to arrest and detain religious [. . .] dissidents suspected of breaching “national security”).

⁸² Compare UDHR, *supra* note 35, at art. 18; ICCPR, *supra* note 4 at arts.18(2)-(3); *contra infra* at 37 (portraying the experience of believers whose rights were violated by Vietnamese who accused them of practicing “American” beliefs).

police said, “If you do not renounce you will suffer.” The person who came to beat me, he beat me, and kicked me, and kept asking, “Would you renounce your faith?” They beat me from 8 pm until 3 am. After they beat me, they fined me in order to pay for a meal for them. I refused, and ran home.

On December 15, 2009, they told the village people to invite me to village leader’s house. I did not have any reason to go to the village leader’s house. They sent a summons, and I did not go. I knew they would beat me like previous time. Later the police came to get me, and they told me I had to prepare a pig for them if I go. I had to take the pig, and kill it there at the village leader house. It was 50 kg pig, and 20 liters of wine. When I took the pig, they killed it and did not even talk to me. They locked me in a room [...]. The police came and asked me for a statement, and asked again that I renounce my faith. If I did not renounce they threatened to beat me again. When I did not renounce, they did beat me. They police stood by my side, and asked the people from the village to beat me. They beat me for a long time, from 8 am to midnight, and they beat me hard. They wrote up a letter again, wanting me to sign. They threatened to beat me even more until I died. Not knowing what to do, I signed. They forced me to sign. Even after I signed the document they beat me.

Nghia, a religious leader in his community, was similarly persecuted. Nghia was summoned to the commune office multiple times due to his position as a religious leader.

I was coming back to my house; the police were monitoring me. At 7pm, the temple near my home was closing so they rang the bell. Around 11pm the police came to my house and surrounded my house. They surrounded my house and they yelled saying that they’d kill me. I saw this and I opened the door, and that’s when they started throwing stones. One hit my shoulder hard and I went back inside. I had seen the people from the door in front, so that’s why I know they are the district police.

Long discussed how government authorities, one of whom was his father, physically assaulted him and his wife for being Christian.

They sent a summoning paper to come before the commune. They said they heard that my family had converted to Christianity. My father was an officer in the commune. They forced me to go to my father’s village. They wanted me to renounce my religion, but I did not. They pulled my hair and hit my face. They pulled my clothes and beat me. My clothes were broken so my father pulled my hair and beat me in the head. When my wife saw this she tried to help, but he hit her also. He went for a knife but two brothers-in-law stopped him.

Kien, also a Christian, was summoned numerous times to be interrogated by the authorities, and he faced significant restrictions and abuses based on his religious identity.

Earlier this year the government announced they would use the local government of people to harm the Christians. Some were beaten and some were sent out from their village. Some people, say maybe 30% [of the population, are] Christian in Vietnam. I left Vietnam in 2016. The situation hasn’t changed in Vietnam since I left. When there is authority they will accuse you of being guilty. In the past, the government accused Christians of believing in the [United States]. So when they summon us for interrogation, they always ask who is the leader. If you don’t tell them a leader, they will persecute you. They want you to admit or confess that you are guilty. They ask you the question and you give the answers and they beat you. If they beat you several times and you do not admit something, they will bend you over and use their knee to hit your back. It’s more painful than beating. The authorities they think you are guilty when you didn’t do anything wrong. After I left my country the authorities came to ask my family--repeatedly to ask my younger brother to tell them they cannot live there any longer, so they moved to the north. They said they don’t know where I am, and I didn’t talk to anyone, even my children, to tell them where I am.

Kien continued, describing the ways in which the government targets individuals outside of an official or legal system, using the lack of the family documents or IDs as a way to render individuals and their children undocumented and unable to access government benefits such as education.

In my country, we have many reasons [why] people were persecuted but we cannot share it. One thing [that] the authorities in Vietnam [do]; they often accuse the people [of harassment]. They will use your people to harm [other] people. This way it looks to other countries like there is no problem with the government. Because of this, people in my country were beaten or expelled from the village but when they came to ask the authorities for assistance, [the authorities] say, “This is your people; we cannot help.” So this is why the people in my country have a very difficult time []. Now in my country, you move from the north to the south and after six months they will take your family book and your documents. Now many people from my country cannot live in their village and they move and the government doesn’t register them [in their new location] so they have no family documents or ID cards. The children cannot go to school or to work because they lack documents. Even if you go back to your hometown to ask the government to register you they say “You have [not] been living here a long time; we shred your documents, so we cannot help you.”

As illustrated by these examples, Vietnamese religious adherents face a wide range of harsh tactics by government authorities when they transgress legal, extra-legal, and CPV party rules and norms that place severe restrictions on religious rights and freedoms.

IV. Due Process Violations

Although legal protections exist under Vietnamese and international law, participants reported many violations of their due process rights during both the arrest and pre-trial detention periods and throughout the legal proceedings. Common due process violations include arbitrary deprivation of liberty through repeated “working sessions” (informal and extra-legal interrogations), lack of *habeas corpus* proceedings, prolonged pre-trial detention—often with the detainee held *incommunicado*, delayed and unfair trials adjudicated by a biased judiciary, presumptions of guilt, coerced confessions, secret trials, and the lack of legal representation and the time and facilities needed to prepare a defense. Several of these due process abuses are codified into Vietnamese law while others occur in violation of the protections which exist in the Constitution and Criminal Procedure Code.

a. Arrest and Pre-trial Detention

The 2015 Criminal Procedure Code distinguishes between temporary detainment and prolonged detention and sets forth for certain procedures for, and the rights of, individuals held in each form of detention. Nonetheless, these procedures and rights fall short of international standards of due process for individuals deprived of their liberty.

Vietnamese law provides for “temporary detainment” in a number of scenarios. Article 110 of the Criminal Procedure Code permits emergency custody of an individual by certain authorities⁸³ where there is “substantial evidence” that the arrestee is going to commit a crime; where the arrestee was identified by someone at the crime scene as the fleeing accomplice or perpetrator; or where the arrestee must be stopped from escaping or disposing of evidence.⁸⁴ Articles 111 and 112 permit “everyone” to arrest a person caught *in flagrante delicto* or a “wanted person” while Article 113 allows only certain authorities to apprehend suspects for detention where there is a pre-existing arrest warrant.

Article 114(1), setting forth the essential actions that must be taken once an individual has been arrested or taken into emergency custody, gives the investigating authorities 12 hours to decide whether to temporarily detain or discharge the arrestee. Where such authority has decided to temporarily detain the arrestee, it must send this decision



(and supporting documents) to the relevant procuracy,⁸⁵ which has the ability to annul the lower authority’s decision on temporary detainment.⁸⁶ Article 118 sets the time limit for a detainee to remain in temporary detainment at three days after the detainee has been arrested, however this temporary detainment order can be extended for up to six more days if so approved by the procuracy, which itself has 12 hours in which to approve or deny a request for extension.

Articles 58 and 59 of the Criminal Procedure Code set forth a number of rights to which arrestees, persons held in emergency custody and temporary detainees are entitled, including, *inter alia*, the rights to access the warrants and wanted notices issued against them; be informed of the reasons for their detention; be free from self-incrimination; present and confer on evidence; defend themselves; and complain about the decisions and procedures regarding such person’s arrest.

The Criminal Procedure Code’s arrest provisions depart from due process standards under international law in several important ways. Articles 9(3) and (4) of the ICCPR require that detainees be brought “promptly” before a judicial authority to decide “without delay” on the lawfulness of such detention. The UN Human Rights Committee has interpreted the term “promptly” to be within about 48 hours, unless there are exceptional circumstances.⁸⁷ This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights—such as freedom from

⁸³ Criminal Procedure Code, *supra* note 13 at art. 110 (2) (setting forth the list of individuals entitled to issue an order of emergency custody).

⁸⁴ *Id.* at art. 110 (1).

⁸⁵ *Id.* at art. 20 (describing the function of the procuracy).

⁸⁶ *Id.* at art. 117.

⁸⁷ *General Comment No. 35, supra* note 51 at ¶ 34.

torture—that are often at risk before a detention has been judicially sanctioned.⁸⁸

Although Article 114(1) of the Criminal Procedure Code requires the arresting authority to make a determination whether to temporarily detain or discharge the arrestee within 12 hours, the procuracy, serving as the “independent” authority reviewing such decision, is not given a specific time frame in which to respond to this initial temporary detention determination; it is only when the investigating authorities request an extension of this temporary detention under Article 118 that the procuracy must respond within 12 hours. Thus, an arrestee may sit in detention for up to four days before the procuracy, by law, must adjudicate the legality of such person’s detention. Also problematic is that, with the procuracy’s blessing, an individual may sit in “temporary detention” for up to nine days.

In addition to orders of temporary detainment, Article 119 of the Criminal Procedure Code provides for extended pre-trial detention for a broad range of detainees, including those accused of perpetrating “a horrific or extremely severe felony”; or certain lesser felony or misdemeanor if there is a showing, *inter alia*, that such person is likely to reoffend, be difficult to find later, abscond, tamper with evidence or witnesses, or continue to be a danger to the public.⁸⁹ The government can hold detainees in pre-trial detention for up to 24 months⁹⁰ and prolonged pre-trial detention appears to be a particular problem for those accused of national security offenses.⁹¹

For both temporary detainment and extended pre-trial detention, the Criminal Procedure Code does not afford to a detainee the right to *habeas corpus*, as guaranteed under Article 9(3) and (4) of the ICCPR and Principles 4, 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the “Body of Principles”).⁹² Although the legality of temporary detainment order or an order for prolonged pre-trial detention may be adjudicated by the procuracy, the Criminal Procedure Code does not grant to a detainee the right to challenge in court, with the assistance of counsel, the legal basis of his detention.

Moreover, the permissible reasons for prolonged pre-trial detention under Article 119 of the Criminal Procedure

Code are far broader than those permitted under international law. Article 9(3) of the ICCPR makes it clear that “it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial,” and this presumption in favor of release pending trial is further confirmed by Principles 38 and 39 of the Body of Principles. The UN Human Rights Committee has found that “[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime... Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”⁹³ Article 119 of the Criminal Procedure Code, however, authorizes pre-trial detention for a broader array of reasons, including that the detainee is accused of perpetrating heinous crimes or has “no definite place of residence.”⁹⁴

In addition to these issues with the law *de jure*, participants reported that significant pre-trial detention abuses occur in *de facto* practice. For instance, Article 31 of the Constitution and Article 25 of the Criminal Procedure Code guarantee timely trials to defendants, however extended pre-trial detention periods necessarily mean that trials are unduly delayed. Detainees awaiting trial are also frequently held *incommunicado*, unable to communicate with either family or attorneys. Journalist Nguyen Van Hoa, for example, was arrested in January 2017 for his reporting on the Formosa disaster. He remained in pre-trial detention until his trial and conviction 11 months later—the first three months of which he was held *incommunicado*. In another example, online activist Nguyen Huu Quoc Duy was arrested on November 21, 2015 and spent nine months in *incommunicado* detention before his trial and conviction on August 23, 2016. Such *incommunicado* detention and delayed trials are violations of Articles 9(3)(which covers freedom from *incommunicado* detention)⁹⁵ and Article 14(3)(c) of the ICCPR (guaranteeing the right to a timely trial) and Principles 15 and 19 of the Body of Principles (guaranteeing the right of detainees to communicate with the outside world).

As discussed further in section V below, although Articles 58(d) and 59(c) of the Criminal Procedure Code guarantees

⁸⁸ *Id.* at ¶ 34, 35; see ICCPR, *supra* note 4 at arts. 6, 7, 10, 14 (guaranteeing other rights that may be at risk as a result of the Criminal Procedure Code).

⁸⁹ See Criminal Procedure Code, *supra* note 13 at arts. 119(1)-(3) for the full list of persons against whom longer pre-trial detention may be applied.

⁹⁰ US Dep’t of State Report on Human Rights: 2017, *supra* note 6 at 9.

⁹¹ *Id.* at 8.

⁹² ICCPR, *supra* note 4 at arts. 9(3)-(4); Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment, principles 4, 11, 32, 37, G.A. Res 47/173, U.N. Doc A/43/49 (1998).

⁹³ *General Comment No. 35*, *supra* note 51 at ¶ 38.

⁹⁴ Criminal Procedure Code, *supra* note 13 at art. 119.

⁹⁵ *General Comment No. 35*, *supra* note 51 at ¶ 35.

to detainees the right to remain silent, in practice detainees are often abused or tortured in order to obtain a confession and other information.⁹⁶

A particularly common abuse appears to be unfounded arrests and custodial detention, in violation of Article 9 of the UDHR, Article 12 of the AHRD, and Article 9(1) of the ICCPR, which all guarantee freedom from arbitrary arrest. Participants confirmed that local officials abused Criminal Procedure Code provisions that broadly allow arrest or “emergency custody” by frequently and repeatedly calling people in for “working sessions” in which they were questioned, interrogated, and abused for long periods of time.

After the three days of the working session, they transferred me to T20. At T20 they asked me back and forth about my statement. They went line by line and asked me about the charges. I told them that it wasn't true, but then they said, then why did you sign this document? – Thanh

I participated in protests and was dragged to the police car and brought to the police station. They will drag you into a room, beat and interrogate and intimidate you. I stayed there for more than 10 hours and they released me at midnight. While we were “working” they made me sign a confession that I violated the law under “public disturbance” and another crime that I don't remember. – Cuong

They summoned me to meet them sometimes from 8 am until 5 pm sometimes later. When they summoned me, because I'm a pastor they hurt me a lot. When they asked me to take a picture of me I refused, so some police held me and another one took a picture of me. They always let me go home the same day but a few days later they would summon me again. – Bao

In addition to arrests, several participants reported that local authorities visited them at their homes where they were interrogated in front of their families and/or neighbors.

In 2015 I was in a protest about cutting down trees in Saigon. The day after that [I] received a phone call saying my son is involved in online activities against the government and that he should stop. I then knew I was being monitored and they recognized me at the protest. I was in a training class and we were caught and the police confiscated personal belongings, laptops and phones. They had a working session with everyone and some were pressured to become informers and then others were threatened to stop their activities. They interrogated us in groups of 2 to 3 and then alone. At the end they wrote their report about my statements and a lot of it was made up and untrue. I refused to sign, and we kept “working together” and I kept refusing to sign, then I

got a more accurate statement and I signed. In the end they made me write and sign a paper promising not to do anything against the government. – Hieu

They interrogated me and asked me for all the list of numbers on my phone, also my husband's friends. After this they allowed me to go back home. The next day the police called all the people whose names I gave them. After that they invited me to the police station two times; they always came to my house to visit me. They did this every day. Even when I went to the farm, they followed me to the farm. The ward police, security came to my house all the time. I was really tired from these people. Then they invited me to come to the commune office; they gave me an invitation letter. They pressured me to write a “commitment letter.” They said, “if your husband calls you to flee, will you flee?” I said if he does, “I will. How can we continue to live here? You always invite me and follow me in the farm?” They said, “If you follow your husband to flee, you will be held for being against the government.” I finished the commitment letter. They said, “Every week you have to come back here to report. We will call you three times a week and one time a week you have to report.” If I didn't go, they threatened me. – Trang

22 participants (88%) faced some due process violation including repeated interrogations without charge, no access to a lawyer, prolonged detention, and/or trials held in secret.

Participants reported that such harassing detentions could last anywhere from several hours to several days where they were held without charges. Family members were sometimes also brought into detention.

The shortest time I was detained was eight hours, and the longest was four days. I was detained around 15 times. – Binh

I was detained twice. My husband was detained many times. I was even detained with my four-year-old son. The first time my son was four months old and they took him from me. – Linh

I was detained for one month, because I was carrying the Bible. They forced me to renounce my faith. They beat me many times. They accused me of delivery illegal documents. – Nam

They detained me many times. They beat me while I was detained with baton from 3 pm to 12 midnight. They beat me again after they released me, by about 10 plain-clothes people. They didn't give me any food or water, and I had no access to the outside world. – Hoang

⁹⁶ Criminal Procedure Code, *supra* note 13 at arts. 58(d), 59(c).

Often temporary deprivations of liberty foreshadowed lengthier detentions. For example, human rights activist Nguyen reported that “From 2007 to 2011, I often got arrested and detained for one or more days” due to his participation in public demonstrations regarding environmental and religious rights issues and for his blogging. When this informal harassment did not stop Nguyen, the police proceeded to take more permanent measures. Nguyen was arrested again in August 2011, held for 17 months until his trial in January 2013 when he was sentenced to prison, and finally released in August 2015. Nor did this harassment stop after Nguyen’s release; due to his continued activism, authorities told people in his village to watch out for Nguyen because he was wanted for arrest for not being in compliance with his probation.

b. Right to Fair Trial

Vietnamese trials consistently fail to meet international fair standards.⁹⁷ Although Article 103 of the Constitution declares that “Judges and Assessors are independent and shall only obey the law; interference with the trials of the Judges and Assessors by bodies, organizations, and individuals is strictly prohibited,”⁹⁸ in practice, as detailed in section II above, the CPV dominates the selection and the ideology of the judiciary. As the US Department of State reported, “the judicial system was opaque and lacked independence, and political and economic influences regularly affected judicial outcomes . . . most, if not all, judges were members of the CPV and underwent screening by the CPV and local officials during their selection process to determine their suitability for the bench.”⁹⁹

This lack of judicial independence from the CPV has resulted in clear bias in favor of the government in cases where the government’s interest appears to be at stake¹⁰⁰ and is in violation of Vietnam’s obligations under Article 10 of the UDHR, Article 20(1) of the AHRD, and Article 14(1) of the ICCPR, which entitle criminal defendants to “a fair and public hearing by a competent, independent and impartial tribunal established by law.” The UN Human Rights Committee has confirmed that this “requirement of independence refers, in particular, to . . . the actual

independence of the judiciary from political interference by the executive branch and legislature.”¹⁰¹ In Vietnam, however, the judiciary’s dependence on and bias in favor of government interests ushers in a host of subsidiary fair trial violations and ensures that politically-sensitive trials have pre-determined outcomes.¹⁰²

For instance, Vietnamese courts regularly fail to uphold the principle of the presumption of innocence, in violation of Article 14(2) of the ICCPR, Article 11(1) of the UDHR, Article 20(1) of the AHRD, and Principle 36(1) of the Body of Principles. Although this presumption is guaranteed in both Article 31 of the Constitution (“a defendant shall be regarded as innocent until the crime is proved in accordance with legal procedure and the sentence of the Court has acquired full legal effect”)¹⁰³ and Article 13 of the Criminal Procedure Code (“accused person is deemed innocent until his guilt is evidenced according to the procedures and formalities as defined in this Law and a Court passes a valid conviction”),¹⁰⁴ courts—particularly in politically-motivated trials—frequently appear to presume a defendant’s guilt,¹⁰⁵ an allegation reiterated by several of the Vietnamese refugees interviewed for this report. Binh, an activist and citizen journalist, charged under Article 88 of the 1999 Criminal Code (propaganda against the government), put it bluntly: “all [judicial sentences] were made beforehand . . . [the judges] read a decision already made for them.”

Another common complaint was the denial of the right to legal counsel as well as the time and facilities needed to prepare for a defense, rights that are also guaranteed by Vietnamese law. Article 16 of the Criminal Procedure Code provides that “An accused person is entitled to defend himself or be defended by a lawyer or another person.”¹⁰⁶ Additionally, Article 31 of the Constitution states, “Any person who has been arrested, held in custody, prosecuted, investigated, charged, or brought to trial in violation of the law has the right to self-defend or to seek the assistance of defense from lawyers or other people.”¹⁰⁷

Unfortunately, despite these express guarantees codified in the law, Vietnam frequently impedes criminal defendants from accessing legal assistance through a variety of

⁹⁷ See e.g., Human Rights Watch, *Vietnam: Events of 2016* (Sept. 20, 2016), available at <https://www.hrw.org/world-report/2017/country-chapters/vietnam>; US Dep’t of State Report on Human Rights: 2015, *supra* note 34 at 16.

⁹⁸ Constitution of the Socialist Republic of Vietnam, *supra* note 12 at art. 103.

⁹⁹ US Dep’t of State Report on Human Rights: 2015, *supra* note 34 at 16.

¹⁰⁰ US Dep’t of State Report on Human Rights: 2016, *supra* note 5 at 1.

¹⁰¹ *General Comment No. 35*, *supra* note 51 at ¶ 29.

¹⁰² US Dep’t of State Report on Human Rights: 2017, *supra* note 6 at 15.

¹⁰³ Constitution of the Socialist Republic of Vietnam, *supra* note 12 at art. 31; Criminal Procedure Code, *supra* note 13 at art.13.

¹⁰⁴ Criminal Procedure Code, *supra* note 13 at art. 13.

¹⁰⁵ US Dep’t of State Report on Human Rights: 2017, *supra* note 6 at 11; Civil Rights Defenders, *Human Rights in Vietnam*, (Sept. 25, 2016), available at <http://old.civilrightsdefenders.org/country-reports/human-rights-in-vietnam/>.

¹⁰⁶ Criminal Procedure Code, *supra* note 13 at art. 16.

¹⁰⁷ Constitution of the Socialist Republic of Vietnam, *supra* note 12 at art. 31.

intimidation and coercive techniques. Credible reports suggest that authorities pressure defense lawyers not to represent religious or democracy activists.¹⁰⁸ Authorities have “restricted, harassed, arrested, disbarred, and, in some cases, detained human rights attorneys who represented political activists.”¹⁰⁹ This pressure has led to a widespread reluctance by lawyers to take on any human rights-related or politicized cases for fear of being targeted themselves, further exacerbating the issue of accessibility.¹¹⁰

Though the law provides for access to counsel at the time of detention, authorities use bureaucratic delays to deny this right.¹¹¹ A detainee is often prevented from meeting his attorney outright or, if she or he is permitted to communicate with an attorney, is not given enough time to prepare for an adequate defense.¹¹² Defense lawyers “routinely reported having little time before trials to talk to their clients or examine the evidence against their clients.”¹¹³ By law, the government may prohibit a suspect being investigated under national security laws from accessing his attorney until after the officials have completed the investigation and formally charged such suspect with a crime.¹¹⁴

There are numerous reports that authorities have prevented detainees from communicating with and being defended by attorneys of their choosing. For instance, in the case of Nguyen Huu Quoc Duy, an online activist who was convicted to three years in prison in August 2016, Vietnamese authorities barred Duy from meeting with attorneys hired by his family until his appeal hearing; instead the government provided Duy with an attorney of its choosing during the trial of first instance.¹¹⁵

Vietnamese refugees interviewed for this report likewise reported that they were deprived of access to lawyers throughout the criminal justice process. To illustrate, Binh, a citizen journalist and activist, stated: “I was able to meet with [my attorney] for 30 minutes. The lawyer only had enough time to ask about my skin condition and to tell me not to speak at trial. . . . Not only in my trial but for others,

lawyers never have enough time to prove [a case], and judges can stop lawyers from speaking and debating.”

Another human rights activist, Nguyen, echoed the same, “At the beginning, I did not have access to a lawyer when they arrested me, but when I went to court, I only met with the lawyer one time.”

Huong, a pro-democracy and religious freedom activist, was arrested for causing public disorder in 2014. She said, “Since the time I was detained to the trial, I only met with the lawyer one time. . . . On August 24th, I met with the lawyer and on the 26th was my trial.”

In addition to this *de facto* denial of legal assistance, new amendments to the Criminal Code have gravely infringed upon the sanctity of the attorney-client relationship. In particular, Article 19 of the amended Criminal Code has compromised the ability of individuals charged under vague national security laws to obtain effective legal representation. Article 19(3) requires lawyers to report crimes committed by clients where such crimes fall under the umbrella of national security or “other especially serious crimes.”¹¹⁶ The Ho Chi Min Bar Association, which complained in a letter to the National Assembly, noted that the government considers everything to be a potential national security issue, and that the new law would essentially make lawyers “agents of the state.”¹¹⁷ Lawyers need to be able to build trust among their clients, in part by guaranteeing that information provided by clients will be treated confidentially; in potentially putting attorneys at criminal risk for refusing to disclose their client’s crime, Article 19(3) not only chills the relationship between defendant and attorney, but will also likely reduce the numbers of attorneys willing to take on such representations. This chilling effect is particularly concerning when viewed in the context of the government’s tendency to prosecute human rights defenders and other activists under national security laws. Moreover, the fact that Article 19(3) undermines trusted legal assistance for criminal defendants accused of the most severe crimes is particularly egregious as it is precisely in such situations—

¹⁰⁸ US Dep’t of State Report on Human Rights: 2016, *supra* note 5 at 11, 16.

¹⁰⁹ *Id.* at 16.

¹¹⁰ Freedom House, *Freedom in the World: Vietnam 2015*, available at <https://freedomhouse.org/report/freedom-world/2015/vietnam>.

¹¹¹ US Dep’t of State Report on Human Rights: 2015, *supra* note 34 at 11.

¹¹² *Human Rights in Vietnam*, *supra* note 105.

¹¹³ US Dep’t of State Report on Human Rights: 2017, *supra* note 6 at 12.

¹¹⁴ *Id.* at 8.

¹¹⁵ Freedom Now, *Petition to: United Nations Working Group on Arbitrary Detention, in the Matter of Nguyen Huu Quoc Duy*, 26, (Sept. 19, 2017), available at <http://www.freedom-now.org/wp-content/uploads/2017/09/Nguyen-Huu-Quoc-Duy-Petition-to-the-UNWGAD-REDACTED-VERSION.pdf> (hereinafter “Petition to the United Nations Working Group on Arbitrary Detention”).

¹¹⁶ Criminal Code (2015), *supra* note 10 at art. 19(3) (“[When] the person who does not report [on people] is a lawyer, he/she is not held criminally accountable in accordance with clause 1 of this article, except for not reporting on national security crimes or other especially serious crimes which the person he/she is defending is preparing to carry out, is carrying out, or has carried out and the defender clearly knows about it while carrying out his/her defense duty”).

¹¹⁷ See also Human Rights Watch, *Vietnam: New Law Threatens Right to a Defense*, (June 21, 2017), available at <https://www.hrw.org/news/2017/06/21/vietnam-new-law-threatens-right-defense>.

where the risk of lengthy deprivation of liberty or the death penalty is high—that rigorous assistance of counsel is most crucial.

In addition to infringing upon defendants' right to legal counsel, the government often prevents defendants from accessing the information they need to adequately prepare a defense. Defendants may not be given prompt notice of the charges against them.¹¹⁸ In one egregious example, as reported by the US Department of State, blogger Nguyen Huu Vinh was not informed that he had a trial scheduled until the day before it began.¹¹⁹ The government also commonly prevents defendants and their lawyers from accessing government evidence before trial, including basic information such as who the prosecution's witnesses will be.¹²⁰

The UN Human Rights Committee has confirmed that a defendant's ability to confidentially communicate with and be defended by an attorney of his or her choosing is an "an important element of the guarantee of a fair trial."¹²¹ This right is set forth not only in Articles 14(3)(b) and (d) of the ICCPR, but is reiterated by Principles 11(1), 15, 17(1), and 18 of the Body of Principles. Such a right requires that a defendant have prompt access to counsel from the outset of their detention.¹²² Article 14(3)(b) of the ICCPR also guarantees a defendant the right to "adequate time and facilities for the preparation of his defense" and Article 14(3)(a) specifies that a defendant has the right to be promptly informed of the charges against him, a right additionally reiterated by Principle 10 of the Body of Principles.

Vietnam, by fostering a climate of intimidation against potential defense attorneys, by using bureaucratic delays and coercive measures to prevent a defendant from accessing an attorney of his or her choosing, by codifying into law provisions that undermine attorney-client confidentiality, and by preventing defendants from having the information necessary to adequately prepare a defense, has repeatedly failed to live up to its obligations under international law.

Although Vietnamese law includes the presumption that trials should be held publicly,¹²³ the Constitution does allow "special cases, which require the protection of state

secrecy, fine customs and beautiful habits of the nation, the protection of youths and the protection of privacy according to the legitimate requirement of the persons concerned" to be held in private.¹²⁴ The government regularly uses the protection of national security as a pretext to deny open trials to human rights activists and civil society leaders, where due process violations are often rife.

For example, online activist Nguyen Huu Quoc Duy was tried in a secret proceeding on August 23, 2016. Although Duy's family attempted to attend the trial, police at the courthouse claimed that the family needed an invitation from the court to enter. Duy's mother was not only denied access to the courtroom, but was physically detained by the police for the duration of the trial, taken to a local police station and told that she would only be able to leave once the trial had ended. (The trial lasted only one day; Duy was convicted of spreading anti-government propaganda under Article 88 of the 1999 Criminal Code.) Because Duy was not permitted a lawyer of his choice, other than the defendant, only court officials or government-approved attorneys were witness to the proceeding.¹²⁵

In November 2017, Nguyen Van Hoa, a videographer for Radio Free Asia, was also tried secretly; again, neither members of Hoa's family nor defense attorneys of his own choosing were present.¹²⁶ After a half-day trial he was convicted to seven years in prison for spreading propaganda against the state under Article 88 of the 1999 Criminal Code.¹²⁷

Several Vietnamese refugees interviewed for this report were also subjected to trials in secret. In 2007, authorities arrested and charged Bao, an activist and founder of a labor rights organization, with "abusing freedoms to infringe upon the state." Bao was not allowed to speak with a lawyer throughout the entirety of his detention and trial. After he was sentenced to seven years in prison, he appealed and asked his family to hire an attorney to represent him.

When I finally got to meet with the lawyer, [the authorities] did not allow me to say anything and the police were all surrounding me. They closed all of the doors. In the court, it was only me, my lawyer and the

¹¹⁸ *Freedom in the World: Vietnam 2015*, *supra* note 110.

¹¹⁹ US Dep't of State Report on Human Rights: 2016, *supra* note 5 at 10.

¹²⁰ *Id.* at 16.

¹²¹ Human Rights Committee, *General Comment No. 32*, ¶¶ 32, 34, U.N. Doc CCPR/C/GC/32 (Aug. 23, 2007), *available at* <http://undocs.org/CCPR/C/GC/32>.

¹²² *General Comment No. 35*, *supra* note 51 at ¶ 35.

¹²³ Constitution of the Socialist Republic of Vietnam, *supra* note 12 at art. 31.

¹²⁴ *Id.* at art. 103.

¹²⁵ Petition to the United Nations Working Group on Arbitrary Detention, *supra* note 115 at 10.

¹²⁶ The 88 Project, *Profile: Nguyen Van Hoa*, (last updated June 5, 2018), *available at* <https://vietnamprisoners.info/prisoner/36/nguyen-van-hoa>.

¹²⁷ Reporters Without Borders, *Vietnamese blogger Nguyen Van Hoa gets Seven Years in Prison*, (Nov. 27, 2017), *available at* <https://rsf.org/en/news/vietnamese-blogger-nguyen-van-hoa-gets-seven-years-prison>.

judge. There was no jury and no people there. They always say it is a public trial, but it is not.

Other participants reported similar experiences:

All the roads surrounding courts were blocked by the police. People wanted to attend, but could not. – Binh

My trial was not public. It was held in a courthouse, and my parents were not allowed into the court. My trial lasted from 9 am to 12 pm, and I was sentenced to eight years in prison. – Thanh

Article 14(1) of the ICCPR, Article 10 of the UDHR, and Article 20(1) of the AHRD guarantee a public trial to all criminal defendants. The UN Human Rights Committee has emphasized the importance of a public hearing as it “ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.”¹²⁸ Moreover, a public hearing requires not just that some individuals unconnected with the proceedings are permitted into the courtroom, rather the hearing must be open to the general public, including media, without limiting entrance to a select group of people.¹²⁹

Article 14(1) of the ICCPR does permit that a trial may be held in private for, *inter alia*, reasons of national security, however this allowance for a private trial is narrowly drawn. The UN Human Rights Committee has stated that “Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public.”¹³⁰ Moreover, the UN Working Group on Protecting Human Rights While Countering Terrorism has confirmed that “[a]ny restrictions on the public nature of a trial, including for the protection of national security, must be both necessary and proportionate.”¹³¹ Any such exclusion of the public for reasons of national security “should nevertheless be accompanied by adequate mechanisms for observation or review to guarantee the fairness of the hearing” and the exclusion of the public should be limited only those portions of the hearing in which it is necessary.¹³² In contrast to these principles, however, Vietnam is in the practice of holding the entire trial where an individual has been charged with a national security offense behind closed doors.

Notably, these secret trials are often incredibly speedy, sometimes lasting only a few hours. Considering the gravity of the national security crimes allegedly at issue as well as the length of the sentences being handed down, the fact that courts are able to adjudicate so quickly simply highlights the unfair nature of the process and the presumption of guilt. Rather than use secret trials to protect legitimate national security interest, Vietnam relies on secret trials to mask additional due process violations.

¹²⁸ *General Comment No. 32*, *supra* note 121 at ¶ 28.

¹²⁹ *Id.* at ¶ 29.

¹³⁰ *Id.*

¹³¹ United Nations Working Group on Protecting Human Rights While Countering Terrorism, *Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism*, (Oct. 2014), available at <http://www.ohchr.org/EN/newyork/Documents/FairTrial.pdf>.

¹³² *Id.* at § 3.2.

V. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Vietnamese government has made some positive changes to its domestic law that brings the country more in line with international laws and obligations. The use of torture is prohibited by the Constitution,¹³³ and Vietnam has ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”). Nevertheless, the use of torture and ill treatment during interrogation and detention remains widespread and was reported by 68% of the Vietnamese refugees who participated in this research.

17 participants (68%) reported being subjected to torture and other cruel, inhuman, or degrading treatment while in custody.

The prohibition against torture “is part of customary international law and it has become a peremptory norm (*jus cogens*).”¹³⁴ The prohibition against torture or cruel, inhuman, or degrading treatment or punishment has also been codified into numerous international declarations and treaties, such as Article 5 of the UDHR, Article 14 of the AHRD, Article 7 of the ICCPR, the CAT, and Principle 6 of the Body of Principles.

The CAT defines torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.¹³⁵

Participants reported a number of abuses by police and security officers while they were in custody that would constitute torture under international law. Specifically, individuals reported physical, sexual, and psychological abuse, food deprivation, humiliation, extensive use of solitary confinement, and other harsh methods.



KamrenB Photography, flickr

The first day when I arrived in the prison, they tied my arms to pots of water and made me stand with my arms up in a T shape. They also tied my penis to a pot of water. They forced me to smoke. One time they made me smoke 5 cigarettes. They walked across me 50 times. They told me to swallow the smoke and not blow it out. They said that if you participate in demonstrations there’s only one way you’re going to die. No one is going to save you. They told me there was one person who had broken ribs who passed away. – Thanh

When they arrested me a lot of people were surrounding me at that time. I kept shouting “Robbery, robbery!” and then they beat me. And then they picked me up and put me in the car. So, when they just arrested me they did not allow me to sleep for nine days. After the nine days they did not allow me to sleep and took turns questioning me. During the night, they would take me to the custody room for an hour and “work” with me [...] they would do this continuously. The Vietnamese authority has so many people, so they would take turns. They wanted to give me mental problems. After this, they concluded that I am guilty. They said that we convinced many people to be against the government and the authorities. – Bao

They tortured me in prison. They released six snakes in my prison cell. The room only had one door and it had only a very small window for air. And, the snake climbed through those holes. So I had to call out for help. They came into the cell [after an hour] and they said, “This snake will not bite, why are you scared?” I made them catch all the snakes and then they put me in another room without any light. I was in prison for two whole years. – Huong

When I was in the prison for four years every year I was tortured and beaten. Three times I was attacked by

¹³³ Constitution of the Socialist Republic of Vietnam, *supra* note 12 at art. 20.

¹³⁴ International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, ¶ 99, Judgment of 20 July 2012, ICJ Reports 2012, available at <https://www.icj-cij.org/en/case/144>.

¹³⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, 1465 U.N.T.S. 85 (Dec. 10, 1984).

[other] prisoners. Another time I was attacked by the police officers in the prison and beaten by them. These two police officers put a baton in my mouth and hurt my chin. Then they used the baton to hit me on my body, my legs, and my arms. Then, I fainted. During this attack, my legs were broken. After one month I still could not walk. If I want to move around, I would need someone to help me or I would need crutches. They detained me with four other criminals who were drug offenders and were using heroin inside the prison, so they forced me to use heroin too and beat me. I'm sorry to say this because I am so embarrassed but when they attacked me, they took off my clothes and sexually assaulted me. – Nguyen

I was beaten and persecuted by the government very brutally and even now I still have the scars from the wounds from that beating. They wanted to force me to sign the documents to renounce my religion, but I refused so the public security [officers] beat me. They used their hands and wooden stick to beat me. They hung my arms up and would beat my legs and feet, and I would be bleeding. I still have the wounds. They accused me of spreading the “American religion.” I am not sure how long it was that they beat me, maybe one to two hours. When they beat my feet I would shout and scream because it was so painful. They also beat my head and I was injured. They tried to cut the rope and cut my arms as well. – Phong

At times, this torture may have resulted in a detainee's death. For instance, Kien, an activist, witnessed the police entering the home of an activist monk. Although the monk's house did not have electricity, after many hours the police claimed that the monk had committed suicide by sticking his hand in an outlet and electrocuting himself.

In addition to torture, detainees are often subjected to cruel and inhuman treatment, kept in prisons with poor sanitation, bad food, and limited access to medical care. The UN Human Rights Committee, the UN Human Rights Council, the UN High Commissioner for Human Rights, and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have determined that poor prison conditions can also amount to cruel and inhumane punishment.¹³⁶ The Committee against Torture has concluded that failure to provide medical care to detainees can amount to cruel and degrading treatment under the CAT.¹³⁷

The condition in the prison they put me in was really bad. They put me in a really small cell six square meters. It was very dirty, smelled, and very dark so that I cannot see the sun. The food was insufficient. If I got sick, they would not even allow me to go to the hospital. It is very difficult for me to recall these memories. In the winter, we did not have a blanket or a mosquito net to cover. – Nguyen

It was very bad. They put me in a small room with five to six others including drug addicts and other criminal suspects. They arrested five of us but held us in different places. . . . Sanitation was very bad. – Anh

Because the environment is not clean, I contracted a skin disease. There was never enough water, and it was not clean. There was no medical care. Sometimes they gave medicine. But usually it didn't work. For each meal we got a small bowl of rice mixed with other dirty things. The food normally consisted of old vegetables. They were hard and chewy and mixed with toilet paper. – Binh

The room was very dirty and there were many mosquitos without any mosquito net to protect us. There were no mattresses or blankets, and we had eight women in the room. One lady had her period and they did not give her anything. We screamed at them to give us female supplies. The water was the same as the color of coffee and was very dirty. The water would all come from one tank and 200 people would use that water to take a bath. The tank also had fish inside. In Vietnam they force you to work as a slave in the prison without pay. – Huong

Torture and mistreatment of detainees is particularly prevalent among persons arrested for peacefully exercising their rights to freedom of expression, association, assembly, or conscience. The UN Special Rapporteur on the situation of human rights defenders, for instance, has expressed deep concern about “a series of alarming trends detected in the situation of human rights defenders in Vietnam,” noting “a persistent pattern of physical assaults and intimidation which are perpetrated either by police officers or unidentified individuals against human rights defenders, religious minorities, or those with dissenting voices, including government critics and social activists.”¹³⁸ Yet, despite this alarming trend and despite Vietnam's obligations under various international instruments, the government has largely ignored attempts by UN human rights mechanisms to engage it in discussion or amelioration of the problem.¹³⁹

¹³⁶ Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Argentina*, ¶ 11, U.N. Doc. CCPR/CO/70/ARG, (Nov. 15, 2000), available at goo.gl/uhM33d; Human Rights Council, *Human Rights in the Administration of Justice, Including Juvenile Justice*, U.N. Doc. A/HRC/24/L.28, (Sept. 23, 2013), available at <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G13/172/77/PDF/G1317277.pdf?OpenElement>; Human Rights Council, *Human Right Implications of Overincarceration and Overcrowding*, U.N. Doc. A/HRC/30/19 (Aug. 10, 2015), available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>; Theo van Boven, *Report of the Special Rapporteur on Civil and Political Rights including the Questions of Torture and Detentions*, Human Rights Comm'n, U.N. Doc. E/CN.4/2004/56 (Dec. 23, 2003), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/173/27/PDF/G0317327.pdf?OpenElement>.

¹³⁷ Committee Against Torture, *Report of Committee against Torture*, ¶ 156, U.N. Doc. A/53/44 (Sept. 16, 1998).

¹³⁸ Michael Forst, *Report of the Special Rapporteur on situation of human rights defenders*, ¶ 474, U.N. Doc. A/HRC/34/52/Add.1, (Feb. 20, 2017).

¹³⁹ See e.g. *id.* at ¶ 473 (noting that Vietnam had failed to respond to any communications regarding torture allegations sent within the most recent reporting period).

VI. Conclusion and Recommendations

The information gleaned from interviews of Vietnamese refugees and Freedom Now cases paints an alarming picture of the state of human rights in the country. Although the government has ratified various human rights treaties, accepted the majority of the recommendations made to it during its most recent Universal Periodic Review and even allowed the UN Special Rapporteur on the freedom of religion and belief to visit the country, it has consistently failed to live up to its obligations under international human rights law. To the contrary, the last few years have witnessed an intensified legal crackdown on individual rights; in 2017 alone the government arrested three times as many people for peacefully expressing their political or religious views as in 2016.¹⁴⁰ Numerous laws and ordinances have enabled government cyber-surveillance and prohibited dissent online or in the media. 2018 witnessed the coming into effect of the Law on Belief and Religion, which further brought religious activities under tight government control, and the amended Criminal Code, which criminalized an unforeseeably broad range of what should be protected expression and activity, imposed harsher sentences for such crimes, and chipped away at due process rights.

This legalization of repression is particularly problematic because it moves numerous state institutions—police, judicial, and security mechanisms—into the service of human rights abuse and may also serve to whitewash the government’s crackdown to domestic or international casual observers. Human rights defenders, NGOs, international institutions and concerned governments must thus push back forcefully on Vietnam government’s attempts to turn its legal system into a tool of repression by demanding that the government repeal or amend these laws to be in line with Vietnam’s human rights obligations.

This *de jure* crackdown has been accompanied by *de facto* violations of individuals’ rights, even in situations where Vietnamese law does purport to protect such rights. The right to a freedom from torture, freedom from arbitrary arrest and detention and fair trial rights are codified into Vietnamese law, however participant interviews and Freedom Now case work show that these safeguards are commonly ignored in practice. Harassment of human rights defenders, journalists, bloggers, civil society leaders or religious minorities often starts with warnings or threats, “working sessions,” pressure through family members, and short stints in detention for several hours, or in some cases a few days. Officials may also beat individuals in interrogation or intimidation efforts. When these tactics fail, officials

may escalate their efforts by using these same tactics more frequently or bringing criminal charges which result in lengthy pre-trial and post-conviction detention in prisons with deplorable convictions. Thus, concerned observers must also push for Vietnam to ensure that human rights are respected in practice as well as in law through immediate public denunciation of any such abuse, human rights training for police, judicial and security personnel, ending the culture of impunity for perpetrators of such acts, and providing redress to victims of abuse.

To achieve these ends, the following recommendations are suggested:

To the Government of Vietnam

- a) Amend the Constitution to ensure structural independence of government branches from the interests of the CPV, to provide robust protections for the freedoms of expression, association, assembly, and religion, and to bring into compliance with Vietnam’s obligations under international human rights law.
- b) Amend or repeal the Law on the Press, the Law on Cyber Information Security and all related laws, decrees and regulations to ensure robust protections for the freedoms of expression and to bring into compliance with Vietnam’s obligations under international human rights law, specifically under Article 19 of the ICCPR. Ensure that such repeal or amendment ends surveillance, censorship, and harassment against all journalists, bloggers, human rights defenders and others.
- c) Amend or repeal the Law on Belief and Religion and all related laws, decrees and regulations to ensure robust protections for the freedom of belief and religion and to bring into compliance with Vietnam’s obligations under international human rights law, specifically Article 18 of the ICCPR. Ensure that such repeal or amendment extends protection for adherents of all beliefs or religions and ends registration requirements.
- d) Amend the Criminal Code to eliminate provisions that criminalize activities protected by the right to free expression, association, assembly and religion, “preparatory” offenses, and require defense attorneys to breach confidentiality in certain situations, including, among others, Articles 19(3), 109, 116, 117, 118, 330, and 331. Bring the Criminal Code into compliance with Vietnam’s obligations under

¹⁴⁰ US Dep’t of State Report on Human Rights: 2017, *supra* note 6 at 6.

international human rights law, specifically Articles 14, 15, 18, 19, 21, and 22 of the ICCPR.

- e) Amend the Criminal Procedure Code to ensure robust due process protections surrounding any deprivation of liberty and trial process, and bring into compliance with Vietnam's obligations under international human rights law, specifically Articles 9 and 14 of the ICCPR. Ensure that such amendments bar arrest and temporary detainment (such as "working sessions") as a means of harassment and *incommunicado* detention and provide for *habeas corpus* proceedings within 48 hours of detention, release pending trial (except in situations permitted by international law), fair and public trials adjudicated by an independent and unbiased judiciary, full and confidential access to an attorney of the accused's choice at all stages of the legal proceedings, and sufficient time and facilities to prepare a defense.
- f) Publicly condemn all harassment, intimidation, unauthorized surveillance, arbitrary detention, conviction, and torture of persons peacefully exercising their fundamental rights, stressing that anyone involved in ordering or effectuating such illegal acts will be held responsible. Investigate and hold accountable officials who order or effectuate the commission of human rights abuses in violation of domestic or international law, in particular, violations of an individual's right to life; liberty and security of person; and freedom from torture or cruel and inhuman treatment.
- g) Provide training to the judiciary, police, and security forces to ensure that human rights protections in domestic and international law are scrupulously enforced throughout the entire legal process. Ensure public and fair trials adjudicated by independent and unbiased judges where the defendant enjoys a presumption to innocence, full and confidential access to an attorney of his or her choice during all stages of the legal proceedings, sufficient time and facilities to prepare a defense, the ability to rigorously challenge the prosecution's evidence, and freedom from coerced confession.
- h) Ensure that any allegations of torture or abuse are heard in open court and fully investigated.
- i) Allow journalists to freely report on and civil society activists to freely document the harassment, intimidation, unauthorized surveillance, arbitrary detention, conviction, and torture of persons peacefully exercising their fundamental rights.
- j) Immediately and unconditionally release and rehabilitate the civil and political rights of human rights defenders, bloggers, journalists, religious

minorities, and all other individuals detained under criminal or administrative charges for exercising their fundamental human rights.

- k) Invite the UN Special Rapporteur on freedom of expression and opinion, the UN Special Rapporteur on the freedoms of peaceful assembly and association, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the UN Special Rapporteur on the situation of human rights defenders and the UN Working Group on Arbitrary Detention for country visits, fully cooperate with their mandate, and implement their recommendations.

To Concerned Countries and International Organizations

- a) In high-level dialogue with Vietnamese officials, consistently raise concerns about the ongoing *de jure* and *de facto* human rights abuses in Vietnam. Publicly and privately urge Vietnam to amend its laws in line with its international human rights obligations and to immediately end the harassment, intimidation, surveillance, arbitrary detention, conviction, and torture of persons peacefully exercising their fundamental rights.
- b) Provide support to human rights defenders, journalists, bloggers, religious adherents and others targeted for peacefully exercising their fundamental rights by making public and private statements on their behalf, sending observers to visit them in detention or witness their trial, assisting with financial support for legal or material expenses, and organizing seminars in Vietnam and inviting independent civil society organizations to participate.
- c) Using diplomatic, development aid and trade tools available, condition closer bilateral relationships with Vietnam on measurable improvement of its record with respect to *de jure* and *de facto* respect for civil and political rights.
- d) To the United States, re-designate Vietnam as a Country of Particular Concern as the USCIRF has recommended and ensure that serious human rights abusers in Vietnam are added to the Specially Designated Nationals *List under the* Global Magnitsky Act.

To Multinational Technology Corporations

- a) Push back on and refuse to comply with requirements to store data inside of Vietnam, turn over user data to the government of Vietnam and other regulations that enable the persecution of online activists.

VII. Research Methodology

This report is based on research conducted from September 2017 through May 2018, encompassing a review of relevant laws, existing literature, analysis of qualitative interviews with Vietnamese refugees living abroad and analysis of the prisoner of conscience cases of current and former Freedom Now clients. The IHRLC students, supervised by IHRLC faculty (“researchers”) examined human rights reports and media publications documenting human rights violations committed by Vietnamese authorities against human rights and democracy activists and religious minorities. They also analyzed existing domestic laws in Vietnam and the international laws and treaties under which the Vietnamese government is bound.

The researchers obtained approval from the Institutional Review Board (“IRB”) at the American University prior to conducting human subject research. As part of the IRB application, they submitted for comment and approval documents with Vietnamese language translations, including a written informed consent form, a recruitment script for partners on the ground to distribute to the participants, an interview script, and an interpreter confidentiality agreement. To gain diverse perspectives, the researchers intentionally did not specify an interest in speaking with individuals who suffered human rights violations of a particular nature, and instead left open the possibility of talking with anyone identified as having suffered human rights violations at the hands of Vietnamese officials.

Over a five-day period, the researchers worked in pairs and conducted in-person, structured interviews with 25 Vietnamese refugees of whom four were women and 21

were men. Nine of the participants were from the Kinh majority ethnic group, six were from the Hmong minority ethnic group, and five from the Montagnard minority ethnic group. They identified participants through Freedom Now and their confidential contacts and partners located safely outside Vietnam. Freedom Now’s partners identified participants by reaching out to Vietnamese refugees known to the organizations. The IRB-approved consent form, as well as Freedom Now’s partners directly, informed participants that their involvement was voluntary, their refusal would have no impact on their eligibility for services, they could refuse to answer questions, and they could end the interview early for any reason.

Researchers worked with three interpreters from ethnic minority groups who spoke Ede, Hmong, Jarai, and Vietnamese. The researchers worked in pairs to interview each participant; one person took notes while the other conducted the interview. The interviews ranged from thirty minutes to two and a half hours. Each interview contained open-ended questions that highlighted the general human rights situation in Vietnam for ethnic minorities, religious communities, and activists. These questions laid the foundation for the next layer of questions about each participant’s personal experience with human rights violations imposed on them by Vietnamese officials. With the exception of three interviewees who did not feel comfortable having their voices recorded, all interviews were audio recorded.

The report uses pseudonyms to identify the participants, to protect their privacy and safety.

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Third row: Doan Khanh Vinh Quang (Thanh SangVietnam News Agency via AP). Mother Mushroom (Vietnam News Agency via AP)

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