

**INTERNATIONAL FEDERATION OF HUMAN RIGHTS  
&  
VIETNAM COMMITTEE ON HUMAN RIGHTS**

**Submission to the Universal Periodic Review of Vietnam 3/11/08**

**Compliance with international human rights instruments and cooperation with UN Special Procedures**

Whilst Vietnam became party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1982 and is party to several other core human rights treaties, it falls far short of compliance with reporting mechanisms. Its periodic report on the ICESCR is overdue since 1995. Vietnam also fails to cooperate with the UN Special Procedures. Since 2002, five Special Procedures have requested to visit Vietnam, following repeated allegations of human rights violations without any answer. Indeed, Vietnam has allowed no visits since 1998, when the Special Rapporteur on Religious Intolerance raised concerns on religious freedom abuses. Vietnam then announced it would never again “accept any individuals or organizations coming to investigate religious freedom or human rights”.

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**The Restrictive Legal Framework**

The protection of human rights is guaranteed by the 1992 Vietnamese Constitution and several other legislative provisions. However, the exercise of these rights is severely curtailed, even nullified, by extensive domestic legislation which conditions human rights on compliance with “the policies and interests of the State”. Since state policies are established by the Communist Party of Vietnam (CPV) whose political monopoly is enshrined in the Constitution as the “force leading the State and society” (Article 4), such legislation is invariably inconsistent with international human rights standards. While Vietnam has ratified international treaties, it has adopted an arsenal of restrictive laws, directives, and other domestic regulations, criminalizing the peaceful exercise of freedom of opinion, expression, religion, assembly and association. These laws enable Vietnam to convict dissidents as common criminals, and claim that “there are no political prisoners in Vietnam, only people who violate the law”. The UN Human Rights Committee expressed particular concern that the provisions of these laws impede the enjoyment of individual rights and contravene Vietnam’s binding obligations under the ICCPR<sup>1</sup>.

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**National Security Legislation**

A whole chapter of vaguely-defined “national security” provisions in the Penal Code is widely invoked to detain dissidents and human rights defenders, in gross violation of the ICCPR. They include ambiguous offenses such as “undermining national solidarity, sowing divisions between religious and non-religious people”, (article 87), “conducting propaganda against the Socialist Republic of Vietnam” (Article 88), “abusing democratic freedoms to encroach on the interests of the state” (article 258). In recent years, Vietnam has routinely used charges of “espionage” (Article 80) to detain “cyber-dissidents” for peacefully circulating their views via the Internet. These crimes, which make no distinction between violent acts such as terrorism and the peaceful exercise of freedom of expression, are punishable by harsh prison terms, including life imprisonment. Seven of them carry the death penalty. Despite strong recommendations by the UN Human Rights Committee (2002), the UN Working Group on Arbitrary Detention (1995) and the UN Special Rapporteur on Religious

<sup>1</sup> [Concluding observations of the Human Rights Committee: Vietnam, 26/07/2002, CCPR/CO/75/VNM](#)

Intolerance (1998), Vietnam has made no attempt to revise or repeal these national security laws, which remain the principle tool of political repression.

**Administrative detention** : Last year, Vietnam repealed Decree 31/CP on “Administrative Detention” in a move hailed by the international community as a step towards the rule of law. However, Vietnam had already replaced it, was swiftly by the more repressive **Ordinance 44** on “Regulating Administrative Violations”, which empowers local officials not only to arrest and detain citizens, as Decree 31/CP, but also to commit them to mental hospitals or “rehabilitation camps” without any due process of law. The Ordinance is particularly used against political and religious dissidents, and legalizes the arbitrary practice of detention without trial.

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**Unlimited Pre-trial Detention:** Under the amended 2004 Criminal Procedures Code (Article 120), suspected “national security” offenders may be held in custody pending investigation for four months. This period may be extended four times by the Chairman of the Supreme People's Procuracy, after which the authorities must either release detainees or “if deeming it necessary, apply other deterrent measures”.

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**Probationary Detention:** *Quan che*, or “probationary detention” (Article 30 of the Penal Code) is a second punishment inflicted on former political prisoners. It enables the State to place “national security” offenders “under the supervision and re-education of the local authority” for a period of 1-5 years’ probation after their release. During this time, they are forbidden to leave their homes, deprived of their civic rights and maintained under constant Police surveillance. In theory, *quan che* cannot be applied without a Court decision, but in practice it is automatically applied to political and religious prisoners after their release for many years.

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### The Right to Freedom Expression, Opinion and the Press

There is no independent media in Vietnam. The Communist Party of Vietnam (CPV) mobilization and propaganda department controls all media and sets press guidelines. Editors meet regularly with representatives of the state's Ideology Committee to discuss which stories the government wants emphasized and which are off-limits.

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Constitutional guarantees of press freedom (Article 69) are nullified by a whole range of laws which strictly prohibit all publications with contents deemed to “violate the interests of the State”. Censorship is extremely severe. A 1999 law requires journalists to pay damages to persons harmed by their articles, even if their reports are true. Decree 56 passed in July 2006 provides for crushing fines and suspension of licenses for media and journalists who defame and attack the “prestige of the state”.

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In October 2008, two journalists from the State-controlled press were sentenced respectively to 2 years in prison and two years non-custodial re-education for reporting on a corruption scandal involving government officials. They were convicted of breaching “national security” under Article 258 of the Penal Code. Following their arrest, the deputy editors of their newspapers were also suspended and at least seven journalists had their press cards revoked as part of a wider pattern of the government's use of criminal law to muzzle free expression

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**The Internet:** similar restrictions are used to control the Internet, a fast-growing sector in Vietnam. Under Directive 71 (2004) Internet café owners are responsible for their customers' on-line activities, and must keep records of users' ID. The Ministry of Public Security has set up a unit of “cyber-police” to track down the posting of banned material, and firewalls to block access to overseas sites advocating human rights and democracy. New regulations on “blogs” were introduced in 2008 in order to “constrain propagandas against the state and limit using blogs to smear the image of the party and its governance apparatus”. Several cyber-dissidents were arrested in 2007-8 and

Deleted: In September, blogger Dieu Cay was sentenced to 30 months in prison on trumped-up charges of tax evasion for using the Internet to express opposition views.

sentenced to harsh prison terms on charges of “espionage” or “conducting propaganda against the Socialist Republic of Vietnam” (Articles 80 and 88 of the Penal Code).

### Death Penalty

The use of the death penalty is frequent in the Socialist Republic of Vietnam. Capital punishment is applied for 29 offences, including murder, armed robbery, drug trafficking, rape, sexual abuse of children, and a range of economic crimes. FIDH and the Vietnam Committee are deeply disturbed by Vietnam's use of the death penalty to sanction vaguely-defined "national security" crimes in Chapter XI of the Vietnamese Criminal Code. These include treason, carrying out activities to overthrow the government, espionage, banditry, terrorism, undermining peace. Conditions on death row are particularly inhumane. 3-4 prisoners are detained in each cell. The cells are extremely unhygienic, with one latrine bucket and no ventilation. Prisoners are not allowed to leave their cells except to receive visits, which are extremely rare. Their legs are chained to a long pole, and they are generally lined up in order of execution.

### **The Right to Freedom of Religion and Belief**

Repression on religious grounds is widespread in Vietnam.

Article 70 of the Vietnamese Constitution guarantees religious freedom. However, it also states that no one may “misuse beliefs and religions to contravene the law and State policies”. As the former UN Special Rapporteur on Religious Intolerance Mr. Abdelfattah Amor observed, “this provision establishes the principle of the priority of the policies of the State, a vague and extendable concept” which “impede[s] freedom of religion or reduce[s] it to very little indeed.”

Religions are subjected to a system of recognition and control. With the exception of the Roman Catholic Church, only State-sponsored religious bodies are allowed to practise their activities, and “non-recognised” organisations are illegal. In 2004, an “Ordinance on Beliefs and Religions” came into effect, which has been hailed as sign of progress by the international community. In fact, this Ordinance is incompatible with international human rights standards and it places tighter controls on religions. Under the Ordinance, religious education is subordinated to the “patriotic” dictates of the Communist Party; worship may only be carried out in approved religious establishments; it is forbidden to “abuse” religious freedom to contravene prevailing Communist Party policies (article 8§2). Religious activities deemed to “violate national security... negatively affect the unity of the people or the nation’s fine cultural traditions” are banned (art. 15).

**The Unified Buddhist Church of Vietnam (UBCV):** The situation of the UBCV, adhered to by the majority of the Vietnamese population, is of particular concern. Banned effectively in 1981 following the creation of the State-sponsored Vietnam Buddhist Church, its leaders and members are subjected to detention, intimidation and constant harassment. Despite repeated appeals from the international community, Vietnam has not re-established its legal status. In 2008, the authorities intensified repression against UBCV members in the run-up to UN Vesak Day, hosted by the Vietnamese government and the State-sponsored Buddhist Church in Hanoi. Police seized UBCV pagodas to use for State-sponsored events, evicted and harassed UBCV monks, nuns and lay-followers. UBCV monk Thich Tri Khai was evicted from his pagoda in Lam Dong province and subjected to intensive Police interrogations.

UBCV leader **Thich Quang Do**, 79, who replaced Patriarch Thich Huyen Quang after his death in July 2008, remains under effective house arrest at the Thanh Minh Zen Monastery in Saigon. He has spent 26 years in detention for his peaceful advocacy of religious freedom and human rights, and remains under constant Police surveillance. Ten years after his release in a 1998 government amnesty, he has still not been issued the obligatory “ho khai” (residence permit), without which he is an illegal citizen.

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**The Roman Catholic Church:** In September 2008, Vietnam used tear gas and electric batons to disband peaceful Catholic prayer vigils in Hanoi to call for the return of Church properties confiscated by the State, and bulldozed Catholic properties. During a series of massive peaceful rallies, including one of 10,000 people, ~~protesters~~ were hospitalised and many arrested in grave violation of the right to peaceful assembly guaranteed in the Vietnamese Constitution and in the ICCPR.

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**Protestants:** Despite regulations to streamline the registration process, hundreds of Christian house church organizations that tried to register in 2006 were either rejected, ignored, or had their applications returned unopened. These included 500 ethnic minority churches in the Northwest Highlands.

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### Discrimination against Indigenous Peoples

**The Montagnards** in the Central and Northern Highlands of Vietnam suffer discrimination including social exclusion, confiscation of ancestral lands, state-sponsored migration of ethnic Vietnamese into highland areas and the undermining of traditional culture. Religious persecution is also a key issue, since many Montagnards have converted to Protestantism. In 2001 and 2004, the government violently quelled demonstrations of Montagnards protesting religious persecution and land confiscation, and over 300 Montagnards remain in detention. ~~Over 200 Montagnards are reportedly~~ detained in Ba Sao Camp (northern Vietnam) in extremely harsh conditions. Many bear marks of beatings and torture.

**The Khmer Krom** minority in southern Vietnam suffer religious persecution and land confiscation. In 2007, the authorities ~~arrested~~ 20 Khmer Krom Buddhist monks for participating in a peaceful protest calling for religious freedom. Five received prison sentences. ~~Excessive force has been used against~~ Khmer Krom farmers petitioning for resolution of land conflicts.

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### The Right to Peaceful Assembly

Although this right is guaranteed by the Constitution (Article 69), Vietnam systematically suppresses peaceful demonstrations and punishes protesters under criminal law. In September 2008, Police forcefully disbanded demonstrations by students in Hanoi protesting Chinese claims of sovereignty over Vietnamese territory. Scores of students ~~and activists~~ were arrested and many are still in custody. Peaceful demonstrations by farmers and peasants, known as the "Victims of Injustice", many of them women, have also been brutally repressed. This rural protest movement, in which dispossessed farmers march to Hanoi or Saigon to file petitions and camp outside government buildings protesting state confiscation of lands ~~for development projects and lack of compensation~~, has reached explosive proportions, with over 2 million complaints filed over the past 10 years. Police routinely beat and arrest demonstrators or forcibly return them to their homes. To stem these protests, the government adopted Decree 38/2005 prohibiting demonstrations outside public buildings.

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### The Rights of Women

Grave violations of women's rights persist in Vietnam, despite legal commitments taken by the government to promote gender equality. Abuses include domestic violence, prostitution and trafficking of women and girls – often with the connivance of Party and Police officials – violations of reproductive rights. ~~Lack of implementation and awareness, official power abuse and corruption~~ result in mass abuses of women's right to land. Despite revisions in the Land Law that entitle women to register Land User Certificates along with their husbands, only 3% are registered in women's names, and 3% joint-held. Widows find themselves completely destitute after working for decades on their husband's lands. Recommendations made by the CEDAW Committee to address these abuses ~~have~~ been ignored.

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## Violations of Labour Rights

Economic liberalisation and competition to provide cheap labour has led to serious abuses of labour rights. In 2008, as Vietnam suffered its worst economic crisis, with inflation rocketing to 27% and the price of rice up 72%, hundreds of thousands of workers staged wildcat strikes denouncing low pay and sweat-shop working conditions.

As a reaction, the government adopted a new decree obliging workers to pay their employers 3 months salary in compensation if their strike is deemed illegal. Whilst the 1995 Labour Code authorizes the right to strike, strikes are prohibited in 54 sectors considered to be of “public service” or important to the national economy or defence (including the post office, public transport, banking). The Prime Minister can “terminate” any strikes perceived as “*detrimental to the national economy or public safety*”.

The Labour Code does not authorize freedom of association. All labour unions are under the umbrella of the “Vietnam General Confederation of Labour” (VGCL) controlled by the CPV. Free trade unions are prohibited. In 2007, several people who set up an unofficial United Worker-Farmers Organization (UWFO) were arrested and sentenced to harsh prison terms simply for seeking to protect workers’ rights and demanding the right to form free trade unions.

### Detention Conditions and Ill-treatment of Prisoners

Detention conditions are extremely harsh. Beatings and torture are routine. Prisoners, including the sick and elderly must perform hard labour. Prisons are overcrowded and filthy, and food rations are grossly insufficient. Medical care is available only to those who can pay. Vietnam has not implemented the recommendations made by the UN Working Group on Arbitrary Detention after their 1994 visit, and has not extended an invitation for a follow-up visit as planned.

### Recommendations

FIDH and the Vietnam Committee on Human Rights call on the Government to take urgent steps to:

1. immediately and unconditionally release human rights defenders and prisoners of conscience detained for the peaceful exercise of their political opinions or religious beliefs;
2. implement the recommendations of the UN Human Rights Committee<sup>2</sup> by bringing domestic legislation into line with international human rights law, especially by immediately repealing Ordinance 44 on “Regulating Administrative Violations”, revising “national security” provisions in the Penal Code and repealing all legislation restricting the exercise of rights enshrined in the ICCPR;
3. guarantee that the Vietnamese Constitution conforms with the International Covenant on civil and political rights and ensure that Vietnamese law guarantees the effective protection of all Covenant rights, in accordance with the recommendations of the Human Rights Committee<sup>3</sup>;

2 [Concluding observations of the Human Rights Committee: Viet Nam », CCPR/CO/75/VNM, 26/07/2002.](#)

3 [Ibid. § 5.](#)

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4.ensure that the definition of certain acts such as “opposition to order” and “national security violations”, for which the death penalty may be imposed, is clear and consistent with article 6 paragraph 2 of the Covenant, in accordance with the recommendations of the Human Rights Committee<sup>4</sup>;

5.establish an immediate moratorium as first step of abolishment of the capital punishment under all circumstances;

6.re-establish the legitimate status of the Unified Buddhist Church of Vietnam and all other non-recognized religious organisations and allow them full freedom of religious activity;

Deleted: lift all restrictions on UBCV Patriarch Thich Quang Do and all others held under house arrest for their religious beliefs;

7.cease arbitrary Police harassment, surveillance and censorship (on telephones, Internet, post etc) of perceived critics and dissidents;

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8.guarantee the right to freedom of assembly; guarantee freedom of association and allow the establishment of trade unions independent of the Communist Party of Vietnam;

9.guarantee freedom of media, authorize the publication of independent newspapers and cease legal sanctions and harassment against journalists and citizens expressing peaceful views through the printed media, Internet or radio;

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10.implement the recommendations of the UN Committee on the Elimination of Discrimination against Women, in particular with regard to the Land Law, by taking the necessary steps to remove any administrative obstacles that may prevent the issuance of joint land use certificates to husbands and wives<sup>5</sup>.

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4 Ibid, § 7

5 Concluding Comments of the CEDAW, CEDAW/C/VNM/CO/6, 2 February 2007, §9