



FREEDOM NOW

## **FREEDOM NOW – INDIVIDUAL SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS**

### **UNIVERSAL PERIODIC REVIEW (“UPR”): VIETNAM 32<sup>ND</sup> SESSION HUMAN RIGHTS COUNCIL – UPR WORKING GROUP**

**July 2, 2018**

#### **Introduction**

1. Freedom Now submits this report to assist the UN Human Rights Council in its review of the policies and practices of the Government of Vietnam (“Vietnam”). Freedom Now is a non-partisan, non-governmental organization that works to free prisoners of conscience around the world through legal, political, and public relations advocacy.<sup>1</sup>

2. This report documents the Vietnamese government’s use of arbitrary detention and politically-motivated prosecutions in violation of international law, as well as the attendant human rights violations. As outlined in detail below, Vietnam reportedly continues to silence human rights defenders, journalists, bloggers, and religious minorities through abuse and wrongful criminal detention. Such practice violates the government’s obligations under the International Covenant on Civil and Political Rights (“ICCPR”), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), and the Universal Declaration of Human Rights (“UDHR”).

#### **History of Arbitrary Detention in Vietnam**

3. Vietnam has a well-documented history of detaining its citizens for exercising their fundamental human rights, including the rights to freedom of expression, association, assembly, and conscience. In the context of such politically-motivated detentions, the government has also failed to meet minimum international due process standards and violated detainees’ rights to be free from torture and other forms of mistreatment.

4. Concern for human rights defenders was highlighted during Vietnam’s second Universal Periodic Review (“UPR”) in 2014. During that review, Vietnam did not accept recommendations to release persons detained for exercising their rights to freedom of assembly, association, expression, and religion.<sup>2</sup> Vietnam also did not accept several recommendations to provide legal safeguards to those detained under propaganda laws,

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<sup>1</sup> Freedom Now is currently serving as or advising international *pro bono* counsel to Vietnamese prisoners of conscience, Nguyen Van Hoa, Nguyen Hoang Quoc Hung, Nguyen Huu Quoc Duy, Father Thadeus Nguyen Van Ly.

<sup>2</sup> UPR Info, Database of Recommendations: Vietnam, *available at* <http://www.ohchr.org/EN/HRBodies/UPR/Pages/VNIndex.aspx>.

amend national security legislation that criminalizes political dissent, or adopt measures to end prosecution of peaceful protesters.<sup>3</sup>

5. Although Vietnam accepted certain recommendations pertaining to freedom of expression, due process rights and freedom from torture,<sup>4</sup> it has failed to implement the changes needed to effectuate such recommendations; to the contrary, the most recent reporting period witnessed increased *de jure* and *de facto* repression on civil and political rights through the passage or coming into effect of new restrictive legislation and the surveillance, harassment and detention of ever-greater numbers of government critics.

### **Continued Use of Arbitrary Detention**

6. Arbitrary detention in Vietnam is on the rise. 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.<sup>5</sup> The US Department of State has reported that in 2017 alone the government arrested three times as many people for peacefully expressing their political or religious views as in 2016.<sup>6</sup>

7. In 2017, the Special Rapporteur on the situation of human rights defenders expressed grave concern over "alarming trends detected in the situation of human rights defenders in Vietnam."<sup>7</sup> The report noted worrying accounts of torture, denial of medical treatment, *incommunicado* detention, and beatings in detention centers since Vietnam's last UPR. Torture remains pervasive within the detention system; there are reliable reports of officials breaking fingers and using electric shocks to elicit confessions, as well as deaths in police custody that are not investigated.<sup>8</sup>

8. Trials of political prisoners are replete with due process violations. Accused persons are systematically subjected to extended pre-trial detention and are denied access to lawyers.<sup>9</sup> Vietnamese law does not provide detainees with *habeas corpus* rights. Courts consistently deny accused persons their presumption of innocence and conduct closed-door hearings. The 2015 Criminal Procedure Code requires the government to appoint counsel to defendants charged with certain serious crimes, do not give defendants the express right to call witnesses, and limit the defendant's right to remain silent.<sup>10</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Free Vietnam's Political Prisoners!*, Human Rights Watch (November 3, 2017) <https://www.hrw.org/video-photos/interactive/2017/11/03/free-vietnams-political-prisoners>.

<sup>6</sup> US Department of State, *Country Report on Human Rights Practices for 2017: Vietnam*, Bureau of Democracy, Human Rights and Labor, 6.

<sup>7</sup> United Nations General Assembly, *Report of the Special Rapporteur on situation of human rights defenders*, A/HRC/34/52/Add.1, February 20, 2017, ¶ 474.

<sup>8</sup> *Amnesty International Testimony Human Rights in Vietnam: Hearing before the Committee on Foreign Affairs, House of Representatives*, (Statement of T. Kumar, Amnesty International Advocacy Director for Asia, Europe, and United Nations) <https://docs.house.gov/meetings/FA/FA16/20170525/106047/HHRG-115-FA16-Wstate-KumarT-20170525.pdf>.

<sup>9</sup> *See generally* UN Working Group on Arbitrary Detention, Opinion No. 75/2017 UN Doc. A/HRC/WGAD/2017/75, December 15, 2017.

<sup>10</sup> US Department of State, *Country Report on Human Rights Practices for 2015: Vietnam*, Bureau of Democracy, Human

9. In the reporting period, Vietnam passed new cybersecurity<sup>11</sup> and press<sup>12</sup> legislation that further restricts freedom of speech on internet outlets and in the media. Discussion of multi-party democracy online is censored, and political dissenters are punished with fines.<sup>13</sup> Access to sites using foreign internet service providers is prohibited, and bloggers have been forced to terminate their internet service by the Ministry of Public Security.<sup>14</sup> Press agencies are punished if they release “untruthful information,” and public broadcasts are required to run at a 30-60-minute delay to enable content monitoring.<sup>15</sup>

10. Freedom of assembly and freedom of religion are heavily regulated by national legislation. The constitution gives some protection to these rights, but allows the government to restrict such rights in the interest of national defense, national security, public order, the security of society, or social morality. The law does not allow workers to form unions unless authorized by the Vietnam General Confederation of Labor. In 2016, the Special Rapporteur on the rights to freedom of peaceful assembly and of association condemned the government’s “tight control” over religious communities and observed that the members of such communities were under “constant surveillance, intimidation, harassment, and persecution.”<sup>16</sup> In 2018, a new Law on Belief and Religion came into effect which limits the recognition of religious organizations and activities to those pertaining to traditional Vietnamese religions, prohibits using religion to harm national security or morality or tarnish the image of national heroes, and imposes onerous registration requirements.<sup>17</sup>

11. In addition to restrictive legislation regulating the rights to free expression, association and religious exercise, Vietnam continues to detain government critics on trumped-up national security, public order, or propaganda charges. A revised version of the Vietnamese penal code took effect on January 1, 2018,<sup>18</sup> which strengthened these vague laws by imposing harsher sentences for such crimes, required attorneys to report their clients’ national security and “other serious” crimes, and included a broad new range of offenses, criminalizing any person for the “preparation” of a crime.<sup>19</sup>

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Rights and Labor, 17.

<sup>11</sup> New cyber security legislation passed or coming into effect in the reporting period include the Law on Network Information Security, No. 86/2015/QH13, (2015); Decree 174: Providing Detailed Guidelines for the Implementation of Accounting Laws, No. 174/2016/ND-CP, (2016); Law on Network Security, No. \_\_/2018/QH13, (2018).

<sup>12</sup> Law on the Press, No. 103/2016/QH13, (April 5, 2016) [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=447052](http://www.wipo.int/wipolex/en/text.jsp?file_id=447052).

<sup>13</sup> US Department of State, *Country Report on Human Rights Practices for 2016: Vietnam*, Bureau of Democracy, Human Rights and Labor, 23-25.

<sup>14</sup> US Dep’t State Report on Human Rights 2015, *supra* note 10, at 26.

<sup>15</sup> US Dep’t State Report on Human Rights 2016, *supra* note 13 at 22.

<sup>16</sup> United Nations General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/32/36/Add.3, June 17, 2016, ¶ 66.

<sup>17</sup> Law on Belief and Religion, No. 2016/QH13, Article 1(11); 5(5); Chapter III (forthcoming) <http://queme.org/app/uploads/2016/02/Report-VCHR-FoRB-in-Vietnam-State-management-of-religions-Feb-2016.pdf>.

<sup>18</sup> *Vietnam’s Proposed Revisions to National Security Laws*, Human Rights Watch, (November 2015) <https://www.hrw.org/news/2015/11/19/vietnams-proposed-revisions-national-security-laws>.

<sup>19</sup> Criminal Code, No. 100/2015/QH13, (November 27, 2015) <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>.

## **Vietnam's Abuses Exemplified: The Cases of Four Activists Currently Imprisoned**

### *Nguyen Van Hoa*

12. Nguyen Van Hoa is a journalist and videographer for the Vietnamese language division of Radio Free Asia. Among other reporting, he published video footage of the 2016 protests against the Formosa Steel company which caused an environmental catastrophe. Hoa was arrested in January 2017. In November 2017, after 11 months in pre-trial detention (including three months *incommunicado*), he was sentenced to seven years in prison and three years house arrest for “disseminating propaganda against the state” after a closed-door trial which lasted only two and a half hours. Hoa was unrepresented by an attorney of his choosing during this trial.<sup>20</sup>

### *Nguyen Hoang Quoc Hung*

13. Nguyen Hoang Quoc Hung is a founding member of the United Farmers and Workers Organization, an independent Vietnamese labor union. Along with Do Thi Minh Hanh and Doan Huy Chuong, Hung helped organize a strike at a shoe factory in 2010. The three organizers were arrested after the peaceful conclusion of the strike and, in October 2010, after eight months in pre-trial detention, Hung was sentenced to nine years in prison after a trial replete with due process violations. Hung has been subjected to deplorable treatment throughout his incarceration; he has been beaten and had to endure prolonged periods of solitary confinement.<sup>21</sup>

### *Nguyen Huu Quoc Duy*

14. Nguyen Huu Quoc Duy is an online activist. In November 2015, he was arrested for posting comments on Facebook in support of his cousin. He was held *incommunicado* for nine months after his arrest. In August 2016, after a closed-door trial where he was not represented by legal counsel of his choosing, Duy was convicted of “spreading anti-government propaganda” and sentenced to three years in prison. (Not only was Duy’s mother not permitted to attend the trial, she was held at a nearby police station during the duration of trial, which lasted only one day.)<sup>22</sup>

### *Father Thadeus Nguyen Van Ly*

15. Father Ly is a Vietnamese Roman Catholic priest and activist who has been repeatedly arrested for political dissent. He is one of the country’s most prominent dissidents and has advocated for religious freedom and democracy in Vietnam for over 40 years. In March 2007, Father Ly was sentenced to eight years in prison for alleged national security crimes. During his imprisonment, Father Ly suffered three strokes and was regularly denied

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<sup>20</sup> *Vietnamese blogger Nguyen Van Hoa gets seven years in prison*, Reporters Without Borders, (Nov. 27, 2017) <https://rsf.org/en/news/vietnamese-blogger-nguyen-van-hoa-gets-seven-years-prison>.

<sup>21</sup> *Nguyen Hoang Quoc Hung: Vietnam*, Freedom Now, <http://www.freedom-now.org/campaign/doan-huy-chuong-do-thi-minh-hanh-and-nguyen-doan-quoc-hung/>.

<sup>22</sup> *Nguyen Huu Quoc Duy: Vietnam*, Freedom Now, <http://www.freedom-now.org/campaign/nguyen-huu-quoc-duy/>.

proper medical care. He was rearrested by Vietnam after having been granted a one-year and four-month temporary medical parole. Father Ly was granted amnesty in May 2016 and returned home where he is currently serving five years house arrest.<sup>23</sup>

## **Conclusion and Recommendations**

16. Freedom Now recommends that Vietnam:
  - a) Immediately and unconditionally release and rehabilitate the civil and political rights of Nguyen Van Hoa, Nguyen Hoang Quoc Hung, Nguyen Huu Quoc Duy, Father Thadeus Nguyen Van Ly, and all other individuals detained under criminal or administrative charges for exercising their fundamental human rights.
  - b) Thoroughly investigate all cases of deaths in custody, arbitrary detention, torture, fair trial abuse, and other rights abuses directed against Nguyen Van Hoa, Nguyen Hoang Quoc Hung, Nguyen Huu Quoc Duy, Father Thadeus Nguyen Van Ly, and other human rights activists, journalists, government critics, and religious persons. Ensure that perpetrators of such abuses are held accountable and that victims of such abuses are appropriately rehabilitated and compensated.
  - c) Review and update the Law on Cyber Information Security, Decree 174, the Law on the Press, the Law on Belief and Religion and all other laws and decrees pertaining to the freedoms of expression, association, assembly and religion to ensure compliance with international obligations and ensure that such laws are robustly enforced.
  - d) Ensure that all detainees have immediate and confidential access to legal counsel of their own choosing, that trials are open to the public, that confessions are not obtained via use of torture or other undue pressure, that the presumption of innocence is respected and that all other procedural rights are fully respected.
  - e) Review and amend: (i) the Criminal Code's vague provisions which are used to crack down on government critics; and (ii) the Criminal Procedure Code to ensure full due process rights under international law, including that detainees are granted *habeas corpus* rights, confidential access to an attorney of their choosing from the outset of their detention, and a presumption for release pending trial. Ensure that such due process protections are robustly enforced.
  - f) Provide training to the judiciary, police, and security forces to ensure that human rights protections in domestic and international law are scrupulously protected throughout the entire legal process.
  - g) 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.

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<sup>23</sup> *Father Thadeus Nguyen Van Ly: Vietnam*, Freedom Now, <http://www.freedom-now.org/campaign/father-thadeus-nguyen-van-ly/>.