



FREEDOM NOW

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

**UNIVERSAL PERIODIC REVIEW (UPR): SOCIALIST REPUBLIC OF VIETNAM  
18<sup>TH</sup> SESSION  
HUMAN RIGHTS COUNCIL – UPR WORKING GROUP**

**June 7, 2013**

**Introduction**

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

2. This report describes the Vietnamese government's use of arbitrary detention in violation of international law. As outlined below, the government uses national security laws to silence an ever-growing list of critical voices in the country. Despite the government's assurances—often repeated in the course of interaction with international bodies and mandate holders—this practice violates Vietnam's freely undertaken obligations under international law, including provisions of the International Covenant on Civil and Political Rights (ICCPR), to which it is a party.

**History of Arbitrary Detention in Vietnam**

3. The Government of Vietnam has a long and well-documented history of detaining individuals for exercising fundamental rights. In 1994, the United Nations Working Group on Arbitrary Detention (UN Working Group)—a panel of five independent experts from across the globe—conducted a fact-finding mission to Vietnam. In addition to raising concerns regarding respect for due process standards, the UN Working Group highlighted limitations on peaceful free expression through the misuse of vague national security laws. Specifically, the UN Working Group noted that the provisions of the Penal Code pertaining to national security, then Articles 72 through 100, did not distinguish between peaceful political activity the use of violence.<sup>2</sup> As such, the provisions were found to impermissibly limit the right of Vietnamese citizens to exercise their rights to freedom of expression and association.<sup>3</sup>

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<sup>1</sup> Among others, Freedom Now serves as international *pro bono* counsel to imprisoned Vietnamese citizens Father Thadeus Nguyen Van Ly, Doan Huy Chuong, Do Thi Minh Hanh, and Nguyen Doan Quoc Hung.

<sup>2</sup> *Report of the United Nations Working Group on Arbitrary Detention: Visit to Vietnam* (Dec. 21, 1994) [U.N.Doc. E/CN.4/1995/31/Add.4](#) at ¶ 35.

<sup>3</sup> *Id.* at ¶ 58.

4. After receiving repeated follow-up requests, in 2000 the Vietnamese government notified the UN Working Group of revisions to the Penal Code.<sup>4</sup> However, despite the elimination or modification of some of the relevant provisions, Vietnamese authorities have continued to use national security charges, now codified under Articles 78 through 92 and Article 258 of the Penal Code, to punish individuals for exercising fundamental rights, including freedom of expression, association, and religion.

5. In particular, the government has continued to sentence democracy activists and independent religious leaders, such as Catholic Priest Father Thadeus Nguyen Van Ly, to long prison terms. Although only one case among many, the facts of his continued imprisonment are illustrative. Father Ly is one of Vietnam's leading dissidents and proponents of religious freedom and democracy. He has spent roughly 18 of the last 36 years in prison as a result. In 2001, the authorities arrested Father Ly after he submitted written testimony to the United States Commission on International Religious Freedom. The government sentenced him to 15 years in prison on charges including undermining the government's unity policy under Article 87. Released in 2005 after an international outcry over his detention, Father Ly resumed his advocacy and co-founded a number of independent organizations and publications. However, in 2007 the government arrested him again, this time on charges of disseminating propaganda against the state under Article 88. Sentenced to eight more years in prison, Father Ly was released on medical parole in March 2010 after he suffered a series of strokes and developed a brain tumor, but authorities rearrested him 16 months later despite continued health problems.

6. In response to these facts, the UN Working Group held on two occasions that the detention of Father Ly violates international law. In Opinion No. 20/2003 the UN Working Group held that the charges under Article 87 were arbitrary, reminding the government that it had "indicated in several opinions concerning Viet Nam and in the report following its visit to the country, vague and imprecise charges as those mentioned in [A]rticles 87... carry the disadvantage not to allow distinction between violent acts that endanger national security and the peaceful exercise of the rights of freedom of opinion and expression."<sup>5</sup> Similarly, in Opinion No. 6/2010, the UN Working Group found the detention of Father Ly on propaganda charges under Article 88 to be arbitrary and called for his immediate release, emphasizing that his detention "was in response to the peaceful exercise of his freedom of religion and freedom of expression and political speech."<sup>6</sup>

7. Father Ly's case, however, is not unique. The UN Working Group has reached the same conclusion in eight other cases since Vietnam revised its Penal Code. Such cases have included individuals detained under Article 79 (carrying out activities aimed at overthrowing the people's administration), Article 80 (espionage), Article 88 (disseminating propaganda), Article 89 (disrupting national security), and Article 258 (taking advantage of democratic freedoms and rights to abuse the interest of the State).<sup>7</sup> These cases also reveal a pattern of due process

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<sup>4</sup> *Report of the United Nations Working Group on Arbitrary Detention: 2001* (Dec. 20, 2000) [U.N.Doc. E/CN.4/2001/14](#) at ¶¶ 65 – 67.

<sup>5</sup> UN Working Group on Arbitrary Detention, Opinion No. [20/2003](#).

<sup>6</sup> UN Working Group on Arbitrary Detention, Opinion No. [6/2010](#).

<sup>7</sup> UN Working Group on Arbitrary Detention, Opinion Nos. [42/2012](#) (independent labor organizers charged under Article 89), [27/2012](#) (democracy activists charged under Articles 79 and 88), [46/2011](#) (land rights activists charged under Article 79), [24/2011](#) (rights lawyer charged under Article 88), [1/2009](#) (group of activists and bloggers charged

violations—in particular, the right to the assistance of legal counsel of one’s own choosing, the right to be free from torture or mistreatment, the right to present a defense, and the right to a public hearing are often violated in the course of proceedings against critical voices in the country.<sup>8</sup>

## 2009 Universal Periodic Review

9. During the 2009 UPR, the Vietnamese government accepted a series of recommendations broadly related to criminal law reform, engagement with UN bodies, and respect for fundamental human rights. The government accepted the recommendation that it “[e]ngage in dialogue with international experts on legal developments, including on the review of its Penal Code... [and] continue to work to ensure that key pieces of legislation... are consistent with its international human rights treaty commitments.”<sup>9</sup> Further, in addition to recognizing the need to “[e]nhance cooperation with the United Nations special procedures,”<sup>10</sup> the government accepted a number of recommendations urging it to respect the fundamental freedoms protected under the ICCPR, including fair trial rights and the right to free expression and freedom of religion.<sup>11</sup>

10. However, while the government accepted these broad recommendations related to fundamental human rights, it rejected a number of reasonable, though specific, suggestions. Despite recognizing the need to respect freedom of expression, for example, the government rejected a number of recommendations related to ensuring press freedom and independence.<sup>12</sup> The government also rejected recommendations that specifically addressed arbitrary detention or the imposition of arbitrary limitations on fundamental freedoms.<sup>13</sup>

11. In commenting on the rejected recommendations, the Vietnamese government dismissed concerns regarding limitations on basic rights by noting that the nation’s domestic laws “clearly provide for freedom of press and expression in accordance with international law and practice.”<sup>14</sup> This statement largely mirrored the government’s National Report, which claimed that “laws

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with violating, among other provisions, Article 258), [13/2007](#) (democracy and rights activist charged under Article 80), [19/2004](#) (doctor and democracy activist charged under Article 80), and [1/2003](#) (lawyer and reform advocate charged under Article 88).

<sup>8</sup> See e.g. UN Working Group on Arbitrary Detention, Opinion No. [42/2012](#) (independent labor organizers Doan Huy Chuong, Do Thi Minh Hanh, and Nguyen Doan Quoc Hung, were held for long periods in solitary detention and repeatedly beaten, denied access to a lawyer before and during their trial, convicted after closed proceedings at which they were not permitted to present a defense).

<sup>9</sup> *Report of the Working Group on the Universal Periodic Review*, Human Rights Council (Oct. 5, 2009) [U.N. Doc. A/HRC/12/11](#) at ¶ 99(11) [*hereinafter* 2009 Report]

<sup>10</sup> *Id.* at ¶ 99(22).

<sup>11</sup> *Id.* at ¶ 99(44) (“Take all necessary steps to ensure that citizens can fully enjoy the rights to freedom of expression and freedom of religion.”) See also *Id.* at ¶¶ 99(44, 42, 47, 48, 50, 52, and 53).

<sup>12</sup> *Id.* at ¶ 101(referring to ¶ 41(d)) (“Ensure that the media can operate freely and independently.”). See also *Id.* (referring to ¶¶ 35(a), 35(b), 41(e), 47(b), 51(a), 59(b), 63(b), and 63(c)).

<sup>13</sup> Among the recommendations that did not enjoy the government’s support were: amending the Penal Code “to ensure that it cannot be applied in an arbitrary manner or prevent the freedom of expression,” “ensuring freedom of expression for members of the press without fear of arbitrary arrest or prosecutions,” and “allowing individuals to speak out on the political system... releasing all prisoners of conscience... abolish[ing] vague ‘national security’ provisions such as articles 84, 88, and 258 used to convict those who voice dissent against the Government or its policies.” *Id.* at ¶ 101 (referring to ¶¶ 63(c), 64(d), 66(a), and 66(b)).

<sup>14</sup> *Views on Conclusions and Recommendations, Voluntary Commitments and Replies Presented by the State under Review*, Human Rights Council (Sept. 16, 2009) Human Rights Council, [UN Doc. A/HRC/12/11/Add.1](#) at ¶ 11.

related to national security are in conformity with [national] socio-economic and political conditions as well as the international laws that Viet Nam has acceded to,” and that there “are no so-called ‘prisoners of conscience’ and no one is arrested for criticizing the government.”<sup>15</sup>

### **Expanded Use of Arbitrary Detention in Violation of International Law**

12. While the government’s recognition during the 2009 UPR that human rights “are the universal values of mankind”<sup>16</sup> is to be welcomed, it must also acknowledge that the continued use of national security charges to punish peaceful dissent is inconsistent with its freely undertaken treaty obligations.

13. Since the 2009 UPR—and especially beginning in 2011 when pro-democracy movements swept across the Middle East and North Africa—rights groups have documented increased incidences of arbitrary detention by the Vietnamese government. The imprisonment of activists in Vietnam rose in 2011 and again in 2012, when the government sentenced at least 40 such individuals to prison terms—a number already surpassed in 2013.<sup>17</sup> The government also appears to have expanded the scope of individuals subject to prosecution on national security charges. In addition to traditional targets of arbitrary detention in Vietnam—such as democracy and religious freedom advocates—musicians, bloggers, rights advocates, and independent union organizers have all faced prosecution on national security charges in recent years.<sup>18</sup> For example, independent labor activists Daon Huy Chuong, Do Thi Minh Hanh, and Nguyen Doan Quoc Hung received sentences in 2010 ranging from seven to nine years in prison under Article 89 (disrupting national security) for attempting to organize striking workers and distributing leaflets with the workers’ demands.<sup>19</sup> Similarly, Vietnamese bloggers like Truong Duy Nhat face imprisonment on charges under Article 258 (abusing democratic freedoms) or Article 88 (distributing propaganda).<sup>20</sup>

14. Although the Vietnamese government has consistently claimed that the prosecution of activists on national security charges is consistent its international obligations, such claims are demonstrably false. Indeed, the UN Working Group has specifically and repeatedly identified this practice as inconsistent with international law.<sup>21</sup> As the Vietnamese government frequently notes, it is a party to a number of core human rights treaties, including ICCPR, which explicitly protects the right to free expression, freedom of association, freedom of religion, and the right against arbitrary detention.

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<sup>15</sup> 2009 Report, *supra* note 9, at ¶ 75. The government made a similar, though less direct, argument in its National Report when it highlighted the country’s “policy to guarantee human rights while strictly punishing violations of the law...” 2009 National Report: Vietnam, Human Rights Council, UN Doc. [A/HRC/WG.6/5/VNM/1](#) (Feb. 16, 2009) at ¶ 26.

<sup>16</sup> 2009 Report, *supra* note 9, at ¶ 6

<sup>17</sup> [Testimony of John Sifton, Asia Advocacy Director for Human Rights Watch](#), Hearing: Highlighting Vietnamese Government Human Rights Violations in Advance of the U.S.-Vietnam Dialogue (Apr. 11, 2013), US House of Representatives Committee on Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations.

<sup>18</sup> See [2012 Country Reports on Human Rights Practices: Vietnam](#), U.S. Dept of State, at §§ 1(d) and 2(a).

<sup>19</sup> UN Working Group on Arbitrary Detention, Opinion No. [42/2012](#).

<sup>20</sup> [Vietnamese Blogger Arrested for “Anti-State” Writings](#), Radio Free Asia (May 27, 2013); [Bloggers Imprisoned in Mass Sentencing in Vietnam](#), Committee to Protect Journalists (Jan. 9, 2013).

<sup>21</sup> See *supra* note 7.

15. While the universal rights outlined in the ICCPR may be subject to some limitations in certain circumstances, the UN Human Rights Committee (Committee) has consistently emphasized the narrowness of such limitations. The Committee, which is tasked with interpreting obligations arising under the ICCPR, has noted that “when a State party imposes restrictions on the exercise of freedom of expression these may not put in jeopardy the right itself.”<sup>22</sup> In this context, the Committee held that such restrictions “may never be invoked as a justification for the muzzling of any advocacy for multi-party democracy, democratic tenants and human rights.”<sup>23</sup> However, it is this very activity that continues to result in long prison sentences under Vietnam’s national security laws. As such, the government’s continued practice of imprisoning peaceful activists, bloggers, and dissidents is clearly inconsistent with Vietnam’s freely undertaken obligations under international law.

### **Conclusion and Recommendations**

16. The Vietnamese government has a well-documented history of arbitrarily detaining individuals in response to their legitimate exercise of fundamental human rights. Although the government accepted a number of recommendations broadly related to freedom of expression and religion during the 2009 UPR, it rejected recommendations specifically related to arbitrary detention and incorrectly asserted that its use of national security charges is consistent with international law. In fact, the government’s policy of jailing independent critical voices on national security charges—a practice which has worsened in recent years—is inconsistent with the government’s freely accepted obligations under the ICCPR. In light of the above, Freedom Now submits the following recommendations:

- Immediately release and cease prosecuting individuals on national security charges because they peacefully exercised a fundamental human right protected under the ICCPR, including the right to freedom of expression, association, and religion.
- Revise provisions of the Penal Code, specifically Articles 78 through 92 and Article 258 to specifically protect the right to peaceful freedom of expression, association, and religion.
- Ensure that individuals charged with national security violations are afforded internationally recognized standards of due process.
- Fully cooperate with, respond to, and follow the recommendations of all Human Rights Council special procedure mandate holders—including the UN Working Group on Arbitrary Detention.

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<sup>22</sup> UN Human Rights Committee, [General Comment 34](#) at ¶ 21.

<sup>23</sup> *Id.* at ¶ 23.