

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE

Prior to the Adoption of the List of Issues
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Vietnam



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I. Summary of the submission

This submission to the Human Rights Committee (ICCPR) on Vietnam highlights violations of the provisions of the International Covenant on Civil and Political Rights (ICCPR – “the Covenant”) prior to the adoption of the List of Issues, for its 140th Session.

ACAT-France, Freedom House and Viet Tan primarily recommend the following for Vietnam to uphold its treaty obligations, more than 40 years after the ratification of the ICCPR:

- Ratify the optional protocol of the ICCPR to allow the Human Rights Committee to receive individual complaints with regards to the Vietnamese government failing to meet standards in relation to ICCPR.
- Provide statistical data on the use of the death penalty in Vietnam since 2017, including the number of sentences, executions, and commutations during the reporting period.
- Remove ambiguous provisions of the 2015 Penal Code (109 – subversion, 117 - Propaganda against the Vietnam state, and 331 - Abuse of democratic freedoms) which have frequently been used to arrest and sentence journalists, bloggers, and human rights defenders to lengthy prison terms, and provisions within the 2016 Press Law which state that the role of the press is to be the “voice of the Party”.
- Immediately release all people sentenced under these ambiguous laws and/ or victims of miscarriages of justice, including people who are currently on death row.



II. Introduction

- ACAT-France, Freedom House and Viet Tan hereby submit a List of Issues Prior to Reporting (LOIPR) to the Human Rights Committee to anticipate the 5th periodic report of Vietnam under the International Covenant on Civil and Political Rights (ICCPR – “the Covenant”).
- Vietnam has ratified the Covenant in 1982. It is significant that several provisions of this treaty are still not fully implemented to this day, more than 40 years after this ratification. We question the level of commitment of Vietnam to uphold its treaty obligations.
- Overall, human rights’ violations have significantly increased in Vietnam since the last review of the State’s implementation of the Covenant for 2019-2022. For example, more and more journalists have been arbitrarily detained by the authorities, on the sole grounds of their activities. Also, the Vietnamese government has adopted laws and implemented measures which resulted in grave violations of fundamental rights, such as the freedom of expression, as seen with Force 47, the recent Vietnamese new army’s cyber unit.
- The international community and civil society unanimously highlighted the gap between policy, claims and practice regarding the implementation and respect of the ICCPR in Vietnam. It seems like the State party, the Vietnamese Communist Party (VCP) follows a similar path to China’s, dealing with their own visions of human rights.



III. Report on specific articles of the International Covenant on Civil and Political Rights (ICCPR — “the Covenant”)

Article 6 (Right to life)

According to the State party’s report, in conjunction with the mid-term report submitted in March 2021, “*Vietnam still applies death penalty in conformity with provisions in Article 6 of the Covenant. Vietnam considers death penalty as the last resort and applies to a very few extremely serious crimes (...)*”.

However, these declarations do not reflect reality, as the case of Ho Duy Hai shows. He has been arrested, convicted of murder, and sentenced to death in 2008 by a local court, for the murder and robbery of two women. Since then, he has spent 16 years on death row, even though there has been a lot of suspicion regarding the evidence and proceedings of the case. His conviction has solely been based on its confession, that he repudiated later saying he has been forced to accuse himself. Irregularities of the case have been spoken out by many public voices who called for a revisit of the case. In 2020, the Supreme People’s Procuracy of Vietnam determined that the case suffered from “*serious procedural proceedings*”, requesting a cassation trial. This request has not been granted and Ho Duy Hai is still facing the death penalty. Many other faced and are still facing similar situations.

Ho Duy Hai’s case is one of many which exemplifies how the Vietnamese law and judiciary system allow for the unjust application of the death penalty, applied because of a miscarriage of justice. Therefore, the Vietnamese government cannot state that the death penalty is applied in conformity with provisions in Article 6 of the Covenant. Indeed, according to UN Human rights office spokesperson in a comment made on the 11th of August 2023 on an imminent execution in Vietnam, in a case similar to Ho Duy Hai’s: “*the use of confessions extracted under torture that results in a death sentence violates both the absolute prohibition of torture as well as fair trial guarantees, rendering the sentence arbitrary and a violation of the right to life, as set out in Article 6 of the International Covenant on Civil and Political Rights, to which Viet Nam is a state party*”.



Furthermore, the Vietnamese government needs to clarify the exact meaning and scope of “*extremely serious crimes*”, since the Vietnamese Criminal Code is unclear, except that “*extremely serious crime means a crime whose danger to society is enormous and for which the maximum sentence of the bracket defined by this Code is from over 15 years to 20 years imprisonment, life imprisonment, or death*”. As such, Vietnamese laws can lead to unlawful sentencing. For example, articles 109 (“*activities against the people’s government*”), and 117, which forbids the distribution of propaganda against the State (“*making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam*”) are the most controversial provisions of the Vietnamese Criminal Code falling into that category of “**most serious crimes**”. These articles have been condemned by the international community because of their vagueness

Moreover, it is estimated that around 1200 people are currently being sentenced to death in Vietnam, and, in 2023, from the 14th to the 18th of August and from the 21st to the 25th of August, some public information revealed that during these two periods alone, twelve death sentences have been handed down by Vietnamese courts, suggesting that the numbers of death sentences issued during the year might have been much higher. This tendency seems to be inconsistent with the claim that the death penalty is only applied to the most serious crimes.

Also, the Vietnamese government declares that “*the execution of the death sentence is carried out in accordance with the protocols and procedures provided for in Article 367 of the CrPC, and Articles 77, 78, 79, 80, 81, 82 and 83 of the law on execution of criminal judgments*”, although there is no guarantee that the execution of a death sentence is compliant with human rights standards, since there is no transparency or public data in this matter since 2017.

According to the Vietnamese government, regarding commutation and/ or clemency, “*this power of the State President demonstrates the humanity of the State towards offenders of extremely serious crimes, thus opening up another door for any person sentenced with a death penalty to have an opportunity to continue his/her life*”. However, no public data is available as to the number of commutation and clemency given, or regarding the criteria of eligibility.

Article 7 (Prohibition of torture or other cruel, inhuman or degrading treatment or punishment) _____

According to the State party's report, "*the Penal Code (PC) stipulates 3 crimes relating to torture as defined by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), namely the use of brutal treatment (Article 373), obtainment of testimony by duress (Article 374), or bribing or forcing another person in declaring or providing documents (384) (...). The PC also contains provisions on other relevant crimes, such as deliberate infliction of bodily harm by a law enforcement officer in performance of their official duties (Article (137) (...), abuse of position or power to hold a person in temporary detention or custody against the law (Article 377). Hence the PC ensures that acts of torture are handled in line with the concept in the CAT*". Still, torture is happening in prisons. Several political prisoners died of so-called "mysterious deaths" (according to the authorities) since the last review of Vietnam.

Documented cases of these deaths exist. Do Cong Duong was a citizen journalist, working mainly on land rights issues. He was in good health before his arrest in 2017, but he died in prison in August 2022. Phan Văn Thu was the leader of a buddhist sect that became outlawed. He was sentenced to life in prison in 2012. His right to be released on medical grounds was denied. He finally died in prison in November 2022. Huynh Huu Dat was a pro-democracy activist. While in prison, he lacked proper healthcare although he reportedly suffered from cancer and an unknown liver condition. He died in November 2022. Dao Quang Thuc was a pro-democracy activist. He officially died in December 2019 in prison because of a brain hemorrhage and lung infection. Doan Dinh Nam was a member of a buddhist sect that became outlawed by the current Vietnamese government. He suffered poor health condition. He died in October 2019, reportedly on kidney's failure. All of them were victims of torture.

Psychiatric hospitals are also places of torture for political prisoners. Le Anh Hung is a journalist and pro-democracy activist who has been sent to a psychiatric facility twice, against his will. Trinh Ba Phuong is a land rights activist who was kept in the Central Psychiatric Evaluation Center during a month against a month, kept in a small cell and under constant watch by the police. He was then sent back to prison.

At least seven journalists detained during the reporting period suffered numerous instances of physical beatings by prison officials and/or denial of medical treatment notwithstanding serious illness. One such case pertained to the beating and choking of a pregnant journalist who, while in prison, had advocated for other female prisoners and spoke out about prison conditions.

Articles 9 (Liberty and security of person) and 10 (Humane treatment of persons deprived of their liberty)

According to the State party's report, *"there is no such thing as prolonged incarceration without trial, arbitrary imprisonment, or solitary confinement in Viet Nam"*. However, this is false. The report on the Working Group on Arbitrary Detention (WGAD), made during the 54th session of the Human Rights Council, explicitly concludes that in 2022 only, at least 5 political prisoners were considered victims of arbitrary detention by these experts : Chau Van Kham (opinion n° 13/2022), Nguyen Bao Tien (opinion n° 35/2022), Tran Duc Thach (opinion n° 40/2022), Nguyen Ngoc Anh (opinion n° 43/2022) and Do Nam Trung (opinion n° 86/2022).

Most of these prisoners have been arrested under the controversial articles 109, 113 and 117 of the Vietnamese Penal Code. Yet, these articles have been considered "vague and/or overly broad" by the WGAD. Therefore, people arrested under this law are more likely to be exposed to arbitrary arrest and/or detention.

Besides, this statement is contrary to the testimonies of former Vietnamese detainees recently received by ACAT-France and Viet Tan, such as Ho Duc Hoa, who got released recently, who make a clear reference to the existence of solitary confinement in Vietnamese prisons, especially for political prisoners.

According to the State party's report, *"detention facilities have been seriously observing the laws and regulations on entitlements for prison inmates. Each inmate is guaranteed more than two-meter square of space (...) Cells are well-lit, ventilated and kept clean. Diets are provided in sufficient quantity and quality appropriate to each case in accordance with the law. Diet, clothing, living space, and healthcare entitlements for inmates are stipulated by law and strictly observed in Vietnam."* Also, *"inmates may make phone calls, send letters to their family, and every month may meet their family members once, for no longer than an hour"*. And *"if sick, an inmate is entitled to diagnosis and over-the-counter medicines, and are treated at the clinic"*. These statements are false, for several reasons.

First of all, these statements are contrary to the testimonies of former Vietnamese detainees recently received by ACAT-France and Viet Tan who experienced the lack of access to proper healthcare for their medical condition, no access to safe drinking water, diets provided in insufficient quantity and quality... For example, one of them, Tran Hoang Phuc, said he already found worms inside the vegetables given to him in prison. He also highlighted that *"the main issue is poor hygiene"*, resulting in *"all prisoners having issues with skin and digestion"*. Former detainees alert on an overall and concerning lack of medicine in prisons.



These statements are also contrary to the testimony of Nugyen Van Hoa, a Catholic activist and regular contributor to Radio Free Asia, who suffered numerous severe beatings, solitary confinement stays, and other incidents of mistreatment while serving seven years in prison following his arrest in January 2017. He was also denied medical attention for a tumor. He was forced to testify against other activists under duress of assault, causing him to later recant his statements. He is still being prevented from regularly calling or otherwise communicating with his family. Following a seven-year sentence, he will also serve three years of probation, which we understand to be house arrest.

According to Tran Hoang Phuc, *“almost every prison [in Vietnam] has a specific section for political prisoners”*, who are treated more badly and severely than other prisoners, in violation of article 26 of the principle of non-discrimination guaranteed by the Vietnamese Penal Code: *“all persons are equal before the law (...) the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as political or other opinion”*.

Finally, the mistreatment and abuse suffered by journalists imprisoned for asserting their fundamental rights to expression and opinion is a pervasive issue in Vietnam. Over the past five years, at least one journalist who also frequently commented on political affairs, including on social media platforms, died from an illness contracted in prison, despite numerous requests for medical treatment which went unheeded.



Article 14 (Rights to due process and a fair trial) —————

According to the State party's report, "*in Viet Nam, every person is equal before the law and entitled to the equal exercise of procedural rights and obligations before the Court as specified in the 2013 Constitution (Article 16), the Civil Procedure Code (Article 8), the Criminal Procedure Code (Article 9). The independence and impartiality of judges in the trial panel and at the court hearing is clearly guaranteed.*"

Also, according to the State party's report, "*the PC protects and strictly handles acts that infringe upon the rights to freedom of speech, freedom of press, access to information. (...) The issue of information freedom and transparency is highly regarded by the State.*" These statements are false for several reasons.

First of all, as seen previously, journalists die in detention due to neglect or ill-treatment and physical abuse of detained journalists, and they are being imprisoned for lengthy sentences.

Journalists also being denied the right to a fair trial and appeals process. There have been at least two reports of journalists being subjected to a closed-door trial or an unfair process over the past five years. Notably, journalist Phạm Đoan Trang was sentenced to nine years in prison following a one-day trial marked by procedural abuses and violations of her fundamental rights where her legal defense was prohibited from calling witnesses or meaningfully contesting the evidence relied on by the prosecution. The defense team was only given a few weeks to prepare for the trial notwithstanding 11,000 pages of 7 evidence to review.

VIETNAM'S PRESS FREEDOM INDEX



In the first half of 2023, at least 20 journalists, activists, and human rights defenders were arrested.³⁴ Journalists in Vietnam have also been repeatedly subject to house arrest, often on national holidays or during visits by foreign state officials to prevent gatherings or the voicing of dissent. At least three journalists have been placed under house arrest over the past five years. Many others reported not being informed of the reasons for their house arrest.

At least five journalists were found guilty of “*abusing democratic freedom rights*” under Article 331 of the 2015 Criminal Code for posts made to social media accounts and banned from working as journalists for three years after serving sentences ranging from two to four and a half years in prison. An online newspaper had its press license suspended for three months after publishing allegedly false and inappropriate information.

Finally, in the last five years, the Vietnamese state significantly increased its control over the internet and social media platforms in its attempts to curb media freedom and the freedom of expression and opinion via draft Decree 72, which enforces mandatory user ID verification, increases privacy risks associated with the storage of sensitive data, enables cross-border monitoring and takedown of content, and expands the scope of government’s blocking powers. Restricted access to information online significantly undercuts journalistic and press freedoms as many Vietnamese use social media platforms to communicate and report on political affairs. During the same time, at least 15 journalists were arrested and/or imprisoned under anti-state propaganda charges stemming from their activities on social media platforms.



Article 19 (Right to freedom of expression)

In Vietnam, freedom of expression is completely blocked by articles 117 and 331 of the Penal Code. Article 117, which is “*manufacturing, storing, disseminating information, materials, and objects with the aim of opposing the State of the SRV*”: this law is very vague, and Vietnamese authorities use it as a multifaceted net to arrest almost anyone who publicly expresses an opinion different from that of the VCP. There is no standard to differentiate freedom of expression from propaganda against the state. Everything is subject to the arbitrary judgment of the Ministry of Public Security. Many citizens are arrested and sentenced under Article 117 simply for exercising their right to freedom of expression by posting their political opinions on social media.

Article 331, which is “*abusing democratic freedoms to harm the interests of the State, the legitimate rights and interests of organizations and/or citizens*”: this law is the twin of Article 117. It allows for the arrest of anyone who “*abuses freedom of expression, freedom of the press, freedom of religion, freedom of association, and other democratic freedoms.*” Once again, there are no criteria to define what constitutes abuse and what constitutes the normal exercise of the freedoms to which citizens are entitled.

These 2 articles of the penal code are used massively to imprison many Vietnamese citizens. Here is a non-exhaustive list of Vietnamese citizens imprisoned under article 117 since 2019, with their sentences: Bui Tuan Lam (5,5 years), Bui Van Thuan (5 years), Can Thi Theu (8 years), Dinh Van Hai (5 years), Do Nam Trung (10 years), Le Huu Minh Tuan (11 years), Le Manh Ha (8 years), Le Trong Hung (5 years), Le Van Dung (5 years), Nguyen Duc Hung (5,5 years), Nguyen Duy Linh (5 ans), Nguyen Lan Thang (6 years), Pham Chi Dung (15 years), Pham Doan Trang (8 years), Tran Hoang Huan (8 years), Tran Quoc Khanh (6,5 years), Trinh Ba Phuong (10 years), Trinh Ba Tu (8 years).

And here is a non-exhaustive list of Vietnamese citizens imprisoned under article 331 since 2019, with their sentences: Cao Thi Cuc (3 years), Dang Nhu Quynh (2 years), Le Anh Hung (5 years), Le Chi Thanh (3 years), Le Thanh Hoang Nguyen (4 years), Le Thanh Nhat Nguyen (4 years), Le Thanh Nhi Nguyen (3,5 years), Le Thanh Trung Duong (4 years), Le Tung Van (5 years), Nguyen Hoai Nam (3,5 years), Phan Bui Bao Thy (1 year), Phan Huu Diep Anh (1,5 years), Y Wo Nie (4 years).



The Cybersecurity Law, which came into force in 2019, strengthened the legislative arsenal to repress the right to information in the digital space. Decrees No. 15/2020/ND-CP and No. 119/2020/ND-CP, mandate heavy fines for vaguely defined violations such as “*posting information that is not suitable to the interests of the country and the people*” or “*disseminating reactionary information*” online. Decree No. 15/2020/ND-CP provides fines for offenses committed on social networks, which are vaguely defined and open the way to arbitrary procedures. In January 2022, these two decrees have been amended to increase the fines imposed on the media for the publication of “*false information.*”

In August 2022, the authorities issued Decree No. 53/2022/ND-CP, which details the implementation of the Cybersecurity Law. Its Article 26 specifies that foreign technology companies failing to comply with government requests to remove user content and data will be obliged to localize their data in the country and open local offices upon orders by the Minister of Public Security, giving the Vietnamese authorities important leverage over foreign companies.

Between January 2020 and June 2023, nearly 10,000 Facebook posts were blocked for Vietnamese Internet users at the request of the authorities. None of these posts are banned in other countries. For comparison, only 2000 posts were blocked over the period 2017-2019.

In addition to the Cybersecurity Law, Vietnamese authorities are using loopholes in Facebook's community guidelines as another way to censor online content, mass reporting content with the aim of severely restricting its distribution online inside Vietnam information that they do not want to see spread among the population.



Article 22 (Freedom of association)

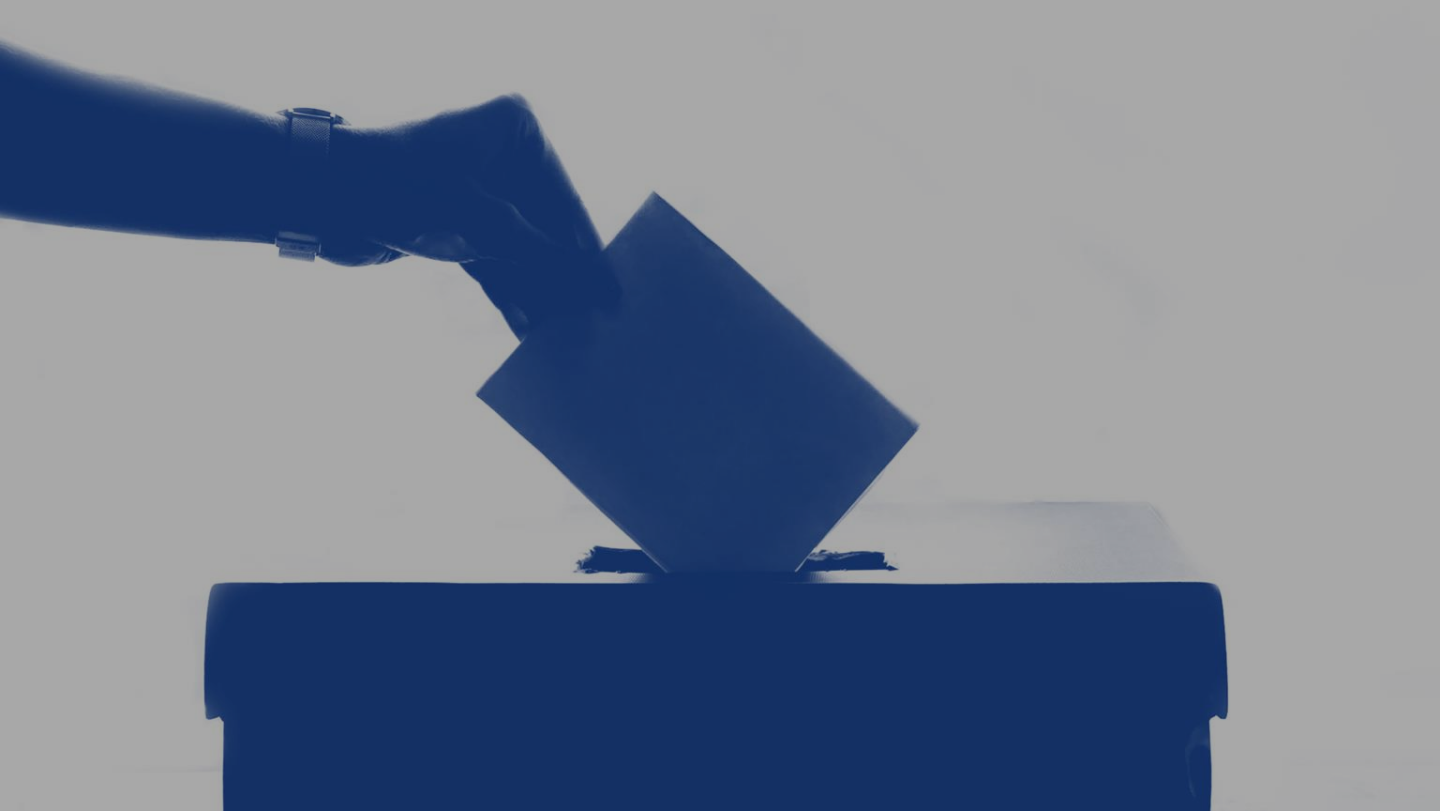
In a one-party state like Vietnam, civil society is more “*tolerated*” than encouraged. The Vietnamese authorities consider NGOs and civil society as a threat that could ultimately lead, through “*peaceful evolution*”, to multi-partyism and political pluralism.

The VCP organizes and controls civil society through six umbrella organizations: the Fatherland Front, the Youth Union, the General Confederation of Labor, the Women's Union, the Veterans' Association, and the Farmers' Association. Although citizens are supposed to be free to establish associations, only those approved by the Fatherland Front can exist and operate legally.

Due to this filtering organized by the state, many organizations have been created without any registration. They operate in various fields such as humanitarian work, the environment, sport, religious worship, etc. Without legal existence, these organizations can find it difficult to develop and receive subsidies from international organizations such as the United Nations.

On the trade union level, Vietnam has still not ratified Convention No. 87 of the International Labor Organization on freedom of association and protection of the right to organize, nor issued a decree allowing worker representation and collective bargaining.

Legally registered civil society organizations are also not immune from repression. Since 2021, several founding leaders of environmental NGOs have been imprisoned on charges of “*tax evasion*” such as Nguyen Thuy Khanh, founder of Green Innovation and Development Center (GreenID) who was sentenced to 21 months from prison on 21 November 2022. On 28 September 2023, Hoang Thi Minh Hong, founder of CHANGE which promotes the fight against climate change, was sentenced to 3 years in prison on the same charge.



Article 25 (Right to participate in public affairs, voting rights and the right of equal access to public service) —————

Article 4 of the Vietnam’s Constitution specifies that the Vietnamese Communist Party (VCP) *“is the leading force of the State and society”*. This de facto excludes any other political entity from public life. All elections are organized by the Communist Party, with only candidates approved by it.

In December 2020, the 3 administrators of a Facebook group called *“Political and Economic Discussions”* were sentenced to prison terms under article 331 of the Penal Code (abuse of democratic freedoms). These 3 people are Nguyen Dang Thuong (18 months in prison), Huynh Anh Khoa (15 months in prison) and Tran Trong Khai (12 months in prison).

In 28 October 2021, Tran Quoc Khanh, who publicly announced that he wanted to run in the legislative elections as an independent candidate, was sentenced to 6 years in prison under article 117 of the Penal Code (propaganda against the state). Khanh ran a Facebook page called *“The Voice of the Citizen”* where he criticized government policies.

On 3rd July, 2023, the authorities sentenced Phan Son Tung to 6 years in prison (again under article 117). In 2022, Phan Son Tung publicly declared the creation of the *“Vietnam Prosperity Party”*. Before his arrest, Phan Son Tung had a YouTube channel called *“For a Clean Vietnam”* with numerous videos totaling millions of views.

IV. Recommendations

- 1.** Ratify the optional protocol of the ICCPR to allow the Human Rights Committee to receive individual complaints with regards to the Vietnamese government failing to meet standards in relation to ICCPR.
- 2.** Ratify the optional protocol of the ICCPR to abolish the death penalty in Vietnam.
- 3.** Immediately release all people victims of miscarriages of justice and currently on death row.
- 4.** Provide statistical data on the use of the death penalty in Vietnam since 2017, including the number of sentences, executions, and commutations during the reporting period.
- 5.** Remove ambiguous provisions of the 2015 Penal Code (109 – subversion, 117 - Propaganda against the Vietnam state, and 331 - Abuse of democratic freedoms) which have frequently been used to arrest and sentence journalists, bloggers, and human rights defenders to lengthy prison terms, and provisions within the 2016 Press Law which state that the role of the press is to be the “*voice of the Party*”.
- 6.** Immediately release all people sentenced under these ambiguous laws.
- 7.** Offer sufficient guarantees regarding the respect of decent standards of detention in Vietnamese prisons.
- 8.** Allow all Vietnamese detainees access to their families, legal counsel and medical care.
- 9.** Ensure the absolute prohibition of torture in Vietnamese prisons.
- 10.** Repeal the Cybersecurity Law used by the authority to censor and control the internet including access to social media accounts, and user information published on social media platforms.
- 11.** End all legal harassment and intimidation of journalists and strive to protect journalists from all forms of violence, pressure, discrimination, unfair legal proceedings, and all attempts aimed at preventing them from accomplishing their mission or weakening their ability to do so in accordance with international norms, especially the ICCPR.
- 12.** Allow journalists to report on politically sensitive news and include perspectives that are critical of the state to produce balanced news articles.
- 13.** Dismantle Force 47 to prevent any form of online harassment or intimidation.