

VIETNAM

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*Ngo Huong\**

## Part 1: Overview of Vietnam

### A. Country Background

Vietnam Facts	
Geographical size	332,698 sq km
Population	92.70 million <sup>1</sup>
Ethnic breakdown <sup>2</sup>	Main ethnic groups: Kinh (85.7%) Tay (1.9%) Tai (1.8%) Muong (1.5%)
Official language	Vietnamese
Literacy rate (aged 15 and above)	97.3% <sup>3</sup>
Life expectancy	75.9 <sup>4</sup>
GDP	US\$202.6 billion (per capita US\$2,185) <sup>5</sup>
Government	A one-party socialist republic led by the Communist Party of Vietnam (CPV). The unicameral popularly elected National Assembly is the supreme organ of government, electing the President who is head of state.
Political and social situation	Although the CPV maintains a stranglehold on political power, recent amendments/proposed amendments to laws and increased public participation in decision-making, has led to the inclusion of human rights into legislation. However, in some instances, an implementation gap exists between what the law preaches and what the government practices.

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<sup>1</sup> Data from 2016. 'Vietnam' The World Bank, available at <http://data.worldbank.org/country/vietnam>, accessed on 18 October 2017.

<sup>2</sup> Data from 2009. 'The 2009 Vietnam population and housing census: Completed results' Central Population and Housing Census Steering Committee, 2010, available at [http://portal.thongke.gov.vn/khodulieudanso2009/Tailieu/AnPham/KetQuaToanBo/3\\_Ketqua-toanbo.pdf](http://portal.thongke.gov.vn/khodulieudanso2009/Tailieu/AnPham/KetQuaToanBo/3_Ketqua-toanbo.pdf), accessed on 20 October 2017.

<sup>3</sup> Data from 2016. As announced by the Ministry of Education and Training. See, 'Vietnam's literacy rate reaches 97.3 percent' dtinews, 15 January 2016, available at <http://dtinews.vn/en/news/020/43462/vietnam-s-literacy-rate-reaches-97-3-percent.html>, accessed on 17 October 2017.

<sup>4</sup> Data from 2015. The World Bank (see note 1 above).

<sup>5</sup> Data from 2016. The World Bank (see note 1 above).

### *History and system of governance*

Ideas about human rights and democracy were assimilated by pre-World War II nationalist elites who had been exposed to western democratic norms and institutions. And indeed, during the anti-colonisation period, the acceptance of democratic norms proved a vital tactic in nationalist struggles for independence. Similar to other countries in Southeast Asia at the time, Ho Chi Minh made a unilateral Declaration of Independence from France in 1945, incorporating a quote from the American Declaration of Independence (1776).<sup>6</sup> He went on to further incorporate human rights into the 1946 Constitution. Although this gave birth to a (self-proclaimed) new republic and supposedly democratic nation, western concepts of human rights remain controversial in a nation where political control is based firmly in the realms of Marxist-Leninist ideology.

Initiated in 1945, the August Revolution against French colonial rule led to the development of a highly centralised political and economic system in the northern region of the country. In 1946, the first constitution proclaimed a communist state in North Vietnam leading eventually to three decades of war between North and South Vietnam; a conflict which finally ended in 1975. Underpinned by Marxist-Leninist ideology which pervades all aspects of social and political life, economics, and systems of governance, thereafter, the unified state of Vietnam was led by the Communist Party (CPV). Indeed, the revised constitutions of 1959 and 1980 were entirely socialist in nature, and to this day, Vietnam remains a socialist state governed by a one-party system. After Doi Moi (or Economic Renovation) was proclaimed in 1986, and the contemporaneous collapse of socialism led to political fragmentation in the USSR, Vietnam shifted radically to an ‘open-door’ economic policy and pushed for economic integration on a global scale based on the principle of market economics.

When Doi Moi was initiated, although political conservatives sought to attract investment funds and technology, they also feared pressures for political freedom, respect for human rights, the emergence of civil society, and wider concepts of governance, would undermine CPV dominance.<sup>7</sup> However, in response to economic liberalisation, Vietnam has merely shifted from being a ‘centralised totalitarian state’ to a ‘decentralised authoritarian state.’ On the other hand, decentralisation also facilitated a distribution of power, and in its wake, pluralism in the political, social, and cultural spheres of society. While the concept of individual human rights is alien to communist

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<sup>6</sup> 1946 Constitution of the Democratic Republic of Vietnam, Chapter II states: “Tất cả mọi người đều sinh ra có quyền bình đẳng. Tạo hóa cho họ những quyền không ai có thể xâm phạm được; trong những quyền ấy, có quyền được sống, quyền tự do và quyền mưu cầu hạnh phúc” (which translates as: “We are all born equal ... We all have non-derogable rights by nature, including the rights to life, freedom, and the pursuit of happiness”). Compare this to the American Declaration of Independence (1776) which states: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness”

<sup>7</sup> Dinh, QX, ‘The political economics of Vietnam’s transformation process’ *Contemporary Southeast Asia*, 2000, Vol 22, No 2, pp 360-388.

ideology, human rights in Vietnam are also heavily influenced by the Chinese political-moral system, under which Confucian values stress social duties, hierarchy, and filial obligations. Further complicating the mix, for decades, understanding of human rights in the region has been bound up with contested political positions.<sup>8</sup>

### *Current political and social situation*

Of particular significance in 2016 was May's National Assembly (NA) general election which followed Communist Party Congress XII in January. Notably, a CPV resolution stipulated that Central Committee members should neither stand for election nor be nominated without personnel planning.<sup>9</sup> More notably was the quinquennial leadership change that took place at the Congress.<sup>10</sup> The 500 seats were contested by 900 Communist Party members nominated by central or local authorities, plus 11 independent candidates, meaning only 4.2% of candidates were not affiliated with the CPV.<sup>11</sup>

Following the election of Nguyen Phu Trong as CPV General Secretary for a second term, the Socialist Republic of Vietnam remains an authoritarian state ruled by the CPV and led by the General Secretary, Prime Minister Nguyen Xuan Phuc, President Tran Dai Quang, and Chairwoman of the NA, Nguyen Thi Kim Ngan. Challenges facing the new government include an economic downturn and the need for institutional reform, a process that will hopefully make the government more a 'servant' to its people than a 'regulatory' body.<sup>12</sup>

### *Trans-Pacific Partnership*

Following Nguyen Phu Trong's visit to the US in 2015, another notable event of 2016 involved the visit of then US President Barack Obama who stressed the importance of

<sup>8</sup> Gammeltoft, T, and Hernø, R, 'Human rights in Vietnam: Exploring tension and ambiguities' in Jacobsen, M, and Brunn, O (eds), *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*, Democracy in Asia, Series No 6, London: Curzon Press and Nordic Institute of Asian Studies, 2000.

<sup>9</sup> In December 2015, following Decision No 224 on vote procedures within the Communist Party, the CPV held a meeting to agree on nomination processes for high leadership positions to be voted for at the January 2016 Congress. See, 'Đại hội Đảng toàn quốc lần thứ XII từ ngày 20 đến 28-1-2016' Tuổi Trẻ Online, 21 December 2015, available at <https://tuoitre.vn/dai-hoi-dang-toan-quoc-lan-thu-xii-tu-ngay-20-den-28-1-2016-1024888.htm>, accessed on 20 November 2017.

<sup>10</sup> At Congress Party XII (8 January 2016), many term XI party leaders were ousted including President Trương Tấn Sang, Prime Minister Nguyễn Tấn Dũng, and Chairman of the National Assembly, Nguyễn Sinh Hùng.

<sup>11</sup> See, 'Đại biểu Quốc hội ngoài Đảng 'rất ít'' BBC, 8 June 2016, available at [http://www.bbc.com/vietnamese/vietnam/2016/06/160608\\_national\\_assembly\\_non\\_party\\_members](http://www.bbc.com/vietnamese/vietnam/2016/06/160608_national_assembly_non_party_members), accessed on 17 October 2017.

<sup>12</sup> In his inaugural speech in 2016, Prime Minister Nguyen Xuan Phuc said: "Tôi sẽ cùng tập thể Chính phủ kế thừa và phát huy những thành tựu của 30 năm đổi mới; tranh thủ tối đa thời cơ, thuận lợi; khắc phục hạn chế, yếu kém; vượt qua khó khăn thách thức; nỗ lực xây dựng Chính phủ kiến tạo phát triển, liêm chính, hành động quyết liệt, phục vụ Nhân dân" (which may be translated as: "As head of the highest public administration, together with the government, I will uphold the achievements of 30 years of Doi Moi, take advantage of opportunities, overcome limitations and weaknesses, and overcome difficulties and challenges, to create development with integrity and take decisive action to serve the people"). See, 'Lời tuyên thệ và phát biểu của Thủ tướng trước Quốc hội' VGP News, 26 July 2016, available at <http://baochinhphu.vn/Cac-bai-phat-bieu-cua-Thu-tuong-Loi-tuyen-the-va-phat-bieu-cua-Thu-tuong-truoc-Quoc-hoi/282500.vgp>, accessed on 17 December 2017.

having Vietnam as a strategic partner in the region, both to enhance security and to encourage speedy adoption of the Trans-Pacific Partnership (TPP) free trade agreement.

Some comment is necessary given the TPP's political importance to Vietnam and new American President, Donald Trump's cancellation of America's commitment to it in 2017. Over the course of a decade, the TPP became a focus for international relations between Vietnam, 11 other signatories, and the US. As such, it signalled a renewal of friendship 40 years after America withdrew its armed forces from Vietnam in 1975. Significantly, the TPP would have allowed for investor-state dispute settlement, an instrument granting corporations the right to sue a foreign government. Under the arrangement, Vietnam would also have been required to amend its labour laws to allow workers to form independent trade unions; a litmus test for a country where the Vietnam General Confederation of Labour (VGCL) is the only legal trade union representing all workers. In its January 2016 congress, the CPV approved the TPP, pending the NA's passage vote in May 2016. Nevertheless, opposition to the TPP argued for changes as regards freedom of association and trade union independence. However, because the TPP is now in limbo, the social and political outcomes it would have promoted in Vietnam, will need to be pursued by other means.

### ***B. International Human Rights Commitments and Obligations***

Vietnam began engaging in human rights discourse when Doi Moi was introduced in 1986, thus, signalling a modest opening of political space. Indeed, it has since acceded to a number of UN human rights instruments, even though the western ideal of human rights remains controversial there. For example, this ambiguity was reflected at the ASEAN level when Vietnam joined Singapore, among other member states, in upholding the principle of 'non-interference' in the internal affairs of states. Further highlighted was the "significance of national and regional particularities and various historical, cultural, and religious backgrounds."<sup>13</sup>

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<sup>13</sup> ASEAN Human Rights Declaration, Art 7.

**Table 1: Ratification Status of International Instruments – Vietnam<sup>14</sup>**

Treaty	Signature Date	Ratification Date, Accession(a), Succession(d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	7 Nov 2013	5 Feb 2015
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		24 Sep 1982 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	29 Jul 1980	17 Feb 1982
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		9 Jun 1982 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		24 Sep 1982 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)	26 Jan 1990	28 Feb 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	8 Sep 2000	20 Dec 2001
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	8 Sep 2000	20 Dec 2001
Convention on the Rights of Persons with Disabilities (CRPD)	22 Oct 2007	5 Feb 2015

Since Doi Moi, human rights have risen in Vietnam's national policy agenda. Despite powerful economic pressures, the state has entered into many international human rights commitments (see Table 1 above), notably UN instruments, ICCPR and ICESCR in 1982. After the CRC in 1990, Vietnam did not ratify another international

<sup>14</sup> 'Ratification status for Vietnam' United Nations Human Rights Office of the High Commissioner, available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx), accessed on 17 October 2017.

convention until 2001, when optional protocols to the CRC were ratified. More recently, in 2015, Vietnam ratified conventions against torture, and on the rights of persons with disabilities. Hence, Vietnam has ratified the majority of human rights treaties with the exception of any attached optional protocols or individual complaints mechanisms. Further, Vietnam reported to both cycles of the Universal Periodic Review (UPR) in 2009 and 2014, and has also reported in a timely fashion on all conventions it is party to, except the ICCPR. Since 1994, the government also committed to ratifying a number of ILO conventions whereby labour rights would be recognised as human rights and adopted into domestic law.<sup>15</sup>

As a result of strong political will in Vietnam's leadership, the nation became a non-standing member of the UN Human Rights Council in November 2013, for the term 2014-2017, and chair of the ASEAN General Secretariat, for the term 2013-2017. Pressure to adopt and retain commitments to human rights accordingly increased persuading top political leaders to publicly assert Vietnam's commitment to human rights<sup>16</sup> as espoused in its Economic Development Strategy (2011-2020) which aims "to ensure human rights and citizen's rights for overall development."<sup>17</sup>

Although Vietnam signed and ratified its first human rights treaties (ICCPR and ICESCR) in the early 1980s, a more consistent international engagement only began in 1993 when it attended the World Conference on Human Rights in Vienna.<sup>18</sup> Prior to this, Vietnam had joined ASEAN leaders in advocating 'Asian Values' at an ASEAN meeting in Bangkok.<sup>19</sup> Promoting non-interference by states, this concept is considered more appropriate to the region than western democracy which emphasises individual freedoms rather than community, social unity, and individual duty.

<sup>15</sup> To date, Vietnam has ratified 21 ILO conventions. See, 'Ratifications for Vietnam' ILO, available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200\\_country\\_id:103004](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:103004), accessed on 30 April 2015. Accordingly, labour law, trade union law, and insurance laws were amended to include labour conditions, gender, health and safety at work, and collective bargaining provisions.

<sup>16</sup> For example, in 2014, former Prime Minister Nguyen Tan Dung said, "Chúng tôi tin rằng nhân quyền, tự do, dân chủ là xu hướng không thể đảo ngược và là đòi hỏi khách quan của xã hội loài người. VN không phải ngoại lệ, không đứng ngoài xu thế này" (which may be translated as: "We believe that human rights, freedom, and democracy are an irreversible trend and an objective requirement of human society. Vietnam is no exception to this trend"): 'Thủ tướng: Dân chủ là xu thế không thể đảo ngược' Vietnam Net, 17 October 2014, available at <http://vietnamnet.vn/vn/chinh-tri/202481/thu-tuong--dan-chu-la-xu-the-khong-the-dao-nguoc.html>, accessed on 18 October 2017.

<sup>17</sup> The Socio-Economic Development Strategy 2011-2020: "Phải bảo đảm quyền con người, quyền công dân và các điều kiện để mọi người được phát triển toàn diện" (which may be translated as: "To ensure human rights, citizen rights, and other conditions for the comprehensive development of the people"), available at <http://www.xaydungdang.org.vn/Home/vankientulieu/2011/3511/CHIEN-LUOC-PHAT-TRIEU-KINH-TEXA-HOI-20112020.aspx>, accessed on 18 October 2014.

<sup>18</sup> In 1982, Vietnam ratified the Convention on Economic, Social, and Cultural Rights, the International Convention on Civil and Political Rights, the Convention on the Elimination of all forms of Discrimination against Women, and the International Convention on the Elimination of all forms of Racial Discrimination.

<sup>19</sup> Vietnam joined ASEAN in 1995.

The next generation of legal changes regarding human rights was triggered when Vietnam embraced global economic integration, via World Trade Organization (WTO) accession in 2005, thus, necessitating changes to its domestic laws to meet requirements for WTO membership.

Another opportunity to promote human rights occurred during TPP and other free trade agreement negotiations. Accordingly, Vietnam opted to adjust its domestic legislation and systems to explicitly recognise human rights.<sup>20</sup> One condition imposed by the TPP was to recognise rights to freedom of association and trade unions. However, these have yet to trigger changes in domestic laws and, as noted above, with the TPP's collapse, it remains to be seen whether they will now be adhered to. On the up-side, Vietnam's single trade union system may be on its way out. However, the government must also introduce mechanisms to manage the new organisations, including systems to enable new unions to register since under current laws they are still considered arms of the state.

**Table 2: International and Regional Rules Affecting Vietnam's Commitments and Requirements**

Organisation	Vietnam's Commitments, Requirements, and Actions
United Nations	<ul style="list-style-type: none"> <li>• Ratified 13 UN human rights conventions</li> <li>• Became a non-standing member of the Human Rights Council in 2012</li> <li>• Committed to recognise human rights in UPR reports of 2008 and 2013</li> <li>• Reported on ICESCR in 1993 and again in 2014</li> <li>• Constitution amended in 2012 to incorporate a human rights chapter</li> </ul>
International Labour Organization	<ul style="list-style-type: none"> <li>• Adheres to ILO framework and is an active participant</li> <li>• Ratified 17 ILO conventions (including Convention No 188, and 5 of the 8 fundamental conventions) between 1980 and 1985, and since 1992</li> <li>• Has not ratified the ILO convention on freedom of association and collective bargaining and related human rights conventions</li> <li>• Ratified the Equal Remuneration Convention in 1997</li> <li>• Ratified the Convention concerning Occupational Safety and Health and the Working Environment in 1994</li> </ul>

<sup>20</sup> The TPP imposed conditions for labour standards, requiring state commitments on labour rights protection and mechanisms. In Vietnam's case, the US requested legal changes to ensure freedom of association and freedom to join trade unions. In addition, free trade agreements with the European Union posts conditions for compliance with international labour standards including freedom of unions.



Organisation	Vietnam's Commitments, Requirements, and Actions
World Trade Organization	<ul style="list-style-type: none"> <li>• Member since 2005</li> <li>• Sits on the ILO governing body as a party to bilateral and multilateral trade and investment agreements, some of which contain provisions dealing with labour matters, thus, mandating application of international labour and human rights standards</li> </ul>
Trans-Pacific Partnership	<ul style="list-style-type: none"> <li>• Aimed to provide market access for made-in-America goods and services</li> <li>• Would have required commitment to strong and enforceable labour and environmental standards, including independent trade unions</li> </ul>
Association of Southeast Asian Nations (ASEAN) <sup>53</sup>	<ul style="list-style-type: none"> <li>• Under ASEAN Declaration (1965), member nations committed to uphold the values of social harmony and consensus in political decision-making</li> <li>• Vietnam's representative became ASEAN Secretary General in 2012</li> <li>• ASEAN launched the ASEAN Human Rights Declaration (AHRD) in 2012 (to which Vietnam is a party) but non-binding AHRD is flawed as it adheres to the 'ASEAN Way' and its principle of non-interference. During negotiations, Vietnam allegedly sided with states such as Singapore and Malaysia in advocating for derogations and exceptions on the basis of, e.g. public morality and national security</li> </ul>

### ***C. National Laws Affecting Human Rights***

Vietnam suffers from an 'implementation gap' in relation to human rights. Briefly described, this refers to states ratifying human rights treaties, establishing complying laws, yet failing to respect rights in practice. As noted, Vietnam has already ratified the majority of human rights treaties and inscribed such rights into its constitution and legislation, yet the government struggles to practice what the law preaches due, one must assume, to insufficient political will.

<sup>21</sup> The ASEAN Human Rights Declaration (2012) asserts:

respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance, respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance; recognising freedom of peaceful assembly, the right to work, free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed, the right to an adequate standard of living for himself or herself and his or her family.

See, ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD, Jakarta: The ASEAN Secretariat, ASEAN, 2013, available at [http://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20\(7.%20Jul\)%20-%20ASEAN%20Human%20Rights%20Declaration%20\(AHRD\)%20and%20Its%20Translation.pdf](http://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20(7.%20Jul)%20-%20ASEAN%20Human%20Rights%20Declaration%20(AHRD)%20and%20Its%20Translation.pdf), accessed on 18 December 2017.

### *The Constitution (2013)*

Effective in 2013, Vietnam amended its constitution to include a separate chapter on human rights and the basic rights and duties of citizens.<sup>22</sup> Notwithstanding, Chapter II, Art 14 permits human rights to be restricted on grounds of national defence, national security, social order and security, social morality, and community well-being.

### *The Penal Code and the Revised Penal Code*

Moreover, as human rights NGOs have pointed out, the government also takes advantage of “vaguely worded and loosely interpreted provisions” in the Penal Code to crack down on dissent, e.g. s.79 (“activities aiming to overthrow the people’s administration”), s.87 (“undermining national unity policy”), s.88 (“conducting propaganda against the State of the Socialist Republic of Vietnam”), s.89 (“disrupting security”), s.91 (“fleeing abroad or staying abroad to oppose the people’s government”), s.245 (“causing public disorder”), and s.258 (“abusing rights to democracy and freedom to infringe upon the interests of the State and the legitimate rights and interests of organizations and citizens”).<sup>23</sup>

### *Legislative reform*

Following adoption of the 2013 Constitution, the NA embarked on a process of legislative reform. Laws on demonstrations (freedom of assembly), access to information, the criminal and criminal procedure codes, and others, were to have been amended by the end of 2015. However, the NA delayed implementation of several laws<sup>24</sup> passed in 2015 affecting the rights of citizens (including the new Penal Code, the Criminal Procedure Code, and a law on custody and temporary detention) due to flaws in the amended Penal Code.

Chapter II of the 2013 Constitution provides for the recognition of human rights and consequent state obligations in law. Progress can also be seen in the increasing acceptance of international norms and in a number of revised and new laws including the Penal Code, the Criminal Procedure Code, the Civil Code, the Civil Procedure Code, the Labour Law, and the Law on Access to Information. These laws were formulated to realise the goals of Art 25 of the 2013 Constitution, that “citizens have freedom of expression, freedom of press, access to information, freedom of assembly,

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<sup>22</sup> 2013 Constitution of the Socialist Republic of Vietnam, Chapter II.

<sup>23</sup> See, ‘World report 2016’ Human Rights Watch, available at [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2016\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf), at 638-641; and ‘Vietnam: Widespread ‘national security’ arrests’ Human Rights Watch, 19 November 2015, available at <https://www.hrw.org/news/2015/11/19/vietnam-widespread-national-security-arrests>, both accessed on 18 January 2017. Many activists and bloggers such as Nguyen Huu Vinh (also known as Anh Ba Sam) and Nguyễn Đình Ngọc (also known as Nguyen Ngoc Gia) have been in custody since 2014. Likewise, rights activists, Pham Minh Vu, Do Nam Trung, and Le Thi Minh Thy were arrested in 2015 and are now on trial for contravening s.258 of the Penal Code.

<sup>24</sup> For example, the Criminal Procedure Code, the Law on the Organization of Criminal Investigation Agencies, the Law on the Implementation of Custody and Temporary Detention, and the amended Penal Code itself.

freedom of association, and freedom of demonstration. The realisation of these rights is provided by law.”

*Access to information:* A key human right, the Law on Access to Information was passed by the NA in 2016.<sup>25</sup> Enabling citizens to access information held by the public sector, this law facilitates participation by citizens in the monitoring of government activities, thus, increasing transparency.

*Freedom of religion:* Previously covered by Parliamentary Ordinance No 21 of 2004, a new law on religion was passed on 18 November 2016. Section 24 states that: “citizens are free to pursue, or not to pursue, religions, and all religions are equal before law.” However, while government affiliated churches may hold services, other groups must, e.g. register their organisations and activities, acquire permits for building houses of worship, and inform authorities about the ordination of clergy, all of which led the Special Rapporteur on Religion or Belief to say in 2015 that “legal provisions [...] tend to give broad leeway to regulate, limit, restrict or forbid the exercise of freedom of religion or belief.”<sup>26</sup> Therefore, although the 2016 law was designed to improve on Ordinance No 21, it has to be said that it still restricts religious expression in organisations through complicated registration and operating procedures (ss.12, 16, 17, and Chapter IV).

*Freedom of association:* A law on freedom of association was drafted in 2016 but was returned to government for quality improvement and to make it better reflect the goal of freedom of association.<sup>27</sup> A law on public demonstrations was also postponed for further development. Despite being recognised in the 2013 Constitution, these laws have been pending for over 10 years. For example, in 2016, the public objected to a draft law imposing strict controls over association by the addition of a registration process and other clauses on the meaning of freedom of association; the proposed legislation was therefore postponed.<sup>28</sup>

<sup>25</sup> See, Socialist Government of Vietnam, Government Portal, available at [http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class\\_id=1&mode=detail&document\\_id=184568](http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=184568), accessed on 17 October 2017.

<sup>26</sup> See, ‘Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt’ Human Rights Council, 30 January 2015, A/HRC/28/66/Add.2, available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>; and ‘World report 2016’ Human Rights Watch, available at [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2016\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf), at 639, both accessed on 18 January 2018.

<sup>27</sup> See, ‘QH lùi thông qua luật về Hội’ Vietnam Net, 18 November 2016, available at <http://vietnamnet.vn/vn/thoi-su/quoc-hoi/qh-lui-thong-qua-luat-ve-hoi-340581.html>, accessed on 30 May 2017.

<sup>28</sup> See, ‘Bộ trưởng Nội vụ xin lùi thông qua Luật về hội’ Vietnam Net, 25 October 2016, available at <http://vnexpress.net/tin-tuc/thoi-su/bo-truong-noi-vu-xin-lui-thong-qua-luat-ve-hoi-3489204.html>; and ‘Kiến nghị hoãn thông qua Luật về Hội’ Wake It Up, available at <http://wakeitup.net/hoan-luat-hoi>, both accessed on 17 October 2017.

The Penal Code and Penal Procedure Code were amended in 2015, taking effect in 2016.<sup>29</sup> The 2015 Penal Code replaced some provisions limiting freedoms and democratic rights. New provisions relate to the infringement of freedom of expression and press activity, access to information, and the right of citizens to demonstrate (s.167).<sup>30</sup> However, the state still has the ability to prevent demonstrations under domestic law, because freedoms of association and demonstration as constitutional rights have not yet been institutionalised into domestic law.

The Constitution supports rights to associate and demonstrate but limits their exercise by, e.g. preventing workers from organising or joining independent unions of their choice. Whilst workers may choose whether to join a union and at which level (local, provincial, or national), the law requires every union to be established under the legal purview and control of the country's only trade union confederation, the VGCL. The amended Trade Union Law (2013) stipulates that trade unions have the right and responsibility to organise and lead strikes whilst also establishing certain substantive and procedural restrictions on strikes. In contravention of international standards, the law also forbids strikes over 'rights-based' disputes. This includes strikes arising out of economic and social policy measures that are not part of a collective negotiation process, since such strikes are regarded as falling outside the law's definition of protected 'interest-based' strikes.<sup>31</sup> The proposal to amend the 2013 Labour Code was made in 2016 and underscores the CPV's instruction that it should align with ILO standards ensuring the establishment and operation of employees' organisations in work places.<sup>32</sup>

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<sup>29</sup> For example, the amended law includes s.109 on "activities aimed at overthrowing the people's administration," s.117 (replacing s.80(1)(c)) which defines spying as "collecting, supplying information and other materials against the Socialist Republic of Vietnam," and s.118 which proscribes security disorder. See more at [http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class\\_id=1&mode=detail&document\\_id=183216](http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=183216), accessed on 17 October 2017.

<sup>30</sup> Under the 1993 Penal Code, s.88 criminalises the conduct of propaganda against the Socialist Republic of Vietnam and s.258 criminalises the abuse of democratic freedoms that infringe upon the interests of the state. Section 258 reads:

- (1) Those who abuse the rights to freedom of speech, freedom of press, freedom of belief, religion, assembly, association and other democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens shall be subject to warning, non-custodial reform for up to three years or a prison term of between six months and three years;
- (2) Serious offences shall be subject to a prison term of between two and seven years.

<sup>31</sup> In October 2015, the government issued Decree 88 regarding administrative sanctions for interference in trade union activities. It imposed fines of between VND3 and 10 million (US\$135-450) for discrimination against employees establishing, joining a trade union, or carrying out trade union activities, and for any actions disadvantaging the operations of a trade union.

<sup>32</sup> Resolution of CPV Central Committee, November 2016. See, 'Rừng bị phá, 80% cử nhân chạy Uber, Grab thì tăng trưởng đạt ở đâu?' Lao Dong, available at <http://laodong.com.vn/chinh-tri/toan-van-nghi-quyet-so-06nqtw-hoi-ngghi-trung-uong-4-khoa-xii-608410.bld>, accessed on 17 October 2017.

## Part 2: Outstanding Human Rights Issues

The expectations and assumptions that govern the notion of states as system-like units capable of acting symmetrically and reciprocally does not adequately reflect the diversity of states with respect to their capacity to achieve the consensus necessary to realise human rights. This is not an excuse for human rights violations, but a challenge to the assumptions underpinning the international system. Despite progress, it has to be said, frequent human rights violations still cloud the picture in Vietnam.

### *A. Corruption*

Ranked 113th out of 176 in Transparency International's Corruption Perception Index, the issue of corruption looms particularly large in Vietnam. Indeed, General Secretary Nguyen Phu Trong was elected on an anti-corruption platform. Considered one of the cleaner politicians in the country, it is generally agreed he makes a fitting figurehead for the drive against corruption. Although not a common occurrence, corruption cases are occasionally reported in the media, e.g. the Vinalines case in 2014 during which head of company, Duong Chi Dung, was given the death penalty for mismanagement of state assets.<sup>33</sup> In another case, the former Minister of Commerce and Industry, Nguyen Huy Hoang, was sacked and stripped of all official titles for poor management of the oil sector<sup>34</sup> and may possibly face criminal charges.<sup>35</sup> In a related case, CEO of state oil company (PVC), Trinh Xuan Thanh (who was appointed by Vu Huy Hoang), was again deemed to have mismanaged state resources.<sup>36</sup> Although Thanh fled to Germany, he was abducted from Berlin and returned to Vietnam for investigation.<sup>37</sup>

Corruption causing economic loss is not necessarily a human rights issue; the fact offenders may be sentenced to death is. It remains to be seen whether the country has the political will to really fight corruption, bearing in mind the power struggles plaguing the party. Further, Vietnam must find a way to deal with corruption without violating human rights. Although the law provides for judicial independence and lay assessors, in practice, the judiciary lacks strength of will and is vulnerable to influence by outside elements such as senior government officials and CPV leadership.

<sup>33</sup> See, 'Đương Chí Dũng bị y án tử hình, bồi thường 110 tỷ đồng' VN Express, 7 May 2014, available at <http://vnexpress.net/tin-tuc/phap-luat/duong-chi-dung-bi-y-an-tu-hinh-boi-thuong-110-ty-dong-2987389.html>, accessed on 17 October 2017.

<sup>34</sup> See, 'Ông Vũ Huy Hoàng bị xóa tư cách nguyên Bộ trưởng Công Thương' VN Express, 23 January 2017, available at <https://vnexpress.net/tin-tuc/thoi-su/ong-vu-huy-hoang-bi-xoa-tu-cach-nguyen-bo-truong-cong-thuong-3532753.html>, accessed on 18 January 2018.

<sup>35</sup> See, General Secretary Nguyen Phu Trong's statement on 6 December 2016: 'Tổng Bí thư: Ông Vũ Huy Hoàng nếu có sai phạm hình sự sẽ xử lý' Người Lao Động, 8 December 2016, available at <http://nld.com.vn/thoi-su-trong-nuoc/tong-bi-thu-ong-vu-huy-hoang-neu-co-sai-pham-hinh-su-se-xu-ly-20161206121936118.htm>, accessed on 17 December 2017.

<sup>36</sup> See, 'Bắt Trịnh Xuân Thanh 'phải có thời gian' BBC, 6 December 2016, available at <http://www.bbc.com/vietnamese/vietnam-38227142>, accessed on 17 October 2017.

<sup>37</sup> See the statement by a German Federal Foreign Office spokesperson at [http://www.vietnam.diplo.de/contentblob/5129516/Daten/7838506/170922\\_Statement\\_TXT\\_229\\_EN.pdf](http://www.vietnam.diplo.de/contentblob/5129516/Daten/7838506/170922_Statement_TXT_229_EN.pdf), accessed on 17 December 2017.

## ***B. Businesses, the Environment, and Human Rights***

Another notable case in 2016 involved the death of huge numbers of fish off the coasts of Nghệ An, Hà Tĩnh, Quảng Bình, Quảng Trị, and Thừa Thiên-Huế provinces, affecting the livelihoods of 270,000 people. The disaster was alleged to have been caused by Formosa-Taiwan Plastics Group which was said to have discharged toxic waste into the water.<sup>38</sup> When the company publicly acknowledged responsibility and announced it would provide compensation of US\$500 million, the government investigated and mandated a remedy for victims of the pollution. However, when some rejected the proposed compensation, opting instead to protest, the government proved reluctant to respect their rights in this regard.<sup>39</sup> Indeed, several were convicted of abusing democratic freedoms and threatening state interests under s.258 of the Penal Code.<sup>40</sup> Similarly, citizens claiming remedies in other cases have also had their freedom of expression constrained, purportedly for being harmful to public order.<sup>41</sup>

## ***C. Right to a Fair Trial***

The Constitution states that all persons are equal before the law, that defendants are innocent until proven guilty, and that everyone has the right to a defence lawyer and a speedy public trial. Further, under Art 31, the Constitution guarantees the “adversarial principle in trials,” but in practice, courts have not yet introduced such procedures into the judicial system. The government is, however, in the process of amending the Penal

<sup>38</sup> ‘Formosa làm cá chết, bồi thường 500 triệu USD’ Vietnam Net, 30 June 2016, available at <http://vietnamnet.vn/vn/thoi-su/chinh-tri/cong-bo-nguyen-nhan-ca-chet-313134.html>, accessed on 17 October 2017.

<sup>39</sup> See, ‘Viet Nam 2016/2017’ Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>; and ‘Viet Nam: Crackdown on human rights amidst Formosa related activism’ Amnesty International, 8 November 2016, available at <https://www.amnesty.org/en/documents/asa41/5104/2016/en/>, both accessed on 17 October 2017.

<sup>40</sup> See, ‘Nghị phạm chủ mưu vụ bao vây trụ sở huyện Lộc Hà bị truy nã’ VN Express, 12 May 2017, available at <http://vnexpress.net/tin-tuc/phap-luat/nghi-pham-chu-muu-vu-bao-vay-tru-so-huyen-loc-ha-bi-truy-na-3583937.html>, accessed on 17 October 2017. Also, see the cases reported in ‘Vietnam’ US Department of State, 3 March 2017, available at <https://www.state.gov/j/drl/rls/hrrpt/2016/eap/265386.htm>, accessed on 17 October 2017. From April to July, police officers and plainclothes security forces in multiple locations around the country reportedly assaulted individuals attending demonstrations related to an environmental disaster that had caused mass fish deaths along the central coastline. These demonstrations coincided with the period preceding NA elections and a visit to the country by a foreign leader. Likewise, on 1 and 8 May, police in Ho Chi Minh City reportedly detained and assaulted dozens of activists attending or attempting to attend environmental demonstrations.

<sup>41</sup> Land activist, Cấn Thị Thêu, was convicted under s.245 for “causing public disorder” by a court in Ha Noi and was sentenced to 20 months in prison. She was accused of inciting protests against land reclamation in Duong Noi, Ha Dong district, Ha Noi, by posting photographs online. See, ‘Cấn Thị Thêu bị bắt tạm giam về hành vi gây rối trật tự công cộng’ 11 June 2016, available at <http://anninhthudo.vn/chinh-tri-xa-hoi/can-thi-theu-bi-bat-tam-giam-ve-hanh-vi-gay-roi-trat-tu-cong-cong/684295.antd>, accessed on 17 October 2017.



Code to implement these principles with the NA passing a new Criminal Procedure Code in November 2015 (although its implementation has been delayed until 2016).<sup>42</sup>

#### ***D. Labour Rights***

The government now proscribes workers' rights to form and join unions outside of the VGCL framework. As such, the amended Labour Code (2013) allows for labour strikes but organisation of such strikes requires compliance with a complicated regulatory procedure which had the effect of making many strikes illegal in 2016. However, the government refrained from taking action against the strikers, and in some cases, actively mediated agreements in their favour. Provision for collective bargaining between workers and employers is also included in the Labour Code. This law allows trade unions and employer organisations to facilitate and support collective bargaining, requiring companies to establish a mechanism to enable management and workforce to exchange information and consult on subjects affecting working conditions. For example, one regulation requires workplace dialogues to occur every three months. Some initial success in collective bargaining has been recognised.<sup>43</sup> Nevertheless, the right to strike is still limited because under the current Labour Code, attempted dispute resolution via mediation and reconciliation must occur before the right to strike may be recognised.<sup>44</sup>

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<sup>42</sup> Some pending cases include the arrest of Nguyen Van Dai in 2015 on the charge of "conducting propaganda against the Socialist State of Vietnam" (under s.88 of the Penal Code). On 30 March, at Ho Chi Minh City People's Court, the following were charged under s.88 of the Penal Code for "spreading anti-state propaganda:" (1) Blogger, Nguyen Dinh Ngoc (also known as Nguyen Ngoc Gia), was sentenced to 4 years in prison; and (2) activists, Ngo Thi Minh Uoc, Nguyen Thi Tri, and Nguyen Thi Be Hai were sentenced to prison terms of between 4 years and 3 months to 3 years. Likewise, in October, well-known activist, Nguyễn Ngọc Như Quỳnh, known as blogger, Mẹ Năm (or Mother Mushroom), was arrested under s.88 for blog postings criticising the government (see, 'Viet Nam: 2016/2017' Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/#endnote-4>, accessed on 18 October 2017). Section 88 carries a 3-20 year prison sentence. Similarly, Nguyen Huu Vinh (also known as Anh Ba Sam) and Nguyen Thi Minh Thuy were sentenced to 5 and 3 years' imprisonment under s.258.

<sup>43</sup> On 19 June 2016, the Hai Phong Economic Zone Trade Union and five Korean manufacturing enterprises based in Trang Due Economic Zone signed the country's first multi-enterprise collective bargaining agreement negotiated between a group of foreign-investor enterprises and trade unions to decide basic work conditions, including recognition of union rights. The agreement will likely benefit nearly 2,500 workers through improved recruitment and female worker policies, increased base wages, better bonuses, allowances, leave, and rest time, as well as conditions for ensuring trade union operations in the enterprises. See, 'Công đoàn Khu Kinh tế Hải Phòng: Lần đầu tiên thương lượng ký TULĐTT nhóm DN FDI' Lao Dong, 27 May 2016, available at <http://laodong.com.vn/cong-doan/cong-doan-khu-kinh-te-hai-phong-lan-dau-tien-thuong-luong-ky-tuldt-nhom-dn-fdi-556250.bld>, accessed on 17 October 2017.

<sup>44</sup> The VGCL reported 177 strikes from January through July, approximately the same number as 2015. Of those strikes, 69% were in foreign direct-investment companies (mainly Korean, Taiwanese, and Japanese companies and in three labour intensive sectors including the garment, footwear, and electronic industries) See, 'Vietnam' US Department of State, available at <https://www.state.gov/j/drl/rls/hrrpt/2016/eap/265386.htm>, accessed on 17 October 2017.

## Part 3: Conclusion

Following the 2013 Constitution, legal reform is on-going in Vietnam with laws on fundamental freedoms and human rights in development. However, tensions continue to rage around the widening of political space, and the freedoms of demonstration, association, and assembly. Some major laws have already been passed favouring human rights, notably, the Penal Code and the Law on Access to Information. In addition, whilst still-born, the TPP negotiation process, in attempting to link international relations to economic goals, pushed the CPV to make positive changes to the Labour Code such as accepting the public's right to discuss unionisation of industries outside the VGCL system.

Under the concept of 'socialist democracy,' Vietnamese citizens participate in the law-making process through dialogue and debate. It is hoped the state will listen and respond to society's desire to include human rights in its legislation instead of limiting such rights. However, despite liberalisation and increasing levels of public participation, Vietnam is by no means a democracy. Yet, even this authoritarian government has had to respond to emerging issues, as exemplified by the corruption and environmental cases cited above. Moreover, claims for human rights have expanded to include wider casts of actors than those in official positions. However, it seems the CPV is not yet ready for a complete paradigm shift away from the state's founding Marxist-Leninist political philosophy. Nevertheless, the party appears swayed by the need for stronger legal reforms and greater community participation. As such, the punishment of corrupt public officials surely signals a more transparent government, arguably strengthening public trust in its mechanisms which could prove fruitful for the future of human rights in Vietnam.