VIETNAM

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Khuong Duy

Part 1: Overview of Vietnam

A. Country Background

Vietnam Facts	
Geographical size	332,698 km sq
Population	94.57 million[1]
Ethnic breakdown[2]	Main ethnic groups: Kinh (85.7%) Tay (1.9%) Thai (1.7%) Muong (1.5%) Khmer Krom (1.5%)
Official language	Vietnamese
Literacy rate (aged 15 and above)	94.5%[3]
Life expectancy	76.3[4]
GDP	US$205.28 billion[5] (per capita US$2,343)[6]
Government	A one-party socialist republic exclusively led by the Communist Party of Vietnam which espouses Marxism–Leninism and Ho Chi Minh thought.
Political and social situation	Despite continuous economic growth and progress on social indicators, Vietnam's record on political and civil rights remains dismal with the ruling CPV maintaining a monopoly on political power and permitting no challenge to its leadership. However, recent additions to the 2013 Constitution and ratification of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership may lead to more civil rights and liberties re-emerging on the law-making agenda.

[1] Data from 2016. 'Vietnam' The World Bank, available at https://data.worldbank.org/country/vietnam, accessed on 1 September 2018.

[2] 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, accessed on 1 September 2018.

[3] Data from 2015 (est). 'The World Factbook: Vietnam' Central Intelligence Agency, available at https://www.cia.gov/library/publications/the-world-factbook/geos/vm.html, accessed on 1 September 2018.

[4] Data from 2016. The World Bank (see note 1 above).

[5] Data from 2016. The World Bank (see note 1 above).

[6] Data from 2017. 'GDP per capita (current US$): Vietnam' The World Bank, available at https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=VN, accessed on 1 September 2018.

System of governance

A one-party socialist republic, Vietnam's current political system is composed of the Communist Party of Vietnam (CPV), the State, political organizations, socio-political organizations, socio-professional organizations, and mass associations. The 2013 Constitution defines the CPV as:

> *… the vanguard of the Vietnamese working class, concurrently the vanguard of labourers and of the Vietnamese nation, faithfully representing the interests of the working class, labourers and the entire nation, and acting upon the Marxist-Leninist doctrine and Ho Chi Minh thought … [Further, it] is the leading force of the State and society[,] … closely associated with the People, shall serve the People, shall submit to the supervision of the People, and is accountable to the People for its decisions … [and it] shall operate within the framework of the Constitution and law.*[7]

The CPV directs State and socio-political organizations by:

> *… deciding on political programs, strategies, and guidelines for national construction and defense; carrying out leadership through ideological work, personnel management, and supervision over the implementation of its political programs, guidelines, and strategies; consistently directing the personnel work and managing the contingent of cadres, at the same time promoting the responsibilities of organizations in the political system and their leaders in charge of personnel work; [and] introducing competent cadres for posts in State agencies and in socio-political organizations.*[8]

To consolidate its mono-leadership, the CPV works through its affiliates as dictated by its Constitution and laws.[9] These include State-leading agencies (e.g. the National Assembly (NA), People's Councils) and socio-political organizations at the central level, provinces/centrally-administered cities which are formed through elections, and same-level party committees and bodies composed of CPV members working for related organizations and those appointed by same-level party committees. Party bodies lead and ensure compliance with CPV guidelines and policies, whilst increasing the CPV's influence, improving its close relationship to the people, realizing its resolutions on organization and personnel management, and deciding matters of organization and personnel management in line with the duties assigned by the Politburo.

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[7] Constitution of the Socialist Republic of Vietnam 2013, Art 4, available at http://vietnamlawmagazine.vn/the-2013-constitution-of-the-socialist-republic-of-vietnam-4847.html, accessed on 1 September 2018.

[8] 'About Vietnam: Political system' Socialist Republic of Vietnam Government Portal, available at http://www.chinhphu.vn/portal/page/portal/English/TheSocialistRepublicOfVietnam/AboutVietnam/AboutVietnamDetail?categoryId=10000103&articleId=10001578, accessed on 1 September 2018.

[9] Vietnam Government Portal (see note 8 above).

Other affiliates include judicial and executive bodies (the government, ministries, courts, inspection agencies, etc) at the central level, in provinces/centrally-administered cities and same-level party committees and boards which are composed of CPV members working for related bodies and same-level party committee appointees, including the secretaries. Party boards ensure other members understand and implement CPV guidelines and policies whilst also advising party committees on their operations, duties, organization, and personnel management, making decisions within their competence, and observing implementation of CPV guidelines and policies.

Finally, the CPV also works through its security and armed forces with a network of central military committees and security party committees. With these bodies, the CPV controls a nationwide organizational system that stretches from the centre to grassroots. At the State level lies the National Assembly, the President, and the Government. The National Assembly is the highest representative body of the people, exercising constitutional and legislative powers. It also decides important issues for the country and conducts supreme oversight over State activities.[10]

As head of state, the President represents the country, both internally and externally,[11] and is elected by the NA from among its deputies to which he/she must also report. The President's term of office follows that of the NA.[12] The Government is the highest administrative body in the land and as the executive body of the NA, exercises executive power. However, it is also responsible to the NA and must report to it, the Standing Committee of the NA, and the President.[13]

Exercising judicial power are the People's Courts.[14] Another judicial body can be found in the People's Procuracies which prosecute and supervise judicial activities.[15] Local administration is composed of the People's Council and the People's Committee[16] which are divided into provinces (and centrally-run cities), districts (including towns and provincial cities), and communes (including townships and wards). Furthermore, special administrative-economic units may be established by the NA.[17]

In addition to the CPV and State organs, Vietnam's political system also includes a number of political organizations of which the leading one is the Vietnam Fatherland Front (VFF). VFF is a political alliance and a voluntary union of political, socio-political, social organizations, and prominent individuals representing various classes,

[10] Constitution of the Socialist Republic of Vietnam 2013, Art 69.
[11] Constitution of the Socialist Republic of Vietnam 2013, Art 86.
[12] Constitution of the Socialist Republic of Vietnam 2013, Art 87.
[13] Constitution of the Socialist Republic of Vietnam 2013, Art 94.
[14] Constitution of the Socialist Republic of Vietnam 2013, Art 102.
[15] Constitution of the Socialist Republic of Vietnam 2013, Art 107.
[16] Constitution of the Socialist Republic of Vietnam 2013, Art 111.
[17] Constitution of the Socialist Republic of Vietnam 2013, Art 110.

social strata, ethnicities, religions, and the Vietnamese diaspora.[18] According to the 2013 Constitution, the VFF constitutes the political base of the people's administration. As such, it represents and protects their lawful and legitimate rights and interests; instils and promotes solidarity, exercises democracy and promotes social consensus; conducts social supervision and criticism; and participates in the building of both party and State, and contributes to national construction and defence.[19]

Under the VFF, the Trade Union of Vietnam, the Vietnam Peasants' Association, the Ho Chi Minh Communist Youth Union, the Vietnam Women's Union, and the Vietnam War Veterans' Association comprise voluntary socio-political organizations which represent and protect the lawful and legitimate rights and interests of their members; and, together with other member organizations of the VFF, coordinate and unify action within the country.[20]

In general, Vietnam's current governance system is still characterized by previous models of former socialist states. As such, it is cumbersome, some features may overlap, and there may be a lack of clarity due to an emphasis on formalistic institutions and mechanisms.

Political and social situation

Despite significant economic achievements since Doi Moi (1986), Vietnam faces increasing political and social challenges. In particular, the relationship between the CPV, the State, and its population has deteriorated over the past decade, although, arguably, tension between the people and local government, as well as between social groups, is even higher. Such pressures have attributed to the absence of effective reform which is adversely affecting an economy already suffering from a macroeconomic imbalance. To many, this poses major questions about the capacity of Vietnam's political elite to rule the country effectively.[21] Accordingly, negative economic development is stated by an increasing number of critics as evidence that urgent political reform is needed in the country.

In this climate, the CPV itself has been criticised by local elites and retired politicians with some even challenging the party to renounce Marxist-Leninist doctrine in favour of Western liberal democratic principles. Moreover, ordinary people are also increasingly moving away from socialist theories and have been pressuring the government to reform based on principles of good governance and anti-corruption.

[18] Constitution of the Socialist Republic of Vietnam 2013, Art 9.
[19] Constitution of the Socialist Republic of Vietnam 2013, Art 9.
[20] Constitution of the Socialist Republic of Vietnam 2013, Art 9.
[21] Fforde, A, 'Light within the Asian gloom: Vietnam's economy since the Asian financial crisis' *Southeast Asian Affairs*, 2002, pp 357-377.

For the mass of Vietnamese, issues of national sovereignty are closely related to domestic sovereignty. In particular, they regard China's rising power in the world as deeply worrying with many expressing concern at the government's easy acceptance of Chinese investment.[22] However, it could be argued that Vietnam's central issue is not the external threat posed by China but the need for political and economic reform at home,[23] and specifically whether the current leadership is capable of such reform. In this regard, although the 2013 Constitution provides valuable opportunity for civil society engagement and advocacy which could lead to increased civil liberties and an expansion of political space, the slow and difficult process of drafting human rights laws is indicative of the CPV's lack of consistency which perhaps shows it is not yet ready to relinquish its authoritarianism.

B. International Human Rights Commitments and Obligations

Vietnam is a party to most important international human rights treaties. As a member of the United Nations since 1977, it has also agreed to adhere to international obligations under the UN Charter and the Universal Declaration of Human Rights. Furthermore, it has accepted the legal obligations to respect, protect, and fulfil human rights and the fundamental freedoms as outlined by said treaties.

Table 1: Ratification Status of International Instruments – Vietnam[24]

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	7 Nov 2013	5 Feb 2015
Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		
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

[22] Fforde (see note 21above).

[23] Fforde (see note 21 above).

[24] 'Ratification status for Vietnam' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 1 September 2018.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
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

However, Vietnam also made a number of reservations to the above treaties upon accession. Regarding the ICERD, reservations were made to Arts 17(1) and 18(1) on the fact accession is limited to certain states, and Art 22 on the use of the International Court of Justice for dispute settlement. Vietnam also made reservations to: Art 48(1) of the ICCPR and Art 26(1) of the ICESCR; Art 8(2), Arts 20 and 30(1) of the CAT; and Art 29(1) on the use of arbitration and the International Court of Justice in CEDAW.

As regards the effect of Vietnam's commitments under international treaties in general, the 2005 Law on the Conclusion and Implementation of International Treaties stipulates the overriding effect of international obligations over national laws in cases of conflict. A number of domestic laws also make specific and direct reference to international treaties and their effects, e.g. the Civil Code (Art 827), the Commercial Code (Art 4(1)), the Maritime Code (Art 23), and the Law on Environmental Protection (Arts 24 and 25). Similarly, Art 827(2) of the Civil Code provides that international agreements shall prevail over local laws.

However, Vietnam's practice in this regard has not been clear and consistent. Concerning the incorporation and transformation of concluded international agreements, the law does not "clearly specify whether a treaty that has been ratified is self-executing or requires the enactment of legislation to incorporate the treaty

obligations into Vietnamese domestic law."[25] Vietnamese law enforcement and State practice suggests that treaty provisions contrary to pre-existing laws will need to be 'transformed' into domestic law, and will not be effective until the relevant laws have been amended or repealed. However, treaty provisions not yet included in existing laws will be automatically incorporated into domestic law when the treaty comes into effect.

Along with Vietnam's deepening integration into the world economy, the government has increased its engagement with international human rights mechanisms. Remarkably, in 2009, Vietnam subjected itself to the Human Rights Council's Universal Periodic Review (UPR). Following this, Vietnam accepted as many as 93 out of a total of 123 recommendations made by other countries. Similarly, it accepted 182 out of 227 recommendations after the second UPR process in 2014. Of particular note was the first-time participation of NGOs in the process. In June 2013, after careful preparation and consultation, more than 60 local NGOs submitted a 'shadow report' under the UPR to the UN Human Rights Council.[26]

The government has made great efforts to codify international human rights norms and standards into national laws as demonstrated by Chapter II of the newly revised 2013 Constitution. Progress can also be seen in the increasing acceptance of international norms as revealed by the number of revised and new laws incorporating such standards including the Penal Code, the Criminal Procedures Code, the Civil Code, the Civil Procedures Code, the Labor Law, the Law on the Protection and Care of Children, and the Land Law.

Moreover, legal drafting processes now involve more public and proactive consultation than ever before, particularly with non-State stakeholders, e.g. sex workers and drug users were offered a chance to meet with the drafting committee to discuss administrative sanctions. Likewise, during the Land Law amendment process, the Economic Committee of the National Assembly organized a workshop with Vietnamese NGOs to hear the voices of farmers. The 2013 revised Land Law placed tighter restrictions on compulsory land acquisition by the State and proposed more accountable ways to agree on compensation. It also increased the period of farmers' land use rights to 50 years. And during revisions to the Law on Marriage and Family, the drafting committee conducted surveys and workshops with lesbian, gay, bisexual, and transgender groups to consider, e.g. the rights and issues of same-sex couples.

Despite tremendous efforts to develop legislation and strengthen the judicial system over recent decades, various loopholes in the formal legal rules guaranteeing human

[25] Bryant, T, and Jessup, B, 'Fragmented pragmatism: The conclusion and adoption of international treaties in Vietnam' in Gillespie, J, and Nicolson, P (eds), *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform*, Canberra: ANU Press, 2011, at 299.

[26] Bui, T, 'Vietnam's civil society' East Asia Forum, 5 September 2013, available at http://www.eastasiaforum.org/2013/09/05/vietnams-civil-society-undergoing-vital-changes/, accessed on 18 October 2016.

rights still exist. Further, considerable discrepancies between legal rules/practices and their enforcement can also be seen. Notably, limited access to justice and the relative weakness of the judicial system pose a large obstacle to the protection of human rights. It is also often noted that some important rules on human and citizens' rights in the Constitution, particularly such civil and political rights as freedom of speech, the press, assembly, and the right to form associations and to demonstrate, have not been institutionalized into laws.

Part 2: Outstanding Human Rights Issues

A. Civil and Political Rights

The process of implementing human rights in Vietnam was marked by several significant events in 2017. According to the US Department of State, human rights violations in 2017 related to issues of arbitrary and unlawful deprivation of life; torture and cruel, inhuman, and degrading treatment; arbitrary arrest and detention of persons peacefully expressing dissent; systemic abuses in the legal system, including denial of access to an attorney, visits from family, and the lack of fair and expeditious trials; government interference with privacy, family, home, and correspondence; limits on freedom of speech, assembly, association, movement and religion, including censorship of the press, and restrictions on internet freedom.[27]

Unlawful or politically motivated killings, torture, and other cruel or degrading treatment

Vietnam signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 7 November 2013, ratified it on 28 November 2014, and in December 2017, submitted its initial report on the Convention's implementation. Despite this, in 2017, there were several reports of deaths in custody, e.g. on July 18, Luu Ngoc Hai died while in custody at Dak Po district police station (Gia Lai Province) where he was being held for an on-going investigation into drug charges.[28] In all cases, the provincial police departments implicated denied the alleged violence or ill-treatment and their responsibility for the deaths. Instead, suicide was generally put forward as an alternative explanation.

Although physical abuse of detainees is prohibited under Vietnamese law, some suspects reported mistreatment and torture by policemen, plainclothes security officials, and compulsory drug-detention centre personnel during arrest, interrogation, and detention. For example, on April 13, in Quang Binh province, plainclothes security officials reportedly abducted two activists, Tran Hoang Phuc and Huynh Thanh Phat, robbing and beating them before releasing them in a remote area in central Vietnam.

[27] 'Vietnam 2017 Human Rights Report' US Department of State, available at https://www.state.gov/documents/organization/277375.pdf, accessed on 2 September 2018, at 1.

[28] US Department of State (see note 27 above), at 1-2.

Later, they also arrested Phuc for "storing, making, (and) posting videos to the Internet, which convey messages against the State," and therefore continued to detain him.[29]

The oppression of religious minorities and activists

In an attempt to maintain the legitimacy and dominance of the communist ideology, the Vietnamese government regularly harasses, oppresses, and uses violence against certain ethnic groups and activists. It also uses vague legislative provisions on belief and religion and discriminatory language to exploit religious groups, such as the Montagnard Christians, Hoa Hao Buddhists, Khmer Krom Buddhists, and Cham Muslims. As such, it attacks and threatens people who question its authority and legitimacy, especially targeting those advocating for democracy, human rights, and religious freedom.[30]

In June 2017, An Giang province authorities set up a barrier to block people from attending the Quang Minh Pagoda celebrations on the founding day of Hoa Hao Buddhism. Religious and pro-democracy activists, Ngo Hao and Nguyen Cong Chinh, were abused by prison officials, held in solitary confinement, and tortured for prolonged periods. Likewise, on May 3, Nguyen Huu Tan, a follower of Hoa Hao Buddhism, died while in custody at Vinh Long provincial police station after his May 2 arrest on charges of committing "propaganda against the State."

Non-state actors, such as the "Red Flag Associations," have also been mobilized to harass and assault activists and independent religious communities across the country. This government-supporting group is characterized by its violent behaviour. For example, on the evening of May 30, over 1,000 individuals claiming to be Red Flag Association members, wearing red T-shirts and carrying red flags, surrounded Van Thai Sub-Parish of the Song Ngoc Parish, insulted the Catholic parishioners, threw bricks and rocks to damage their vehicles and a number of houses, and beat parishioners as they went home after mass. Although these terror tactics continued for days, the authorities took no action to protect the victims. Nor did they respond to written requests to investigate these unlawful and violent acts.

Indeed, the authorities have used many measures to limit or block activists advocating for human rights and other political matters. For example, to prevent critical speech and peaceful activism, the police arrested at least 21 people for sweeping "national security" offences.[31] In addition, they prohibited activists from attending meetings with the US Consulate, further threatening their freedom of expression. On 16 November 2017, authorities in Hanoi detained three popular bloggers (Pham Doan Trang, Nguyen Quang A, and Bui Thi Minh Hang) for several hours after they met with representatives

[29] US Department of State (see note 27 above), at 2-3.

[30] Ngo, TH, 'Human rights situation in Vietnam: 2017-2018 report' Office of Senator Thanh Hai Ngo, 2018, available at http://senatorngo.ca/wp-content/uploads/2012/08/HR-Report-English.pdf, accessed on 2 September 2018.

[31] 'Vietnam: Events of 2017' Human Rights Watch, available at https://www.hrw.org/world-report/2018/country-chapters/vietnam, accessed on 2 September 2018.

of the EU to discuss human rights in Vietnam. Furthermore, several human rights activists have had their passports confiscated by the authorities to prevent them from attending international conferences or human rights training abroad.[32]

Restriction of freedom of expression

In 2017, Vietnam recognized cyberspace as a "new battleground" and in response, the government established a special force consisting of 10,000 military "cyber soldiers" called "Force 47" (named after Directive No 47 authorizing its foundation) with the mission of "combating wrongful information and anti-State propaganda." Realising that about 62.7% of Vietnam's 90 million population have access to the internet, the Central Party Committee of the People's Army of Vietnam therefore decided to focus on the task of building a special force to deal with the "information war."[33] After 14 revisions, the Draft Cyber Law of Vietnam, compiled by the Ministry of Public Security, was submitted to the NA for comment. Slated to be made official law in 2018, it includes many provisions which could violate international human rights standards. This is hardly surprising as the government's aim had always been less to protect network security than to preserve the CPV's monopoly. As such, the draft law targets freedom of expression and access to information and will constitute one more government weapon against dissenting voices.

Land ownership

Since the 1980 Constitution, private land ownership has not existed in Vietnam. Citizens only have the right to use land; the government retains control of the management of all lands. This mechanism of entire-people land ownership alongside the inevitable corruption resulted in obstinate conflicts between citizens and authorities, such as Dong Tam in 2017. On April 15, the farmers of Dong Tam village rose in open defiance against the Communist Party to protest disputed land evictions and the alleged corruption of state officials. Following this, the aging leader of the village was detained and violated by police. In retaliation, the farmers held 38 policemen hostage for nearly a week. Eventually, a written hostage-release agreement was reached in exchange for a guarantee that none of the perpetrators would be criminally prosecuted and that an investigation on police brutality during the incident would be launched. Despite this, on June 13, the party broke its promise and began a criminal investigation against the villagers.[34]

In general it would be safe to say that civil and political rights in Vietnam were brutally violated in 2017. Indeed, the above cases prove that the Vietnamese government has

[32] 'Report to the Human Rights Committee for its consideration for the adoption of the List of Issues in relation to the review of the third periodic report of Vietnam – Submission from the Vietnam Coalition Against Torture (CCPR/C/VNM/3)' ICCPR, 25 April 2018, available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VNM/INT_CCPR_ICO_VNM_30980_E.pdf, accessed on 2 September 2018.

[33] ICCPR (see note 32 above).

[34] Ngo (see note 30 above).

a tendency to nurture and support violence within its ranks. As such, it encourages officers to use violence and assault to oppress suspects, activists, and religious minorities, especially in cases relating to national security and the legitimacy of the Communist Party. Along with the lack of judicial independence, this tends to result in a general ignorance of rights and the abuse of power of authorities in Vietnam. Accordingly, the authorities did not hesitate to ignore international human rights standards and used vague and inadequate provisions to justify ill-treatment and violence for their own political ends.

B. Economic, Social, and Cultural Rights

Economic, social, and cultural rights were also under fire in 2017. These problems stemmed from various aspects of Vietnam's socio-economic reality, but fall into three main issues: ongoing marine life disasters, prohibition of independent unions, and restriction of academic freedom and cultural events.

Ongoing marine life disasters

As mentioned in a previous edition of this series, the Formosa Ha Tinh Steel environmental disaster of 2016 had a detrimental effect on Vietnam. In April of that year, the company discharged toxic industrial waste into the ocean through illegally built drainage pipes, polluting more than 200 km of coastline and killing more than 80 tonnes of fish. Vietnamese authorities denied all responsibility and defended the foreign corporation, prompting public uproar and widespread civil unrest. Despite ongoing protests, Formosa has since decided to further expand its investment in Vietnam and is expected to start production on a new facility at the end of June 2017.[35] A year after Vietnam's worst environmental disaster, marine life has still not recovered and far from being sympathetic to the affected population, the government continues to crack down on protesters seeking compensation.

The mass killing of fish not only caused long-term harm to Vietnam's ecosystem, it also adversely affected the lives of close to 200,000 locals and those dependent on the fishing industry. As such, fishermen in the four most affected provinces must also deal with the fallout from a seafood safety scare as the toxic spill contained harmful chemicals such as phenol, cyanide, and iron hydroxide. With customers still worried about the safety of seafood, many villagers have now been forced to find new employment in different fields. Indeed, some have even gone overseas, putting centuries old cultural and fishing traditions at risk of extinction.[36]

The Formosa incident is a sensitive topic for the Vietnamese government as it pits several competing forces directly against each other: political stability, environmental protection, and foreign direct investment, the latter being one of its key economic growth

[35] Ngo (see note 30 above).
[36] Ngo (see note 30 above).

drivers. As Formosa is one of Vietnam's largest foreign investors, it is hardly surprising the government took the stance it did despite the heavy cost to the environment. As such, this issue is a prime example of the government's one-sided economic development policy that values foreign investment at the expense of environmental protection as in many cases, to avoid the high cost of proper waste treatment, companies often discharge waste directly into the country's rivers and streams. Meanwhile, Vietnam's inadequate environmental laws and policies governing business practices are often not properly enforced, leaving companies unaccountable for violations and manmade environmental disasters, all of which could lead to the serious degradation of Vietnam's environment over time.

Prohibition of independent unions

Under national law, workers are prohibited from forming independent unions. Instead, all unions must be registered and affiliated with the Vietnam General Confederation of Labor (VGCL), an official labour confederation controlled by the Communist Party. Anyone who joins or attempts to establish an independent union can be targeted and prosecuted. However, conflicts of interest are often much in evidence within a factory's managerial structure, where union officials are chosen by factory managers without any worker input. As a result, workers may receive unfair and harsh treatment.

Consequently, labour activists and representatives of independent (non-VGCL) worker organizations often face anti-union discrimination. In addition, independent labour activists seeking to form unions separate from the VGCL or informing workers of their rights sometimes face government harassment. Thus, on 15 June 2017, authorities prevented Do Thi Minh Hanh, chairwoman of the independent Viet Labor Movement (which advocates for labour rights in Vietnam) from traveling abroad. Authorities also stopped Hanh's sister, Do Ngoc Xuan Tram, from leaving the country two days later at Tan Son Nhat Airport in Ho Chi Minh City – however, authorities ultimately permitted her to leave on July 25. Border authorities stopped both sisters for "national security" concerns.[37]

This was not the first time Do Thi Minh Hanh's rights had been violated. Due to her crusading and support of Vietnamese labour unions, in October 2010, the defender was found guilty of "disrupting national security" and sentenced to seven years' incarceration. She was released on 26 June 2014, after serving four years and four months of her seven year sentence. Since her release, Do Thi Minh Hanh has been a regular target of harassment by the authorities.[38]

In another example, on 15 May 2017, Hoang Duc Binh, vice-president of the aforementioned Viet Labor Movement, was riding as a passenger in the car of Father

[37] Human Rights Watch (see note 31 above).

[38] 'Do Thi Minh Hanh subject to daily violent attacks' Front Line Defenders, available at https://www.frontlinedefenders.org/en/case/do-thi-minh-hanh-subject-daily-violent-attacks, accessed on 2 September 2018.

Nguyen Dinh Thuc, another human rights defender, when they were stopped by traffic police. Father Thuc wrote in a statement published on the Saigon Broadcasting Television Network website that a group of men in civilian clothes and police in uniform "suddenly appeared, jerked the door open, and forcefully dragged Hoang Duc Binh out of the car and took him away"[39] without an arrest warrant. That evening, the Nghe An television network broadcast the news of Hoang Duc Binh's arrest and showed the arrest warrant on which he had written, "I do not agree [with the charges] because the Nghe An police have beaten me and arrested me illegally."[40]

The Communist Party opposes independent unions because they could represent competing centres of political power. While there is government resistance, there is also hope for labour rights reform as a result of international investment agreements, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Vietnam-EU Free Trade Agreement (EVFTA).

Restriction of academic freedom and cultural events

Academic freedom was also curtailed in 2017. In particular, while foreign academics temporarily working at universities in the country could freely discuss non-political topics, government observers regularly attended classes taught by both foreigners and nationals. In addition, international and domestic organizations wishing to host conferences involving international sponsorship or participation, had to obtain government permits. Moreover, the government continued to prohibit any public criticism of the CPV or State policy even by independent scientific and technical organizations for purely academic audiences.[41]

Although the government allowed universities more autonomy over international exchanges and cooperation programs, visa requirements for visiting scholars and students remained onerous. Many reported that Ministry of Public Security officials threatened university leaders for not expelling activists from their respective universities and even pressured them and their family members not to attend certain workshops despite the peacefulness of their political activities. Multiple activists also reported that academic institutions refused to allow them to graduate due to their human rights advocacy.[42]

The Vietnamese government also controlled art exhibits, music, and other cultural activities. For example, authorities restricted public art displays and musical

[39] 'Bản tường trình của Linh Mục Nguyễn Đình Thục về sự việc công an bắt người trái phép ngày 15/05/2017' Saigan Broadcasting Television Network, available at http://www.sbtn.tv/ban-tuong-trinh-cua-linh-muc-nguyen-dinh-thuc-ve-su-viec-cong-an-bat-nguoi-trai-phep-ngay-15052017/, accessed on 2 September 2018.

[40] 'Vietnam: Crackdown on rights activists' Human Rights Watch, available at https://www.hrw.org/news/2018/01/24/vietnam-crackdown-rights-activists, accessed on 2 September 2018.

[41] Human Rights Watch (see note 31 above).

[42] Human Rights Watch (see note 31 above).

performances by use of substantial permission procedures, although Ho Chi Minh City authorities did permit the country's first-ever nude art exhibition in 2017. In another case, local authorities denied a permit to organizers of a women's march in Hanoi in April. In May, police used excessive force to disperse pro-environment marches in Hanoi and Ho Chi Minh City. Many protesters reported being beaten and detained for hours. Several protesters, including Vo Chi Dai Duong, Dang Ngoc Thuy, Cao Tran Quan, Xuan Dieu, and Nguyen Tan, were taken to administrative detention centres where they were kept for several days without access to legal counsel or due process.[43]

On July 22, Hanoi officials ultimately permitted a concert by the group, Mai Khoi and the Dissidents, to continue in Tay Ho District, Hanoi, albeit with a heavy security presence and after several hours of negotiations. Mai Khoi subsequently shared on social media that security forces pressured her landlord to evict her following the concert.[44]

Although academic activities and cultural events have little connection to politics, it is likely the Communist Party still sees them as possible opportunities to spread ideas that could threaten its power, thus compelling it to find ways to restrict the activities or events, regardless of their true purpose, meaning, and audience.

C. The Impact of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership on Human Rights in Vietnam

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is one of the largest free trade agreements in the world, representing nearly 13.5% of global gross domestic product. Officially signed on 8 March 2017 in Santiago, Chile, Vietnam became one of eleven signatories; the others included Australia, Brunei, Canada, Malaysia, New Zealand, and Singapore. With the intention of invigorating economic development, the agreement includes provisions to expand markets and enhance international commercial relations bringing about not only opportunities for economic growth, but also human rights impacts.

Based on the idea that human rights only flourish in well-governed markets, CPTPP concentrates mainly on human rights in a business context. For example, the CPTPP contains provisions to protect the proper functioning of market processes, rather than simply access to markets. Moreover, it includes provisions on "regulatory coherence" to ensure a common set of rules governs the way member states regulate markets. It also requires transparency in decision-making, the testing of regulations by reference to the goals set, and a form of cost-benefit assessment. Finally, the most common criticism levelled against the CPTPP is that Investor-State Dispute Settlement (ISDS) provisions infringe upon the "right to regulate" markets in the public interest.[45]

[43] Human Rights Watch (see note 31 above).

[44] US Department of State (see note 27 above), at 22.

[45] Robertson, D, and Shore, L, 'The Trans-Pacific Partnership and human rights' Herbert Smith Freehills, 29 October 2015, available at https://www.herbertsmithfreehills.com/latest-thinking/the-trans-pacific-partnership-and-

The CPTPP has several impacts on human rights. First, the CPTPP requires country members to adhere to fundamental rights as acknowledged by the International Labor Organization, including the right to freedom of association and collective bargaining, the elimination of child labour, forced labour or compulsory labour, and of discrimination with respect to employment and occupation.[46] It also has strong and enforceable environmental obligations. Article 20.15 appears to address the climate crisis obliquely by acknowledging that "transition to a low emissions economy requires collective action" and that the parties "shall cooperate to address matters of joint or common interest" such as "development of cost-effective, low emissions technologies and alternative, clean and renewable energy sources." Therefore, it seems well aware of the important relationship between law, economic growth, and the environment.[47]

It can therefore be seen that the CPTPP has both positive and negative impacts on human rights practices in Vietnam. For instance, the chapter concerning ISDS mechanisms are inadequate in that the provisions provide protection for investors but not for states or their populations. Accordingly, provisions in the agreement could create the "chilling effect" that intrusive ISDS awards have had when countries have been penalized for adopting regulations, for example, to protect the environment, food security, access to generic and essential medicines, reduce smoking (as required under the WHO Framework Convention on Tobacco Control), or to raise the minimum wage.[48] Further, Farida Shaheed, the UN Special Rapporteur in the field of cultural rights, points out that current laws have had the tendency of strengthening copyright protections with little consideration for their human rights implications which could harm rights to access science and culture by going far beyond prohibiting just literal copies, and making other activities such as translation, distribution, and modification illegal without the permission or licence of the holder.[49]

human-rights, accessed on 2 September 2018.

[46] 'What does the CPTPP mean for labour?' Government of Canada, available at http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/sectors-secteurs/labour-travail.aspx?lang=eng, accessed on 2 September 2018.

[47] Hailes, O, Menkes, D, Jones, R, et al, 'Climate change, human health, and the CPTPP' *The New Zealand Medical Journal*, 2018, Vol 131, No 1471, pp 7-12, at 7.

[48] 'UN experts voice concern over adverse impact of free trade and investment agreements on human rights' OHCHR, available at https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E, accessed on 2 September 2018.

[49] Sutton, M, 'UN experts say TPP and fast track threaten human rights' Electronic Frontier Foundation, 7 May 2015, available at https://www.eff.org/fr/deeplinks/2015/05/how-tpp-and-fast-track-threaten-human-rights, accessed on 2 September 2018.

Part 3: Conclusion

Vietnam is currently transitioning from a socialist model of governance to a more democratic one. The transformation began after Doi Moi (1986) and is quickly gathering speed. However, compared to the transformation of economic institutions, progress is extremely slow. In Vietnam, there are both internal and external motives for such a process. Internally, Vietnamese people are increasingly aware of the limitations of socialist authoritarian regimes and as such, increasingly demand democratic reform. Externally, democratic influences and pressure from international institutions are forcing the CPV to pay more attention to improving democracy and human rights.

Due to internal pressure and the international community, democracy and human rights in Vietnam have generally improved since 1986. However, while economic, social, cultural, and some civil rights, (including the rights of some disadvantaged groups) have been on the receiving end of considerable improvement, political rights and other more sensitive civil rights have been strictly curtailed.

The fact that civil and political rights are still limited is largely due to the need to maintain the one-party political system in Vietnam. As such, the CPV believes that fully recognizing and respecting civil and political rights may threaten its mono leadership. In fact, the CPV is currently facing a dilemma. On the one hand, it is under increasing pressure from its populace and the international community to democratize; on the other, it still seeks to cling on to power. Following the aspirations of its people and the international community, it may very well lose its mono leadership role, instead becoming just one political party in a pluralistic society. However, desperately holding on to authoritarian power at any cost could lead to a revolution of sorts as Vietnamese society grows more prosperous, similar to the democratic transitions of South Korea, Taiwan, and other Asian nations in the 1980s and 1990s.

The human rights situation in Vietnam in 2017 and in recent years, reflects this new situation and the CPV's embarrassment surrounding the issues of democracy and human rights. While the party must restrain political and civil rights to retain its monopoly on power, it must also continue to improve economic, social, cultural, and group rights in order to relieve the pressure from its populace and the international community.

However, the above-mentioned state of affairs may continue for several more years to come. Landmark improvements in democracy and human rights will only occur with extensive political reform. Until this happens, any improvements in democratic, civil, or political rights will only be piecemeal and taken as countermeasures against greater change.

In 2017, the human rights situation in Vietnam also reflected an interesting characteristic of international affairs – that is, when international community pressure for change reduces, civil and political rights in countries resisting such change will correspondingly be more tightly controlled. Thus, in 2017, when the United States changed its foreign policy to focus on domestic issues, the CPV felt more able to suppress local dissent, illustrating both the complexity and the difficulty of improving human rights in Vietnam.

Vietnam's introduction of a market economy, the development of a socialist law-based State doctrine, and the exposure of its long-held socialist norms of human rights to liberal universalism, have paved the way for an evolving human rights regime. As can be seen from the 2011-2013 constitutional amendment debate, the discourse around human rights is dynamic and ever-changing. On the one hand, legal limits on the freedom of association and workers' rights, freedom of the press and peaceful assembly, including the right to demonstrate, and access to information, are apparent and have been used by the Party-State to control civil society and to prevent groups or individuals from potentially engaging in political advocacy. On the other hand, despite setbacks and restrictions in the regulatory framework on a number of human rights issues, it must be stressed that efforts to institutionalize a more effective and consistent legal-rational model of human rights has made some progress. This 'new thinking' on the rule of law and human rights has gradually been transplanted and developed while still drawing resistance from some conservative elements of the CPV. A number of reforms that have been proposed and considered seriously could truly open up substantive and constructive deliberations. Thus, it can be seen a more effective and consistent legal-rational model is beginning to take root in Vietnam.

The foregoing analysis aimed to shed clearer light on the right to associate and workers' rights in Vietnam. While the Vietnamese Party-State has accepted the universality of human rights at a high level of abstraction, in practice, it still disagrees with western countries and international institutions over the content, justification, interpretation, and implementation of these rights. The interim solution to this impasse is necessarily a syncretism that would enable "new and contradictory substantive ideas to enter and enlarge the range of values applied to new situations."[50] While the socialist legality doctrine is in decline and a law-based State is still embryonic, a dynamic and tolerant political model of human rights is likely to embrace such syncretism and adjust itself in the long-run.

[50] Gillespie, J, 'Concepts of law in Vietnam: Transforming statist socialism' in Peerenboon, R (ed), *Asian Discourses of the Rule of Law*, London: Routledge, 2004, at 172.