# The Socialist Republic of Vietnam

## Submission to the UN Universal Periodic Review

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**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in General Consultative Status with ECOSOC**


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## 1. (A) Introduction

**1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizens' freedom of association are threatened.

**1.2** In this document, CIVICUS outlines urgent concerns related to the environment in which civil society activists and human rights defenders operate in the Socialist Republic of Vietnam, and discusses threats faced in the exercise of the freedoms of expression, association and assembly.

**1.3** CIVICUS is greatly concerned by legislative and extra-legal measures taken by the Vietnamese Government which drastically curb civil society activism and the freedom of association.

**1.4** CIVICUS is deeply alarmed by undue and arbitrary restrictions on freedom expression, independence of the media and access to information.

**1.5** CIVICUS is greatly concerned by ongoing restrictions on the free exercise of the right to freedom of assembly, including unwarranted use of excessive and sometimes fatal force to disperse nonviolent demonstrations.

- In section B, CIVICUS highlights concerns related to the freedom of association and restrictions on civil society activities.
- In section C, CIVICUS expresses concerns involving harassment and arbitrary detention of human rights defenders.
- In section D, CIVICUS highlights concerns relating to the freedom of expression, independence of the media and restrictions on access to information.
- In section E, CIVICUS highlights concerns regarding the freedom of assembly.
- In section F, CIVICUS makes a number of recommendations to address the concerns listed.

## 2. (B) Restrictions on freedom of association and impediments to civil society activities

**2.1** Article 69 of the 1992 Vietnamese Constitution guarantees the right to freedom of association. Moreover, Article 22 of the ICCPR, to which Vietnam is a party, also guarantees freedom of association. However, in policy and practice this right is drastically subverted by a highly restrictive regulatory regime. Through the issuance and invocation of a series of draconian directives and decrees, including wide scale prohibitions on rights-based activities, outsized discretion to approve the internal affairs of CSOs and restrictions on foreign funding, the government has effectively prevented the creation of an independent civil society sector in the country.

**2.2** The Vietnamese government, dominated by the ruling Communist Party of Vietnam (CPV), has established a severely stratified regulatory framework, which actively

fosters support for specific mass organizations and government sponsored groups, while simultaneously restricting the activities of dissident groups or those attempting to publicly comment on or criticize the CPV or the state. Under Decree 45 on the Organization, Activities and Management of Associations, promulgated on 21 April 2010 and taking effect on 1 July 2010, six organizations, including the Vietnam Fatherland Front, the Vietnam General Confederation of Labour, the Ho Chi Minh Communist Youth Union, the Vietnam Peasants Association, the War Veterans Association and the Vietnam Women's Union, are given privileged legal protection and preferential treatment. The groups, stipulated under Article 33-34 as "*associations with special characteristics,"* are the only civil society groups in Vietnam permitted to conduct advocacy work and engage with and comment on the formulation of public policy.

**2.3** In direct contrast to the privileges afforded to "*associations with special characteristics,*" civil society groups not under the auspices and control of the government are subjected to discriminatory limitations on their activities, including blanket restrictions on conducting advocacy work. Under Article 23 of Decree 45, CSOs are prohibited from conducting activities deemed harmful to "national security, social order, ethics and national fine customs [and] practices." These provisions are vaguely worded and subject to abuse. In addition, civil society groups are only permitted to participate in "programs, projects, research topics, consultations [and] feedback" if specifically requested by relevant government agencies. This mars the independence of civil society.

**2.4** Registration requirements for civil society groups are patently discriminatory, providing the government with undue discretion to preclude the establishment of CSOs with objectives perceived to contravene the interests of the state and the Communist Party of Vietnam. Of principal concern are provisions under Article 13 of Decree 45 requiring CSOs to seek government approval of the group's organizational charter. After the pertinent government agency approves the formation of an association, the bylaws of the association must also be sanctioned by a relevant government agency. Furthermore, Article 6 of Decree 45 requires a prohibitively high number of Vietnamese citizens in order to form an association, such as mandating at least 100 citizens in order to establish a national group and at least 50 citizens in order to form a provincial organization.

**2.5** In practice, international resource mobilization for civil society groups is subject to state authorization in breach of international standards. Under two decrees issued in October 2009 and March 2012, Decree 93 on the Regulations on the Management and Use of Foreign Non-Governmental Aid and Circular 7, all foreign aid provided to civil society groups must be approved by "competent authorities," be in line with the government's national objectives and "comply with Vietnamese law." In addition, the provision of donor aid can be denied to civil society groups based on broad and ambiguous grounds including requirements that the specified aid does not "affect political security and social order and safety or infringe upon interests of the State or lawful rights and benefits of organizations or individuals."

**2.6** The right to freedom of association and to collective bargaining for unions also remains severely curtailed in Vietnam. Workers are prohibited from establishing or joining unions not endorsed by and officially affiliated with the Vietnam General Confederation of Labour (VGCL), which is afforded privileged status as an "*association with special characteristics"* under Decree 45. Furthermore, the right to strike is drastically limited for unions. Strikes involving the public sector or directly impacting state-owned industries are strictly prohibited, while unions are banned from holding strikes pertaining to 54 sectors considered vital to maintenance of the economy and defence. Finally, the Prime Minister possesses overly broad and vague discretion to suspend any strike deemed injurious to the national economy or public security.

## 3. (C) Concerns involving harassment, intimidation and attacks against human rights defenders and civil society activists

**3.1** Article 69 of the Constitution of Vietnam guarantees the rights to freedom of speech, press, assembly, and association. In addition, Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection of human rights defenders. However, the operating environment for human rights defenders in Vietnam remains one of the most disenabling in world. Judicial harassment and arbitrary and incommunicado detention of activists and civic dissidents continues unabated.

**3.2** In contravention to Vietnam's constitutional and international human rights commitments, the government continues to invoke spurious "national security" charges found in the Vietnamese Penal Code to suppress independent religious and political dissident. Under the Penal Code, which prohibits public criticism of the government and the communist party, seven nonviolent national security offences including "conducting propaganda against the Socialist Republic of Vietnam" and "taking advantage of democratic freedoms and rights to violate the interests of the state" carry the death penalty.

**3.3** In an apparent attempt to prevent public disclosure of the government's on-going campaign to silence independent dissent, the government has erected and regularly invokes a number of legal mechanisms permitting the authorities to suspend the due process rights of Vietnamese citizens. Under Ordinance 44 on Regulating Administrative Violations (2002), local officials are permitted to arrest and detain citizens and further commit them to mental hospitals or "rehabilitation camps" while jettisoning all due process rights. Furthermore, according to Article 120 of the amended 2004 Criminal Procedures Code, persons suspected of committing "national security" offenses can be held in custody for four months pending investigation. This period can be extended up to four times, after which the authorities must either release detainees or "if deeming it necessary, apply other deterrent measures."Finally, under Article 30 of the Penal Code, persons convicted of national security crimes can be placed "under the supervision and re-education of the local authority" for a period of one to five years following the completion of their sentence. Such practices, which include placing persons under house arrest and constant police surveillance, serve as

powerful tools to prevent former political prisoners from reassuming their legitimate work.

**3.4** As a result of these and other legislative and policy measures, dozens of human rights defenders, including civil society activists, land rights activists and religious advocates remain in prison and subjected to extrajudicial forms of detention for their political or religious views. Despite repeated commitments to rescind legislation criminalizing the exercise of civil and political rights, the environment for human rights has precipitously deteriorated since Vietnam's initial examination under the UN Universal Periodic Review (UPR). It is reported that in 2012 at least 40 human rights defenders were convicted and sentenced to prison in political trials which did not meet international standards of legal due process. This marks an increase from 2011, itself an increase from 2010. Moreover, in 2013, the government has engaged in an unprecedented campaign to quash independent dissent, convicting 40 activists in political trials in the first six weeks of the year.

**3.5** Land rights activists have continued to be imprisoned at an alarming rate on trumped-up criminal charges in an apparent attempt to discourage them from exercising their basic human rights. In June and July 2012, three land rights activists, including Nguyen Kim Nhan, Dinh Van Nhuong, and Do Van Hoa in Bac Giang Province, and labour activist Phan Ngoc Tuan from Ninh Thuan Province were sentenced to a total of eighteen-and-a-half years under Article 88 of the Penal Code for "[c]onducting propaganda against the Socialist Republic of Vietnam" and for distributing and sharing pro-democracy documents and information to foreign media. Furthermore in April and June 2012, two land rights activists, Nguyen Van Tu and Nguyen Van Tuan in Can Tho and Ba Ria-Vung Tau Provinces, were sentenced to two and a half years and four years respectively under Article 258 of the Penal Code for "abusing rights to democracy and freedom to infringe upon the interests of the State." Both had worked to mobilize local citizens to file petitions with the government against illegal land confiscation.

**3.6** As part of the government's escalating clampdown on civic dissent in 2013, eight human rights defenders involved in the promotion and protection of economic, social and cultural rights in Vietnam were convicted in January 2013 under Article 79 of the Vietnamese Penal Code, which refers to *"carrying out activities aimed at overthrowing the people's administration."* The convicted activists, all of whom were placed in pre-trial detention since 2011, were convicted along with six other members of the Catholic organisation, Congregation of the Most Holy Redeemer. Ho Duc Hoa, a community organiser and social activist, was arrested on 30 July 2012 and faces thirteen years in prison followed by five years of house arrest. A number of those convicted were detained following their attendance of the trial of Dr. Cu Huy Ha Vu, a prominent Vietnamese human rights defender sentenced to seven years in early 2011 for "propaganda against the Socialist Republic of Vietnam"

## 4. (D) Concerns regarding freedom of expression and access to information

**4.1** Article 69 of Constitution of Vietnam affords its citizens freedom of speech and the press. Article 19 of the ICCPR also guarantees the freedom of expression and the right to hold opinions without interference. Despite these legal guarantees, Vietnam maintains one of the most restrictive media environments in the world. Dozens of journalists and "netizens" remain in prison for reporting on sensitive topics and questioning official government policy. Furthermore, the government continues to drastically limit access to information in the country through widespread censorship of the internet and strict controls over domestic media outlets.

**4.2** The continued invocation of vague legislation to silence independent dissent remains a matter of deep concern. Press freedoms enshrined in the Vietnamese Constitution are severely undermined by a number of ministerial decrees and draconian legislation, including the Press and Publication Laws which "strictly prohibit" publications with content that "oppose the State of the Socialist Republic of Vietnam or destroy the people's solidarity block" and "divulge secrets of the Party, State, and security." Furthermore, the government continues to detain and arrest independent journalists under Article 88 of the Penal Code, which proscribes the distribution of "anti-government propaganda," and Article 79, which prohibits a wide range of legitimate activities under the guise that they could be aimed at "overthrowing the state."

**4.3** As of September 2012, at least 14 journalists were reportedly imprisoned in Vietnam, placing it second among countries with the most imprisoned journalists. In addition, in 2012, at least 12 bloggers and netizens were convicted and sentenced to jail terms of up to 13 years, making the country the world's second biggest prison for netizens. On 24 September 2012, a court convicted three prominent dissident bloggers, Nguyen Van Hai Ta Phong Tan, and Phan Thanh Hai, for contravening Article 88 of the Penal Code, which prohibits "[c]onducting propaganda against the Socialist Republic of Vietnam." The journalists were sentenced to 12, 10, and 4 years in prison, respectively, in a six-hour summary trial. Prior to sentencing the bloggers were held in detention and they will be forced to spend between three to five years under house arrest following the completion of their prison terms. Most recently, on 13 June 2013, prominent Vietnamese blogger Pham Viet Dao was arrested and accused of "abusing democratic freedoms," under 258 of the Vietnamese Penal Code. Dao, who has written extensively on a number of politically sensitive topics including Vietnam's ongoing territorial dispute with China, could face up to seven years in prison if convicted.

**4.4** In an apparent attempt to control and limit the free flow of information, the government continues to expand its censorship over both print and internet media**.** As a result of the government's systematic oppression of media, no privately-run, independent media outlets exist in Vietnam. The Communist Party of Vietnam Mobilization and Propaganda Department oversees all media outlets and sets press guidelines dictating the content of all TV stations and publications in the country. Criminal sanctions are regularly applied to media houses which disseminate information suspected of promoting "reactionary" ideas, threatening national security, or revealing state secrets. Adopted in July 2006, Decree 56 allows for debilitating fines

and suspension of licenses of media groups which are accused defaming the "prestige of the state."

**4.5** In addition, the government has intensified its control over the internet, introducing wide scale restrictions on social media, micro-blogging services and access to national and international news sites. A wide range of news website and blogs, including those which cover sensitive topics such as religious freedom and democratic rights, are blocked in Vietnam. Furthermore, in 2008 the government issued Decree 98 "[r]egarding the management, provision and use of Internet services and electronic information on the internet," making it illegal to access blocked websites. In January 2011, the government approved Decree No. 2, Sanctions for Administrative Violations in Journalism and Publishing, which greatly limits the use of pseudonyms and anonymous sources.

## 5 (E) Concerns regarding freedom of assembly

**5.1** Article 69 of the Constitution of Vietnam guarantees the right to freedom of assembly. In addition, Article 21 of the ICCPR also protects the right to freedom of peaceful assembly. Nonetheless, severe limitations exist on the realisation of this right. In practice, the threat of government reprisals greatly discourages groups from holding demonstrations and protests. Moreover, the free exercise of the right to peaceful assembly is severely undermined by unwarranted disruptions and the use of excessive force by security officials.

**5.2** Government forces continue to utilize a variety of extra-legal measures to pre-emptively disrupt and prevent citizens and activists from holding public rallies, protests and demonstrations. Most recently, in response to a public announcement for people to meet to discuss human rights issues at public parks in Hanoi, Nha Trang, and Ho Chi Minh City made by a group of Vietnamese rights activists on 5 May 2013, security officials took a number of undue and excessive measures to thwart the proposed gathering. Directly preceding the May 5 "picnics," police placed several prominent bloggers under house arrest in an apparent attempt to prevent them from attending the meetings. In Hai Phong district, the authorities barricaded the house of blogger Pham Thanh Nghien to prevent her from leaving the house and later detained the proposed moderator for the discussion in Ho Chi Minh City after he was found distributing copies of the Universal Declaration of Human Rights to people at the park. In Nha Trang city, the government deployed local police and Communist Youth League members to pre-emptively occupy Bach Dang Park to prevent activists from holding their meetings.

**5.3** Vietnamese authorities have increasingly resorted to the use of disproportionate and excessive force to disrupt demonstrations across the country staged in opposition to growing land dispossession under the 1993 Land Law which designates the government as the sole steward of land in the country. On 24 April 2012, in response to demonstrations held in the outskirts of the capital, Ho Chi Minh City, calling for the government to abandon plans to evict hundreds of small farm owners, riot police fired warning shots and used tear gas to disperse protestors. Hundreds of police officers

reportedly beat protestors and arrested at least 10 others throughout the day before blocking all roads leading into the area and seizing at least 72 hectares of land and evicting 166 households.

## 6 (F) Recommendations to the Government of the Socialist Republic of Vietnam

CIVICUS calls on the Government of Vietnam to create an enabling environment for civil society to operate within, in accordance with the rights enshrined in the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made.

### 6.1 Regarding restrictions on the freedom of association:

- Decree 45 on the Organization, Activities and Management of Associationsshould be repealed or suitably amended to ensure that restrictions on the freedom of association are removed;

- The requirement for mandatory registration of civil society organisations should be repealed;

- All undue restrictions on obtaining international funding for CSOs under Decree 93 on the Regulations on the Management and Use of Foreign Non-Governmental Aid and Circular 7 should be repealed;

- Requirements underDecree 45 requiring CSOs to seek government approval of the group's organizational charter should be abolished;

- Requirements under Decree 45 that CSOs synchronize their mandate with national priorities and further abstain from conducting advocacy activities should be repealed; and

- Proscriptions on the formulation of independent labour unions and undue limitations on the right to strike for unions should be removed.

### 6.2 Regarding the arbitrary detention and harassment of civil society activists:

- Attacks on and threats to journalists and human rights defenders should be publicly condemned by senior government officials to ensure protection by law enforcement agencies;

- All due process guarantees in accordance with Article 14 of the ICCPR should be

ensured for all detained persons including civil society members;

- Civil society members and human rights defenders should be provided a safe and secure environment to carry out their work. All instances of violations of their rights should be independently investigated;

- All imprisoned civil society activists and human rights defenders should be unconditionally released and their cases should be reviewed to prevent further harassment;

- Provisions under the Penal Code allowing for severe penalties for committing "national security" offences should be immediately repealed and replaced with a legal framework that duly respects due process.

- Provisions found under Ordinance 44 on Regulating Administrative Violation, Article 120 of the amended 2004 Criminal Procedures Code, and Article 30 of the Penal Code providing for excessive pre-trial detention and house arrest without any due process of law should be immediately amended to prevent the use of arbitrary and incommunicado detention.

**6.3 Regarding restrictions on freedom of expression and access to information, and intimidation, harassment and attacks on journalists:**

- All journalists detained for exercising their freedom of opinion and expression should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment;

- Broad and vague definitions in the Press and Publication Laws and Penal Code which prohibit wide a range of legitimate activities should be repealed;

- Provisions allowing for excessive fines and the forced suspension of media groups accused of defaming the "prestige of the state" under Decree 56 should be repealed;

- Unfettered access to online information resources should be allowed by removing restrictions on access to national and international news websites and social media outlets.

**6.4 Regarding restrictions on freedom of assembly:**

- Best practices on freedom of peaceful assembly should be adopted, as put forward by the UN Special Rapporteur on the Right to Peaceful Assembly and Association in his annual report (2012) which calls for simple notification rather than explicit permission to assemble;

- Recourse for judicial review and effective remedy should be provided, including compensation, in cases of unlawful denial of the right to freedom of assembly by state authorities;

- Security forces in charge of crowd control should be equipped with non-lethal weapons and provided training across the board on humane means of crowd control as well as on the UN Basic Principles on the Use of Force and Firearms;

- Every case of injury caused to protestors by security forces should be subjected to mandatory and transparent investigation by an independent commission.

**6.5 Regarding access to UN Special Procedures mandate holders and the ratification of international treaties.**

- A standing invitation should be extended to the UN Special Procedures, particularly to the Special Rapporteur on Human Rights Defenders, Special Rapporteur on Freedom of Expression, the Special Rapporteur on Freedom of Peaceful Assembly and Association and the Special Rapporteur on Independence of Lawyers and Judges.