

Q & A on the Right to Freedom of Movement in Vietnam

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Between 70 to 100 human rights defenders and activists in Vietnam face government-imposed domestic and international travel restrictions, with no legitimate justification.¹

These restrictions appear to be aimed at punishing them for, or preventing them from, exercising their basic rights, including participation in human rights activities and association with regional and international human rights partners.

1. What is the right to freedom of movement?

The right to freedom of movement encompasses:

1. the right to move freely within a country or territory;
2. the right to choose a residence within a country or territory;
3. the right to leave any country, including one's own; and
4. the right to enter one's own country.

The right to leave and return to one's own country necessarily includes the right to obtain or renew the necessary travel documents.

2. How do the authorities in Vietnam restrict activists' right to freedom of movement?

According to independent human rights monitors, human rights defenders and activists face a range of restrictions on their right to freedom of movement, including but not limited to the following:

1. Activists have had their **passport confiscated**, upon return from overseas trips or when attempting to board a flight.
2. The authorities have **rejected or failed to respond to applications** for new passports or renewal of passports.
3. Activists who hold a valid passport have been **physically prevented** from checking in or boarding a flight at an airport, often on the grounds that their travel would "threaten national security."
4. Public security or plainclothes agents have **harassed and prevented activists from leaving their residence** to participate in peaceful activities that include meetings with other activists, diplomats, journalists, and human rights groups.

¹ See, for example, "Despite US-Vietnam human rights dialogue, activists denied right to travel," 7 May 2015, vietnamrightnow.com/2015/05/despite-us-vietnam-human-rights-dialogue-activists-denied-right-to-travel/; "Two more barred from leaving the country," 17 April 2014, vietnamrightnow.com/2014/04/two-more-barred-from-leaving-the-country/; INTERVIEW: I exercise my right to denounce wrong-doings: Rev Dinh Huu Thoai, 31 March 2014, vietnamrightnow.com/2014/03/interview-i-exercise-my-right-to-denounce-wrong-doings-rev-dinh-huu-thoai/; "UPR delegate detained upon return, passport confiscated," 24 February, 2014, vietnamrightnow.com/2014/02/upr-delegate-detained-upon-return-passport-confiscated/.

5. Activists have been forcibly **intercepted, detained or interrogated** by public security or plainclothes agents while en route to participate in peaceful activities or after they have returned from overseas travel.
6. Prisoners of conscience are sometimes released and **forced into exile** and not allowed to return.

There is no evidence to suggest that the authorities have ever provided a detailed explanation in writing to demonstrate that these restrictions are permissible under international human rights law and standards.

3. Is the right to freedom of movement guaranteed under Vietnamese laws?

YES. Article 23 of Vietnam's **Constitution** states:

The citizen shall enjoy freedom of movement and of residence within the country; and can freely travel abroad and return home from abroad. The exercise of these rights shall be provided by the law.

BUT, **Decree No. 136**², issued by the Ministry of Public Security in 2007, places broad limits on the right to freedom of movement. Under Articles 21 and 23 of the Decree, the Minister of Public Security has **total discretion** to prohibit Vietnamese citizens from leaving or entering the country on the grounds of "safeguarding national security and social order and safety." The Decree provides no further definition of or objective criteria for assessing such grounds and for determining proportionate measures.

A competent state agency is required to notify a citizen of its decision (but not the reasons behind it) to prohibit him or her from leaving the country, but has total discretion not to do so if the agency deems non-notification necessary for "criminal investigation or security purposes" (paragraph 3, Article 22).

The Decree allows citizens to "lodge complaints according to the provisions of law", but it is not clear what provisions this refers to. The Decree also does not envision any judicial oversight of the exercise of the powers to deny (or restore) a citizen's right to exit or enter the country.

4. Does Vietnam have an obligation under international law and standards to respect and protect the right to freedom of movement?

YES. Vietnam is a State party to the International Covenant on Civil and Political Rights (ICCPR).³ Article 12 of the ICCPR states:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which

² Decree No. 136/2007/ND-CP of August 17, 2007, on Vietnamese Citizens' Exit and Entry. Available at: <http://www.customs.gov.vn/Lists/EnglishDocuments/ViewDetails.aspx?language=en-US&ID=976>

³ Full text of the ICCPR is available here: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

In its General Comment No. 27⁴, the UN Human Rights Committee, which interprets and monitors implementation of the ICCPR, provides further explanation of the essence of this right and the strict tests for permissible restrictions.

Article 5(d)(i) and 5(d)(ii) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which Vietnam is a State party, also protects freedom of movement.⁵

Article 1 of the UN Declaration on Human Rights Defenders⁶ (1998) states:

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.

The importance of freedom of movement to the work of human rights defenders is further evidenced in Article 5(c) and Article 9(4) of the Declaration:

Article 5 (c) For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: [...] (c) To communicate with non-governmental or intergovernmental organisations.

Article 9 (4) To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

Travel restrictions clearly undermine the right of everyone to participate fully and freely in human rights activities at the international level. In his 2014 annual report⁷ on reprisals against human rights defenders who cooperate with UN human rights mechanisms, Secretary-General Ban Ki-moon reiterated his position that violations, including travel bans, “are unacceptable and undermine the functioning of the United Nations as a whole, including that of its human rights mechanisms.” The Secretary-General’s report highlighted reprisals against religious activist Mr Le Cong Cau and independent journalist Mr Pham Chi Dung in Vietnam, both of whom faced travel restrictions.

5. Are restrictions on the right to freedom of movement permissible?

⁴ Full text of General Comment No. 27 is available here:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/download.aspx?symbolno=ccpr%2fc%2f21%2frev.1%2fadd.9&lang=en

⁵ Full text of the ICERD is available here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

⁶ Full text of the Declaration is available here: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

⁷ UN Secretary-General, Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, UN Doc No. A/HRC/27/38, 27 August 2014. Full text available here:

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A_HRC_27_38_ENG.doc

YES, BUT restrictions are *only* permissible under *exceptional* circumstances as provided for in Article 12, paragraph 3, of the ICCPR. Namely, permissible restrictions must be:

1. **Provided by law.** The law authorising restrictions must be precisely construed, public, and transparent. It must not grant overbroad, unbounded discretion to those in charge of applying the restrictions.
2. **Necessary and proportional** to protect one of the exhaustive list of legitimate purposes in Article 12, paragraph 3 of the Covenant. Proportionality requires that the restriction be “the *least intrusive* instrument amongst those which might achieve the desired result [emphasis added].”⁸ Once the legitimate purpose is met, the permissible restriction must cease. The **burden of proof** to demonstrate necessity and proportionality in a detailed fashion lies with the State.
3. **Consistent with other human rights** and with the principles of **equality and non-discrimination**. Consistency requires the State not to restrict the right to freedom of movement by making distinctions of any kind, such as on the basis of religion or political or other opinion.⁹ It is important to highlight that the right to freedom of movement is enjoyed by *everyone* under the ICCPR.

Permissible restrictions meeting these criteria may apply to, for example, unauthorised access to private properties, access to areas of historical or environmental significance or persons carrying communicable diseases requiring quarantine.

On the other hand, prohibiting a person from traveling abroad solely to prevent their participation in human rights trainings amounts to a violation of the right to freedom of movement. Travel bans also impair human rights defenders’ right to seek, receive and impart information regardless of frontiers and their right to peaceful assembly and association both within and outside of Vietnam.

The impermissibly broad, vaguely worded grounds under Article 21(6) in Decree 136 (2007) for prohibiting Vietnamese citizens’ exit from the country **do not** meet the strict tests of legality, proportionality and necessity under the ICCPR.

6. Is forcing someone into exile a violation of the right to freedom of movement?

YES. Not allowing a person to return to his or her own country constitutes a violation of Article 12, paragraph 4 of the ICCPR, if such a restriction does not meet the strict tests mentioned above. Furthermore, Article 9 of the Universal Declaration of Human Rights (UDHR) states that “No one shall be subjected to arbitrary arrest, detention or exile.”

Article 23 of Decree No. 136 (2007) allows Vietnamese diplomatic missions abroad to refuse application for or to revoke exit and entry papers to Vietnamese citizens on the grounds of “safeguarding national security and social order and safety under decisions of the Minister of Public Security.” This provision, including the ill-defined concept of “social safety”, does not meet the strict tests under Article 12 of the ICCPR.

7. What can and should the international community do?

⁸ See Human Rights Committee, general comment No. 27 (1999) on freedom of movement, para. 14.

⁹ Ibid., para. 18.

Embassies and diplomats of key countries, particularly those with bilateral human rights dialogues or cooperation with Vietnam, should:

1. **Monitor** and document cases of violations on the right to freedom of movement, in close consultation with human rights defenders and activists in Vietnam;
2. **Meet** with and provide support to human rights defenders who face restrictions and who seek legal redress for and an end to such restrictions;
3. **Actively engage** and call on the authorities in Vietnam, particularly the Ministry of Public Security, to lift and refrain from imposing impermissible restrictions on the right to freedom of movement. This should be done not only in Vietnam, but also in home capitals, at the Human Rights Council and in other bilateral and international platforms.

UN agencies should continue to monitor, document and advocate against reprisals towards Vietnamese human rights defenders for cooperating or attempting to cooperate with UN human rights mechanisms. The UN Country Team in Vietnam should integrate the issue of freedom of movement into its technical assistance and dialogues with government agencies. This should be done with a view to encourage the government to align domestic laws and practices with international human rights law and standards concerning freedom of movement.