Brussels, 4 February 2020

Re: Call to Postpone Ratification of EU-Vietnam Trade Deals

Dear Member of the European Parliament,

We are writing ahead of the February 11th plenary vote on the EU-Vietnam Free Trade Agreement (EVFTA) and Investment Protection Agreement (IPA) to urge you to **vote for postponing Parliament's consent to the deals until the Vietnamese government agrees to meet concrete and verifiable benchmarks to protect labour rights and human rights.**

Despite Vietnam's failure to meaningfully meet repeated requests for human rights improvements formulated by MEPs, on 21 January a large majority in the International Trade Committee (INTA) voted in favour of granting swift consent to the agreements, countering the opinion given by the Foreign Affairs Committee (AFET) and ignoring repeated pledges formulated by many international and Vietnamese NGOs[1]. For the reasons detailed in the **annex**, we deeply regret that decision, and call on MEPs in plenary to correct that mistake.

There are notable precedents of the European Parliament setting human rights benchmarks to be met before giving their consent to bilateral deals in order to promote human rights progress, in line with the commitments laid out in article 21 of the Treaty of the European Union. Among the most recent ones is the 2016 consent to the EU textiles trade deal with Uzbekistan, which Parliament only granted after there was reasonable ground to conclude that the country had taken serious efforts to eradicate child labour. Similarly, the EP has persistently refused to ratify the EU-Turkmenistan PCA, due to the country's reluctance to make any progress in the field of human rights and the rule of law – a position last reiterated in a March 2019 resolution.

The European Parliament should take the same approach with Vietnam, withholding Parliament's consent and approving a parallel resolution laying out the human rights conditions that Vietnam should meet for MEPs to greenlight the deal. These should include, at a minimum:

- A public commitment and roadmap by Vietnamese authorities to amend or repeal its draconian **penal code** provisions, including articles 109, 116, 117, 331 and 318, which are routinely used to prosecute peaceful human rights defenders, journalists, lawyers, religious leaders, and political dissidents;
- The **release of political prisoners and detainees**, including, among others, journalist Pham Chi Dung, who was jailed for his advocacy and outreach to the European Parliament about the EU-Vietnam trade agreements;

[1] - https://www.hrw.org/news/2019/11/04/joint-ngo-letter-eu-vietnam-free-trade-agreement
- https://www.etuc.org/en/document/etuc-position-eu-vietnam-free-trade-and-investment-protection-agreements

- Commit to a detailed timeline for the **ratification of ILO Convention No. 87** (Freedom of Association and Protection of the Right to Organize) **by 2021;**
- In connection with the EU-Vietnam trade deals, the creation of an independent **monitoring and complaints mechanism** providing people harmed by the agreements effective recourses, remedies, and tools to address grievances.

The choice MEPs have to make on 11 February is a very simple one: either postpone consent to the agreements and send Hanoi a clear message that they are serious about their calls for human rights improvements; or grant consent despite the lack of any meaningful improvement or imminent prospect thereof, and send the opposite message.

We hope that you make the right choice.

Yours sincerely,

1. Alliance for Independence and Democracy of Vietnam
2. Association for the Advancement of Freedom of Religion or Belief in Vietnam
3. Boat People SOS
4. Buddhist Solidarity Association
5. Campaign to Abolish Torture in Vietnam
6. Committee for Religious Freedom in Vietnam
7. Con Dau Parishioners Association
8. Defend the Defenders
9. Federation Free Viet Labor
10. Front Line Defenders
11. Hmong United for Justice
12. Human Rights Watch
13. Independent Journalists Association of Vietnam
14. Legal Initiatives for Vietnam
15. Montagnard Evangelical Church of Christ
16. Organisation zur Wahrung der Menschenrechte in Vietnam e.V.
17. People in Need
18. Save Vietnam's Nature
19. The 88 Project
20. Unified Buddhist Church of Vietnam, Office of International Relations
21. Van Lang
22. VETO! Human Rights Defenders' Network
23. Vietnamese Americans for Human Rights
24. Vietnam Coalition Against Torture
25. Vietnamese Women for Human Rights
26. Voice Vietnam

ANNEX

Regrettably, on 21 January the International Trade Committee (INTA) endorsed the EVFTA and IPA, paving the way for the upcoming plenary vote. Trade MEPs decided not to follow the position expressed by their own foreign affairs colleagues, as well as by many international and Vietnamese NGOs, who called for postponing Parliament's consent in light of the Vietnamese government's failure to meet any of the requests for human rights improvements formulated by MEPs[2] and by EU member states[3].

Despite repeated requests, human rights NGOs have never had a chance to brief the Committee. We also note the recent decision by MEP Jan Zahradil to step down from his longstanding role as rapporteur for the trade deals, following allegations of conflict of interests over his institutional links with the Vietnamese government, bearing in mind the alleged conflict of interest may have had impact on the parliamentary process leading to the 10 February.

INTA Members have justified their vote making reference to what they consider as two positive developments stemming from their diplomacy with Vietnamese authorities, namely:

- The disclosure of basic information by the Vietnamese government concerning the **roadmap to finalise its ratification of core ILO conventions**. However:
    - In fact, **the Vietnamese government didn't disclose any new information** - or at least none that shouldn't have already been available to the Committee - **nor did it move up the plan for ratification**, which remains set for 2023. This was not therefore a new step or progress;
    - Furthermore, **that roadmap remains voluntary, without any accountability or penalty** in case of delays or failure to ratify the treaties;
    - In 2016, when concluding the TPP, the Vietnamese government committed to ratify ILO Convention 87 by 2021. It is remarkable that **no deadline whatsoever for ILO ratification was included in the EVFTA and IPA texts**, whose negotiations were officially concluded in June 2019, and that the 2023 plan for ratification is self-imposed and non-binding;
    - The ILO itself has conceded in a recent INTA debate that **Vietnam's penal code remains a major obstacle to the full enjoyment of the rights enshrined in**

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[2] - http://tremosa.cat/noticies/32-meps-send-joint-letter-mrs-mogherini-and-commissioner-malmstrom-ask-more-human-rights-progress-vietnam
- https://www.europarl.europa.eu/doceo/document/TA-8-2018-0459_EN.pdf
- http://www.heidihautala.fi/wp-content/uploads/2019/06/Joint-MEP-letter-EVFTA_IPA.pdf

[3] https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/083/45/PDF/G1908345.pdf?OpenElement

those conventions, mainly in C87 on freedom of assembly, even if they were ratified.

- The second one is the introduction of some modest improvements in Vietnam's labour code by the Vietnamese National Assembly in November 2019. Trade MEPs overlooked the reform's many shortcomings, most notably the **persisting de facto impossibility to register and operate as independent trade unions**.

INTA had requested a commitment to reform the penal code to be compatible with labour rights, but this request was patently ignored. They had also called for the release of **Pham Chi Dung**, the Vietnamese activist detained for his outreach to the European Parliament, but the Vietnamese ambassador, in a risible reply, defended the arrest and compared limits on freedom of expression in Vietnam to those in place in Europe.

The detention of Pham is far from an isolated case. Scores of human rights defenders, trade unionists, environmental activists, religious leaders, journalists, bloggers and lawyers are sent to prison under draconian penal code provisions that criminalise any expression of criticism to the government or Communist Party of Vietnam. Increasingly, people are being prosecuted for nothing more than the publication of Facebook posts. In 2019 alone, at least 30 people were arrested or convicted for peacefully expressing their views, leading the total number of political prisoners in Vietnam to at least 144 , in a **trend of systematic repression** of peaceful expression which the EU itself recognised has been **intensifying in recent years**.

Some argue that the EU-Vietnam trade agreements will indirectly lead to general human rights improvements in the country as a result of potential creation of jobs and economic development; others make reference to the agreements' trade and sustainable development (TSD) chapter. Others also argue that the human rights clause in the EU-Vietnam Partnership and Cooperation Agreement (PCA), which provides that the EU can suspend the trade deals in the event that Vietnam commits grave human rights violations, would provide the EU with strong leverage over the country.

All these claims are highly questionable.

Firstly, Vietnam has already enjoyed major economic growth without these agreements: there is little evidence to suggest that EU tariff restrictions have unduly held back economic improvements in Vietnam in the last two decades. Meanwhile, there is little empirical evidence that economic growth in repressive regimes leads to general improvements in civil and political rights – it has not for example been the case in China.

Secondly, **the TSD chapter's provisions are weak and contain no enforceable language.** They include only vaguely formulated commitments with no penalties, timelines, or deadlines. In the current climate of systematic repression of independent civil society in the country some of the TSD provisions --for instance, the creation of domestic advisory groups, or DAGs, tasked

with overseeing the implementation of the deals, are in practice unrealistic. According to the text, the DAGs should be comprised of independent civil society from both the EU and Vietnam, yet it would be very difficult if not impossible to identify any group in Vietnam that could operate independently and properly exercise a monitoring role without fear of government harassment, retaliation, violence or prosecution. The delegation of INTA MEPs who travelled to Vietnam in later October was promised that independent trade union representatives would be included in the DAGs; to date, as noted above, independent trade unions are not even allowed to form and operate.

Thirdly, it is also in practice **unrealistic to foresee the PCA's human rights clause being used to suspend the EU-Vietnam trade deals** as a retaliatory measure for human rights abuses by the government, even if theoretically possible:

1) The EU has never before suspended any trade agreement, with any country, on human rights grounds;
2) The suspension of the agreement would be extremely harmful to EU businesses and investments in the country, ensuring that EU officials would come under intense pressure not to do so, regardless of human rights issues;
3) Vietnam currently benefits from unilateral trade preferences through the Generalised Scheme of Preferences (GSP), and yet the country's ongoing and patent failures to uphold its numerous existing human rights obligations under the scheme (including the long-overdue ratification of the core ILO conventions referenced above) has yet to result in any meaningful reaction by the EU;
4) Human rights violations in the country are so widespread and severe that, were the agreements in place at the time of writing, there would arguably already be grounds to suspend them.

Once Parliament grants consent to the deals, it will relinquish all leverage on Vietnamese authorities.