

May 27 2019

OHCHR- Palais Wilson

Human Rights Council Branch-Complaint Procedure Unit
CH-1211 Geneva 10

Switzerland

Human Rights Council Complaint Procedure Form

**I. Information concerning the author (s) of the communication or the alleged victim (s) if
other than the author**

Individual

Group of individuals

NGO

Other

NGO Name:

Justice for Formosa Victims

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USA

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Submitting the complaint:

On the author's own behalf:

On behalf of other persons: (Please specify: **Thousands of Vietnamese victims of the Formosa disaster**)

II. Information on the State concerned

Name of the State concerned and, as applicable, name of public authorities responsible for the alleged violation(s): **Vietnam**

III. Facts of the complaint and nature of the alleged violation(s)

The complaint procedure addresses consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

Please detail, in chronological order, the facts and circumstances of the alleged violations including dates, places and alleged perpetrators and how you consider that the facts and circumstances described violate your rights or that of the concerned person(s).

See detailed submission in the following pages for all relevant facts and circumstances of the alleged violations.

IV. Exhaustion of domestic remedies

1- Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies– please provide details on the procedures which have been pursued, including recourse to the courts and other public authorities as well as national human rights institutions, the claims made, at which times, and what the outcome was:

Attempts have been made to present petitions to the authorities, including the National Assembly, the Ministry of Natural Resources and Environment and the Ministry of Public Security, without any success or without receiving a response.

2- If domestic remedies have not been exhausted on grounds that their application would be ineffective or unreasonably prolonged, please explain the reasons in detail:

The Vietnamese judiciary is neither impartial nor independent and does not allow for a realistic resolution to these human rights violations. In fact the judicial system has been used as a weapon against protesters and petitioners, through arbitrary arrests and unjust convictions on politically motivated criminal charges.

V. Submission of communication to other human rights bodies

In addition, recognizing the growing role and impact of non-state corporate actors on the enjoyment of human rights, the HRC mandated the *Working Group on the issue of human rights and transnational corporations and other business enterprises* to uphold three guiding principles: (1) the State's duty to protect human rights; (2) the corporate responsibility to respect human rights; and (3) the need for accessible and effective remedies.

Moreover, the right to health and the right to food have been reaffirmed, time and time again, by various United Nations bodies and by the international community as a whole, as well as laid out in a plethora of resolutions, declarations and binding treaties.

Likewise, the rights to work, the right to earn a livelihood and the right to decent standards of living are all integral human rights that are enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and various international human rights treaties and texts.

The International Covenant on Civil and Political Rights (ICCPR), one of the foundational international human rights treaties, guarantees the rights to freedom of expression, the right to receive information, as well as the right to freely and peacefully assemble with others. These rights are an integral part of a healthy dialogue between governments and the population in an open and participatory society.

Finally, the right to an effective remedy following the violation of one's fundamental rights is a key component of the full enjoyment of human rights, recognized as such in all three documents of the International Bill of Human Rights (UDHR art. 8; ICCPR art. 2; ICESCR art. 2). Without being able to access an effective remedy, human rights violations go unpunished, and victims may be deprived of justice, compensation and their dignity.

In light of this normative framework, *Justice for Formosa Victims* (JFFV) would like to bring to your attention serious concerns about a range of human rights violations related to the toxic spill caused by Formosa Ha Tinh Steel Corporation in April 2016 off the coast of Central Vietnam. JFFV is a non-governmental organization whose primary mission is to support the victims of the Formosa environmental disaster in the Central provinces of Vietnam, by advocating for appropriate compensation for the victims and decontamination of the environment.

This case has been brought to the attention of different UN human rights actors since 2016, who have communicated their concerns with the Vietnamese government on several occasions, in particular with regards to arbitrary arrests and detention of environmental rights activists, to no avail. Hence the need to continue applying pressure and lobbying the Vietnamese government in order to ensure an appropriate resolution of the multitude of persistent human rights issues related to this case.

JFFV can confirm that this communication respects all the necessary criteria in order to be accepted for examination by the HRC Complaint Procedure, including that it is not politically motivated, gives a factual description of the alleged violations and the rights which are

More than two months after the initial reports of the incident, the Minister of Natural Resources and Environment, Tran Hong Ha, identified the Formosa Ha Tinh steel mill as the culprit for the disaster, pointing out the existence of 53 regulatory violations³. Most notably the company had not respected the production plans and methods that it had agreed upon in the original environmental assessment conducted by Vietnamese authorities, choosing a processing system that was far cheaper, yet far more polluting than its alternatives.

At the end of June 2016 Formosa offered their apologies and a compensation settlement of 500 million USD to the government, which has been criticized by many NGOs and civil society actors as being wholly insufficient and having largely failed to reach the affected population⁴. In addition, critics have argued that the settlement was reached prior to any comprehensive assessment or evaluation of the damages, and without any transparency or public participation.

The company's negligence has had wide-ranging consequences for the population and amounted to several violations of their human rights. The Vietnamese State's actions, and its failure to act, represent serious failures on its part to uphold its responsibilities and obligations towards its citizens under international human rights law (including various treaties and declarations that Vietnam has signed and/or ratified).

This submission aims to demonstrate how the events in question constitute a consistent pattern of gross and reliably attested violations of various human rights and fundamental freedoms, including the right to a clean environment, the right to food, the right to health, the right to work, the rights to freedom of expression, assembly and the right to information, and finally, the right to an effective remedy.

Part II: Right to Safe, Clean, Healthy and Sustainable Environment

The right to a safe, clean, healthy and sustainable environment has been referred to in many international treaties and texts, both implicitly (e.g. ICESCR, art. 12), and explicitly (ASEAN Human Rights Declaration, art. 28 f.; Stockholm Declaration of the United Nations Conference on the Human Environment; Rio Declaration on Environment and Development).

In Vietnamese domestic law, the right to live in a clean environment is constitutionally entrenched (art. 43, 50, 63), and is further protected and strengthened by several laws, most notably the *Law on environmental protection* (2014) and the *Law on water resources* (2012). The State's responsibilities are notably elaborated upon in article 63 of the Constitution, which states that Vietnam has a policy to protect the environment, to safeguard nature and

³ <https://www.reuters.com/article/us-vietnam-environment-formosa-plastics/exclusive-broken-rules-at-11-billion-formosa-mill-triggered-vietnam-spill-report-says-idUSKBN1380WH>

⁴ See for instance the report compiled by Vietnamese NGO Green Trees, "An Overview of the Marine Life Disaster in Vietnam".

biodiversity, and to hold organizations and individuals accountable for environmental pollution.

On April 11th, a few days after the first fish deaths in Ha Tinh, preliminary reports from the Ministry of Agriculture and Rural Development (MARD) noted the presence of toxic chemicals in the water. This was confirmed on April 20th, when a report from the MARD in Thue Thien-Hue confirmed that the concentration of phosphate was twice the amount allowed, which increased the alkalinity of the water tenfold, thereby increasing the toxicity of other substances as well. On April 26th, another report found heavy metals (chromium), ammonia and nitrogen above the authorized limits.

The following day, at a press conference, the Deputy Minister for the Environment hypothesized two possible causes for the fish deaths: a red tide (the bloom of a toxic microalgae) or toxic discharge by human activity at land or at sea⁵.

Formosa's responsibility was finally established on June 30th when the cause of the sea pollution was determined to be the mill's release of untreated water—contaminated with phenol, cyanide, and iron hydroxide—into the sea as a power failure shut down the plant's waste treatment facility. The government had not approved the factory's operating process, and the buried drainage pipe from which chemicals leaked into the ocean was deemed to be in contravention of regulatory norms⁶.

In turn, the contamination of the marine environment has affected the health of many people, the food of the local population, as well as the work and livelihood of the communities. The government estimates that the recovery of the local environment will be fully restored in 10 years if sufficient rehabilitation work is carried out⁷.

It is worth noting that Formosa has a history of reckless disregard for the environmental impacts of its activities on the local communities where it operates. The company and its international subsidiaries have faced major fines and lawsuits in the United States, notably in Texas, Louisiana, and Mississippi after discharging poisonous chemicals into the land and underground water⁸.

However, Formosa is not the only actor whose responsibility is engaged following the violation of the right to a safe, clean, healthy and sustainable environment. According to General Comment N°24 (2017) on State obligations under the ICESCR in the context of business activities, the State is responsible to implement “an independent public authority which must have [...] the power to order the reparation to redress the harm done. Reparation can be in the form of restitution, compensation, rehabilitation, satisfaction, and guarantee of

5 <https://www.reuters.com/article/us-vietnam-formosa-plastics-environment/vietnam-says-no-proof-formosa-steel-plant-linked-to-mass-fish-deaths-idUSKCN0XO18L>

6 <https://thediplomat.com/2016/07/its-official-formosa-subsidiary-caused-mass-fish-deaths-in-vietnam/>

7 <https://www.reuters.com/article/us-vietnam-environment-formosa-plastics/vietnam-says-recovery-from-formosa-industrial-disaster-could-take-a-decade-idUSKBN14C1F5>

8 Green Trees report pg 47.

non-repetition” (par. 41). While restitution may not be possible in this case, Vietnamese authorities are still liable to ensure appropriate compensation, rehabilitation, satisfaction and guarantee of non-repetition from the perspective of this right.

Moreover, the responsibility of Vietnamese authorities is arguably engaged by its failure to provide adequate oversight mechanisms to monitor the activities of foreign corporations operating within the country, and to ensure their compliance with environmental regulations.

Notably, the Vietnamese government’s conduct, in its relations with Formosa (i.e. significant financial and tax incentives) and in how it has handled the disaster (i.e. providing advance notice before conducting an ‘irregular review’ of the company’s environmental protection activities), has been suspect, giving the impression that potentially high-level corruption has allowed Formosa’s corporate interests to dictate the state’s response.

Part III: The Right to Health and to Food

The right to health and to food are widely recognized in international law. Article 25 of the UDHR recognizes that everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including the right to food. The rights to health and food are also recognized in articles 11 and 12 of the ICESCR. Furthermore, the right to social security, which is directly linked to the right to health and to the right to food, is constitutionally guaranteed by article 34 of the Vietnamese Constitution.

In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights links the right to health to the realization of other rights such as the right to food including access to a sufficient quantity of healthy food (p. 2, 3 and 4). The Committee’s General Comment No. 12 reaffirms the right to food that is free of toxic substances and the general right of access to food (para 8).

The proper identification of the causes of massive fish deaths in Central Vietnam would have been important in ensuring that the health and security of the population was protected. However, delays in governmental action to investigate such causes led to prolonged uncertainty and even widespread misinformation. These inexcusable delays, combined with mixed messaging from the authorities, who at times provided contradictory advice and information on whether the fish was safe to eat, threatened the general health of the population and exposed them to unsafe food sources.

Many cases of sickness have been linked to swimming in the polluted waters and eating contaminated seafood. In particular, there were several reported cases of deep-sea divers becoming sick after swimming in the polluted water, in early to mid April 2016. The following cases are some examples of individuals represented by JFFV who experienced health issues as a result of ingesting or being exposed to contaminants from the Formosa spill:

1. A deep sea diver named Le Van Ngay died on April 24th 2016 after diving into the polluted waters with his team, and experiencing various symptoms in the following days, including difficulty breathing, coughing, blurry vision, itchy skin, swelling all over the body, discomfort to the heart, and headaches.
2. Victim H.V.C.⁹, a fisherman, became sick after catching and eating dead fish that he caught in the sea around the time of the Formosa spill. H.V.C. was hospitalized for a week for low blood pressure, an ear infection, and an irregular heart rate. Some of the remaining fish was fed to dogs, which were immediately sick and died shortly after. Many of H.V.C.'s crewmembers were prevented from travelling to Korea for work, as pre-departure health checks indicated that their blood had abnormal levels of lead following their consumption of the tainted fish.
3. Victim M.V.T., a fishing boat captain working off the coast of Ha Tinh, was hospitalized for sickness (stomach and intestinal pain) for a period of 1.5 months. He was unable to consult his test results but strongly believes there was link with the tainted fish that he was exposed to.
4. Victim N.D. caught and ate many fish in the affected sea coastal region in April 2016, and began experiencing various symptoms, including diarrhea, unstable blood pressure, rapid heart rate, and sore muscles. The victim had their fish tested for contaminants, with results confirming that they were toxic. After having blood tests conducted the victim learned that the levels of mercury, copper, lead and arsenic in their blood were abnormal and at toxic levels.

It is clear that the toxic substances that were discharged in the water during the Formosa spill represent a hazard to health, as shown by the reported abnormally high levels of phenol and cyanide. Medical professionals have reported that the specific types of toxins released by Formosa are linked to increased risks of stomach and colon cancer¹⁰. High levels of these toxic substances should never be present in food. The government's ban on fishing further demonstrated the fact that the fish were not safe for consumption. Finally, the head of Vietnam's Department of Food Safety and Hygiene admitted that the food safety of products from the sea is not guaranteed even if the water became safe again.

This disaster has also had a dramatic effect on the right of access to food, given that fish is a staple food in the Vietnamese diet, with one of the highest per capita consumption rates of fish in the world¹¹. However, the massive fish and seafood deaths and the reduced availability of sea life in the coastal waters off the affected provinces, combined with generalized fears and aversion to fish consumption caused by the disaster, has led to severe food insecurity for many people in the region, forcing many to drastically change their eating habits.

⁹ Individuals will be referred to by their initials to ensure anonymity and to protect their safety.

¹⁰ https://www.daad-vietnam.vn/files/2017/06/WS4_Nutrition-Health.pdf

¹¹ <https://www.helgilibrary.com/indicators/fish-consumption-per-capita/vietnam/>

To remedy this situation, the government has provided rice to many citizens, a measure which was clearly insufficient to provide access to an equivalent amount of healthy food as before the disaster. Following her country visit in November 2017, the Special Rapporteur on the Right to Food, Hilal Elver, shared her concerns about the repercussions that the Formosa disaster has had on food security and the livelihoods of large portions of the regional population. The Special Rapporteur was informed by several people that they had felt desperate enough to eat the contaminated fish, as a result of their drastic income reduction from being unable to fish. The Special Rapporteur expressed reservations with the manner that the government had dealt with the issue.

Notably, the Special Rapporteur on the Right to Food endorsed an emerging jurisprudence coming from a Nigerian case heard by the African Commission on Human and Peoples' Rights (Comm. No. 155/96), which states that: “[...] the minimum core of the right to food requires that the Nigerian Government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources and prevent peoples' efforts to feed themselves” (para 65).

According to General Comment 14 of the ESCR Committee, the government must protect the right to health of its population by taking measures to prevent pollution caused by businesses (para 35 and 51). It must also take all measures to ensure that the activities of the enterprises present on Vietnam's territory are in compliance with the right to healthy food and its access (para 15 and 27). In the present case there is substantial evidence that demonstrates negligence and mismanagement in the government's handling of the disaster and its aftermath. Considering these facts, it is appropriate to hold the Vietnamese government responsible for failing to protect its population against the violations of the rights to health and food by Formosa.

Finally, the Committee on Economic, Social and Cultural Rights has determined on numerous occasions that any person whose rights to health and to food have been violated by the State or by a company have the right to an effective remedy and to adequate reparation (General Comment No. 14 para 59; General Comment No. 12 para 32; General Comment No.24 para 14, 15 and 38-57). However, in the present case this right has not been fully respected. As highlighted by the Special Rapporteur and by the United Nations Development Programme, compensation has not been distributed in a completely transparent or equitable manner and in most cases has been woefully insufficient in relation to the long-term impact on the fishermen and their families' livelihoods.

Part IV: The Right to Work and to Livelihood

The right to work is recognized by many international instruments. Article 23(1) of the UDHR recognizes that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. The right to choose one's work and not be deprived of it unfairly is also provided for in Article 6 of the

ICESCR and clarified in the General Comment N°18 of the CESCR. Moreover, Article 25(1) UDHR recognizes the right to security in the event of unemployment, or other lack of livelihood in circumstances beyond a person's control.

In Vietnam, more than 4 million people work in the fishing industry, making it one of the most important sectors in terms of income and employment¹². According to the UN FAO, nearly 10% of the population in Vietnam earn their income directly or indirectly from the fishing industry. The tourism sector has also become increasingly important in terms of income and employment for the Vietnamese population, with tourism revenue totalling more than 22 million USD in 2018¹³. These activities are essential means of subsistence for the people living in Vietnam and especially in the four coastal provinces impacted by the Formosa disaster.

The excessive fish mortality and food insecurity caused by the Formosa disaster has had severe consequences on the fishing industry, its workers and other related business sectors. First, the death and toxicity of farmed fish and seafood resulted in a massive loss of production and resources, causing losses totalling billions of Vietnamese dong (VND). Risks related to the toxicity of these products also had an impact on the fishing industry market, as customers feared consuming affected seafood, and the selling price of various types of fish diminished greatly. Thus, sales of products directly or indirectly related to the sea such as fish sauces and fishnets were lower, markets were deserted and prices fell dramatically¹⁴. Many shopkeepers and merchants were losing as much as 1 million VND/day at the beginning of the disaster. In addition, the loss of income was reinforced by the fact that fishing and sales bans in the fishing industry came into effect and lasted up to a year after the disaster¹⁵.

Many people related to the tourism sector also suffered a significant loss in the four affected provinces. Revenue related to maritime tourism in Ha Tinh province fell by 90% between January and September 2016, while in Quang Binh province the tourism sector lost more than 85 million USD and the number of visitors decreased by more than 70%¹⁶. Many restaurant owners have also suffered significant losses. Generally, a great deal of people were forced into debt, which was encouraged by banks offering particularly attractive interest rates for loans¹⁷.

12 <http://seafood.vasep.com.vn/685/onecontent/fishery-profile.htm>

13 <https://www.ceicdata.com/en/indicator/vietnam/tourism-revenue>

14 <http://greetingvietnam.com/society/fishermen-locals-suffer-in-wake-of-fish-deaths.html>

15 <https://www.voanews.com/a/vietnam-bans-unsafe-seafood-in-central-provinces/3316289.html>

16 <https://e.vnexpress.net/news/business/formosa-s-fish-kill-robs-vietnam-s-tourism-of-millions-of-dollars-officials-3483843.html>

17 <https://e.vnexpress.net/news/business/finance/big-banks-slash-loan-rates-to-help-fishermen-amid-mass-fish-deaths-3397283.html>

In July 2016, the Ministry of Labour, Invalids and Social Affairs stated that more than 260,000 workers were affected by the disaster, of which 100,000 were significantly affected¹⁸. More specifically, according to a report published by the General Bureau of Statistics of Vietnam in September 2016, 19,000 local workers were unemployed as a result of the disaster, 5,000 had to change jobs and more than 17,000 people had to emigrate to find a job¹⁹. Nationally, this period also coincided with an increase in the rate of unemployment.

As a result, many people have been unjustly deprived of their work and the right to freely choose their jobs, due to Formosa's actions, but also due to the inaction and negligence of the Vietnamese government. Many people have been forced to emigrate or change jobs. The government in particular advocated for programs facilitating the export of Vietnamese workers and programs facilitating the change of profession²⁰. Nonetheless, numerous public testimonies have shown that the population is reluctant and dismayed to have to change jobs or emigrate in order to assure their means of subsistence. By pursuing temporary and inadequate solutions, rather than reliable and lasting measures, in many cases the government has worsened the rights violations experienced by victims.

Most egregiously, the government pressured many fishermen to be sent abroad for contract labour to countries like Taiwan, Japan, South Korea and China. Acting under economic duress, many of those who accepted did not take on these new jobs of their own free will and volition, and were subject to unfair labour practices that caused them prolonged job insecurity. Many individuals were forced to pay exorbitant recruitment fees (thousands of USD\$) to brokerage companies that were either owned or partially owned by the Vietnamese government. This led many migrant workers to become seriously indebted, and caused severe repercussions for many families as children grew up without their parents and marriages fell apart.

The government is to blame for failing to take measures, in accordance with the CESCR's General Comments, to protect its population from Formosa's actions, which have had a major impact on the rights and livelihood of workers. The CESCR has made it clear that anyone whose right to work and livelihood has been violated has the right to access justice, as well as the right to an effective remedy. As of today the Vietnamese State has failed to ensure that these rights are being fully respected.

Part V: Right to Information, Freedom of Expression, and Freedom of Assembly

The right to information and the rights to freedom of expression and assembly are inherent and essential components of a free and open society, in which citizens are able to hold governments accountable. These rights and fundamental freedoms are guaranteed, reaffirmed

¹⁸ <https://english.vietnamnet.vn/fms/society/160091/over-260-000-people-affected-by-mass-fish-deaths-in-central-vietnam.html>

¹⁹ <https://tuoitrenews.vn/society/37322/over-19000-vietnamese-jobs-lost-to-formosa-mass-fish-deaths>

²⁰ <http://vneconomicstimes.com/article/vietnam-today/workers-in-pollution-hit-areas-to-receive-help-in-labor-exports>

and enshrined in countless international human rights texts, most notably the UDHR (arts 19 & 20) and ICCPR (arts 19 & 21). In addition, they are provided for in article 25 of the Vietnamese Constitution. Consequently, the Vietnamese state has a positive and a negative obligation to ensure that these rights are protected and promoted; not only should it govern in a manner that allows information to flow freely and for people to feel comfortable in expressing their points of view, it should also refrain from stifling dissent or repressing the lawful expression of these rights and liberties. Unfortunately, cases in which the Vietnamese state respects these rights are the exception and not the norm.

Notably, serious issues related to limitations on the right to freedom of expression and freedom of assembly were underlined by the UN's Human Rights Committee in its third periodic report of Vietnam²¹. The Committee highlighted the severe restrictions on these civil rights, enabled by vaguely and broadly formulated criminal offences, state control over the media, and the instrumentalization of the justice system to silence dissenters. In particular, the Committee's conclusions made reference to the cases of environmental human rights defenders, protesters, and bloggers who were punished for speaking out with regards to the injustice of the Formosa disaster, through arbitrary arrest, detention, violent crackdowns on demonstrations, unfair trials and criminal convictions.

Given the gravity of the contamination on the coast of Ha Tinh, the information concerning the situation was relayed rapidly by media around the world. However, even if the press was active in responding to the situation, the Vietnamese State largely failed in its duty to protect the rights of its population. By failing to inform the population about the cause of the disaster in a timely manner, and by neglecting to provide consistent instructions on the safety of the water and the sea life, the Vietnamese government contributed to a climate of fear and misinformation which worsened the situation. Moreover, when members of the public sought to express their views on the disaster, and on the manner in which Formosa and the government had handled it, they were persecuted and silenced by the state apparatus.

In a press conference on April 27th 2016, a government spokesman declared that two possibilities were being explored to explain the massive fish death: the first being the chemical toxicity of the water caused by human contamination and the second being the effects of a possible red tide. There is substantial evidence and reason to believe that the government was well aware by this point that Formosa was responsible for the contamination, and to pretend otherwise should be considered an attempt at disinformation, a breach of the public's right to information, and a breach of its responsibility to conduct a prompt, competent and objective investigation before coming to a conclusion.

On the same day, a local newspaper known for sharing the government's views published an article stating that the environmental situation had been restored, implying that the water was no longer polluted. This was a misleading statement, arguably attributable to the government, which caused confusion and disorder within the population. It should be noted that the

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Ministry of Agriculture and Rural Development had already indicated on April 20th that the level of contamination was high and directly related to the fish deaths. Giving the public mistaken and inconsistent information hinders their ability and their right to form an opinion based on accurate and impartial sources of information.

The Vietnamese administration's incoherence was demonstrated in a disturbing fashion when, not even a month after the catastrophe, the Chief of the Ministry of Natural Resources, along with other state officials, shared pictures of themselves purportedly swimming in the polluted area in order to reassure the population of the safety of the water²². Furthermore, on May 5th 2016, the government further confused the population by banning the processing and selling of "dead seafood washed ashore or caught within 20 nautical miles of a mysterious mass fish kill along the country's central coast". This contradictory misinformation campaign put the Vietnamese population's security at risk, and was arguably a violation of their fundamental right to information, leaving them in a state of fear and uncertainty.

On June 2nd 2016, as the Ministry of Agriculture and Rural Development officially established the cause of the fish death, the Ministry of Information refused to immediately share this information with the population. In violating the population's right to information, the government also exposed the public to serious violations of their right to health.

It is only by the end of June 2016 that the government officially recognized the culpability of Formosa²³. Until then, Vietnam had been in constant denial of the situation, continuing to shift the blame onto the "red tide" hypothesis involving a microalgae bloom, despite all the evidence that demonstrated Formosa's responsibility.

On August 25th 2016 the Ministry of Health announced that the consumption of fish was not recommended, but it nevertheless encouraged the population to swim in the ocean, implying that the water was safe. Once again, the Vietnamese government showed inconsistency when it later announced that it could take up to a decade for the local environment to recover from the Formosa spill.

In summary, the Vietnamese government was consistently negligent during the crisis, and at times actively at fault, in failing to uphold its citizens' right to information. The entire investigative process was lacking in transparency, individuals were kept in the dark with regards to the nature and extent of the risk posed by the fish deaths, and in most cases the population did not receive adequate information about their potential recourses or remedies.

The government's lack of transparency, both in failing to promptly release accurate information about the cause of the disaster and in failing to distribute compensation in a transparent manner, forced individuals to use their voices and the means at their disposal to inform the public of the realities of the situation and to call on the government to remedy the

22 <https://e.vnexpress.net/news/news/da-nang-officials-swim-in-the-sea-to-ease-pollution-rumor-3395932.html>

23 <https://www.theguardian.com/environment/2016/jul/01/vietnam-blames-toxic-waste-water-fom-steel-plant-for-mass-fish-deaths>

crisis. In practice people expressed themselves via social media, wrote petitions, hung banners protesting perceived injustices, and participated in peaceful demonstrations within their communities. All of these activities are legitimate exercises of the rights to freedom of expression and freedom of assembly.

In the months and years that followed, the Vietnamese authorities have systematically repressed the freedom of expression and assembly of the population, in relation to their grievances about the Formosa disaster. This systematic silencing of dissent and criticisms follows a pattern of state repression in Vietnam which has been condemned time and time again by the UN, including the HRC and the OHCHR, and documented by a range of independent NGOs.

Justice for Formosa Victims has gathered testimony and affidavits from dozens of individuals, primarily in the affected regions of Central Vietnam, who experienced or were witness to state crackdowns connected to the Formosa case. These crackdowns have taken many forms, including targeted violence against peaceful demonstrators, arbitrary arrests and detention of hundreds of critics and protesters on trumped up charges, and weaponization of the judicial system to silence dissenters with long prison sentences. The following cases are a brief illustration of the rights violations being committed by the Vietnamese government in this regard:

5. Victim H.D.C.²⁴ was intercepted by a group of 30 individuals, composed of police officers and government-allied civilian thugs, while attempting to assist a group of fishermen in filing a petition to the authorities against Formosa. H.D.C. was violently dragged out of his car and assaulted before being forced into a police vehicle. After a brief trial H.D.C. was sentenced to 14-years in prison and 4-years of probation, namely for allegedly violating article 258 of the Vietnamese Penal Code: “Abusing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens”.
6. Victim N.V.H. was assaulted by Vietnamese state police and a group of unidentified thugs, believed to be hired and/or directed by the government to persecute civilians protesting against Formosa. The attack in question occurred after N.V.H. attended a peaceful protest against Formosa, and was committed by 20 individuals, including police officers who hit the victim with police batons, shoes, elbows and fists. The victim received blows to the head until they passed out, and were brought to the police station where they were detained for 3 hours before being released. The victim’s injuries were extensive, including facial swelling, skin lacerations, a broken foot, and a traumatic brain injury.
7. Victim N.V.O. has a history of writing to expose government corruption and to defend the rights of oppressed populations in Vietnam, for which they had previously

²⁴ Individuals will be referred to by their initials to ensure anonymity and to protect their safety.

been sentenced to 4 years in prison and 4 years of probation (in 2011) for politically motivated charges of “plotting to overthrow the government”. N.V.O.’s community was affected by the Formosa disaster, and in 2017 N.V.O. peacefully participated in protests by holding banners around his neighbourhood which condemned the lack of victim compensation. The victim photographed the demonstrations and posted photos on his Facebook page. A short time later the victim was allegedly tied up, kidnapped, beaten and detained by 20 men believed to be plainclothes police officers. N.V.O. was tried in absentia, convicted of violated his probation order and given a 5-year prison sentence.

8. Victim T.T.X. was active in their community, having been involved in environmental cleanup activities. In October 2017 T.T.X. was assaulted, abducted and detained for more than 4 months by the Vietnamese authorities. T.T.X. was eventually convicted of “engaging in activities aimed at overthrowing the government” on the basis of a single piece of evidence: an image of them holding a loudspeaker chanting during a protest where participants demanded that Formosa compensate disaster victims adequately.

These cases represent just a small fraction of the total number of violations of the rights to freedom of expression and freedom of assembly that were committed by the Vietnamese government in connection with the Formosa disaster. The government has been intolerant and draconian in punishing any civilians who dare speak out about its poor handling of the disaster, or on the opaque and inadequate compensation process.

Recent news indicate that the lethal impacts of Formosa’s activities on marine life is still felt today²⁵.

The OHCHR has repeatedly expressed concern about the violence perpetrated by State authorities against Vietnamese protesters demonstrating about the Formosa disaster. Consequently, the OHCHR²⁶ and several UN human rights experts have called on the Vietnamese government to uphold its international human rights obligations, to release jailed environmental rights bloggers, and to respect the rights of its citizens, including the right to freedom of assembly, the right to access effective remedies, and the right to a healthy environment.

It is imperative for the Human Rights Council to remain actively seized of the matter, continue to speak out and apply pressure on the Vietnamese government to help rectify and put an end to these injustices. As stated by Baskut Tuncak, Special Rapporteur for Human Rights and Hazardous Substances and Wastes, “Imprisoning bloggers and activists for their legitimate work raising public awareness on environmental and public health concerns is unacceptable [...] Authorities must ensure that Viet Nam’s rapid economic expansion does

25 <https://www.bbc.com/vietnamese/vietnam-48250439>

26 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19961&LangID=E>

not come at the expense of human rights, in particular those of local communities and workers.” The Special Rapporteur on freedom of expression, David Kaye, has also eloquently spoken out about the judicial persecution faced by protesters and bloggers: “These convictions not only violate the rights to freedom of expression of these individuals but also undermine the rights of everyone in Viet Nam to receive vital information on toxic pollution and to debate the best remedy for it and ultimately to hold those responsible for the disaster accountable.”²⁷

Part VI: Right to an Effective Remedy

The right to an effective remedy is an integral part of international human rights law, ensuring the protection of fundamental rights and that these rights not be violated with impunity. This right is notably enshrined in article 8 of the UDHR and article 2(3) of the ICCPR. In the Vietnamese context, article 63 of the Constitution specifically obligates organizations that have caused environmental pollution to be responsible for remedy and compensation for damage.

However, the right to an effective remedy has been extensively violated in the Formosa case as fishermen and other individuals in the affected provinces have faced many barriers to obtaining adequate compensation and reparation for the damages and various rights violations that they have suffered. The Vietnamese government lacks the independent and impartial judiciary necessary to make up for these failings, leaving the population with little to no recourse for the injustices that they face.

With regards to the compensation that was negotiated by the Vietnamese government with Formosa, it is worth noting that the 500 million \$ settlement has been criticized by many NGOs for being wholly insufficient in repairing the pecuniary harm done to members of the fishing industry, let alone the non-pecuniary rights violations concerning the right to health and the right to a clean environment. When divided by the population of the affected regions, this amounts to roughly 130 USD\$ per household, which is woefully inadequate to compensate the true loss experienced by the victims. The compensation package was negotiated secretly and pre-maturely, before the full extent of the damages could be evaluated, and without properly accounting for the gravity of the disaster. While Formosa was certainly at fault and is fully liable to compensate the Vietnamese population for its actions, the Vietnamese government should also be responsible for ensuring that its own negligence is accounted for in the compensation package.

Moreover, the entire compensation process has been tainted by obscurity and a lack of clarity, as many individuals have received little information from local authorities on their eligibility or the administrative process involved in making a claim for compensation. In addition, many villagers have described to JFFV perceived arbitrariness and bias in the distribution of compensation, which largely favoured individuals who were active members

²⁷ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22696&LangID=E>

of the Vietnamese Communist Party. Furthermore, many villages and communities that have felt the impacts and consequences of the disaster have nevertheless been excluded from government compensation schemes on the basis that they are not located in the 4 primarily affected provinces. Certain industries which were indirectly impacted by the disaster, such as salt farming and the tourism sector, have not been prioritized in the calculation of compensation²⁸.

The government has proposed converting many fishermen to rice farmers, as a means of remedying violations to the right to work, but these solutions have been imperfect in practice. Government sponsored job retraining was not offered to many victims who communicated with JFFV, and the prospect of becoming rice farmers has forced some individuals to move their families and their lives to regions where the land quality is more suitable for agriculture.

In cases where individuals have sought alternative avenues to have their rights enforced or remedies outside of the state administrative apparatus, for example by filing petitions and complaints to local and governmental authorities (including the National Assembly, the Ministry of Natural Resources and Environment and the Ministry of Public Security), or simply by peacefully demonstrating, they have been either ignored or punished by the Vietnamese government. Most notably, a court in Ky Anh rejected a class action lawsuit filed against Formosa in September 2016, while petitioners who tried initiating judicial procedures in the following months were brutally arrested and prevented from doing so before reaching any court²⁹.

Granted, while many individuals and families have received different forms of compensation from the government, to this day many victims of the disaster have yet to receive any financial reparation from the State. Overall Vietnam has largely failed in its obligation to provide its citizens with effective and adequate remedies for the various human rights violations that they suffered. The government has a continuing obligation to ensure that all affected citizens receive adequate compensation and an appropriate remedy for all of their damages.

In a nutshell, the Vietnamese State failed its duty to ensure that the right to an effective remedy and the right to access justice were respected. As these rights are protected by the ICCPR and UDHR, the Vietnamese government should be held accountable for its negligence and for its repeated violations of international law. In rectifying these injustices, it would be appropriate to use UN General Assembly's 2005 resolution titled "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (Basic Principles on the Right to a Remedy), as a model and guideline. This resolution

28 <https://www.vietnambreakingnews.com/2016/07/vietnam-pm-requests-effective-use-of-formosa-compensation-for-fish-deaths/>

29 <https://www.nytimes.com/2016/10/04/world/asia/formosa-vietnam-fish.html>

represents a morally persuasive, non-binding soft law instrument that articulates best practices related to the right to a remedy for victims of human rights violations.

Part VII: Recommendations

JFFV respectfully requests that you consider the information we have presented and that you urge the Vietnamese government to put an end to the various human rights violations, to investigate them, to prevent these violations from happening again, and to take the necessary measures to remedy these violations.

Considering the facts that we highlighted in this communication, we:

- Urge the Working Groups of the HRC Complaint Procedure to hold the Vietnamese State accountable for the remediation of the violations of human rights to ensure that all victims receive appropriate reparation and sufficient compensation to the extent of their respective damages suffered;
- Call on the Vietnamese government to allow for a fully transparent and independent investigation of the Formosa disaster to be conducted by an impartial and international team of experts, with the mandate to identify and analyze the causes and consequences of the spill, propose measures to hold those who were responsible accountable for their actions, as well as to evaluate the total value of damages and loss, and the total amount of compensation that is warranted and required;
- Implore the Working Groups of the HRC Complaint Procedure to call on the Vietnamese government to renegotiate the settlement concluded with Formosa, in line with the Basic Principles on the Right to a Remedy, in order to obtain adequate compensation for all victims, including appropriate measures to account for job retraining needs and loss of livelihoods;
- Stress the need for the Vietnamese government to enact more stringent regulation and robust verification processes in the environmental monitoring sphere, including periodic water checks, factory inspections (on a regular and unannounced basis), and environmental impact assessments, among other measures;
- Demand the immediate and unconditional release of all arbitrarily detained and imprisoned environmental protesters, and to halt the repression of the legitimate exercise of basic human rights to freedom of expression and freedom of peaceful assembly;
- Recommend that toxicological and epidemiological studies be conducted by teams of qualified international and independent experts, in order to establish irrefutable proof of the safety of the water and marine life in Central Vietnam, with the goal of allowing for the safe consumption and fishing of seafood;
- Suggest that legislative measures and changes be considered by the Vietnamese government in order to enact sanctions that are strong enough to deter violations of

environmental laws, with a view of ensuring accountability for past transgressions and ensuring that no environmental disaster of this magnitude ever happens again.