

INTERNET FREEDOM IN VIETNAM

I. CRIMINALIZATION OF ONLINE DISSENT VOICES

Penal Code Articles 109, 117, and 331 of the Socialist Republic of Vietnam are noteworthy in their potential for violations of the freedom of expression¹: directly criminalizing political activism and dissent against the current government regime.

Article 109 imposes sentences of “12-20 years imprisonment, life imprisonment, or death” for “any person who establishes or joins an organization that acts against the people’s government.”² Any person who “makes preparation” to violate Article 109 faces 1-5 years imprisonment. Article 117 is concerned with information or material that opposes the Vietnamese government, imposing a penalty of 5-12 years imprisonment for “making, storing, or spreading information, materials, items that contain” distorted information about the government or are intended to cause psychological warfare. Article 331 criminalizes the abuse of “democratic freedoms,” stating that any person who abuses the freedom of speech, press, association, and other democratic freedom to “infringe upon the interests of the State” can be imprisoned up to 3 years, or up to 7 years if “the offense has a negative impact on social security, order, or safety.”³

More than 160 people have been imprisoned under these three provisions, primarily independent journalists and peaceful political activists. Vietnam ranked 178th in the 2023 World Press Freedom Index, third from the bottom above only China and North Korea.⁴

General Comment No. 34, Paragraph 25 of the UN Human Rights Committee expressly notes free, unrestrained communication of information about political issues among the public as a right under the ICCPR.⁵

Article 19(3) of ICCPR has been interpreted to include a three part test to determine that a restriction on the freedom of expression is legitimate. The restriction must: 1) be provided by law, which is both accessible and

sufficiently precise for citizens to be able to regulate their conduct; 2) must be for a legitimate aim; and 3) must be necessary to carry out the aim. Any use of the three part test does not hold up under scrutiny, because General Comment No. 34 necessarily adds: “The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of the freedom of expression.”⁶ There is no legitimate aim. Also, the definitions of prohibited expressions are too vague, e.g., “against the government”, “distorted information”, “abuse of democratic freedoms”.

This is why the UN Special Rapporteurs issued a joint statement in 2021 expressing deep disturbance at the use of Article 117 of the penal code to silence the critics⁷ and called for the immediate release of three journalists imprisoned under this law, Pham Chi Dung, Nguyen Tuong Thuy, and Le Huu Minh Tuan, who peacefully organized or joined dissenting activist groups and were sentenced to 15, 11, and 11 years in prison respectively.

II. SUPPRESSION OF ONLINE CONTENT

The government in Vietnam has created and enforced other laws to suppress specific instances of public speech across various platforms and modes. Articles 16 and 26 of the 2018 Cybersecurity Law in particular give the Vietnamese government nearly unfettered control over the type of content that may be published online.⁸ Under Article 26, the government in Vietnam can request the takedown of certain content online, and the managing entity must comply with that request within twenty-four hours or face legal consequences. Under Article 16, the content that the government can request to take down is broadly defined, including things like insults, calling for division, and content the government decides is untruthful.⁹

The law is heavily used in Vietnam—in 2022, Facebook blocked 2751 posts, Google removed 7935 videos from Youtube, and Tiktok blocked or removed 329 videos.¹⁰ As a more drastic measure, entire websites are regularly blocked by the Vietnamese government; the Ministry of Public Security blocked over 2705 websites in 2022.¹¹

¹ [https://www.policinglaw.info/assets/downloads/2015_Criminal_Code_of_Vietnam_\(English_translation\).pdf](https://www.policinglaw.info/assets/downloads/2015_Criminal_Code_of_Vietnam_(English_translation).pdf)

² [https://www.policinglaw.info/assets/downloads/2015_Criminal_Code_of_Vietnam_\(English_translation\).pdf](https://www.policinglaw.info/assets/downloads/2015_Criminal_Code_of_Vietnam_(English_translation).pdf)

³ [https://www.policinglaw.info/assets/downloads/2015_Criminal_Code_of_Vietnam_\(English_translation\).pdf](https://www.policinglaw.info/assets/downloads/2015_Criminal_Code_of_Vietnam_(English_translation).pdf)

⁴ <https://rsf.org/en/2023-world-press-freedom-index-journalism-threatened-fake-content-industry>

⁵ <https://www.refworld.org/docid/453883fc22.html>

⁶ <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

⁷ <https://www.ohchr.org/en/press-releases/2021/01/viet-nam-arrests-send-chilling-message-key-party-meeting-un-experts?LangID=E&NewsID=26661>

⁸ <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Cyber%20Security%202018.pdf>

⁹ <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Cyber%20Security%202018.pdf>

¹⁰ <https://freedomhouse.org/country/vietnam/freedom-net/2023>

¹¹ <https://freedomhouse.org/country/vietnam/freedom-net/2023>

The law does not meet the ICCPR Article 19(3) three part test because it does not propose a legitimate aim. For instance, Article 16 outlaws insulting the leaders of the Socialist Republic of Vietnam. General Comment 34, Paragraph 38 prohibits penalizing speech “insulting to a public figure.”¹² Google reported that 95% of the removal requests it received from the Vietnamese government from July 2022 to December 2022 were related to government criticism.¹³

Also, whereas the 2018 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression states in Paragraph 66 that: “States should only seek to restrict content pursuant to an order by an independent and impartial judicial authority,”¹⁴ Article 26 empowers executive branches to take down content.

By removing and blocking thousands of posts and websites under the 2018 Cybersecurity Law for poorly defined reasons and without independent oversight, the government of Vietnam is infringing upon the right to freedom of expression of its citizens.

III. INTERNET SHUTDOWN

The government often shuts down the whole Internet in certain geographic regions or the entire websites throughout the country. In General Comment 34, Paragraph 43, “Any restrictions on the operation of websites. . . internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3 [of ICCPR Article 19]. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3.”¹⁵

¹² <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

¹³ <https://freedomhouse.org/country/vietnam/freedom-net/2023>

¹⁴ <https://documents.un.org/doc/undoc/gen/g18/096/72/pdf/g1809672.pdf?token=fe8JyMFwobMkqvC7Ua&fe=true>

¹⁵ U.N. Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011), <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> [<https://perma.cc/876X-JFF3>]

¹⁶ Human Rights Council Res. 20/8; Human Rights Council Res. 32/13,

<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/8288163/HowEgypt-shut-down-the-internet.html>

¹⁷ Id 49-50

¹⁸ U.N. Special Rapporteur on Freedom of Opinion and Expression et al., Joint Declaration on Freedom of Expression and the Internet, ¶ 3a,

The Human Rights Council requested for states to facilitate internet access and not to intentionally disrupt, prevent, or disseminate online information.¹⁶ Further, the Special Rapporteur noted that it is a violation of Article 19 of the ICCPR to cut off internet access altogether, regardless of any justifications. This means that internet access must be maintained at all times, even in times of political unrest.¹⁷ The 2011 Joint Declaration on Freedom of Expression and Internet confirmed the Special Rapporteur’s determination that blocking entire websites or other networks is incompatible with human rights, regardless of justification or proportionality.¹⁸ Blocking websites constitutes a “prior restraint” through the prohibition of publication of future articles or other content. A “prior restraint” is generally viewed as a significant suppression of the freedom of expression and speech.¹⁹ The Special Rapporteur stated that “any determination on what content should be blocked must be undertaken by a competent judicial authority or a body which is independent of any political, commercial, or other unwarranted influences.”²⁰

Article 26 of the Cybersecurity Law allows the government to “stop providing cyberinformation within a certain area or disconnect from the international internet gateway” to respond to or prevent “cybersecurity emergencies.”²¹ Under this article, a complete internet shutdown for a specific area, such as in Dong Tam in January of 2020, took place²² apparently disrupting the villagers’ social-media based resistance to²³ a violent police attack on the villagers.²⁴ In 2020, the ministry threatened to shut down Facebook, forcing it to comply with content restrictions. The ministry then threatened to ban TikTok in 2023.²⁵

IV. PRIVACY AND SURVEILLANCE

Org. for Sec. & Co-operation in Eur. (June 1, 2011), <https://www.osce.org/fom/78309?download=true>

¹⁹ Id at 3b.

²⁰ Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, ¶ 70, U.N. Doc. A/HRC/17/27 (May 16, 2011)

²¹ <https://www.article19.org/wp-content/uploads/2024/01/Vietnam-LOI-Submission-CCPR-08Jan2024.pdf>

²² <https://www.nguoi-viet.com/viet-nam/dong-tam-chong-tra-tan-cong-3-cong-an-va-1-nguoi-dan-thiet-man>

²³ <https://www.article19.org/wp-content/uploads/2024/01/Vietnam-LOI-Submission-CCPR-08Jan2024.pdf>

²⁴ <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2020-60-revisiting-the-role-of-social-media-in-the-dong-tam-land-dispute-by-mai-thanh-truong/>

²⁵ <https://freedomhouse.org/country/vietnam/freedom-net/2023>

Vietnam has two pillars of laws restricting privacy and conducting surveillance, which violate Article 17 of ICCPR. First, Vietnam engages in data localization, data retention, state monopoly on internet service provision, and anonymity restriction, all of which disproportionately enhance domestic surveillance capabilities of the authorities. Second, Vietnam authorizes the authorities' access to user data and surveillance on the users without procedural safeguards such as warrants. Both

Data retention and localization: “[C]ollection and retention of communications data amounts to an interference with the right to privacy, whether or not the data is subsequently accessed or used by government officials [citing *S and Marper v. United Kingdom*,²⁶ and *Digital Rights Ireland Ltd v. Minister for Communications*]²⁷.”²⁸

Despite the international standard, Decree 53 of the Cybersecurity Law “mandate[s] all domestic companies and many foreign companies, including social media platforms, telecommunications services, payment providers, and gaming platforms, to store user data information locally.”²⁹ ³⁰

Anonymity restriction: The UN Special Rapporteur on Freedom of Speech once characterized privacy as a gateway to other fundamental freedoms, and he emphasized the importance of the right to remain anonymous while speaking.³¹

Despite the international standard, “in July 2023, the Ministry of Information and Communication proposed a draft decree to supersede Decree 72, enforcing real-name identity registration for social media users with their actual names and phone numbers. Non-compliance with this regulation restricts users to viewing content only,”³²

which would bar them from expressing their views through commenting or posting.

Warrantless surveillance: The UN Special Rapporteur on Privacy stated that states should “ensure that restrictions to the right to privacy including through mass or targeted surveillance.. Are on a case-specific basis; [and] reasonable, necessary and proportionate as required by law for a legitimate purpose and ordered only by a court.”³³ He also said that that “Preservation of democracies, however, requires checks and balances to ensure that any surveillance is undertaken to protect a free society. Prior authorization of surveillance and subsequent oversight of surveillance activities are key parts of the rules, safeguards and remedies needed by a democratic society in order to preserve its defining freedoms.”³⁴

Despite the aforesaid norms, “without legal warrants authorities regularly opened and censored targeted private mail; confiscated packages and letters; and monitored telephone conversations, email, text messages, blogs, and fax transmissions.”³⁵ Indeed, Article 193 of the Criminal Procedure Code authorizes the heads of investigation authorities to “self-issue” search warrants. Furthermore, the Cybersecurity Law mandates “internet services to...provide authorities access to data upon request without any procedural safeguards”³⁶ ³⁷. The company must comply with any requests from the government.³⁸ Also, Decree 53 of the Cybersecurity Law requires companies to provide user data to authorities upon request, without any safeguards.³⁹

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²⁶ *S and Marper v. United Kingdom* (2009) 48 EHRR 50 at para 121.

²⁷ Joined Cases C 293/12 and C 594/12, 8 April 2014, paras. 29 and 39.

²⁸ <https://www.ohchr.org/sites/default/files/Documents/Issues/Privacy/ElectronicFrontierFoundation.pdf>

²⁹ <https://thediplomat.com/2022/11/the-quiet-evolution-of-vietnams-digital-authoritarianism/>

³⁰ <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/vietnam/>

³¹ <https://www.ohchr.org/en/documents/thematic-reports/ahrc2932-report-encryption-anonymity-and-human-rights-framework>

³² <https://www.article19.org/wp-content/uploads/2024/01/Vietnam-LOI-Submission-CCPR-08Jan2024.pdf>

³³ <https://documents.un.org/doc/undoc/gen/g20/071/66/pdf/g2007166.pdf?token=pPIvZpdjj4urWLSLpGc&fe=true>

³⁴ <https://documents.un.org/doc/undoc/gen/n17/335/64/pdf/n1733564.pdf?token=kBD7j64t9T6qPQR8ms&fe=true>

³⁵ <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/vietnam/>

³⁶ <https://www.article19.org/wp-content/uploads/2024/01/Vietnam-LOI-Submission-CCPR-08Jan2024.pdf>

³⁷ <https://monitor.civicus.org/explore/despite-international-scrutiny-vietnam-continues-conduct-surveillance-harass-and-jail-activists/>

³⁸ <https://www.article19.org/wp-content/uploads/2024/01/Vietnam-LOI-Submission-CCPR-08Jan2024.pdf>

³⁹ <https://thediplomat.com/2022/11/the-quiet-evolution-of-vietnams-digital-authoritarianism/>