



Access Now submission to the United Nations Human Rights Council, on the Universal Periodic Review 2018 Cycle for Vietnam

About Access Now

1. Access Now (www.accessnow.org) is an international organisation that works to defend and extend digital rights of users globally. Through representation in 10 countries around the world, including engagement with stakeholders and policymakers in the Asia Pacific region, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet's continued openness and the protection of fundamental rights. We engage with an action focused global community, and our Technology Arm operates a 24/7 digital security helpline that provides real time direct technical assistance to users around the world.
2. Access Now advocates an approach to information and communications technology policy that protects user rights, including privacy and freedom of expression. Access Now has worked extensively in the Asia Pacific region on digital rights including on free expression and web blocking, regulation of Net Neutrality, and data protection legislation.

Domestic and international human rights obligations

3. This is the third Universal Periodic Review for Vietnam, having been earlier reviewed in 2009 and 2014.¹ In the first UPR of Vietnam in 2009, 58 states made 172 recommendations and supported 119.² In second UPR cycle, Vietnam received 256 recommendations and supported 195.³
4. Vietnam is a party to eight important international treaties relating to human rights, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.⁴
5. Article 25 of Vietnam's Constitution entitles freedom of opinion and speech to Vietnamese citizens. It reads, "The citizen shall enjoy the right to freedom of opinion and speech, freedom of the press, of access to information, to assemble,

¹ "Universal Periodic Review - Viet Nam," (United Nations Human Rights Council)

<https://www.ohchr.org/EN/HRBodies/UPR/Pages/VNindex.aspx>

² "Statistics of Recommendations," (UPR Info) https://www.upr-info.org/database/statistics/index_sur.php?fk_sur=191&cycle=1

³ "Statistics of Recommendations," (UPR info) https://www.upr-info.org/database/statistics/index_sur.php?fk_sur=191&cycle=2

⁴ "Note verbale dated 27 August 2013 from the Permanent Mission of Viet Nam to the United Nations addressed to the President of the General Assembly," (UN HRC General Assembly, 27 August 2013) http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/312



- form associations and hold demonstrations. The practice of these rights shall be provided by the law.”⁵
6. Article 166 of the 2015 Penal Code of Vietnam makes it a crime to infringe upon the human rights of others.⁶

Developments of digital rights in Vietnam

7. In 2015, the National Assembly of Vietnam passed the Law on Network Information Security to ensure that the collection, processing, and use of personal information of an individual requires the consent of that person. The law provided for the collection and use of personal information; updating, change, and deletion of personal information; protection of personal information security in network; and the obligations of state administration agencies in network personal information protection.⁷
8. In 2016, the Vietnam government introduced the Law on Access to Information for incorporating and laying legal grounds for a number of provisions of a number of treaties to which Vietnam is a contracting party. The law provides the right of access to information and defines obligations of the state institutions in guaranteeing the right of access to information of citizens.⁸
9. The Vietnam Government introduced the Decree No 102/2009 on investment management of IT applications and guidance circulars with the objective to increase community supervision in IT projects. According to the Decree, the investor of IT projects must publicly announce purposes and contents of activities, project scale and organizational structure of the project management unit (or consulting unit in project management) to political organizations, social organizations, local authorities and local elective bodies for the purpose of courting the community supervision during the investment performance.⁹
10. In 2010, the Vietnam government released a comprehensive roadmap on “Digital Information Security Development Project to 2020”. The Project consisted of four major areas: ensuring network security and information infrastructure to meet the requirements of ICT growth; data protection; training of cybersecurity specialists

⁵ “Final Constitution of the Republic of Vietnam,” (International Institute for Democracy and Electoral Assistance, 28 November 2013)

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94490/114946/F114201808/VNM94490%20Eng.pdf>

⁶ “Criminal Code,” (Socialist Republic of Vietnam National Assembly, 27 November 2015)

<http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>

⁷ “Law on Network Information Security,” (Socialist Republic of Vietnam National Assembly, 2015)

<http://english.mic.gov.vn/Upload/VanBan/Law-on-Network-Information-Security-16-05-30.pdf>

⁸ “New Law on Access to Information,” (Vietnam Law and Legal Forum, 12 July 2018)

<http://vietnamlawmagazine.vn/new-law-on-access-to-information-5598.html>

⁹ “Decree on Management investment application information technology funds state budget 2009,” (Van Ban Phap Luat, 2009) <https://vanbanphapluat.co/decree-no-102-2009-nd-cp-management-investment-application-information-technology-funds-state-budget-2009>

and experts and increasing public awareness on cybersecurity; and improving the legal framework for cyber crimes and information security.¹⁰

11. The government launched the Target IT Programme for 2016-2020 with the aim to meet the data access and connectivity demand of ministries, sectors and localities. The program also aimed to enhance the capacity to ensure information security and develop the IT sector.¹¹

Violations of access to information & freedom of expression

12. In the year 2017, the government arrested at least 21 human rights bloggers and activists for exercising their civil and political rights. Several prominent activists who were arrested included Nguyen Bac Truyen, Truong Minh Duc, Nguyen Van Tuc, Nguyen Trung Ton, and Pham Van Troi, besides several others.¹²
13. In May 2017, an appeals court in Vietnam upheld the long prison sentences given to Tran Anh Kim and Le Thanh Tung. In December 2016, the People's Court of Thai Binh sentenced the activists to prison for 13 and 12 years respectively, for the allegations of founding a democratic group called the National Force.¹³
14. In June 2017, the Khanh Hoa court sentenced famous blogger Nguyen Ngoc Nhu Quynh to 10 years in prison for critical online comments and documents she published on the internet.
15. In July 2017, a court in Ha Nam province sentenced prominent activist Tran Thi Nga to 9 years in prison for her internet posts.¹⁴
16. The Vietnam government urged the internet companies including Facebook and Google to censor and block "toxic" information that defamed Vietnamese leaders. At the behest of Vietnam government, Google removed more than 5,000 clips and Facebook flagged about 160 anti-government accounts.¹⁵
17. Civil society organisations in Vietnam alleged that Facebook was complying with government pressure to silence dissent in the country. A letter written and signed by nearly 50 civil society groups and addressed to Facebook CEO Mark Zuckerberg, civil society reported that Facebook's system of automatically pulling

¹⁰ Candice Tran Dai, "Cybersecurity Governance Framework in Vietnam: State of Play, Progress and Future Prospects," (Governance Systems for Cybersecurity: Vietnam) http://www.arpjournal.org/download/usr_downloadFile.do?requestedFile=20170804118248150.pdf&path=thesis&tp=isdwn&seq=148

¹¹ "Program adopted to promote IT application in State agencies," (Vietnam Economic News, 2 September 2018) <http://ven.vn/program-adopted-to-promote-it-application-in-state-agencies-31115.html>

¹² "Vietnam: Events of 2017," (Human Rights Watch: World Report 2018) <https://www.hrw.org/world-report/2018/country-chapters/vietnam>

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Dien Luong, "Vietnam's Internet is in trouble," (Washington Post, 19 February 2018) https://www.washingtonpost.com/news/worldpost/wp/2018/02/19/vietnam-internet/?utm_term=.c7561ac92e6e

content if enough people complained could “silence human rights activists and citizen journalists in Vietnam”.¹⁶

Violations of the right to privacy

18. In December 2017, the Vietnam government deployed a 10,000-strong army to check and combat “wrong” views on the internet, a censorship initiative which was strongly opposed by civil society. The deployment was a major step of the Vietnam government establishing itself as a strong surveillance regime and violation the rights of privacy and freedom of speech and expression.¹⁷
19. In June 2018, the National Assembly of Vietnam passed the controversial cybersecurity bill ignoring the intense protests by the activists, human rights groups, and requests to repeal the law by several countries. The law stipulates that foreign companies must maintain a “representative” office in Vietnam, and must maintain customer database of users in Vietnam. The law also forbids internet users from expressing anti-state views and undermining the nation’s achievements or solidarity.¹⁸

Recommendations

20. Vietnam should reconsider their decision to request companies such as Facebook to mass take-down content which they consider “toxic”. Such mass takedowns can often be counterproductive, and risk silencing voices seeking to respond to or counter extremist narratives. While regulating information online, content should not be removed until it is specifically adjudicated as being illegal, in line with international standards in this area. Mass take-down initiatives that take place outside of legal process frustrate corporate transparency and are not likely to deter the cultivation of extremism, and in fact may encourage it.
21. Instead of deploying a 10,000-strong army for surveillance and putting activists and bloggers in prison, the government should explore ways to support efforts to create further dialogue using the internet, without preferential treatment for how content is openly disseminated. Censoring and intimidating internet users will not foster digital literacy and more engaged and educated public, nor will it increase trust in institutions.
22. The new Cybersecurity Law of Vietnam, with provisions of “representative offices” and measures for data localisation, takes away from the global character

¹⁶ Reuters, “Vietnamese activists question Facebook on suppressing dissent,” (New York Post, 10 April 2018) <https://nypost.com/2018/04/10/vietnamese-activists-question-facebook-on-suppressing-dissent>

¹⁷ “Vietnam army hires censors to fight ‘internet chaos,’” (BBC News, 27 December 2017) <https://www.bbc.co.uk/news/technology-42494113>

¹⁸ “NA passes Cybersecurity Law,” (Viet Nam News, 12 June 2018) <https://vietnamnews.vn/politics-laws/449739/na-passes-cybersecurity-law.html#QRT2JYIq7RYqfMf0.97>



- of the internet, and may be a threat to data protection and privacy by the government.
23. The Vietnamese government should not force or request online platforms to undertake actions regarding user data disclosure or other surveillance measures that are outside of rule-of-law processes that comply with international human rights law and policy, including the 13 International Principles on the Application of Human Rights to Communications Surveillance (the “Necessary and Proportionate Principles”).
 24. The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. Access Now is grateful to make this submission.
 25. For additional information, please contact Access Now staff Peter Micek (peter@accessnow.org).