

Legal Initiatives
for VIETNAM

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**“Freedom of Opinion & Expression and The Right to Access Internet
Concerning Vietnam's New Cybersecurity Law”**

Legal Initiatives for Vietnam

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A. Preamble

1. In 2016, the Human Rights Council passed a resolution without a vote, to include an addition to Article 19 of the Universal Declaration of Human Rights, recognizing that the right to internet access is a human right.
2. Accordingly, section 32 now adds “the promotion, protection, and enjoyment of human rights on the internet” to “the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers,” previously stated in Article 19.
3. Vietnam was a member of the HRC then and also was among those that did not object to the resolution.
4. Vietnam was also among the 193 countries that have pledged to realize the Agenda 2030’s 17 Sustainable Development Goals (SDGs), in which improving internet quality, sustainability, and accessibility is an inseparable and integral part⁽¹⁾. Thus, it is essential for the Vietnamese government to continue its commitment to treat the right to internet access as a human right and in doing so, it shall immediately repeal the Cybersecurity Law passed on June 12, 2018.
5. Legal Initiatives for Vietnam (LIV) was formed by a group of Vietnamese lawyers, jurists, and journalists who have been working with various independent CSOs in the country since at least 2011. LIV works to improve the political and legal framework and culture in Vietnam through the implementation of universal values of human rights, democracy, and the rule of law. LIV’s objectives are:

(1) to promote human rights, democracy and the rule of law in Vietnam by practicing high-quality and independent journalism, providing knowledge, accurate information as well as in-depth analyses of our thematic issues;

(2) to train a new generation of independent journalists and activists with a strong background in laws and politics;

(3) to generate public awareness about Vietnam’s current politics and human rights situation on the international stage.

¹ Vietnam Investment Review: Vietnam launches an action plan to reach Agenda 2030 goals, <http://www.vir.com.vn/vietnam-launches-action-plan-to-reach-agenda-2030-goals-50473.html>

B. PARTIAL OR LACK OF IMPLEMENTATION OF RECOMMENDATIONS ACCEPTED BY VIETNAM

6. In May 2009, under its 1st Universal Periodic Review (UPR) cycle, Vietnam was reviewed at the 12th session of the Human Rights Council Universal Periodic Review. In September 2009, it subsequently responded to these recommendations (A/HRC/12/11). Vietnam received the following three recommendations regarding internet freedom:
 - a. Take steps to ensure that full respect for the freedom of expression, including on the internet, is implemented in current preparations for media law reform (Sweden). **SUPPORTED/ACCEPTED**
 - b. Lift restrictions on internet usage such as filtering and surveillance (Netherlands). **NOTED**
 - c. Demonstrate its commitment to article 69 of its Constitution, article 19 of ICCPR and article 19 of the Universal Declaration of Human Rights by ensuring freedom of expression for members of the press without fear of arbitrary arrest or prosecution, provide for the free flow of information on the internet and abolish restrictive regulations on blogging and the media (United States of America). **NOTED**

7. In February 2014, under its 2nd UPR cycle, Vietnam was reviewed at the 18th session of the Human Rights Council Universal Periodic Review (A/HRC/26/6). In June 2014, at the 26th plenary session, it subsequently responded to these recommendations (A/HRC/25/5/Add.1). There were 12 UPR recommendations related to internet freedom:
 - a. Ensure that any law governing the internet is in compliance with the international human rights obligations of Viet Nam as a State party to ICCPR (Belgium). **SUPPORTED/ACCEPTED**
 - b. Actively promote steps to guarantee freedom of expression, as well as the freedom and independence of the press, including on the internet (Japan). **SUPPORTED/ACCEPTED**
 - c. Allow bloggers, journalists, other internet users and non-governmental organizations (NGOs) to promote and protect human rights specifically by ensuring that laws concerning the internet comply with the freedom of expression and information (Netherlands). **SUPPORTED/ACCEPTED**
 - d. Repeal or modify the Penal Code relating to national security particularly Articles 79, 88 and 258, to prevent those articles from being applied arbitrarily to impede freedom of opinion and expression, including on the internet (France). **NOTED**
 - e. Revise "Decree 72" and "Decree 174" relating to the management, provision, and use of the internet, to ensure their consistency with international human

rights obligations, and in particular with Articles 19, 21 and 22 of ICCPR (Ireland). **SUPPORTED/ACCEPTED**

- f. Ensure that Decree 72, concerning the management, provision, and use of internet services and information online, is implemented in a manner that does not limit individuals' rights to voice their opinions online (Finland). **SUPPORTED/ACCEPTED**
- g. Amend the provisions concerning offenses against national security which could restrict freedom of expression, including on the internet, particularly articles 79, 88 and 258 of the Penal Code, to ensure its compliance with Viet Nam's international obligations, including ICCPR (Canada). **SUPPORTED/ACCEPTED**
- h. Take the necessary measures to protect freedom of expression and press freedom, including through the internet (Brazil). **SUPPORTED/ACCEPTED**
- i. Undertake measures enabling unrestricted access and use of the internet to all citizens and undertake measures to guarantee the freedom of opinion and expression to everyone, as well as the freedom of press and media in the country (Estonia). **SUPPORTED/ACCEPTED**
- j. In line with its previous commitments, take all measures to ensure that freedom of expression, including on the Internet, is fully guaranteed in law and practice by bringing its legislation in line with the obligations of Viet Nam under ICCPR (Hungary). **SUPPORTED/ACCEPTED**
- k. Maintain the momentum of development of the mass media, including the Internet, to protect freedom of expression (Pakistan). **SUPPORTED/ACCEPTED**
- l. Fulfill its obligation under ICCPR and fully guarantee the freedom of assembly and freedom of expression on the internet as well as offline to all its citizens (Germany). **SUPPORTED/ACCEPTED**

- 8. Vietnam accepted 11 out of the above 12 recommendations in June 2014. However, with the newly passed Cybersecurity Law in June 2018, Vietnam had failed to implement these recommendations. According to this new law, Vietnam will require foreign companies to open an office or a representative branch in Vietnam, to store their users' data in Vietnam, and to provide personal information of their users to the government of Vietnam upon request. This law directly threatens Vietnamese users' right to privacy and their freedom of speech.
- 9. Instead of following through and implementing the recommendations listed above, Vietnam enacted the new Cybersecurity law which follows and expands on similar provisions in the Decree 72. The new law puts even more restrictions on the management, provision, and use of internet services and online information. It

contains exhaustive provisions establishing content-filtering and censorship, and outlawing thoroughly defined “prohibited acts.”

C. CHALLENGES TO THE SITUATION REGARDING INTERNET FREEDOM IN VIETNAM

I. Political background and legislative context in Vietnam regarding freedom of opinion and expression concerning internet freedom

10. Despite the fact that Vietnam has been under a strict one-party rule for over seven decades in the North, and over four decades as to the whole country, the internet, especially various social media platforms like Facebook and Twitter, has been somewhat beyond the government’s control and becoming more influential day by day in society. It is partly because the Vietnamese government cannot build a "Great Firewall" like China.
11. Therefore, the recently passed Cybersecurity law in June 2018, is the latest and so far, the most ambitious attempt of the Vietnamese government, to gain back control of the internet and to restrict the people’s freedom of expression.
12. According to Human Rights Watch (HRW), 2017 was a challenging year for human rights activists in Vietnam, and the government had intensified their crackdown on the people's right to express their opinions, especially on the internet.
13. HRW reported, the “authorities arrested at least 41 rights advocates and bloggers for joining protests or other events or publishing articles critical of the government. During the first five months of 2018, Vietnamese Communist Party-controlled courts prosecuted at least 26 rights defenders. Several were sentenced to more than ten years in prison.” (2) Reporters Without Borders ranks Vietnam at 175 out of 180 countries in the recent report on the free press while Freedom House categorizes Vietnam as a "not free" country(3). The Freedom on the Net index provided by Freedom House in 2017 also gave Vietnam an Internet Freedom Score of 76/100 with 100 being the least free.

II. The Cybersecurity Law Recently Passed on June 12, 2018

14. Approximately one year ago, in June 2017, Vietnam’s Ministry of Public Security (MPS) submitted their proposal of the Cybersecurity bill (“CS law” hereafter) to the government. After going through various collections of public comments and seven draft versions of the law, the final draft was provided to the National Assembly when they met in May 2018. This draft was again revised the day before the National Assembly’s members supposed to cast their votes. In the end, the CS law was passed by an overwhelming 86.86% on June 12, 2018.

² Human Rights Watch - Vietnam: Withdraw Problematic Cyber Security Law, <https://www.hrw.org/news/2018/06/07/vietnam-withdraw-problematic-cyber-security-law>

³ [Vietnam](#), Reporters Without Borders.

15. Together with the Special Economic Zones draft bill, the CS law caused mass protests in many large cities across Vietnam on June 10, 2018. Protesters were seen in videos and photographs getting beaten up by police forces, both in plainclothes and uniforms. Many of them, including one American citizen - William Anh Nguyen - are still detained and charged with disrupting public order (4).

III. Analysis: violations of international human rights law

16. Before identifying the concerns raised by the CS law, we want to note that Article 19 of the International Covenant on Civil and Political Rights (ICCPR) (5), which Vietnam ascended to on September 24, 1982, protects everyone's right to hold an opinion without interference and their "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media."
17. Paragraph(3) of Article 19 further provides, while there are allowable restrictions on the right to freedom of expression, but such restrictions must be "provided by law", and necessary for "the rights or reputations of others" or "for the protection of national security or of public order (ordre public), or of public health and morals". Permissible restrictions on the internet are the same as those offline (A/HRC/17/27).
18. Also, there is a special correlation between Article 19 and Article 17 of the ICCPR. "Articles 17 and 19 of the ICCPR are intimately connected, as the right to privacy is often understood to be an essential requirement for the realization of the right to freedom of expression (A/RES/68/167, A/HRC/27/37, A/HRC/23/40, A/HRC/29/32)." (6)
19. With respect to the above standards, we would like to address the following specific observations and concerns raised by the most problematic provision, Article 26 (please see Annex 1), of Vietnam's new CS law, to demonstrate how this law was enacted to put improper restrictions on the freedom of expression in direct violation of international human rights laws.
- *Concerns of violations of international human rights standards:*
20. The State has a legitimate interest and responsibility to protect against threats directed at their national security. The question that arises here relates to the way in which the CS law seeks to achieve legitimate objectives, in particular, the responsibilities it places upon private companies to cooperate with the police and to

⁴ The Vietnamese Magazine: Black Sundays Report: Brutal Police Crackdown on Civilians, <https://www.thevietnamese.org/2018/06/black-sundays-report-vietnamese-peoples-response-to-police-brutality-during-june-2018-protests/>

⁵ International Covenant on Civil and Political Rights, Article 19, <https://www.ohchr.org/en/professionalinterest/pages/CCPR.aspx>

⁶ David Kaye, Report of the Special Rapporteur to the Human Rights Council on the use of encryption and anonymity to exercise the rights to freedom of opinion and expression in the digital age, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/095/85/PDF/G1509585.pdf?OpenElement>

regulate the exercise of freedom of expression, and whether the measures proposed by this law would be lawful under international human rights law.

21. The obligations which place upon private companies the responsibility to regulate and take down content posted by their users raise serious concerns with respect to the freedom of expression and the right to access the internet.
22. A restriction on the dissemination of information on the internet using vague and ambiguous criteria, such as “offends the nation, the national flag, the national emblem, the national anthem, great people, leaders, notable people, and national heroes,” or “to distort history, deny revolutionary achievements, [or] undermine national solidarity,”⁽⁷⁾ is incompatible with Article 19 of the ICCPR.
23. The list of potential violations detailed in Article 26 and other provisions of the CS law is overbroad and vaguely worded. Moreover, almost all of the violations covered by the CS law are highly dependent on the context in which the service providers cannot assess. Besides, the loosely defined “service providers” raises questions as to the range of actors covered by the scope of the law. According to the wording, it would cover all kinds of providers, including messaging services.
24. The risk of censorship appears even higher considering the strict time periods of 24 hours according to which the private companies must assess and remove content in violation of the CS law. Facing short deadlines to comply could lead these companies to over-regulate as a precaution to avoid finding themselves in violations of the CS law. Such pre-cautionary censorship would interfere with the people’s right to seek, receive and impart information of all kinds on the internet under Article 19 ICCPR.
25. Most importantly, we are deeply concerned with the lack of judicial oversight concerning the responsibility placed upon private service providers to remove and delete content and to deny services to specific users at the MPS’ requests. “Any legislation restricting the right to freedom of expression and the right to privacy must be applied by a body which is independent of any political, commercial, or unwarranted influences in a manner that is neither arbitrary nor discriminatory”⁽⁸⁾ (A/HRC/17/27). Thus, the liability placed upon private companies to remove third-party content, to store information and data of users on their system for police’s access, and also to deny people services absent a judicial oversight as required by the CS law is not compatible with international human rights law.
26. We are also concerned at the provisions that mandate the storage and documentation of data concerning violative content and user information related to such content, especially since the police, absent judicial oversight, can order that data be revealed for criminal investigation. This provision of the CS law could undermine the right individuals enjoy to anonymous expression (A/HRC/29/32) under Article 17 ICCPR.

⁷ Vietnam’s Cybersecurity Law, Articles 8 and 15, <https://thuvienphapluat.vn/van-ban/cong-nghe-thong-tin/Luat-an-ninh-mang-2018-351416.aspx>

⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/17/27, paragraph 25, http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

8 Such restrictions on anonymity, in particular, absent judicial oversight, would simplify the process for the State to obtain identification of individuals accessing or disseminating prohibited content. In short, under the new law, the MPS could have access to any users' confidential data at any time they wish, as long as it is for their "investigation," placing the entire public under the Big Brother's watch.

27. Finally, we are concerned about the ongoing implementation of the CS law and possibly the cooperation of foreign service providers such as Google and Facebook before such law takes effect on January 1, 2018. According to state-media, Truong Minh Tuan, the Minister of the MIC stated that Google had removed 6,700 of 7,800 Youtube videos at the request of Vietnam's authorities in the first six months of 2018. Also at the request of the Vietnamese government, Facebook has removed 1000 links alleged to be in violations of Vietnam's laws, removed 107 fake accounts, and 137 accounts which "defame, gossip, propaganda against the Vietnamese Communist Party, the government of Vietnam, and a few links related to Formosa incident and the Central Coast of Vietnam."⁹

D. RECOMMENDATIONS

28. LIV calls upon the member states of the UN Human Rights Council to urge the Vietnamese authorities to :

1. Repeal the Cybersecurity Law in its entirety.
2. Ensure that any future laws governing the internet will comply with the international human rights obligations and the ICCPR.
3. Enable unrestricted access and use of the internet to all citizens and undertake measures to guarantee the freedom of opinion and expression to everyone, as well as the freedom of press and media in the country.
4. Release immediately and unconditionally all citizens currently imprisoned for exercising their freedom of expression, including on the internet, particularly those who have been convicted under Articles 79, 88 and 258 of the 1999 Penal Code.

⁹ Vietnamplus online newspaper, Some 8000 violating clips, links on Youtube and Facebook have been removed, July 9, 2018, <https://www.vietnamplus.vn/gan-8000-clip-duong-link-vi-pham-tren-youtube-facebook-bi-go-bo/512484.vnp>

