



Submission to the UN Universal Periodic Review of the Socialist Republic of Vietnam

by

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Brotherhood for Democracy
Lawyers Rights Watch Canada
Reporters Without Borders
Viet Labor Movement
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For consideration of the 32nd session of
the Universal Periodic Review in 2019

July 2018

Introduction

1. ACAT, Bau Bi Tuong Than Association, Brotherhood for Democracy, Lawyers Rights Watch Canada, Reporters Without Borders, Viet Labor Movement and Viet Tan welcome the opportunity to contribute to the third cycle of the Universal Periodic Review process of the Socialist Republic of Vietnam. We submit this report on the state of human rights in Vietnam, with regards to freedom of expression and the Vietnamese government's compliance of international human rights obligations and with our recommendations for the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the 32nd session of the Universal Periodic Review (UPR) Working Group in the United Nations Human Rights Council in January 2019.
2. In the 2014 Universal Periodic Review, the government of Vietnam accepted 182 recommendations of the 227 put forward. However, despite the Vietnamese government accepting recommendations in the areas of continued participation in international standards on human rights, implementation of obligations regarding human rights and international cooperation on human rights, it continues to face international criticism for its increased restrictions on basic rights including freedom of expression and freedom of information. Most notably, the European Parliament adopted two Urgent Resolutions regarding the arrest of human rights lawyer Nguyen Van Dai and journalist Nguyen Van Hoa in June 2016 and December 2017, respectively. Furthermore, the United Nations Working Group on Arbitrary Detention (UNWGAD) has ruled in favour of a number of petitions filed on behalf of bloggers and human rights defenders. The Working Group noted that the several cases brought before the UNWGAD may be signs of "widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity".¹
3. Since 2014, the Vietnamese government has severely restricted basic freedoms of expression and information. We are particularly concerned about the severe crackdown on journalists, bloggers and human rights defenders over the past two years. This submission will examine the following key issues:
 - Curtailing freedom of expression and information
 - Restrictive press freedom
 - Increased digital attacks
 - Shrinking civil society
 - Persecution of journalists, bloggers and human rights defenders

Curtailing Freedom of Expression and Information

4. The Vietnamese government accepted a number of recommendations in terms of promoting and protecting freedom of expression online and offline in the last Universal Periodic Review (No. 145, No. 146, No. 153 and No. 158); however it has failed to

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https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_26.pdf

respect freedom of expression and instead enacted new laws curtailing the rights to freedom of information and expression.

5. Furthermore, it should be noted that the Vietnamese government has not allowed for individual complaint procedures with regards to the Optional Protocol to the ICCPR. This prevents the Human Rights Committee from receiving any individual complaints with regards to the Vietnamese government failing to meet standards in relation to ICCPR.

Cybersecurity Law

6. Vietnam's National Assembly passed a "cybersecurity" law in June 2018, which could severely impact and restrict freedom of expression and freedom of information online. The cybersecurity law aims to protect against "conspiracies or the use of cyberspace to prejudice the national sovereignty, interests, and security of the social order and safety." Notably, this vague and broad language could be facilitate abuse by those enacting the law.
7. Article 8 of the cybersecurity law defines prohibited acts as "posts, preparation and dissemination of information contents on cyberspace" that can "disrupt security or public order" or considered to be "propaganda against the State". Broad language referring to propaganda against the State has previously been used to restrict rights to freedom of expression.

Freedom of Information

8. The Vietnamese government accepted recommendations to protect and guarantee respect for freedom of information (No. 149). Despite this pledge, Vietnam's National Assembly passed the Access to Information Law on April 2016 which in turn limits the right to access information. Furthermore, the law allows authorities to penalize individuals found sharing public information deemed critical of the state.
9. Article 6 of the Access to Information law prevents Vietnamese citizens from accessing government and state agency documents until they are considered declassified by the authorities. Citizens are not permitted to obtain information under broad areas including politics, economics, and technology.
10. Article 11 of the law prevents individuals from providing or obtaining information which can be considered to "oppose the State" or "undermine the solidarity policy" as well as harming the "honor, dignity or reputation of, or to cause property damage to an individual, agency or organization". The vague language provides opportunities for the Vietnamese government to refuse to provide information or to prosecute individuals who gather or disseminate information critical of the state.

Restrictive press freedom

11. The Vietnamese government accepted several recommendations (No. 144, No. 156, No. 159) to promote free media and allow for non-state media in the previous Universal

Periodic Review. Despite this, the Vietnamese government has tightened its grip in the media sphere and has introduced legislation which restricts the publication of certain information in the news.

12. Print and broadcast journalism remains under complete control of the Communist Party. State media has also transitioned to online platforms such as websites and social media channels including Facebook and Twitter which has expanded the reach of government controlled news and information to the online sphere.

Press Law

13. Vietnamese authorities passed an amended press law in April 2016. While the law continues to maintain the state's authority and power over the press, it also contains new provisions with regards to the responsibilities of journalists and the journalist association in maintaining information in line with Communist Party views. The law also includes additional provisions with regards to prohibited acts in press activity.
14. Article 4 of the press law states the role of the press to be "the voice of Party and state agencies, socio-political organizations, socio-politico-professional, social organizations, and socio-professional organizations", hence associating publications with the Communist Party and its affiliated agencies and institutions.
15. Article 8 of the law outlines the role and power of the Vietnam Journalists Association, reinforcing that journalists are controlled by the state. The law describes what activities the Vietnam Journalists Association should hold rather than allowing the association to have its own autonomy. Furthermore, the article states that the association's role is "to coordinate with state management agencies in propagandizing and disseminating the press law". This clearly shows that there is a lack of independent media organizations or associations as all journalists must be cooperating with the state.
16. Of most concern, Article 9 of the law states what the press is prohibited from doing, including "publishing and broadcasting information" which can be considered critical of the state as well as publishing information which may cause "division among strata of people, between the People and the people's administration" or "offend the nation and national heroes". This provision of the press law prevents journalists from reporting on politically sensitive issues and publishing views critical of the state.
17. Furthermore, Article 57 states that any journalist or media organization seen to be publishing content deemed to be in violation of Article 9 would have their press activity permit revoked.
18. Article 38 of the press law also states that journalists and news organizations are required to disclose the identity of their sources when requested to do so by a "chief procurator", "chief justice" or another official of similar ranking.

Increased digital attacks

19. During the last Universal Periodic Review in 2014, the Government of Vietnam accepted recommendations with regards to provision and use of Internet services and information online (No. 154 and No. 155). However since then, authorities have created new laws and found tactics to stifle information online and access private and secure information by forcing foreign companies to set up local data servers subject to domestic laws.
20. The government passed a cybersecurity law which calls on data centres to be collected and stored domestically. Article 26 of the law requires offshore entities to set up local data servers and offices in Vietnam. The law in essence forces foreign internet companies to operate under Vietnamese law, provide user data as requested which can enable authorities to access and censor user data and information.
21. Pro-government actors have been implementing Distributed Denial of Service (DDoS) attacks on websites and mobile applications, making the sites and apps inaccessible for the general population. In May 2016, state-sponsored hackers initiated a DDoS attack on a mobile app used to encourage smartphone users to freely express their political views ahead of Vietnam's National Assembly elections.² A website led by Vietnamese civil society groups to mark the one year anniversary of the Formosa fish crisis off the central coast of Vietnam was DDoS attacked frequently following its launch in March 2017. DDoS attacks prevent Vietnamese users from accessing information and is in violation of the right to freedom of expression and freedom of information.
22. Of particular concern is the announcement by a Vietnamese general in December 2017 that a task force named "Force 47" is used to combat information that authorities consider to be wrong or critical of the state. General Nguyen Trong Nghia, deputy head of the Vietnamese military's General Political Department, said the cyberarmy was "ready to fight against wrongful views in every second, minute and hour."³
23. In 2017 the Vietnamese government sent Google several requests to remove more than 6,000 videos on Youtube citing "national security" or "government criticism".⁴ The majority of the requests came from government agencies, signalling the Vietnamese government's regulation over content posted on specific platforms used by Vietnamese netizens.
24. With Facebook being the most popular social media platform in Vietnam, the Vietnamese government frequently tries to censor Facebook during times of heightened political sensitivity. During the protests following the Formosa fish crisis in

² <http://viettan.org/en/ahead-of-national-assembly-election-vietnamese-authorities-resort-to-ballot-stuffing-on-independent-platform-for-political-expression/>

³ <https://rsf.org/en/news/vietnams-cyber-troop-announcement-fuels-concern-about-troll-armies>

⁴ https://transparencyreport.google.com/government-removals/by-country/VN?hl=en&country_request_amount=group_by:totals;authority:VN&lu=country_request_amount&country_item_amount=group_by:reasons;authority:VN

central Vietnam, authorities intermittently blocked access to Facebook in regions where public demonstrations were likely to occur.⁵

25. Authorities also worked with telecommunication providers to block standard text messages if mobile phone users sent messages containing particular words such as “bieu tinh” (protest) or “bau” (vote) in May 2016 as Vietnam’s National Assembly elections took place following the Formosa fish crisis.⁶

Persecution of journalists, bloggers, and human rights defenders

26. The Government of Vietnam accepted recommendations to protect and provide a favourable environment for the work of journalists, bloggers, and human rights defenders (No. 149, No. 167). Additionally, the Government of Vietnam also accepted recommendations to amend its Penal Code to ensure that it cannot be applied in an arbitrary manner to restrict freedom of expression and is consistent with international human rights obligations (No. 34, No. 150, No. 156, No. 157, No. 166). Despite this, authorities launched an unprecedented political crackdown in 2017, arresting, exiling or issuing arrest warrants to more than 25 bloggers, citizen journalists, and peaceful activists. Many have been sentenced to lengthy prison terms.

2015 Penal Code

27. Vietnam’s National Assembly adopted a new Penal Code to replace the 1999 Penal Code in November 2015 which came into effect on January 1, 2018. Although the Penal Code was changed, many of the vague articles which cite national security and are used to arbitrarily arrest activists and human rights defenders still remain.
28. Article 109 (previously Article 79) for “activities against the state” has been applied to high profile human rights defenders, many from the Brotherhood for Democracy, an organization that has trained and educated people about their fundamental rights. In recent years, the Brotherhood for Democracy has launched campaigns to support victims of land grabs and fishermen affected by the Formosa environmental crisis. Many of its members--including Nguyen Van Dai, Le Thu Ha, Nguyen Trung Ton, Nguyen Bac Truyen, Pham Van Troi, Truong Minh Duc, Tran Thi Xuan, and Nguyen Van Tuc--have been sentenced to lengthy prison terms of up to 15 years under this charge. The Special Rapporteur on the situation of human rights defenders, current Chair-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression urged the Vietnamese government not to crack down on civil society or stifle dissent following the trial of six Brotherhood for Democracy members in April 2018.⁷
29. Other notable human rights defenders and citizen journalists who remain imprisoned charged for “activities against the state” include Tran Huynh Duy Thuc, sentenced to

⁵ <https://techcrunch.com/2016/05/17/facebook-blocked-in-vietnam-over-the-weekend-due-to-citizen-protests/>

⁶ <http://viettan.org/en/vietnam-cyber-dialogue/>

⁷ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22937&LangID=E>

16 years prison followed by 5 years house arrest; Ho Duc Hoa, sentenced to 13 years prison followed by 5 years house arrest; and Nguyen Dang Minh Man, sentenced to 8 years prison followed by 5 years house arrest. The UNWGAD has issued rulings in favour of these three human rights defenders mentioned above, deciding that their detention violated the right to freedom of opinion and expression. Le Dinh Luong, a community organizer who has also been charged for carrying out “activities against the state”, remains in pre-trial detention since July 2017.

30. Many bloggers have also been arrested and sentenced to lengthy prison terms charged for “conducting propaganda against the state” under Article 88 of the 1999 Penal Code (renumbered as Article 117 of the 2015 Penal Code). Nguyen Ngoc Nhu Quynh, Nguyen Van Hoa, Tran Thi Nga, Phan Kim Khanh and Tran Hoang Phuc were detained between 2016 and 2017 and have been all sentenced to prison terms of up to 10 years prison. The aforementioned are bloggers who have also worked with various independent media organizations, working to report on the Formosa environmental crisis. UN human rights experts have communicated their concerns to Vietnamese authorities, stating that “imprisoning bloggers and activists for their legitimate work raising public awareness on environmental and public health concerns is unacceptable”.⁸
31. Former prisoners including human rights attorney Le Quoc Quan have described prison conditions as “harsh” where human rights defenders were imprisoned with “killers, robbers, people with severe diseases.”⁹ Former prisoner of conscience Dang Xuan Dieu said he was tortured, extorted money and forced to be a slave. He was terrorized and physically beaten, and shackled in a dark, smelly cell with no water to use for 10 days. Land rights activist Tran Thi Thuy, who is currently serving an eight year prison term, has been denied medical treatment for a tumour in her uterus in circumstances that could amount to torture. She has been told she would only receive medical treatment unless she “confesses” to the crimes for which she was convicted.
32. Of particular note, blogger Pham Minh Hoang was stripped of his birth nationality and deported from Vietnam in June 2017. Hoang, who previously spent 17 months in prison for “activities against the state”, was forcibly remove from his home before being exiled to France. An executive decision to strip Pham Minh Hoang of his citizenship in May 2017 based on his political views violated Article 15 of the Universal Declaration of Human Rights, which affirms that no individual shall be arbitrarily deprived of their nationality.
33. Furthermore, human rights defenders and bloggers have also been continually harassed by local authorities. Since her release, labour rights activist Do Thi Minh Hanh has been frequently harassed and intimidated by local police. She was physically assaulted in November 2015 following a meeting with workers from a company to support their campaign for recognition of rights and compensation of workers. Most recently in June 2018, Minh Hanh’s family home in Di Linh in Lam Dong Province was stoned three times in the middle of the night over two weeks. The latest incident on

⁸ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22696&LangID=E>

⁹ <http://www.advocatenvooradvocaten.nl/10810/vietnam-interview-with-le-quoc-quan/>

June 30 involved explosive devices being thrown which caused serious damage to their home.¹⁰

- Before his arrest, Pastor Nguyen Trung Ton and his friend were kidnapped and assaulted by men in plainclothes in February 2017. They were forcibly removed from their car in Quang Binh province and taken to a remote area of the neighbouring Ha Tinh province where they were beaten about the legs and feet with an iron bar. They were robbed of all their belongings and clothes and were deserted by their attackers. The pair were found the following morning by local residents who helped them to travel back to Pastor Ton's home in Thanh Hoa province.
- Similarly, citizen journalist and human rights defender Tran Minh Nhat whose family home in Lam Ha, Lam Dong Province was also stoned frequently during January and February 2016, resulting in the activist being stoned on the head. Prior to this, his family's crops were poisoned and pro-government thugs set fire to dry plants next to his home. These frequent incidents of harassment and intimidation create a very unfavourable environment for citizen journalists and human rights defenders in Vietnam.

Recommendations

34. Ratification of international instruments:

- Ratify the optional protocol of the International Covenant on Civil and Political Rights to allow the Human Rights Committee to receive individual complaints with regards to the Vietnamese government failing to meet standards in relation to ICCPR.

35. Curtailing freedom of expression and information:

- Remove vague and ambiguous language in the "cybersecurity" law that could be used to restrict freedom of expression and freedom of information online.
- Remove laws that are used to restrict freedom of expression or assembly under the safeguard of "national security".
- Ensure legislation with regards to access to information meets international standards on freedom of information.

36. Restrictive press freedom

- Vietnamese media should be autonomous from the state to pluralize the media landscape and allow for various independent media organizations to function.
- Remove provisions within the press law which state that the role of the press is to be the "voice of the Party".

¹⁰ <https://www.amnesty.org/en/press-releases/2018/07/viet-nam-authorities-must-protect-activist-from-mob-attacks/>

- The Vietnam Journalists Association (and any other organization representing journalists) should be an independent organization from the state that upholds the traditional function of the press as the fourth estate and function as the watchdog of societal institutions.
- Journalists should be allowed to report on politically sensitive news and include perspectives that are critical of the state to produce balanced news articles.
- Proper judicial processes must be involved to help journalists and new organizations to protect their sources.

37. Increased digital attacks

- Repeal the “cybersecurity” law which forces foreign companies to store data in Vietnam and be subject to arbitrary domestic laws which can lead to the sharing of user data and information.
- Discontinue Force 47 to prevent any form of online harassment or intimidation and ensure that freedom of expression and freedom to information is also respected online.
- Stop working with domestic internet service providers to block websites and text messages during politically sensitive times.

38. Persecution of journalists, bloggers, and human rights defenders

- Remove ambiguous provisions of the 2015 Penal Code which have frequently been used to arrest and sentence journalists, bloggers, and human rights defenders to lengthy prison terms.
- Ensure that the treatment of prisoners fully adheres to the conditions set out in the 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', adopted by UN General Assembly resolution 43/173 of 9 December 1988.
- Restore the citizenship of Pham Minh Hoang who was stripped of his citizenship for simply exercising his right to freedom of expression and association.
- Release all citizen journalists, bloggers, human rights defenders, religious and social activists immediately and unconditionally. They should never have been detained in the first place.
- Conduct independent investigations into the harassment and intimidation of activists.