

**Civil Society Report on the Implementation of the ICCPR
(Replies to the List of Issues CCPR/C/VNM/Q/3)**

**For the Review of the third State Report of Viet Nam
(CCPR/C/VNM/3)
At the 125th session of the Human Rights Committee
(Geneva, 4 – 29 March 2019)**

“The Death Penalty in Vietnam: Facts and Solutions”

Legal Initiatives for Vietnam
Advocacy Department
No. 9, Lane 105 Shi-da Road
Taipei City, Taiwan
www.liv.ngo
Tel: +886 966-682-942

PREAMBLE

1. *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:

- a. 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;
- b. to train a new generation of independent journalists and activists with a strong background in laws and politics;
- c. to generate public awareness about Vietnam's current politics and human rights situation on the international stage.

We would like to make this report public.

2. In regard to Issue 8 raised in the LOI of HR Committee:

With reference to paragraph 7 of the Committee's previous concluding observations and to paragraph 67 of the State party's report, please enumerate the crimes which remain subject to the death penalty and elaborate on the criteria and methods of assessment used to determine which crimes qualify as the "most serious crimes". Please provide data on the number of persons executed during the reporting cycle and currently under death sentence. Please also provide information on the detention conditions of prisoners on death row and on existing measures for reviewing death penalty judgments that have been pronounced in violation of the right to a fair trial. Pending the abolition of the death penalty, please provide information on the steps taken towards an official moratorium on executions.

3. There are at least four crimes defined in the amended Penal Code of 2015 in which Vietnam currently imposes the death penalty in direct violation of the ICCPR: Article 109 - Activities against the people's government, Article 110 - Espionage, Article 353 - Embezzlement, and Article 354 - Taking Bribes.

4. Accordingly, while Vietnam, since its first UPR cycle in 2009, has until now reduced a total of 15 offenses subjected to the death penalty (including three drugs-related offenses out of a total of 10 non-violent crimes), yet it also sentenced more

people to death and the number of executions carried out by the government during the same period has increased¹.

5. According to the statistics of the Office of the People's Supreme Court as cited in the research magazine of Hanoi National University, Law Studies Department, there was a total of 1,470 people sentenced to death between the years 2011-2016. This number is equal to the number of death sentences given out in the ten years between 1992 to 2002².

6. Amnesty International also noted that any data related to the death penalty is classified as state secrets in Vietnam. At the third UPR Cycle, the State continued to maintain that death penalty is state secret³.

7. There are almost close to none publicly disclosed information regarding the number of executions being carried out by the State. There are also no details provided to the public regarding the method of execution by the use of lethal injection since it was introduced in 2011 to replace the firing squad⁴.

8. Amnesty International did note that according to a report provided by the Vietnam's Ministry of Public Security, which was first published by a national media outlet in February 2017, 429 prisoners were executed between August 8, 2013 and June 30, 2016, at an average rate of 147 executions per year⁵. Thus, with these statistics, Amnesty International had placed Vietnam among the top executioners in the world in 2016, well above Iraq and the United States, "with numbers comparable to Saudi Arabia and Pakistan."

9. After Vietnam's 2nd UPR cycle in 2014, the country ratified two more international human rights treaties in February 2015: the Convention against Torture and Other Cruel Inhuman or Degrading Treatment (CAT) or Punishment and the Convention on the Rights of Persons with Disabilities (CRPD)⁶. However, the CAT-OP - Optional Protocol of the Convention against Torture and the CCPR-OP2-DP -

¹ Vietnam's Ministry of Public Security's Report Regarding executions carried out in the previous 5 years dated January 4, 2017, provided to us unofficially from some members of the press

<https://www.documentcloud.org/documents/4456429-Bao-Cao-Tong-Ket-5-Nam-Doc.html>

² Death Sentence in Vietnam's Criminal Law: Maintain or moving towards Abolition by Lê Văn Cẩm, Nguyễn Thị Lan, Hanoi National University Research Magazine: Law Studies, Volume 30, No. 3 (2014) pp.1- 14, at p.6, <https://js.vnu.edu.vn/LS/article/view/477/453>

³ The Vietnamese Magazine: *Death Penalty Remains State Secret in Vietnam*.

<https://www.thevietnamese.org/2019/01/death-penalty-remains-state-secret-in-vietnam/>

⁴ Vietnam's Governmental Decree on the Implementation of Execution by Lethal Injection 82/2011/NĐ-C, http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=151638

⁵ Report of the Ministry of Public Security No. 05/BC-BCA-C81, 4 January 2017. See also Dtinews, "Vietnam to build five more lethal injection venues," 9 February 2017, available at www.dtinews.vn/en/news/017/49419/vietnam-to-build-five-more-lethal-injection-venues.html

⁶ United Nations Ratification status for Vietnam,

https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=192&Lang=EN

Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty, have yet to be ratified.

10. Vietnam had made some other efforts in improving its legal framework regarding the criminal procedures besides reducing the number of crimes subject to the death penalty. For example, in March 2018, Vietnam started to implement the new regulation from its Code of Criminal Procedures to require that all police interrogations and interviews must be recorded. The amended Penal Code of 2015 also reaffirms the principle of “presumption of innocence” and the right of the defendant to remain silent.

11. Vietnam had, in the past, expressed its willingness to consider a moratorium on the imposition of the death penalty. During the 42nd and 43rd of the UN General Assembly meetings on the resolution on the death penalty moratorium in 2008, while Vietnam abstained from voting, citing their belief that each country had the sovereign right to choose its legal measures as appropriate, the representative of Vietnam also stated that the country would likely move towards the abolition of the death penalty should a number of proposed policies be adopted.⁷

12. At the moment, Vietnam is imposing the death penalty on a total of 18 offenses, including eight non-violent crimes: attempting to overthrow the people's government; espionage; producing, dealing counterfeit of cured or preventive medicine; producing, trafficking and dealing illicit drugs; embezzlement; and bribe-taking.

13. The resolution on judicial reform strategy of Vietnam's Politico Bureau of the Communist Party in 2005 also agreed to "limiting the application of capital punishment only for a few of the most serious crimes, reducing the highest punishment for some crimes."⁸

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15. In reality, the death penalty is still applied to at least four non-violent crimes as mentioned in Paragraph 3 above. Article 109 is the amended version of Article 79 of the old penal code, which the government had used to file charges against political dissidents almost exclusively.¹⁰

⁷ GA/SHC/3939 20 November 2008, <https://www.un.org/press/en/2008/gashc3939.doc.htm>

⁸ Resolution on judicial reform strategy of the Politico Bureau of the Communist Party, lines 90-92, dated 02/06/2005, Department of Justice, <http://www.moj.gov.vn/qt/clqkhk/Pages/chien-luoc-quy-hoach-ke-hoach.aspx?ItemID=11&CateID=1>

⁹ Resolution on judicial reform strategy of the Politico Bureau of the Communist Party, lines 90-92, dated 02/06/2005, Department of Justice, <http://www.moj.gov.vn/qt/clqkhk/Pages/chien-luoc-quy-hoach-ke-hoach.aspx?ItemID=11&CateID=1>

¹⁰The Vietnamese Magazine: *From Nguyen Van Dai April 5 2018 Trial: What Constitute Overthrowing The People's Government in Vietnam?* <https://www.thevietnamese.org/2018/04/from-nguyen-van-dais-april-5-2018-trial-what-constitutes-overthrowing-the-peoples-government-in-vietnam/>

16. Wrongful death penalty cases monitored by LIV from December 2014 to date show clear violations of their right to a fair trial under international laws and their right to be free from cruel, inhumane and degrading treatment.

a. Ho Duy Hai

17. Hai was a 23-year-old recent college graduate who was convicted of double homicide and robbery in 2008. On March 22, 2008, Hai was arrested and tried for the double-murder of two women when none of the fingerprints left at the scene matched his, no physical evidence tied him to the case, and there were testimonies that other men were seen at the crime scene during the night of the murders.

18. According to the indictment, one of the prosecution's witnesses, Nguyen Van Thu, later purchased a knife at a local market and gave it to the police, vowing that it would have matched the size and shape of the knife from the scene. That was enough for the police to conclude that they had sufficiently determined the murder weapon. It was this "purchased" weapon that got admitted into evidence to be parts of the case file which convicted Ho Duy Hai of double-murder and sentenced him to death in December 2008.

19. During visitation, Hai told his mother and aunt that he was beaten up by the police and tortured during his pre-trial detention to confess to the crimes. Also according to his family, Hai's appeal process began immediately after the conviction, but the court system repeatedly denied review.

20. Social media in Vietnam came to know of Hai's case when his younger sister, Thuy, created a Facebook group in November 2014 to raise awareness about his conviction and plead for his life. At the time, Hai's family had just received notice from the Long An Province Police Department that they would execute him on December 5, 2014. Due to pressure from both the public in Vietnam and international organizations, on December 4, 2014, the then President Truong Tan Sang personally ordered a halt of his execution – which would have been carried out the next day.

21. Despite the fact that a special team of jurists and legislative members was set up to investigate wrongful convictions in 2014 and 2015, and that the Deputy Commissioner of the National Assembly's Judiciary Committee at the time – Le Thi Nga – already reported to Congress there were severe violations committed by the police and prosecution in Hai's case, he had yet been granted a review and remained incarcerated.

b. Le Van Manh

22. On October 16, 2015, the family of death-row inmate Le Van Manh received a written notice from the People Court of Thanh Hoa Province, informing them about procedures to pick up and bury his body after execution, which was scheduled for October 26, 2015. Le Van Manh was convicted of robbery, rape, and murder of a 14-year old girl in July 2005.

23. On October 25, 2015, Amnesty International issued a statement on behalf of Le Van Manh, urging the Vietnamese government to spare his life and investigate allegations that he was tortured in police custody¹¹. Like Ho Duy Hai, Manh's execution was halted due to domestic and international pressure. Moreover, also like Hai, Manh continues to be incarcerated since then, with not much progress in his plea for justice.

24. The case began in 2005. On April 20, 2005, Le Van Manh, who was 23 year old at the time, was arrested according to a provisional arrest warrant issued by the investigative police unit of Dong Nai Province for an entirely different matter, suspected robbery and attempting to flee criminal custody, earlier that month.

25. However, according to the criminal complaint, just three days later, by April 23, 2005, a confession letter, claimed to be written by Le Van Manh to his father while in police detention, had surfaced, admitting guilt to the rape and murder of Hoang Thi Loan. The police was able to confiscate this letter from Manh and used it as evidence of his guilt. The criminal complaint further showed that investigation relied on the testimony of a 9-year old child – who had limited education and was interviewed by the police without parental permission – for leads.

26. From 2005-2008, Le Van Manh underwent a total of seven court hearings, including three trials, three appeals, and one cassation trial. In all of his court hearings, Manh vehemently denied all of the charges and retracted his earlier confessions, alleging that he had to confess after being beaten by both the police officers investigating his case and his cellmates who were acting under police's instructions.

c. Nguyen Van Chuong

27. Nguyen Van Chuong's official case file reveals that it could probably be the strongest one among these three to demonstrate how police brutality affected criminal investigation in Vietnam because not only the suspects but witnesses also fell victims to such practice.

28. The only evidence used to convict Chuong was his and his co-defendants' confessions. The defendants alleged that the police obtained these confessions through torture. His parents recalled how Chuong had described the police would handcuff him so that he was hanging and only the tips of his toes would touch the floor, then they would beat him repeatedly until he confessed.

29. Court's dockets confirmed that Chuong and other defendants had all petitioned for review after the appellate court confirmed their convictions in November 2008. Not only did the defendants claim that they were tortured by the police during the investigation to confess, but Chuong's alibi witnesses had also come forward and alleged they were physically abused by the authorities as well.

¹¹ Amnesty International, ASA 41/2737/2015, Vietnam: Halt Imminent Execution of Le Van Manh and Order Investigation into Allegations of Torture, <https://www.amnesty.org/en/documents/asa41/2737/2015/en/>

30. The police never investigated the validity of Chuong's alibi, and instead, they also arrested his brother, Doan, alleging that Doan was manipulating evidence and witnesses to help Chuong conceal his crimes.

31. One of Chuong's alibi witnesses was Tran Quang Tuat, who later told Tien Phong newspaper in November 2007 that the police had intimidated him into changing his testimony about Chuong's whereabouts during the night of the murder.

32. Another witness, Trinh Xuan Truong, petitioned to the People's Supreme Procuracy Office on September 10, 2013 and claimed that the police had beaten him up, burnt him with cigarettes, threatened to arrest him, and ordered him to change his testimony, from being with Chuong in a different city during the night of the attack to did not see Chuong that night.

33. On June 12, 2008, Chuong and co-defendants were tried for murder, and he was given the death penalty and the other two received life sentence and 20-year imprisonment respectively.

34. Nguyen Trong Doan, Chuong's younger brother, was also sentenced to two years imprisonment for "concealing criminals" because he was trying to bring forward Chuong's alibi witnesses.

d. Dang Van Hien

35. Dang Van Hien and the farmers in his village had been in land dispute with Long Son Commercial and Investment Company (Long Son), an investor granted the right of using land by the provincial authorities of Dak Nong, for over a decade. The conflicts between the company and the involved farmers, including defendants Dang Van Hien, Ninh Viet Binh, Ha Van Truong, have all been reported to the competent officialdom, but the farmers only received silence back.

36. On October 23, 2016, armed with weapons and several bulldozers, over thirty workers of Long Son Company went to the disputed lands, destroyed half thousands of cash crops and surrounded the farmer' houses in groups.

37. The farmers then responded with their improvised firearms. Dang Van Hien fired his gun in the air with the hope of dismissing the crowd. The attempt was unsuccessful and triggered further escalation from Long Son's employees with rocks and bulldozers approaching. Desperate and probably was also in fear, in the end, Hien and Binh shot aimlessly into the group of workers even after they turned around and ran away. Three persons were killed and 13 others injured.

38. Hien was sentenced to death in January 2018, a court of appeal turned down his appeal and upheld the judgment in July 2018.

39. In our opinion, the trial and appellate courts have failed to consider the numerous mitigating factors in favour of Hien under Vietnam's Penal Code. These include the

fact that Hien voluntarily turned himself in and he and his family have made financial reparation to the victim's families.

Poor living conditions of inmates

40. There are concerns regarding the poor living conditions of death row inmates, and also the lack of independent supervision. LIV believes that prisoners on death row in Vietnam are treated with inhumane conditions.

41. Other types of prisoners also testified to the same. One of our witnesses attested to us that he was temporarily solitary confined with three others in a 15 squared meter cell, lack of ventilation, lack of proper food and exercise, faced with extreme temperature, and not allowed to spend time outside the cell.

42. A witness interviewed by us was held in a prison center of a district in Ca Mau Province. His parents were also not allowed to visit him during such solitary confinement for six months. To prevent skin diseases, he and his cellmates had to take off their clothes. He believed that the treatment was a reprisal because he did not plead guilty as requested by the investigators. After one year of imprisonment, he walked free and was awarded compensation.

Death row inmates are not guaranteed the right to contact with the outside world

43. According to Vietnam's laws, death row inmates do not have the right to meet with their brothers and sisters-in-law, aunts, uncles, cousins in comparison with the other types of prisoners. There has yet to be a law provision which allows death row inmates to meet with any organizations or individuals besides their immediate family. They are also not allowed contact by phone with non-family members.

44. Besides, their foot could get shackled 24/7 if they express any sign of wanting to commit suicide, escaping the prison, and/or any other dangerous acts. The inmates will be allowed to go to the toilet unshackled for one time per day for 15 minutes, and to change their shackle from one foot to another every week.

45. We recommend:

- a) Impose a moratorium on the execution of non-violent crimes, including those offenses which related to drugs;
- b) Reduce the number of cases subjected to the death penalty involving drugs offenses, non-violent crimes, and homicide with extenuating circumstances;
- c) Ratify the Second Optional Protocol to the ICCPR before the midterm review of the next UPR cycle;

- d) Establish a national mechanism that independently, effectively and regularly monitors and inspects all places of detention to be conducted by independent CSOs;
- e) Accede to the Optional Protocol to the Convention against Torture;
- f) Ensure the right of death row inmates to contact others, free to receive supply and be able to communicate by telephone;
- g) Immediately and publicly disclose what are the lethal drugs being used along with their dosage in all executions;
- h) Publish adequate and publicly accessible information on the death penalty annually;
- i) Uphold the right to a fair trial, including the right to have access to adequate legal presentation at all stages of a criminal investigation.
- j) Immediately initiate the appropriate legal proceedings to review the cases of Ho Duy Hai, Le Van Manh, Nguyen Van Chuong, Dang Van Hien.

46. In regard to Issue 11 raised in the LOI of HR Committee:

With reference to implementation of the 2004 law on the enforcement of criminal judgment, please elaborate on whether and how the regulations establishing classifications of prisoners are used to facilitate the use of appropriate conditions of incarceration and treatment, in particular circular No. 37 issued by the Ministry of Public Security in 2011. Please comment on allegations that prisoners of conscience are subject to (a) torture and ill-treatment, including incommunicado detention, enforced disappearances, the infliction of severe physical and mental pain and suffering, solitary confinement, denial of medical treatment and punitive prison transfers; and (b) abuses committed by fellow prisoners (antennae) acting at the instigation or with the consent or acquiescence of police or officials.

47. We would want to raise the current deteriorating health issues of Tran Huynh Duy Thuc and Ngo Hao who we have received information from the family members during the last visits that their conditions have worsen.

48. In January, 2019, Ngo Hao's family reported that he had suffered a minor stroke in prison. According to his wife, the prison's center in An Diem, Quang Nam Province did not inform his family directly. The family learned about his conditions on social media when the brother of Hoang Duc Binh, another prisoner of conscience, posted about it on Facebook.

49. During the last family visit on January 27, 2019, the family observed that "he was very sick and shaking a lot while walking."

50. In January 2015, the government relocated him from Phu Yen Province – his hometown – to An Diem prison center in Quang Nam Province. His wife has chronic disease which has made visitations challenging.

51. Ngo Hao could be one of the oldest political prisoners serving a sentence in Vietnam right now. Born in 1948, he is turning 71 this year. Hao would now be in his sixth year of the 15-year-term.¹²

52. Nine years ago, on January 20, 2010, the People’s Court of Ho Chi Minh City convicted Tran Huynh Duy Thuc, Le Cong Dinh, Le Thang Long and Nguyen Tien Trung under Article 79 of the 1999 Penal Code for “subversion against the people’s government.”¹³

53. Tran Huynh Duy Thuc was sentenced to 16 years in prison and five years probation which technically meant five more years under house arrest.

54. On December 13, 2018, Julie Ward, a Member of the European Parliament representing the North West of England, sent a letter to the President of Vietnam – Nguyen Phu Trong – (who is also the leader of the VCP), calling for an unconditional, in-country release of Tran Huynh Duy Thuc. The letter addressed the concerns over allegations from his family that he had suffered abuse in prison.

55. The letter stated, in parts, “ in late November 2018 that he had experienced symptoms of food poisoning and further deterioration of his health, including high blood pressure. Concerned about food quality, Thuc refused the prison food, relying only on instant noodles provided by his family. In turn, prison authorities restricted his access to hot water to cook noodles and took away his personal blood pressure monitor. In an open letter, published by The 88 Project, Thuc’s daughter stated, “the family is extremely worried about his health and safety since we believe these new forms of mistreatment are used to coerce my dad to admit guilty.” Although prison authorities have since resumed his access to hot water and his blood pressure monitor, Thuc’s treatment and ongoing imprisonment remains a grave concern.”

56. We recommend that Vietnam releases Tran Huynh Duy Thuc, Ngo Hao, and other political prisoners being imprisoned for exercising their human rights peacefully.

57. In regard to Issue 14 raised in the LOI of HR Committee:

With reference to paragraph 8 of the Committee’s previous concluding observations, please report on the measures taken to ensure that in practice, arrests are based on warrants or judicial decisions. Please also provide information on the measures taken to ensure that (a) arrested persons are afforded fundamental legal safeguards from the very outset of the deprivation of their liberty, including the right to notify family

¹² The Vietnamese Magazine: *Political Prisoner Ngo Hao Suffered Minor Stroke In Prison , Health Deteriorated*
<https://www.thevietnamese.org/2019/01/political-prisoner-ngo-hao-suffered-minor-stroke-in-prison-health-deteriorated/>

¹³ The Vietnamese Magazine: *Tran Huynh Duy Thuc A Decade Behind Bars*
<https://www.thevietnamese.org/2019/01/tran-huynh-duy-thuc-a-decade-behind-bars/>

members or third persons and the right to have access to a lawyer, including in cases related to national security; and (b) persons arrested on a criminal charge are brought promptly before a judge. With reference to paragraph 96 of the State party's report, please provide further information on the regulations regarding temporary detention, on the maximum length of pretrial detention, including for "national security offences", and on measures in that regard to ensure that the Covenant is respected in practice. Please comment on allegations that the authorities use lengthy periods of pretrial detention to extract confessions. With reference to paragraph 101 of the State party's report, please provide further information on avenues open to detainees for challenging the lawfulness of their detention before a court. Please elaborate on the steps and measures taken to (a) implement opinions adopted by the Working Group on Arbitrary Detention, in particular regarding the arbitrary detention of Nguyen Ngoc Nhu Quynh (opinion No. 27/2017), who blogs under the pen name "Me Nam" (Mother Mushroom); and (b) release all individuals arbitrarily detained in connection with "national security offences" and grant compensation to them. Please comment on allegations that administrative detention, particularly in drug detention centres, and house arrest are still a common practice.

58. We would like to bring attention to the latest arrest without a warrant of 20-year-old man Tran Van Quyen in January 2019. Tran Van Quyen is from Ha Tinh Province. His brother informed attorney Nguyen Van Mieng of Ho Chi Minh City that he was arrested by the police on January 23, 2019 without a warrant while drinking coffee with friends in Binh Duong Province.

59. The police took him back to his house to conduct a search, yet also without a warrant. To date, his family still doesn't know why he was arrested and detained. When they visited him at Temporary Detention 34 at Cu Chi District, Ho Chi Minh City, they were informed verbally that he was arrested because the authorities believed that he was involved with Viet Tan - an overseas Vietnamese political party that has been categorized as "terrorists" by the Vietnamese government.¹⁴

60. Notwithstanding the allegations over his association, Tran Van Quyen should have been afforded the basic rights guaranteed under Vietnam's laws. A warrant for his arrest and the search of his home must be provided and that he should be allowed to contact family and/or an attorney.

61. Our recommendation:

Vietnam should commit to ensure that all proper procedures under its own criminal procedures code to be carried out in all cases, including political cases.

62. In regard to Issue 20 raised in the LOI of HR Committee:

Please provide information on the new cyber security law, adopted on 12 June 2018, and elaborate on its compatibility with articles 17 and 19 of the Covenant, including

¹⁴ Facebook post by Attorney Nguyen Van Mieng on February 2, 2019 (link in Vietnamese) <https://www.facebook.com/nguyenvan.mieng/posts/1944936538938826>

the principles of necessity and proportionality, particularly the provisions that (a) define legal and illegal content in cyberspace; (b) require companies to deny service, censor or inform the Government about persons publishing forbidden content; and (c) require companies to store individual information related to national security. Please describe the legal safeguards that ensure that decisions infringing on freedom of expression and the right to privacy are subject to judicial review. With reference to paragraph 189 of the State party's report, please (a) comment on allegations that the Internet is strictly monitored and provide data on the number of blogs or websites blocked during the reporting period and the reasons; and (b) explain the mandate and practice of "security cyber units" which monitor the use of the Internet by citizens. Please also provide information on the measures taken to enhance the right to access information, including the effect in practice of the 2016 law on access to information. With reference to paragraph 187 of the State party's report and to paragraph 19 of the Committee's previous concluding observations, please describe the steps taken towards the promotion of openness and pluralism in the media, including the current number of private media. Please provide further information on the legal framework regulating State control over the media, including the 2016 press law, and comment on allegations of sanctions being applied to the publication of content that does not meet governmental approval.

63. 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 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.

64. 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 order¹⁵

Analysis: violations of international human rights law

65. The CS law of 2018 places upon private companies the responsibilities to cooperate with the police and to regulate the exercise of freedom of expression, which makes the measures proposed by this law going to be unlawful under international human rights law.

66. The obligations the CS law seeks to impose would place upon private companies the responsibility to regulate and take down content posted by their users. This raises

¹⁵ 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/>

serious concerns with respect to the freedom of expression and the right to access the internet.

67. 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,”¹⁶ is incompatible with Article 19 of the ICCPR.

68. 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.

69. 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.

70. 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”¹⁷ (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.

¹⁶ Vietnam’s Cybersecurity Law, Articles 8 and 15, <https://thuvienphapluat.vn/van-ban/cong-nghe-thong-tin/Luat-an-ninh-mang-2018-351416.aspx>

¹⁷ 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

14 71. 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. 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.

72. 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, 2019. 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."¹⁸

73. We want to bring attention to the case of a student who was brought into questioning by the police over his Facebook postings in February 2019.

74. The police of the Domestic Security Bureau of Ben Tre Province accused Tran Ngoc Phuc, a resident of Tan Phu Commune, Chau Thanh District, Ben Tre Province, of using his personal account to propagandizing against the Vietnamese Communist Party and the State. The police accused Phuc of using Facebook under the name "Ngoc Phuc" to join several "politically hostile" groups. Among them, was "The South of Vietnam" (Miền Nam Việt Nam), Fanclub of Saigon Capital (Đô thành Sài Gòn Fanclub), and "Liking BBC Vietnamese" (Thích BBC Vietnamese).¹⁹

75. The police had deemed his activities on Facebook include materials which "propagandized, sabotaged the thoughts, distorted the direction, objectives, and policy of the VCP, the laws of the State and distorted (the image of) the leader Ho Chi Minh." Formal charges against Phuc had not been filed, but the police indicated that they would continue to build the case and follow the regular legal procedures in this case.

76. In January 2019 alone, there have been reports of two confirmed arrests of Facebookers in Vietnam.

77. Recommendations:

1. Repeal the Cybersecurity Law in its entirety.

¹⁸ 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>

¹⁹ <https://www.thevietnamese.org/2019/02/the-vietnamese-communist-party-turns-89-and-the-people-may-have-had-enough/>

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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 and Articles 109, 117, and 331 of the 2015 Penal Code.