



## **Legal Initiatives *for* VIETNAM**

**Submission of Open Net Association, Inc. and Legal Initiative for Vietnam to the HUMAN RIGHTS COMMITTEE for 144th session, 23 June – 25 July 2025, in relation to Viet Nam**

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### **I. Reporting Organizations**

- A.** Open Net Association, Inc. is a non-profit organization based in South Korea that promotes free expression, privacy, network neutrality, and other digital rights in the country, Asia, and globally. It has participated in and worked with the UN Human Rights Committee and the special mandates on free speech of international human rights bodies on the issues of various countries, especially in Asia.
- B.** Legal Initiative for Vietnam (LIV)'s mission is to build a democratic society in Viet Nam through independent journalism, research, and education. LIV believes that independent journalism and an informed citizenry are vital parts of the democratic future of Viet Nam. Thus, LIV invests in building independent media outlets and institutions that are free of censorship and self-censorship. Also, LIV aims to provide quality resources for journalists, researchers, policy makers, and advocacy groups. Over the years, LIV has worked on various research projects in internet freedom, religious freedom.

### **II. Issues Summary**

- A.** In this submission, the aforementioned organizations have reviewed the Human Rights Committee's ("Committee") List of issues in relation to the fourth periodic report of Viet Nam<sup>1</sup> and Viet Nam's replies to it<sup>2</sup>. This submission will focus specifically on digital rights, including freedom of expression, internet access and right to privacy, and

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<sup>1</sup> CCPR/C/VNM/Q/4, 28 May 2024.

<sup>2</sup> CCPR/C/VNM/RQ/4, 17 Feb. 2025.

the Government of Viet Nam's ("GoV") corresponding violations under the International Covenant on Civil and Political Rights ("ICCPR").

- B.** This submission begins with a discussion of the GoV's enforcement of restrictive criminal provisions that penalize online expression, such as Articles 109, 117, and 331 of the Penal Code, targeting political activism and dissent. It also discusses increased crackdown on online commentators and arrests for online speech, including criticisms of the government's COVID-19 policies, and administrative penalties for illegal online speech, leading to the evident lack of press freedom. It then moves on to the discussion of the GoV's suppression of online content through pressure on civilian actors in censoring speech protected under international human rights law, including the discussion of Decree No. 147/2024/ND-CP's restrictions on online content. The following section discusses the GoV's internet shutdowns. It then discusses Vietnamese legislation that leave room for the GoV's arbitrary surveillance and unlimited access to personal data without any legal safeguards or independent oversight mechanisms, such as the Decree No. 13/2023/ND-CP, Decree No. 53/2013/ND-CP, and Decree No. 147/2024/ND-CP. Finally, the submission concludes with an overview of recommendations.

### **III. Background**

- A.** In 2019, the Committee released the Concluding observations on the third periodic report of Viet Nam.<sup>3</sup> At that time, the Committee expressed concerns over:
1. The vague and broadly formulated offences in articles 109, 116, 117 and 331 of the Penal Code and their use to curtail freedom of opinion and expression;
  2. State control over the media, including through the Law on the Press of 2016, which prohibits any criticism of the Government;
  3. The Law on Cybersecurity of 2018 and other regulations curtailing the freedom of expression in cyberspace by prohibiting the provision and use of Internet services to spread information opposing or criticizing the State, and the establishment of the Force 47 cyber unit to control the Internet; and
  4. Arbitrary arrest, detention, unfair trials and criminal convictions of human right defenders, journalists, bloggers and lawyers, for criticizing State authorities or policies.

### **B. Committee's List of Issues in relation to the Fourth Periodic Report ("LOI") and the State Party's Response Summarized**

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<sup>3</sup> CCPR/C/VNM/CO/3, 29 Aug. 2019.

**1. Freedom of expression:** The Committee inquired in paras. 21-22 of LOI on the (a) measures taken to revise or repeal legislation pertaining to the freedom of expression; (b) the blocking of websites and removal/restrictions on content critical of the Government; (c) the harassment and intimidation of online activists and criminalization of online expressions; (d) Internet shutdowns in targeted areas; and (e) the measures taken to protect human rights defenders and civil society actors. The GoV responded in paras. 226-228 in the State report that (1) media in Viet Nam operates freely in accordance with law and the GoV is considering amendments to the Law on Press; (2) the GoV allocates resources for the initiatives that aim to promote telecommunications; (3) Viet Nam facilitates cooperation with international organizations, UN entities and NGOs; (4) Decree No. 119/2020/ND-CP protects journalists in their work; and (5) the cases of the five environmental rights defenders were for violations of the Penal Code were legitimate.

**2. Right to privacy:** The Committee inquired in para. 19 of LOI on (a) legal safeguards applied to the surveillance regime and independent oversight mechanisms; (b) allegations of targeted surveillance on political activists, journalists and human right defenders; (c) information on Decree No. 13/2023/ND-CP and its compatibility with the Covenant, in particular with regard to Article 17; and (d) the number of complaints alleging violations of the right to privacy, the legal basis and outcomes thereof, the sanctions imposed and any remedies provided. The GoV responded in paras. 64-66 that (1) allegation on arbitrary surveillance is not true; (2) the Constitution of Viet Nam and legal documents ensure the right to confidentiality of correspondence, telephone communication, electronic data, and other private exchanges; (2) the opening, inspection, or seizure of private communication is permitted only under circumstances prescribed by law; and (3) personal data processing without the data owner's consent, as stipulated in Decree No. 13/2023/ND-CP (Article 17), is limited to urgent situations and the entities involved in such data processing must demonstrate the necessity and appropriateness of their actions.

#### **IV. Violations to the International Covenant on Civil and Political Rights**

**A. Criminalization of Online Dissent Voices:** The GoV enforces restrictive criminal provisions (Articles 109, 117, and 331 of the Penal Code) targeting political activism and dissent. These laws are used to penalize online expression, and there has been a significant increase in punishment for online speech criticizing the government's handling of the COVID-19 pandemic. As the Special Rapporteur on Freedom of

Opinion and Expression has emphasized, “the arbitrary use of criminal law to sanction legitimate expression constitutes one of the gravest forms of restriction to the right, as it not only creates a “chilling effect”, but also leads to other human rights violations, such as arbitrary detention and torture and other forms of cruel, inhuman or degrading treatment or punishment.”<sup>4</sup>

**1. Restrictive criminal provisions targeting political activism and dissent:** General Comment No. 34, Paragraph 25 of the UN Human Rights Committee expressly notes free, unrestrained communication of information about political issues among the public as a right under the ICCPR.<sup>5</sup> Given that the Penal Code Articles 109, 117, and 331 directly criminalize political activism and dissent against the current government regime, they raise serious concerns regarding potential violations of the right to freedom of expression:

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

Article 19(3) of the ICCPR has been interpreted to include a three-part test to determine that a restriction on the freedom of expression is legitimate. The restriction must: (1) be provided by law, which is both accessible and sufficiently precise for citizens to be able to regulate their conduct; (2) must be for a legitimate aim; and (3) must be necessary to carry out the aim. Any use of the three-part test does not hold up under scrutiny, because General Comment No. 34 necessarily adds: “The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of the freedom of expression.”<sup>6</sup> Article 109, 117, and 331 of the Penal Code not only lack legitimate

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<sup>4</sup> A/HRC/17/27, 16 May 2017, at para. 28.

<sup>5</sup> CCPR/C/21/Rev.1/Add.7, 27 Aug. 1996.

<sup>6</sup> CCPR/C/GC/34, 12 Sept. 2011, at para. 42.

aim, but their definitions of prohibited expressions (“against the government”, “distorted information”, “abuse of democratic freedoms”) are also too vague.

**2. Examples of how the provisions are enforced in reality:** Articles 109, 117, and 331 of the Penal Code are often used against political activists and dissidents, with Article 331 extending to criminal punishment for ordinary citizens' online speech. More than 160 people have been imprisoned under these three provisions, primarily independent journalists and peaceful political activists.

- a) The UN Special Rapporteurs issued a joint statement in 2021 expressing deep disturbance at the use of Article 117 of the penal code to silence the critics<sup>7</sup> and called for the immediate release of three journalists imprisoned under this law, Pham Chi Dung, Nguyen Tuong Thuy, and Le Huu Minh Tuan, who peacefully organized or joined dissenting activist groups and were sentenced to 15, 11, and 11 years in prison respectively.
- b) The table below shows prominent examples of the enforcement of aforementioned provisions. All the cases listed below involve online speech.

| Provision          | Defendant                        |                      | Year of Trial | Sentence                 |
|--------------------|----------------------------------|----------------------|---------------|--------------------------|
| <b>Article 109</b> | Lê Đình Lượng <sup>8</sup>       | Activist             | 2017          | 20 years of imprisonment |
|                    | Trần Huỳnh Duy Thức <sup>9</sup> | Blogger, activist    | 2010          | 16 years of imprisonment |
|                    | Phan Văn Bình <sup>10</sup>      | Blogger, activist    | 2019          | 14 years of imprisonment |
| <b>Article 117</b> | Phạm Chí Dũng <sup>11</sup>      | Journalist, activist | 2021          | 15 years of imprisonment |
|                    | Phạm Đoàn Trang <sup>12</sup>    | Journalist, activist | 2021          | 9 years of imprisonment  |
|                    | Nguyễn Lân Thắng <sup>13</sup>   | Blogger, activist    | 2023          | 6 years of imprisonment  |
| <b>Article 331</b> | Nguyễn Hữu Vinh <sup>14</sup>    | Journalist           | 2016          | 5 years of imprisonment  |

<sup>7</sup> Special Procedures of the UN Human Rights Council, *Viet Nam: Arrests send chilling message before key Party meeting – UN experts*, 14 Jan. 2021, <https://www.ohchr.org/en/press-releases/2021/01/viet-nam-arrests-send-chilling-message-key-party-meeting-un-experts?LangID=E&NewsID=26661>.

<sup>8</sup> The 88 Project, *Profile: Le Dinh Luong*, <https://the88project.org/profile/18/le-dinh-luong/>.

<sup>9</sup> The 88 Project, *Profile: Tran Huynh Duy Thuc*, <https://the88project.org/profile/44/tran-huynh-duy-thuc/>.

<sup>10</sup> The 88 Project, *Profile: Phan Van Binh*, <https://the88project.org/profile/461/phan-van-binh/>.

<sup>11</sup> The 88 Project, *Profile: Pham Chi Dung*, <https://the88project.org/profile/431/pham-chi-dung/>.

<sup>12</sup> The 88 Project, *Profile: Pham Doan Trang*, <https://the88project.org/profile/286/pham-doan-trang/>.

<sup>13</sup> The 88 Project, *Profile: Phan Van Binh*, <https://the88project.org/profile/291/nguyen-lan-thang/>.

<sup>14</sup> Front Line Defenders, *Case History: Nguyen Huu Vinh (Ba Sam)*, <https://www.frontlinedefenders.org/en/case/case-history-nguyen-huu-vinh-ba-sam>.

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|--|-------------------------------|------------------|------|-------------------------|
|  | Lê Tùng Vân <sup>15</sup>     | Religious leader | 2022 | 5 years of imprisonment |
|  | Nguyễn Hoài Nam <sup>16</sup> | Journalist       | 2021 | 2 years of imprisonment |

- 3. Increased crackdown on online commentators and arrests for online speech, including criticisms of the government's COVID-19 policies:** In recent years, a notable trend in Viet Nam's law enforcement has been the increasing criminal punishment of regular internet users for their online speech. This shift marks a significant change in the GoV's approach to regulating online expression. The 88 Project says in their Human Rights Report that “online commentators are increasingly becoming a target of harassment, crackdown, and arrests. Fifteen such arrests were recorded in 2021 alone, an increase from 12 in 2020. Topics of the posts ranged from the typical calls for democracy and freedom of expression, as in the past, to more topical subjects such as COVID-19 and the government's poor handling of the pandemic.”<sup>17</sup> The report states that there is firm evidence of at least six arrests in 2021 due to criticism of the government's health policy on COVID-19, and that many more unreported/unrecorded minor incidents of harassment are suspected.<sup>18</sup> The 88 Project also assessed, “the discussion on social media, mainly Facebook, showed a heightened level of anger and frustration at the authorities and the state-run media.”<sup>19</sup>
- 4. Administrative penalties for illegal online speech:** Decree No.15/2022/ND-CP (“Decree 15”) took effect in April 2020, during the early days of the COVID-19 pandemic, to replace another widely scrutinized decree — Decree No. 174/2013/ND-CP. This is a decree on “penalties for administrative violations against regulations on postal services, telecommunications, radio frequencies, information technology and electronic transactions,” which covers a broad range of administrative violations, including illegal online speech. Articles 99, 100, 101, and 102 of Decree 15 set financial penalties of up to 100 million VND (about 4,500 USD) imposed on both individuals and organizations for making, storing and spreading illegal online speech, or failing to censor illegal online speech. For example, one can be fined up to 70 million VND for their activities online involving “information/images infringing upon the national sovereignty; distorting history, denying the revolutionary achievements; offending

<sup>15</sup> The 88 Project, *Profile: Le Tung Van*, <https://the88project.org/profile/569/le-tung-van/>.

<sup>16</sup> The 88 Project, *Profile: Nguyen Hoai Nam*, <https://the88project.org/profile/526/nguyen-hoai-nam/>.

<sup>17</sup> The 88 Project, *Human Rights Report 2021 - The 88 Project*, 9 May 2022, <https://the88project.org/human-rights-report-2021>.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

the nation, famous persons or national heroes if not liable to criminal prosecutions.” The highest financial penalty, which is from 70 to 100 million VND, is applicable in the case of “providing, exchanging, transmitting or storing and using digital information disseminating wrong facts about the sovereignty of Vietnam.”

The following cases provide detailed information about how these administrative fines are imposed in reality:

- a) In 2022, N.T.T.L. was subjected to a penalty of 10 million VND for a statement made during an online stream about Viet Nam’s then-President, which was considered insulting and inappropriate.<sup>20</sup>
- b) In 2021, N.H.H. was subjected to a penalty of 7.5 million VND for a statement made on an online Zalo group about Viet Nam’s elections: “It’s irrelevant whether you vote or not. Everything has been predetermined, so voting would just be a waste of time. It’s not a choice like voting for Biden or Trump. The results have been known since last year.”<sup>21</sup>
- c) In 2021, Thai Trac Mieu was subjected to a penalty of 7.5 million VND for a Facebook comment criticizing a group of volunteers from a Northern province who came to assist Ho Chi Minh City, a Southern province, at the peak of the COVID-19 outbreak.<sup>22</sup>

**5. Evident lack of press freedom:** ARTICLE 19 ranked the status of free expression in Viet Nam ‘in crisis’ in its latest Global Freedom of Expression Report.<sup>23</sup>

According to the Committee to Protect Journalists, Viet Nam ranks as the third worst jailer of journalists in Asia, trailing only China and Myanmar, with 21 journalists imprisoned in 2022.<sup>24</sup> Reporters Without Borders’ 2023 press freedom ranking reveals that Viet Nam holds 40 journalists in custody, placing it as the world’s third largest jailer of journalists.<sup>25</sup> Significantly, the Reporters Without Borders’ 2023 World Press Freedom Index positions Viet Nam at 178 out of 180 countries, third from the bottom above only China and North Korea and a decline

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<sup>20</sup> Đức Văn, *Xử phạt nữ streamer phát ngôn xúc phạm lãnh đạo cấp cao*, Báo Điện Tử Dân Trí, 6 Sept. 2022, <https://dantri.com.vn/xa-hoi/xu-phat-nu-streamer-phat-ngon-xuc-pham-lanh-dao-cap-cao-20220906202510587.htm>.

<sup>21</sup> Hà, M, *Hà Nội: Bình luận sai sự thật về bầu cử Quốc hội, bị phạt 7,5 triệu đồng*, Thanhnien.vn, 29 Mar. 2021, <https://thanhnien.vn/ha-noi-binh-luan-sai-su-that-ve-bau-cu-quoc-hoi-bi-phat-75-trieu-dong-1851051090.htm>.

<sup>22</sup> Ministry of Culture, Sports and Tourism, Authority of Broadcasting and Electronic Information, *MC Trác Thủy Miêu bị xử phạt vi phạm hành chính vì phát ngôn gây kích động trên mạng xã hội*, 21 July 2021, <https://abei.gov.vn/thong-tin-dien-tu/mc-trac-thuy-mieu-bi-xu-phat-vi-pham-hanh-chinh-vi-phat-ngon-gay-kich-dong-tren-mang-xa-hoi/107727>.

<sup>23</sup> ARTICLE 19, *The Global Expression Report 2022*, <https://www.article19.org/wp-content/uploads/2022/06/A19-GxR-CountryRankings-22.pdf>.

<sup>24</sup> YIU, P, 14 Dec. 2022, *Asian countries top list for worst jailers of journalists: report*, Nikkei Asia, <https://asia.nikkei.com/Politics/International-relations/Asian-countries-top-list-for-worst-jailers-of-journalists-report>.

<sup>25</sup> Reporters Without Borders (RSF), *Vietnam*, 27 Apr. 2023, <https://rsf.org/en/country/vietnam>.

from the previous year's ranking, indicating a deterioration in press freedom in Viet Nam.

**B. Suppression of Online Content:** The GoV has created and enforced laws to suppress specific instances of public speech across various platforms and modes, by exerting pressure on social media and telecommunications companies to remove or restrict content critical of the government.

**1. Pressure on civilian actors, including enterprises, in censoring speech**

**protected under international human rights law:** The 2018 Cybersecurity Law is the most important and consequential piece of legislation that regulates the internet in Viet Nam. Noted domestically and internationally for its clear violation of freedom of speech and privacy rights protected under international human rights law, the law marks a major shift in the GoV's approach to dealing with online content, especially content circulated on cross-border platforms such as Facebook and Google.

Articles 16 and 26 of the Cybersecurity Law do not meet the ICCPR Article 19(3) three-part test. Providing the GoV with nearly unfettered control over the type of content that may be published online, they fail to propose a legitimate aim.

- a) Under Article 16 of the Cybersecurity Law, the GoV can request to take down “information in cyberspace with contents being propaganda against the Socialist Republic of Vietnam,” “information in cyberspace which incite riots, disrupt security or cause public disorder; which cause embarrassment or are slanderous; or which violate economic management order” and “information in cyberspace with invented or untruthful contents causing confusion amongst the Citizens.” These vague concepts are further defined in the sub-clauses, but the definitions still remain highly vague and overly broad, as illustrated by “Distortion or defamation of the people's administrative authorities” or “Serious infringement of the honour, reputation/prestige or dignity of other people.”

Enterprises providing services on telecom networks, the Internet and other added value services on cyberspace and system administrators are responsible for coordinating with government agencies in dealing with such information. Also, the system administrator is responsible for preventing, detecting, stopping and/or removing information with such content when there is a request from the Cybersecurity Task Force.

Whereas General Comment 34, Paragraph 38 prohibits penalizing speech “insulting to a public figure,”<sup>26</sup> Article 16 outlaws insulting the leaders of Viet Nam, thereby failing to comply with the ICCPR. Google reported that

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<sup>26</sup> CCPR/C/GC/34, 12 Sept. 2011



95% of the removal requests it received from the GoV from July 2022 to December 2022 were related to government criticism.<sup>27</sup>

- b) Under Article 26 of the Cybersecurity Law, the GoV can request the takedown of certain content online. Domestic and overseas providers of telecommunications services, internet services and value-added services in Viet Nam’s cyberspace (“cyberspace service providers”) must comply with that request and censor the content within twenty-four hours or face legal consequences. Contrary to reporting that Viet Nam only adopted this 24-hour take-down rule in 2022,<sup>28</sup> the rule had already been incorporated into the Cybersecurity Law as early as 2018.

Whereas the 2018 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression states in Paragraph 66 that “States should only seek to restrict content pursuant to an order by an independent and impartial judicial authority,”<sup>29</sup> Article 26 empowers executive branches to take down content.

The law is heavily used in Viet Nam—in 2022, Facebook blocked 2751 posts, Google removed 7935 videos from YouTube, and Tiktok blocked or removed 329 videos.<sup>30</sup> As a more drastic measure, entire websites are regularly blocked by GoV; the Ministry of Public Security blocked over 2705 websites in 2022.<sup>31</sup> By removing and blocking thousands of posts and websites under the Cybersecurity Law for poorly defined reasons and without independent oversight, the GoV is infringing upon the right to freedom of expression of its citizens.

2. **Decree No. 147/2024/ND-CP’s restrictions on online content:** The aforesaid censorship of online content will become more intensified as, on 9 November 2024, the GoV issued Decree No. 147/2024/ND-CP (“Decree 147”), officially titled “Decree on the Management, Provision, and Use of Internet Services and Online Information,” empowers the Ministry of Information and Communications and the Ministry of Public Security to regulate online content, including blocking illegal content and imposing penalties for non-compliance. Platforms are required to remove illegal content within 24 hours of receiving a request from the ministries. Platforms must actively monitor and remove content deemed illegal or misleading under Vietnamese law. Failure to comply with these obligations can result in severe

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<sup>27</sup> Freedom House, *Vietnam – Freedom on the Net 2023*, <https://freedomhouse.org/country/vietnam/freedom-net/2023>.

<sup>28</sup> Reuters, *Vietnam to require 24-hour take-down for “false” social media content*, 4 Nov. 2022, <https://www.reuters.com/technology/vietnam-require-24-hour-take-down-false-social-media-content-2022-11-04>.

<sup>29</sup> A/HRC/38/35, 6 Apr. 2018.

<sup>30</sup> Freedom House, *Vietnam – Freedom on the Net 2023*, <https://freedomhouse.org/country/vietnam/freedom-net/2023>.

<sup>31</sup> *Ibid.*

penalties, including fines, operational suspensions, or bans from operating in Viet Nam.

**C. Internet Shutdown:** Whereas the Human Rights Council requested for states to facilitate internet access and not to intentionally disrupt, prevent, or disseminate online information,<sup>32</sup> the GoV often shuts down the whole internet in certain geographic regions or entire websites throughout the country.

1. **Internet shutdown as a serious violation of freedom of expression under international human rights law:** In General Comment 34, Paragraph 43, “Any restrictions on the operation of websites. . . internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3 [of the ICCPR Article 19]. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3.”<sup>33</sup> The 2011 Joint Declaration on Freedom of Expression and Internet confirmed the Special Rapporteur’s determination that blocking entire websites or other networks is incompatible with human rights, regardless of justification or proportionality.<sup>34</sup> Blocking websites constitutes a “prior censorship” of future articles or contents on those sites, and therefore a significant suppression of the freedom of expression and speech.<sup>35</sup> The Special Rapporteur stated that “any determination on what content should be blocked must be undertaken by a competent judicial authority or a body which is independent of any political, commercial, or other unwarranted influences.”<sup>36</sup> The Special Rapporteur also noted that it is a violation of Article 19 of the ICCPR to cut off internet access altogether, regardless of any justifications. This means that internet access must be maintained at all times, even in times of political unrest.<sup>37</sup>
2. **Laws enabling internet shutdowns and their examples:** The Cybersecurity Law stipulates that the Cybersecurity Task Force can paralyze or restrict the use of cyberspace “when such use causes harm to national security or causes particularly serious harm to social order and safety” (Article 22), and that the cyberspace service providers should not provide or “cease provision of services on telecom networks and on the Internet and other value added services to organizations and

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<sup>32</sup> A/HRC/RES/20/8, 16 July 2012, at para. 3; A/HRC/RES/32/13, 18 July 2016, at paras. 3 and 10.

<sup>33</sup> CCPR/C/GC/34, 12 Sept. 2011.

<sup>34</sup> UN Special Rapporteur on Freedom of Opinion and Expression et al., *Joint Declaration on Freedom of Expression and Internet*, at para. 3a, 1 June 2011, <https://www.osce.org/files/f/documents/e/9/78309.pdf>.

<sup>35</sup> *Ibid.* at para. 3b.

<sup>36</sup> A/HRC/17/27, 16 May 2011, at para. 70.

<sup>37</sup> *Ibid.*, at paras. 49-50; UN Special Rapporteur on Freedom of Opinion and Expression et al., *Joint Declaration on Freedom of Expression and Internet*, at para. 6b, 1 June 2011, <https://www.osce.org/files/f/documents/e/9/78309.pdf>.

individuals who upload prohibited information” (Article 26). Also, to prevent and respond to “dangerous cybersecurity situation”, the Cybersecurity Law leaves room for the GoV to invoke drastic measures such as “stop providing cyberinformation within a certain area or disconnect from the international internet gateway” (Article 21.2.dd). This means a total internet shutdown in a specific area, a rarely invoked measure which has been reported during sensitive times such as during the police’s violent attack in Dong Tam in January 2020.<sup>38</sup>

The Dong Tam incident occurred just outside Hanoi on the morning of 9 January 2020. Dong Tam commune, known for the farmers' resistance to government land claims, witnessed a violent police attack in its residential area. This confrontation, which escalated during the farmers' sleep, resulted in the tragic deaths of the farmers’ leader, Le Dinh Kinh, and three policemen. This event highlighted the long-standing land dispute and the intensity of the conflict between local farmers and authorities over land rights. During the attack and days that followed, internet access was reportedly cut off in the area, disrupting the villagers' social media-based resistance, which had been a key element of their campaign.<sup>39</sup>

The GoV also threatened to shut down Facebook in 2020, forcing it to comply with content restrictions, then threatened to ban TikTok in 2023.<sup>40</sup>

**D. Privacy and Surveillance:** Legislation such as Decree No. 13/2023/ND-CP, Decree No. 53/2013/ND-CP, and Decree No. 147/2024/ND-CP leave room for the GoV’s arbitrary surveillance and unlimited access to personal data, without any legal safeguards or independent oversight mechanisms. The Human Rights Committee has affirmed that “arbitrary interference” in Article 17 of the ICCPR can also extend to interference provided for under the law.<sup>41</sup> That is, merely passing a law that authorizes state surveillance does not make the surveillance lawful. Minimum safeguards against intrusive surveillance, such as the subject, time limit, precaution, supervision in the use of surveillance power, and remedy for the victim, must be specifically laid down in law, and more specifically in statute.<sup>42</sup>

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<sup>38</sup> Khôi Nguyên, *Đồng Tâm chống trả “tấn công”: 3 công an và 1 người dân thiệt mạng*, *Nguoi Viet Online*, 9 Jan. 2020, <https://www.nguoi-viet.com/viet-nam/dong-tam-chong-tra-tan-cong-3-cong-an-va-1-nguoi-dan-thiet-mang>.

<sup>39</sup> Mai Thanh Truong, *Revisiting the Role of Social Media in the Dong Tam Land Dispute*, 10 June 2020, <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2020-60-revisiting-the-role-of-social-media-in-the-dong-tam-land-dispute-by-mai-thanh-truong>.

<sup>40</sup> Freedom House, *Vietnam – Freedom on the Net 2023*, <https://freedomhouse.org/country/vietnam/freedom-net/2023>.

<sup>41</sup> HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008, at para. 4.

<sup>42</sup> EEF, Article 19, *International Principles on the Application of Human Rights Law to Communications Surveillance: Background and Supporting International Legal Analysis*, 2014, pp.17; *Weber & Savaria v. Germany*, no. 54934, 29 June 2006, para. 95.

**1. Government's broad and vague scope of collecting and processing personal data, potentially allowing unlimited access:** Decree No. 13/2023/ND-CP

("Decree 13") is the first comprehensive legal document on personal data protection, which went into effect on 1 July 2023. It categorizes personal data into two types: (i) basic personal data such as name, address, telephone number, citizenship, sex, and marriage status and (ii) sensitive personal data such as political or religious viewpoints, health (excluding blood types), gender orientation, criminal records, bank records.

Under the decree, personal data can be processed without consent in the following cases (Article 17):

- 1) to protect the life and health of the data subject or others in an emergency situation,
- 2) to conduct disclosure of personal data in accordance with the law;
- 3) to serve the processing of personal data by competent regulatory authorities in the event of a state of emergency regarding national defense, security, social order and safety, major disasters, or dangerous epidemics; when there is a threat to security and national defense but not to the extent of declaring a state of emergency; to prevent and fight riots and terrorism, crimes and law violations according to the provisions of law;
- 4) to fulfill obligations under contracts the data subjects with relevant agencies, organizations and individuals as prescribed by law; and
- 5) to serve operations by regulatory authorities as prescribed by relevant laws.

The GoV argued in their Replies to LOI, that the cases of personal data processing without the data owner's consent, as stipulated in Article 17, are limited to urgent situations, where immediate processing of personal data is required to protect the life or health of the data owner or others. However, as evidenced by the foregoing, they are overbroadly allowed to conduct disclosure, fulfill obligations under contracts, and serve operations by regulatory authorities "as prescribed by law."

Additionally, personal data can be processed without notifying the individual concerned if "the data is processed by a competent state agency for operational purposes, as prescribed by law" (Article 13.4.b).

Such provisions pose a unique risk in Viet Nam, because here, the term "law" encompasses a broad range of legal instruments including rules, regulations, ordinances, and various directives issued by non-legislative bodies such as national and local administrative bureaus. In many jurisdictions, the exemption of personal data from consent requirements under the term "law" typically refers only to statutes enacted by a democratically elected legislative body, ensuring a level of democratic legitimacy. The absence of a similarly restrictive interpretation in Viet Nam means that Decree 13 effectively reduces, rather than enhances, privacy protections for individuals. It does so by easing procedural restrictions on state

surveillance and intrusion into private lives, contrary to the typical objectives of data protection laws.

Decree 13 extends its scope to foreign services and others by mandating personal data processors to prepare and submit assessments on the impact of transferring personal data out of the country to the Ministry of Public Security. This decree empowers the Ministry of Public Security to halt the transfer of personal data abroad if it is used in activities that undermine the interests and national security of Viet Nam, if there is a leak or loss of a Vietnamese citizen's personal data, or if the data processor fails to regularly update these impact assessments as required by the ministry (Article 25.8).

- 2. Data retention and localization:** The Cybersecurity Law makes it mandatory for both domestic and international internet services to store users' data in Viet Nam and provide authorities access to the data upon request without any procedural safeguards (Article 26). Decree No. 53/2013/ND-CP ("Decree 53") lowers the requirement by a triggering provision that says if foreign companies do not comply with the GoV's requests for content removal and users' data, the GoV may order them to localize users' data and open local offices/branches (Article 26). Once requested by the Ministry of Public Security, the company has 12 months to comply and the data must be stored in Viet Nam for at least 24 months (Article 27).
- 3. Government's access to user data without independent oversight:** The Cybersecurity Law and Decree 53 mandate that companies provide data to the GoV upon request, lacking procedural safeguards. Similarly, Decree 147 obliges service providers, including social networks, to furnish user information related to terrorism, crimes, and legal violations to competent authorities when asked, yet it does not specify procedures or oversight mechanisms to prevent misuse.
- 4. Mandatory real-name identity registration for social media users:** On 9 November 2024, the government issued Decree 147 to supersede Decree No. 72/2013/ND-CP, enforcing real-name identity registration for social media users with their actual names and phone numbers. Non-compliance with this regulation restricts users to content viewing only, barring them from posting, commenting, or live streaming. This proposed regulation targets online anonymity, a fundamental aspect of privacy in the digital age.  
As noted by the Special Rapporteur on Freedom of Opinion and Expression, restrictions on anonymity "facilitate State communications surveillance" and "have a chilling effect, dissuading the free expression of information and ideas."<sup>43</sup> Decree 147 does not meet the ICCPR Article 19(3) three-part test, since it is clear that the

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<sup>43</sup> A/HRC/23/40, 17 Apr. 2013, at para. 24.

restriction imposed by this measure is neither necessary for the legitimate purpose, nor the least intrusive means of achieving it as required by the proportionality principle. Though the identity verification requirement is being proposed on the pretense of combating human trafficking and fraud, there is no evidence to suggest that real-name verification will have any substantial impact on the incidence of trafficking, and it targets every single social media account, not only those suspected of human trafficking. In fact, it applies even to accounts held by users who might never enter the territory of Viet Nam. Such a blanket regulation fails the requirement to articulate in a “specific and individualized fashion the precise nature of the threat.”<sup>44</sup>

The real-identity verification requirements exacerbate concerns that the Vietnamese authorities will intensify their surveillance of telecommunications and online activity, and are likely to dissuade individuals from expressing themselves freely, unduly and arbitrarily restricting the right to privacy and freedom of expression protected under the ICCPR. The restriction on people’s ability to speak anonymously online will be especially debilitating to democracy when it is doubtful that the requirement will apply to Viet Nam’s Force 47, the army’s online information warfare unit, which will continue to be able to engage in mass online disinformation campaigns.

## **V. Conclusion and Recommendations**

Based on the above information, we would like to propose that the Committee recommend the following:

### **A. Criminalization of Online Dissent Voices**

1. Abolish Penal Code Article 331 which criminalizes “abuse of freedom of speech,” because it is too vague in clear violation of the legality requirement of Article 19 of the International Covenant on Civil and Political Rights.
2. Release from detention and ensure the safety of journalists, peaceful political or religious dissenters or activists, and human rights defenders from criminal prosecution based on the free expression of their views, opinions, or political or religious beliefs and related association.
3. Reform the prison sentences imposed in Penal Code Articles 109, 117, and 331 so that no decade-long prison time can be given for the peaceful exercise of free expression.
4. Reform the language in Penal Code Articles 109 to remove vague prohibitions such as “acting against the people’s government” to better allow healthy criticism of the

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<sup>44</sup> CCPR/C/GC/34, 12 Sept. 2011, at para. 34.

government in line with obligations under Article 19 of the International Covenant on Civil and Political Rights.

5. Reform the language in Penal Code Article 117 to remove excessive prohibitions such as “spreading distorted information about the people’s government” to better allow healthy criticism of the government in line with obligations under Article 19 of the International Covenant on Civil and Political Rights.

## **B. Suppression of Online Content**

1. Reform the 2018 Cybersecurity Law Articles 16 and 26 to cease the mass removal of online content on the basis of government criticism such as Article 16 clause 1, ease the stringent 24-hour compliance requirement of Article 16, and implement an ex ante independent review process for content takedown requests by the government.
2. Reform the 2018 Cybersecurity Law Articles 16 and 26 to cease the mass removal of online content on the basis of government criticism such as Article 16 clause 1, ease the stringent 24-hour compliance requirement of Article 16, and implement an ex ante independent review process for content takedown requests by the government.
3. Protect online free speech by abolishing the provision in Decree 147 that penalizes platforms for failing to take down the contents noticed by the government agencies without 24 hours.
4. Protect the users’ right to speak anonymously online by abolishing the provision in Decree 147 that requires all platforms to verify the identity of all users.

## **C. Internet Shutdown**

1. Refrain from disrupting internet services during political unrest.
2. Limit the scope of and the reason for the website blocking under Article 26 (c) of the Cybersecurity Law, and ensure the blocking meets the test of necessity in line with obligations under Article 19 of the International Covenant on Civil and Political Rights.

## **D. Privacy and Surveillance**

1. Enact procedural safeguards against excessive governmental monitoring of private mail and communication and the unfettered government access to internet user data by requiring warrants issued by independent public officers for such monitoring or access.
2. Protect privacy of citizens by abolishing the requirement of online user identity verification in Decree 147.