UNITED NATIONS HUMAN RIGHTS COUNCIL

46th Session of the Working Group on the Universal Periodic Review

April – May 2024

SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE UNIVERSAL PERIODIC REVIEW OF VIET NAM

Submitted on 11 October 2023

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Background

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Viet Nam. With respect to this, the ICJ draws the attention of the HRC and the Working Group on the UPR to concerns relating to:

   (i) Freedom of expression;
   (ii) The death penalty; and
   (iii) The independence of the judiciary and the right to a fair trial.

Freedom of expression

2. Following its Third Review under the UPR, Viet Nam accepted 12 recommendations relating to freedom of expression,[1] including four calling upon Viet Nam to ensure freedom of expression online. Additionally, Viet Nam partially accepted four other recommendations relating to freedom of expression,[2] while simply noting 19 others on the same topic.[3]

3. However, since 2019, Viet Nam has not implemented these recommendations and has instead escalated its arbitrary restrictions on the right to freedom of expression, contrary to international human rights law, including article 19 of the International Covenant on Civil and Political Rights (ICCPR). The Vietnamese authorities have continued using laws that are not human rights compliant to unduly restrict the right to freedom of expression by charging, trying and convicting those who express opinions deemed critical of the government. They have also blocked access to websites and online content extrajudicially.

Arbitrary prosecutions and convictions of human rights defenders and journalists

4. The authorities have resorted to the vague, imprecise, arbitrary or overly broad provisions of articles 117 and 331 of the 2015 Penal Code to charge, try and convict individuals solely for exercising their right to freedom of expression, including human rights defenders (HRDs) and journalists.[4] Article 117 of the Penal Code criminalizes "making, storing, distributing or disseminating materials for the purpose of opposing the State" and carries sentences of up to 20 years' imprisonment upon conviction. Article 331 criminalizes "abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens" and carries sentences of up to three years' imprisonment upon conviction, or even up to seven years if "the offence" has a "negative impact on social security, order or safety".[5]

5. The abovementioned "offences", and the harsh criminal sanctions that may be imposed on those convicted of them, contravene the principles of legality,[6] harm,[7] legitimate purpose, necessity and proportionality under general principles of criminal law and human rights law.[8]

6. According to a database maintained by The 88 Project, a non-governmental organization, as of September 2023, at least 63 individuals had been charged under article 117, and 65 individuals under article 331 since January 2018.[9] Some notable examples include: (i) Pham Doan Trang, a renowned Vietnamese journalist, who, following her conviction under article 117, was sentenced to nine years' imprisonment in December 2021 for three reports she had written regarding human rights concerns in Viet Nam;[10] (ii) Nguyen Lan Thang, a journalist, who was convicted under article 117 and sentenced to six years' imprisonment and two years of probation in April 2023 for videos he had posted on Facebook and YouTube said to "oppose" the Vietnamese Communist Party;[11] and (iii) Chung Hoang Chuong, an online commentator, who was convicted and sentenced to 18

months' imprisonment in April 2020 under article 331, for his Facebook posts alleging police brutality in a land rights dispute.[12] The arbitrary arrests and detentions pursuant to articles 117 and 331 are often accompanied by reports of detainees being held incommunicado for long periods; violations of the right to a fair trial; and concerns about treatment in detention.[13]

7. The authorities have also abused tax evasion laws under article 200 of the Penal Code to arbitrarily arrest, detain and convict at least five prominent environmental HRDs since 2022.[14] It was reported that, while in pre-trail detention, the individuals concerned were held incommunicado for long periods of time and were denied adequate time and facilities to prepare a defence, in violation of their human rights, including their right to be free from arbitrary detention. Eventually, their trial took place behind closed doors, in violation of their right to a fair and public hearing.[15] The heavy prison sentences imposed on them following their convictions and the violations of their right to a fair trial are consistent with credible reports that their prosecutions were aimed at silencing environmental HRDs and at dissuading others from continuing to carry out their work.[16] Credible reports indicate that the authorities had detained another environmental HRD, Ngo Thi To Nhien, since 15 September. At the time of writing, the legal basis for her detention was still unknown.[17]

Censorship of online content

8. The government has extrajudicially restricted access to purportedly "illegal" online content through the enactment and use of overbroad legal provisions, including the Law on Cybersecurity (LOCS), read in conjunction with article 19 of Decree 53;[18] and article 5 of the Decree No. 72/2013/ND-CP (Decree 72).[19] The powers these provisions grant to the government enable the authorities to censor content for illegitimate and overbroad purposes (e.g., content that "propagandizes against the State"), and are not subject to sufficient independent judicial oversight.[20]

9. Meta reported that it had restricted access to around 6000 items in Viet Nam from January 2020 to June 2022 in response to demands from the Vietnamese government on the grounds of purported violations of local laws. Meta also reported that, between January and June 2022 alone, it had restricted access to 982 items for alleged violations of article 5(1)(d) of Decree 72 in connection with content that, allegedly, "distorts, slanders, or insults the reputation of an organization or the honor and dignity of an individual".[21] Google reported that, between January 2020 and December 2022, it had received almost 1000 demands to remove online content for the stated reason that it contained "government criticism", which, in and of itself, is an illegitimate reason to remove online content. With respect to this, demands to remove "government criticism" formed the overwhelming majority of demands Google received.[22]

10. The Vietnamese authorities are contemplating the enactment of a new Decree 72 to replace the existing Decree 72; if the new version of the Decree were to be adopted in its current form, it would further expand the already intrusive powers of the authorities to block access to online content. Under the draft new Decree 72, "domestic and foreign regulated entities providing cross-border information to end-users in Vietnam must proactively monitor and remove illegal content, services, and applications within a 24-hour window", with no provision allowing users to "challenge or seek remedy for unwarranted content removal".[23] The draft new Decree 72 also mandates real identity registration for all social media accounts,[24] in turn, posing additional threats to the rights to privacy and freedom of expression and information.

Death penalty

11. Following its Third UPR review, Viet Nam accepted one recommendation regarding the death penalty.[25] Additionally, it partially accepted another death penalty recommendation,[26] while simply noting seven others on the same topic.[27]

12. Viet Nam has not taken any concrete steps towards abolishing the death penalty, which constitutes a violation of the right to life and the ultimate cruel, inhuman or degrading

punishment. Moreover, it retains capital punishment for crimes not qualifying as the "most serious crimes" (i.e., intentional killings) under international human rights law,[28] and it continues to carry out executions. According to article 40 the Penal Code, the death penalty is imposed for "extremely serious crimes that infringe national security, human life, drug-related crimes, corruption-related crimes, and some other extremely serious crimes",[29] with 18 offences potentially carrying the death penalty.[30]

13. Of particular concern is how some of the offences for which the death penalty may be imposed are vaguely defined and allow for arbitrary interpretations.[31] For instance, the Penal Code prescribes the death penalty for certain "national security" offences, including "high treason" (article 108); "activities against the people's government" (article 109); "espionage" (article 110); "rebellion (article 112); and "terrorism to oppose the people's government" (article 113). Such "offences" are all formulated in terms that are vague, imprecise, arbitrary or overly broad and, as such, are subject to an expansive and overly broad interpretation, in violation of the principles of legality, harm, legitimate purpose, necessity and proportionality under general principles of criminal law and human rights law.

14. In addition, there have been numerous reports of violations of fair trial guarantees and procedural irregularities in proceedings resulting in the imposition of the death penalty, with allegations of torture and forced confessions being used to convict defendants.[32] In the case of Nguyen Van Chuong, it was alleged that he had been tortured to compel him to "confess", and this "confession" was then unlawfully admitted as evidence and relied on at his trial to convict him in proceedings that were also marked by procedural irregularities.[33] Similar concerns were also reported with respect to the case of Le Van Manh, who had also allegedly been tortured to compel him to "confess", and who was executed on 22 September 2023.[34]

15. The Vietnamese authorities have also failed to ensure sufficient transparency in imposing the death penalty, with reports that essential information relevant to a specific planned execution were not promptly provided to death row prisoners and their families. For instance, in Nguyen Van Chuong's case, his family received a request from the court in August 2023 inquiring whether they wished to claim his body and possessions following his execution. However, this communication provided no clarity regarding the timing of the execution, leaving the family in a state of unsettling uncertainty. While the family managed to visit Nguyen Van Chuong a few days after receiving the court's request, it is unclear if since then he has been executed.[35]

16. Furthermore, information concerning the death penalty in Viet Nam remains classified, and a considerable number of executions go unreported due to the authorities' secrecy and opaque practices. Nevertheless, the Vietnamese authorities' own partial disclosures show a notable surge in the number of death sentences imposed in recent years, with over 119 handed down between 1 October 2020 and 31 July 2021.[36]

Independence of the judiciary and right to a fair trial

17. Following its Third UPR review, Viet Nam accepted 11 recommendations relating to the independence of judges and lawyers,[37] including one calling upon it to continue its efforts to ensure the independence of the courts of adjudication and four recommendations calling upon Viet Nam to strengthen the rule of law in the country.

18. Despite its acceptance of these recommendations, concern remains about the independence and impartiality of the judiciary, especially when adjudicating criminal cases involving human rights defenders and political activists. Such concern has been compounded by the numerous and credible reports of violations of the right to a fair trial guaranteed under article 14 of the ICCPR, and allegations that human rights lawyers have suffered reprisals, including harassment through legal proceedings taken against them, arising from their work representing human rights defenders and political dissidents in politically sensitive cases.

Independence of the judiciary

19. In spite of Viet Nam's implementation of its judicial reform strategy aimed at, *inter alia*, strengthening the independence of the judiciary,[38] the Communist Party of Viet Nam (CPV) and the government continue to be able to influence the procuracy and the judiciary, "thereby undermining their independence", as underscored by the Human Rights Committee.[39]

20. The Chief Justice of the Supreme People's Court of Viet Nam, Nguyen Hoa Binh, is a member of the CPV's Politburo, the highest decision-making body of the CPV.[40] According to the judicial selection criteria, judges are also reportedly required to demonstrate loyalty to the CPV, and "Party leaders are consulted before appointment [of judges] to ascertain the moral fibre of applicants, and their views must be included in the dossier".[41]

21. There have been numerous allegations that the CPV and the executive are sometimes "directly involved in oversight of political and high-profile cases".[42] In order to handle a "complex criminal case", a joint meeting is usually set up between the investigatory agency, prosecution and the court to come to a consensus on how to adjudicate a case before trial; defence lawyers have limited access to such meetings.[43] The ICJ has received credible information from its partners confirming these arrangements for high-profile cases involving human rights defenders, and these sources have also corroborated how courts often rely heavily on the "cut-and-paste activities of procurators which are based on police investigations, rather than exploring the cases independently".[44]

22. In light of the above, there is legitimate concern about the political influence of the investigatory agency and prosecution — both of whom are part of the executive — on the independent adjudicatory function of the judiciary, a situation that, in turn, raises questions about Viet Nam's adherence to fair trial standards in criminal cases, including with respect to the right to be tried by an independent and impartial court, to equality of arms and the presumption of innocence.

Right to a fair trial and attacks on lawyers

23. As noted above, criminal cases involving human rights defenders and journalists, as well as cases resulting in the imposition of the death penalty, have been marred by numerous reports of violations of the right to a fair trial and by procedural irregularities. Besides concerning reports of the use of torture and other ill-treatment to obtain confessions to secure convictions, the Human Rights Committee has expressed concern about "the denial of the right to legal assistance, access to a lawyer of their choice and a trial within a reasonable time; insufficient time and facilities to prepare their defence; and the lack of lawyer-client confidentiality".[45]

24. In addition to the abovementioned concerns about the fair administration of justice in Viet Nam, there are credible reports of continued harassment of human rights lawyers — including through criminal investigations on spurious grounds — aimed at impairing their legitimate work as lawyers representing their clients and their exercise of the right to freedom of expression, protected under the ICCPR and UN Basic Principles of on the Role of Lawyers.

25. For instance, spurious criminal investigations were launched by the Long An Police against lawyers Dang Dinh Manh and Nguyen Van Mieng under article 331 of the Penal Code for allegedly "abusing democratic freedoms to infringe on the interests of the State, organizations and individuals" by spreading images, words and articles online through video clips. The criminal investigations against the lawyers appear to be related to their legitimate work representing their clients in the high-profile and controversial Tinh That Bong Lai Temple case.[46]

Recommendations

26. In light of the above-mentioned concerns, the ICJ calls upon the HRC and the Working Group on the UPR to recommend:

On freedom of expression

27. The legislature should repeal or substantially amend legal provisions that unduly restrict the right to freedom of expression – including articles 117 and 331 of the Penal Code, Law on Cybersecurity, Decree 53, and Decree 72 – to bring them in line with international human rights law; and the proposed enactment of a new Decree 72 should be shelved;

28. The prosecuting authorities and the judiciary should immediately cease ongoing criminal investigations, drop all existing charges and revoke or otherwise rescind criminal penalties imposed against individuals for alleged violations of domestic provisions, particularly with respect to domestic criminal provisions that are inconsistent with general principles of criminal law and Viet Nam's obligations under international human rights law, including those guaranteeing the rights to freedom of expression and information;

29. The government should refrain from restricting or blocking online content unless the blocking decision has been undertaken following a full analysis that applies international standards concerning legality, legitimate purpose, necessity, proportionality and non-discrimination, and has been authorized pursuant to an order by an independent and impartial judicial authority, in accordance with due process with the express guarantee of the right to appeal.

On the death penalty

30. Halt all impending executions of individuals and commute their sentences; impose an immediate moratorium on the use of the death penalty with a view to abolishing capital punishment;

31. Ensure that there is sufficient transparency with respect to the death penalty, including through making sure that essential information relevant to a specific planned execution be promptly provided to death row prisoners and their families, and making publicly available information regarding death sentences, notifications and executions.

On the independence of the judiciary and fair trial

32. Take immediate steps to safeguard, in law and in practice, the full independence and impartiality of the judiciary from any form of political pressure and influence, and ensure transparent and impartial processes for appointments to the judiciary;

33. Ensure that the right to a fair trial be fully respected at the investigation and trial stages in compliance with international law and standards, including through guaranteeing the right to legal assistance pending trial, the right to adequate time and facilities for the preparation of a defence, the right to a public hearing, the presumption of innocence, the right to defence, and the right to equality of arms;

34. In relation to cases where there have been allegations of ill-treatment, initiate prompt, impartial and effective investigations into all credible allegations of torture or other cruel, inhuman or degrading treatment and, when warranted by the evidence, bring the perpetrators to justice; provide victims with access to an effective remedy and reparation; and

35. Cease the use of arbitrary criminal investigations against lawyers aimed at impairing their legitimate work as human rights lawyers and their right to freedom of expression. In addition, consistent with the ICCPR and UN Basic Principles on the Role of Lawyers, take all necessary measures to ensure the free exercise of the legal profession, in all circumstances, so that lawyers may exercise their legitimate professional rights and discharge their duties towards their clients and the courts without fear of reprisals and free from all undue restrictions, including harassment through abusive legal proceedings.

ENDNOTES

[1] Responses in UN Doc. A/HRC/41/7/Add.1. Accepted recommendations: 38.42 Enhance efforts to comply with the recommendations accepted during the second universal periodic review cycle on guaranteeing the right to freedom of expression (Chile); 38.168 Take steps to guarantee freedom of opinion and freedom of expression, including on the Internet, in the context of the adoption of the law on cybersecurity (France); 38.172 Develop measures to protect reporters and journalists from all forms of discrimination and violence (Greece); 38.174 Consider revising national legislation, including the law on belief and religion and the media laws, in order to harmonize it with international standards regarding the right to freedom of expression and of religion (Brazil); 38.179 Protect civil and political rights, especially freedom of expression, peaceful assembly and association (Luxembourg); 38.184 Lift restrictions on freedom of expression, and particularly online freedom, in line with Viet Nam's obligations under international law (Ireland); 38.186 Review regulations impeding the operation of civil society organizations, to enable a more open space and ensure that national security provisions are not used to prevent peaceful debate and dissent (Ireland); 38.189 Strengthen efforts to ensure freedom of expression, including in the digital environment (Peru); 38.195 Ensure freedom of expression, including online, and promote actions to ensure the freedom and independence of the media (Japan); 38.197 Review and amend national legislation in order to enable the effective exercise of the rights to freedom of expression and peaceful assembly in line with the standards enshrined in the International Covenant on Civil and Political Rights (Seychelles); 38.200 Adopt legislative changes to guarantee the protection and free exercise of freedom of expression, association and peaceful assembly (Spain); 38.203 Improve protection of the rights to freedom of peaceful assembly and expression by reviewing existing legislation, and publishing and implementing clear, transparent guidelines on security personnel conduct in managing peaceful demonstrations (United Kingdom of Great Britain and Northern Ireland).

[2] Partially accepted recommendations: 38.194 Abolish prior censorship in all fields of cultural creation and other forms of expression, both online and offline, including by bringing the restriction on freedom of expression under the 2016 press law into line with international standards and by fostering a pluralistic and independent media environment (Portugal); 38.198 Adopt measures in line with international standards to guarantee freedom of association, opinion and expression, including online, and to ensure that journalists, human rights defenders and NGOs can operate freely (Italy); 38.202 Guarantee fully freedom of speech, the rights of peaceful assembly and association as well as the safety of journalists, and review cases of persons convicted for having freely expressed their opinion, including human rights defenders (Switzerland); 38.214 Nurture a culture of free expression online and offline and release all imprisoned human rights defenders, including bloggers and political dissenters, and put an end to their harassment (Czechia).

[3] Noted recommendations: 38.55 Take steps to protect human rights defenders, particularly by repealing or revising the provisions of the Penal Code that make reference to the concept of national security (France); 38.73 Adapt the Code of Penal Procedure to international standards and amend articles 109 and 117 on "activities against the State" in the Penal Code, in line with human rights standards (Switzerland); 38.166 Authorize the publication of independent newspapers and cease legal sanctions against and harassment of journalists and citizens peacefully expressing views through print media, the Internet and radio (Denmark); 38.167 Repeal or amend the Penal Code and the cybersecurity law so that provisions relating to national security are clearly defined or removed, to ensure that they cannot be applied in an arbitrary manner to endanger any forms of freedom of expression, including Internet freedom (Finland); 38.171 Review all convictions based on laws restricting freedom of expression and opinion, in particular articles 79 and 88 of the Penal Code, according to the revised penalty ranges (Germany); 38.175 Release human rights defenders sentenced to prison for exercising the right to freedom of expression (Iceland); 38.177 Take the necessary measures to ensure the freedom of expression of human rights defenders and journalists, in particular by investigating and punishing perpetrators of threats and reprisals against them (Argentina); 38.180 Protect human rights defenders and prosecute all persons guilty of violence or intimidation against them (Luxembourg); 38.183 Amend, within one year, the 2015 Penal Code, Decree 174/2013, Decree 72/2013, Decree 27/2018, the 2018 law on cybersecurity and articles 4, 9, 14 and 15 of the 2016 press law to guarantee offline and online freedom of the press and expression, and the right to privacy, in line with articles 17 and 19 of the International Covenant on Civil and Political Rights (Netherlands); 38.185 Cybersecurity decrees should include clear provisions for interpretation of the law on cybersecurity in accordance with international standards on freedom of expression (Ireland); 38.187 Ensure that the legal framework protects freedom of expression both offline and online and accordingly amend the penal law and the law on cybersecurity to ensure consistency with international human rights law, including the International Covenant on Civil and Political Rights (New Zealand); Ensure that freedom of expression is protected online and offline by amending national security provisions in the Penal Code, the cybersecurity law and its implementing decree so as to comply with article 19 of the International Covenant on Civil and Political Rights and other commitments (Sweden); Guarantee the rights to freedom of expression and freedom of assembly and amend the Penal Code and the cybersecurity law to make sure that the limitations on the right to freedom of expression are in line with the International Covenant on Civil and Political Rights (Austria); Review the Penal Code and the law on cybersecurity to harmonize them with international standards

related to the freedom of expression, association and assembly (Canada); 38.188 Revise the provisions of articles 117 and 331 of the 2015 Penal Code and other relevant laws that restrict the ability to exercise fundamental freedoms and allow free operation of national and international media (Norway); 38.190 Consider the elimination of the system of censorship in the cultural sphere (Peru); 38.191 Release all human rights defenders as well as political and religious activists detained for the peaceful expression of their political opinions or religious beliefs (Poland); 38.196 Continue the measures aimed at lifting all restrictions on the right to freedom of opinion and expression and to allow bloggers, journalists and other Internet users to promote and protect human rights (Romania); 38.204 Immediately amend or abolish articles 8, 18 and 26 of the cybersecurity law as they are not in conformity with Viet Nam's international obligations, or its 2013 Constitution (United States of America); 38.208 Amend provisions of the cybersecurity law, including articles 8, 18 and 26, to ensure they are consistent with article 19 of the International Covenant on Civil and Political Rights (Australia); 38.209 Take further steps to ensure an independent and pluralistic media landscape, including by reducing political influence on media outlets (Austria); 38.211 Publicly recognize human rights defenders and provide an environment in which they can carry out their human rights work safely (Belgium).

[4] English translation of the 2015 Penal Code available at: https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf

[5] Articles 117 and 331, amongst other problematic laws, were the subject of a recent communication from several UN independent experts, including the Special Rapporteurs on freedom of expression, freedom of peaceful assembly and of association, privacy, and counter-terrorism; see, *Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right to privacy and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Ref.: OL VNM 6/2023, 18 September 2023.

[6] See, for example, The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty, published by the ICJ in March 2023. "Principle 1– Principle of Legality
No one may be held criminally liable for any act or omission that did not constitute a criminal offence, under national or international law, at the time when such conduct occurred. The principle of legality also requires that the law be publicly and sufficiently accessible and the criminal liability foreseeable and capable of being clearly understood in its application and consequences. Thus, crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offence with a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from conduct that is not criminally proscribed. Criminal law must not proscribe any act or omission in terms that are vague, imprecise, arbitrary or overly broad. Criminal law must not be construed broadly to an accused person's disadvantage. In the case of ambiguity, the definition of a particular offence should be interpreted in favour of the accused."

[7] See, for example, The 8 March Principles: "Principle 2 – Harm Principle
Criminal law may only proscribe conduct that inflicts or threatens substantial harm to the fundamental rights and freedoms of others or to certain fundamental public interests, namely, national security, public safety, public order, public health or public morals. Criminal law measures justified on these grounds must be narrowly construed, and the assertion of these grounds by the State must be continuously scrutinized."

[8] See, Human Rights Committee, *Concluding observations on the third periodic report of Viet Nam*, UN Doc. CCPR/C/VNM/CO/3, 29 August 201 ("CCPR/C/VNM/CO/3"), para. 45. See also: UN Human Rights Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 12 September 2011 ("CCPR/C/GC/34"), paras. 25 – 35. See, also, for example, The 8 March Principles: "Principle 7 – Human Rights Restrictions on Criminal Law – Criminal law must be interpreted consistently with international human rights law. Criminal law may not restrict the exercise of any human right unless such a limitation is: a) in accordance with the law – the principle of legality; b) in pursuit of one of the limited and narrowly defined, legitimate fundamental public interests allowed under international human rights law, namely, for the protection of the fundamental rights and freedoms of others, national security, public safety, public order, public health or public morals; c) strictly necessary to achieve these legitimate interests; d) proportionate to the legitimate interest(s) it pursues, meaning that it must be the least intrusive or restrictive means to achieve the desired result; e) appropriate to the legitimate interest(s) to be protected, including by being rationally and reasonably connected to it; f) not arbitrary; g) non-discriminatory; and h) consistent with other rights recognized under international human rights law. To the extent that criminal law measures restrict or impair the exercise of human rights, they must be narrowly construed. The State must go beyond merely asserting an interest in the protection of the fundamental rights and freedoms of others, national security, public safety, public order, public health or public morals, including by showing concrete evidence of the necessity of a criminal law response to protect them, and its assertions must be continuously scrutinized. The substantial harm that the proscribed conduct is said to inflict or threaten must be foreseeable and not unreasonably remote. To be proportionate, criminal law may be applied only as a last resort, where other less restrictive means of achieving the above-mentioned legitimate interests are

insufficient."; "Principle 8 – Legitimate Exercise of Human Rights – Except as in accordance with the permissible limitations set forth in principle 7, criminal law may not proscribe any conduct that is protected under human rights law, namely, because this conduct constitutes the legitimate exercise and enjoyment of human rights guaranteed under international or domestic human rights law."; and "Principle 13– Criminal Law Sanctions – Criminal law sanctions must be consistent with human rights, including by being non-discriminatory and proportionate to the gravity of the o ence. Custodial sentences may only be imposed as a measure of last resort."

[9] The database is accessible here: https://the88project.org/database/. The ICJ has documented numerous examples of arbitrary arrests and imprisonments based on articles 117 and 331 of the Penal Code, see: International Commission of Jurists (ICJ), "Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia", December 2019 ("ICJ Dictating the Internet Report"), pp. 88 – 94, available at: https://www.icj.org/wp-content/uploads/2019/12/Southeast-Asia-Dictating-the-Internet-Publications-Reports-Thematic-reports-2019-ENG.pdf; ICJ, "Dictating the Internet: Curtailing Free Expression and Information Online in Vietnam", December 2020, pp. 29 – 34 ("ICJ, Dictating the Internet Vietnam Report"); ICJ, "Submission of the International Commission of Jurists to the Office of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council Resolution 45/18", 16 April 2021, para. 12(c), available at: https://icj2.wpenginepowered.com/wp-content/uploads/2021/04/SoutheastAsia-ICJ-OHCHR-Submission-Journalists-Safety-2021-ENG.pdf; ICJ, "Vietnam: Authorities must release Dr. Phạm Chí Dũng, Nguyễn Tường Thụy and Lê Hữu Minh Tuấn and cease harassment of journalists", 1 July 2020, available at: https://www.icj.org/vietnam-authorities-must-release-dr-pham-chi-dung-nguyen-tuong-thuy-and-le-huu-minh-tuan-and-cease-harassment-of-journalists/.

[10] The 88 Project, "Pham Doan Trang", available at: https://the88project.org/profile/286/pham-doan-trang/; ICJ, "Vietnam: Immediately release independent journalist and human rights defender Pham Doan Trang", 26 October 2021, available at: https://www.icj.org/vietnam-immediately-release-independent-journalist-and-human-rights-defender-pham-doan-trang/.

[11] ICJ, "Vietnam: Journalist Nguyen Lan Thang's criminal conviction is a gross miscarriage of justice which should be immediately quashed", 12 April 2023, available at: https://www.icj.org/vietnam-journalist-nguyen-lan-thangs-criminal-conviction-is-a-gross-miscarriage-of-justice-which-should-be-immediately-quashed/.

[12] ICJ, Dictating the Internet Vietnam Report, p. 30.

[13] For example, Nguyen Tuong Thuy, a human rights activist and journalist who was sentenced to 11 years' imprisonment for violating article 117 of the Penal Code, was held in pre-trial detention for almost eight months and convicted after a brief trial only lasting five hours. See: Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023: Opinion No. 16/2023 concerning Nguyen Tuong Thuy (Viet Nam)*, UN Doc. A/HRC/WGAD/2013/16, 18 May 2023, paras. 81 – 89. See also: CIVICUS, "Jailing and Persecution of Activists and Journalists Persists Despite Election of Vietnam to the UN Human Rights Council", 8 February 2023, available at: https://monitor.civicus.org/explore/jailing-and-persecution-activists-and-journalists-persists-despite-election-vietnam-un-human-rights-council/.

[14] Notably, in 2022 Viet Nam sentenced four environmental HRDs to prison on tax evasion charges: Bach Hung Duong sentenced to 27 months; Mai Phan Loi sentenced to 45 months; Dang Dinh Bach sentenced to five years; Nguy Thi Khanh sentenced to 21 months but released in May 2023. Dr. Ben Swanton, "Weaponizing the Law to Prosecute the Vietnam Four", The 88 Project, April 2023 ("The 88 Project Report"), pp 31 – 33, available at: https://the88project.org/wp-content/uploads/2023/04/Weaponizing-the-law-report-Project-88-ENG.pdf. On 31 May 2023, Vietnamese police arrested environmental HRD Hoang Thi Minh Hong for tax evasion, and she was later convicted on tax evasion charges and sentenced to four years' imprisonment and a fine of USD 4,100. See: ICJ, "Vietnam: Stop the arbitrary arrest and detention of environmental human rights defenders", 23 June 2023, available at: https://www.icj.org/vietnam-stop-the-arbitrary-arrest-and-detention-of-environmental-human-rights-defenders/; OHCHR, "Sentencing of environmental human rights defender in Viet Nam", 29 September 2023, available at: https://www.ohchr.org/en/press-briefing-notes/2023/09/sentencing-environmental-human-rights-defenders-viet-nam.

[15] Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023: Opinion No. 22/2023 concerning Đặng Đình Bách (Viet Nam)*, UN Doc. A/HRC/WGAD/2023/22, 26 May 2023 ("A/HRC/WGAD/2023/22"), paras. 48 – 73. See also: The 88 Project Report, pp. 16 – 36.

[16] A/HRC/WGAD/2023/22, paras. 74 – 77. The civil society organizations that the four EHRDs managed were also forced to dissolve after their arrests. See: Project 88 Report, pp. 55 – 59.

[17] Reuters, "Days after Biden's visit, Vietnam detains energy expert", 20 September 2023, available at: https://www.reuters.com/world/days-after-bidens-visit-vietnam-detains-energy-expert-2023-09-20/.

[18] Article 19 of Decree 53, which provides guidance on the implementation of the LOCS, provides that "illegal" online content is subject to be taken down by the government, including content that "propagandizes against the State"; "is humiliating or slanderous"; and "fabricates or distorts the truth": Tilleke & Gibbins, "Decree 53 Provides Long-Awaited Guidance on Implementation of Vietnam's Cybersecurity Law", 19 August 2022, available at: https://www.tilleke.com/insights/decree-53-provides-

long-awaited-guidance-on-implementation-of-vietnams-cybersecurity-law/; ICJ, Dictating the Internet Vietnam Report, p. 35;

[19] Article 5(1) of Decree No. 72/2013/ND-CP (Decree 72) prohibits the act of "[a]busing the provision and use of Internet services and online information" for overbroad acts such as "opposing the State" or "providing information distorting, slandering or offending the prestige of organizations or honour and dignity of individuals". Article 25(4) of Decree 72 obligates social media companies "to coordinate with competent state management agencies in removing or blocking information that violates Article 5 of this Decree at their request". The government is presently contemplating amendments to Decree 72, which, problematically, may include mandatory identity verification for the use of social media; ICJ, "Vietnam: Identity verification mandate will violate international human rights", 5 August 2023, available at: https://www.icj.org/viet-nam-identity-verification-mandate-will-violate-international-human-rights/.

[20] See: Human Rights Council, "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression", UN Doc. A/HRC/38/35, 6 April 2018 ("A/HRC/38/35"), para. 7.

[21] See: Meta, "Content Restrictions Base on Local Laws in Vietnam", available at: https://transparency.fb.com/reports/content-restrictions/country/VN/.

[22] Google does not disclose the exact legal bases of the demands it receives to take down content from its platforms: see, Google Transparency Report, "Government requests to remove content", available at: https://transparencyreport.google.com/government-removals/government-requests/VN.

[23] Global Network Initiative, "GNI Submission to the Government of Vietnam on Potential New Decree 72 on the Management, Provision and Use of Internet Services and Online Information", 15 September 2023, p. 4 – 5, available at: https://globalnetworkinitiative.org/gni-submission-to-vietnam-government-on-potential-new-decree-72/.

[24] ICJ, "Vietnam: Identity verification mandate will violate international human rights", 8 May 2023, available at: https://www.icj.org/viet-nam-identity-verification-mandate-will-violate-international-human-rights/.

[25] Accepted recommendation: 38.146 Restrict the use of the death penalty to crimes that meet the threshold of "most serious crimes" under international law (Belgium).

[26] Partially accepted recommendation: 38.291 Introduce a national moratorium on the death penalty, aiming at complete abolition. Until then, reduce the number of crimes subject to the death penalty, ensuring that it does not apply to offences other than the "most serious" crimes, in accordance with International Covenant on Civil and Political Rights (Sweden).

[27] Noted recommendations: 38.5 Accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (El Salvador); Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro); Ratify, without reservations, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Slovenia); Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Croatia); 38.140 Initiate a moratorium on the imposition of capital punishment, especially for non-violent crimes (Finland); Consider implementing a full moratorium on the death penalty (Georgia); Impose a moratorium on executions and abolish the death penalty (Iceland); Establish a de facto moratorium on the death penalty with a view to its abolition (Portugal); Establish a moratorium on the application of the death penalty as a step towards its definitive abolition and modify the Penal Code to reduce the number of crimes for which capital punishment can be imposed (Spain); Impose a moratorium on executions with the goal of abolishing the death penalty (Albania); Establish a moratorium on the death penalty as a step towards the complete abolition of this practice (Australia); Immediately adopt a moratorium on the death penalty with a view to ultimately abolishing it (Austria); Take the necessary measures to establish a moratorium on executions of death row prisoners as well as to repeal the death penalty in national legislation (Argentina); 38.141 Abolish the death penalty and, without delay, reduce the number of offences punishable by the death penalty (France); Abolish definitively the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Luxembourg); Continue reform towards abolition of the death penalty, including by continuing to reduce the list of crimes punishable by the death penalty, in particular non-violent crimes, under the Penal Code of 2015 and by providing greater transparency about the numbers, methods and associated crimes relating to its use (New Zealand); Abolish the death penalty for all crimes, and consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Uruguay); 38.142 Further reduce the list of offences punishable by death, eliminate the death penalty for "activities against the people's government", "espionage", "embezzlement", and "taking bribes" as well as for serious drug offences (Germany); Continue to reduce the number of crimes subject to the death penalty and consider introducing a de facto moratorium on its application (Mexico); Continue to reduce the scope of crimes subject to the death penalty to only the "most serious crimes" and consider introducing a moratorium (Norway); Continue the process of reducing offences subject to the death penalty until the abolition of capital punishment and publish statistics on the use of the death penalty in Viet Nam (Romania); Further reduce the offences punishable by the death penalty, provide official figures regarding death sentences

and executions and consider introducing a moratorium on the death penalty (Italy); 38.143 Reduce further the list of crimes punishable by the death penalty, in particular economic crimes and drug-related offences, and envisage a complete moratorium on the application of the death penalty (Switzerland); 38.144 Assist the process of national discussion on the death penalty with a view to its eventual abolishment (Ukraine); 38.290 Cease applying the death penalty for non-violent crimes, including drug offences (Australia).

[28] Human Rights Committee, *General comment No. 36, Article 6: right to life*, UN Doc. CCPR/C/GC/36, 3 September 2019 ("CCPR/C/GC/36"), para. 35.

[29] Article 40, Penal Code.

[30] Associate Prof. Dr. Dang Minh Tuan, *Why Vietnam justifies the death penalty?*, p. 4, available at: https://law.unimelb.edu.au/__data/assets/pdf_file/0009/3605751/Vu-Thanh-Cu_Minh-Tuan-Dang.pdf.

[31] Human Rights Committee, *General comment No. 36, Article 6: right to life*, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 38.

[32] CCPR/C/VNM/CO/3, para. 23 – 24; CCPR/C/GC/36, para. 41.

[33] ICJ, "Vietnam: Halt the arbitrary execution of death row prisoner Nguyen Van Chuong", 8 August 2023, available at: https://www.icj.org/vietnam-halt-the-arbitrary-execution-of-death-row-prisoner-nguyen-van-chuong/.

[34] SCMP, "Vietnam executes man despite diplomatic pleas for mercy: 'sickening', Amnesty says", 23 September 2023, available at: https://www.scmp.com/news/asia/southeast-asia/article/3235593/vietnam-executes-man-despite-diplomatic-pleas-mercy-sickening-amnesty-says; ICJ, "Vietnam: grant Le Van Manh permanent reprieve from death penalty and investigate allegations of torture", 25 October 2015, available at: https://www.icj.org/vietnam-grant-le-van-manh-permanent-reprieve-from-death-penalty-and-investigate-allegations-of-torture/.

[35] ICJ, "Vietnam: Halt the arbitrary execution of death row prisoner Nguyen Van Chuong", 8 August 2023, available at: https://www.icj.org/vietnam-halt-the-arbitrary-execution-of-death-row-prisoner-nguyen-van-chuong/; Beatrice Siviero "In Vietnam, a controversial planned execution strains death penalty", Southeast Asia Globe, 8 September 2023, available at: https://southeastasiaglobe.com/in-vietnam-a-controversial-planned-execution-strains-death-penalty; OHCHR, "Comment by UN Human Rights Office spokesperson Jeremy Laurence on imminent execution in Viet Nam", 11 August 2023, available at: https://www.ohchr.org/en/statements/2023/08/comment-un-human-rights-office-spokesperson-jeremy-laurence-imminent-execution?ref=thevietnamese.org.

[36] Amnesty International, *Global Report: Death Sentences and Executions 2021*, 24 May 2022, available at: https://www.amnesty.org/en/documents/act50/5418/2022/en/.

[37] Accepted recommendations: 38.60 Expedite the legal reform process and the process to establish the rule of law in order to consolidate the institutional, legal and political framework in line with human rights (Mali); 38.64 Continue its efforts to ensure the independence of the courts of adjudication (Pakistan); 38.150 Abolish immediately at all levels the practice of outdoor trials to ensure the right to presumption of innocence, effective legal representation and fair trials (Denmark); 38.151 Guarantee the People's Procuracy's role in protecting human rights, in accordance with the 2015 Law on Administrative Procedure (Lao People's Democratic Republic); 38.152 Revise the judicial system to provide a safer environment for victims of all crimes (Hungary); 38.155 Continue to strengthen the rule of law, including further development of the criminal justice system taking into account the human rights of suspects and inmates and the promotion of impartial and transparent administration of criminal justice (Japan); 38.156 Pursue judicial and institutional reforms to bring the legal and institutional framework into line with international human rights standards (Senegal); 38.158 Ensure that fair trial guarantees and due process rights, as provided in international law and standards, are respected and upheld in all cases (Slovakia); 38.159 Continue building the rule of law through pursuing legal reforms in order to consolidate its human rights institutional, legal and policy framework (Slovakia); 38.160 Further enhance the rule of law and legal reform aimed at consolidating the institutional, legal and policy foundation for the protection and promotion of human rights (Turkmenistan); 38.162 Continue its efforts in building a rule-of-law State through legal reforms (Azerbaijan).

[38] Vietnam Law & Legla Forum, "Renovating the organizational apparatus of people's courts for improvement of a socialist law-ruled state of Vietnam", 31 March 2023, available at: https://vietnamlawmagazine.vn/renovating-the-organizational-apparatus-of-peoples-courts-for-improvement-of-a-socialist-law-ruled-state-of-vietnam1-69743.html.

[39] CCPR/C/VNM/CO/3, para. 33 – 34. The Procuracy exercises the power to prosecute individuals before the Courts.

[40] The Supreme People's Court of the Socialist Republic of Vietnam, "Politburo member, Secretary of the Party Central Committee Nguyen Hoa Binh worked with MoLISA", 30 November 2021, available at: https://www.toaan.gov.vn/webcenter/portal/spc/news-detail?dDocName=TAND199686.

[41] Pip Nicholson and Nguyen Hung Quang, "Independence, Impartiality and Integrity of the Judiciary in Vietnam", in Asia-Pacific Judiciaries: Independence, Impartiality and Integrity (Cambridge University Press, December 2017), p. 377, 379. According to article 67 of the Law on Organization of People's Courts 2014, judges must be "a Vietnamese citizen who is loyal to the Fatherland and the Constitution of the Socialist Republic of Vietnam, has good ethical qualities, firm political stance, courage and resolve to safeguard justice, and is incorrupt and honest"; see, LawNet, "Who is the judge? Conditions for

appointment of judges", 27 March 2023, available at: https://lawnet.vn/thong-tin-phap-luat/en/tu-van-luat/who-is-the-judge-conditions-for-appointment-of-judges-in-vietnam-113713.html..

[42] Columbia Law School Human Rights Institute, "Socialist Republic of Vietnam v. Pham Thi Doan Trang", April 2022, p. 12, available at: https://hri.law.columbia.edu/sites/default/files/publications/eng-pham-doan-trang-fairness-report-april-2022.pdf; The 88 Project and Global Human Rights Clinic, "UPR Mid-Term Submission to the UN Human Rights Council; Third Cycle", 1 November 2021, para. 36, available at: https://the88project.org/wp-content/uploads/2021/10/Final-ENG-version_UPR-Submission-GHRC-88-Project-10-28-21.pdf. In a case that the ICJ was monitoring and assisting in,

[43] Lan Chi Le et al, "Understanding Causes for Wrongful Convictions in Vietnam: a View from the Top and the Bottom of the Iceberg", in Asian Journal of Criminology (2022) 17 (Suppl 1), October 2022, p. 559; Trang (Mae) Nguyen, "In Search of Judicial Legitimacy: Criminal Sentencing in Vietnamese Courts", in Harvard Human Rights Journal Vol. 32, 2019, pp. 182 – 183.

[44] ICJ communications with partner organizations, whose identities have been withheld for security purposes; Lan Chi Le et al, "Understanding Causes for Wrongful Convictions in Vietnam: a View from the Top and the Bottom of the Iceberg", in Asian Journal of Criminology (2022) 17 (Suppl 1), October 2022, p. 559.

[45] CCPR/C/VNM/CO/3, paras. 35 – 36.

[46] ICJ, "Vietnam: Halt spurious criminal investigations against human rights lawyers Dang Dinh Manh and Nguyen Van Mieng", 9 May 2023, available at: https://www.icj.org/vietnam-halt-spurious-criminal-investigations-against-human-rights-lawyers-dang-dinh-manh-and-nguyen-van-mieng/; *Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders*, Ref.:AL VNM 1/2023, 31 March 2023, available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=27938.