VIET NAM

Submission to the Human Rights Committee

140th Session (4 – 28 March 2024)

Geneva, Switzerland

Subject: The List of Issues (LOI) for the 4th Review

- *This submission can be published* -

Submitted by:

ARTICLE 19 is an international think–do organisation that propels the freedom of expression movement locally and globally to ensure all people realise the power of their voices.

Address: 2nd Floor The Market Building 72-82 Rosebery Avenue London EC1R 4RW

Contact: Svetlana Zens - svetlanazens@article19.org

Legal Initiatives for Vietnam's mission is to build a democratic society in Viet Nam through independent journalism, research, and education.

Address: 350420, 4th Floor, RIIC Building, National Chengchi University, No. 64, Sec. 2, Zhinan Rd., Wenshan Dist., Taipei City, Taiwan (ROC) 116

Contact: Trinh Huu Long - long.trinh@liv.ngo

Open Net's mission is to make the internet a platform for freedom, openness, and sharing.

Address: 301, 13 World Cup buk-ro 5-gil, Mapo-gu, Seoul, Republic of Korea (04001)

Contact: Kyung Sin Park - kyungsinpark@korea.ac.kr

This submission is in response to the call for the List of Issues (LOI) on Viet Nam for the 4th Review by the Human Rights Committee during the 140th session. It is a joint effort by ARTICLE 19, Legal Initiatives for Vietnam, and Open Net, aimed at highlighting the important internet freedom issues arising from the actions of the Vietnamese government. As a one-party state without a separation of powers or an independent judiciary, Viet Nam has been intensively escalating its efforts to limit freedom of expression, access to information, and the right to privacy on the internet. The state under review has enacted and implemented new laws and regulations to exert control over online platforms, and penalize internet users for exercising their fundamental digital rights, for which the international community must hold Viet Nam accountable.

Viet Nam has oppressive laws that target 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. Viet Nam enforces restrictive provisions under Articles 109, 117, and 331 of the Penal Code, targeting political activism and dissent. The Cybersecurity Law of 2018 and Decree 53/2022/ND-CP violate freedom of speech and privacy rights, allowing government access to data without independent oversight. Decree 13/2023/ND-CP broadens the scope of state surveillance and mandates data localization. Decree 72/2013/ND-CP restricts websites from publishing original content, and Decree 15/2022/ND-CP imposes financial penalties for illegal online speech. A new upcoming decree requires real-name identity registration for users on social media platforms.

ONLINE CENSORSHIP AND CONTENT CONTROL

1. Restrictive criminal provisions (Penal Code's Articles 109, 117, 331) targeting political activism and dissent

Viet Nam enforces restrictive criminal provisions (Articles 109, 117, 331 of the Penal Code) targeting political activism and dissent. These provisions are often used against political activists and dissidents, with Article 331 extending to criminal punishment for ordinary citizens' online speech.

> **Article 109.** Activities against the people's government
>
> **Article 117.** Making, possessing, and spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam
>
> **Article 331.** Abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens

The table below shows prominent examples of how these provisions are enforced in reality. With the exception of Pham Van Thu, all of the other cases listed below involve online speech.

Provision	**Defendant**		**Year of trial**	**Sentence**
Article 109 (formerly Article 79 in the 1999 Penal	Phan Van Binh[1]	Blogger, activist	2019	14 years of imprisonment
	Tran Huynh Duy Thuc[2]	Blogger, activist	2010	16 years of imprisonment

[1] *Profile: Phan Van Binh - The 88 Project*. (2015). @The88Project. https://the88project.org/profile/461/phan-van-binh

[2] *Profile: Tran Huynh Duy Thuc - The 88 Project*. (2023). @The88Project. https://the88project.org/profile/44/tran-huynh-duy-thuc

Code)	Le Dinh Luong[3]	Activist	2017	20 years of imprisonment
Article 117 (formerly Article 88 of the 1999 Penal Code)	Nguyen Lan Thang[4]	Blogger, activist	2023	6 years of imprisonment
	Pham Thi Doan Trang[5]	Journalist, activist	2021	9 years of imprisonment
	Pham Chi Dung[6]	Journalist, activist	2021	15 years of imprisonment
Article 331 (formerly Article 258 of the 1999 Penal Code)	Nguyen Huu Vinh[7]	Journalist, activist	2016	5 years of imprisonment
	Nguyen Hoai Nam[8]	Journalist	2021	2 years of imprisonment
	Le Tung Van[9]	Religious leader	2022	5 years of imprisonment

Table 1: Some criminal cases of internet users in Vietnam. Source: The 88 Project.

[3] *Profile: Le Dinh Luong - The 88 Project*. (2022). @The88Project. https://the88project.org/profile/18/le-dinh-luong
[4] *Profile: Nguyen Lan Thang - The 88 Project*. (2023). @The88Project. https://the88project.org/profile/291/nguyen-lan-thang
[5] *Profile: Pham Doan Trang - The 88 Project*. (2022). @The88Project. https://the88project.org/profile/286/pham-doan-trang
[6] *Profile: Pham Chi Dung - The 88 Project*. (2023). @The88Project. https://the88project.org/profile/431/pham-chi-dung
[7] *Case History: Nguyen Huu Vinh (Ba Sam)*. (2016, March 30). Front Line Defenders. https://www.frontlinedefenders.org/en/case/case-history-nguyen-huu-vinh-ba-sam
[8] *Profile: Nguyen Hoai Nam - The 88 Project*. (2015). @The88Project. https://the88project.org/profile/526/nguyen-hoai-nam
[9] *Profile: Le Tung Van - The 88 Project*. (2022). @The88Project. https://the88project.org/profile/569/le-tung-van

ARTICLE 19 ranked the status of free expression in Viet Nam 'in crisis' in its latest Global Freedom of Expression Report.[10] 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.[11] 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.[12] Significantly, the Reporters Without Borders' ranking positions Viet Nam at 178 out of 180 countries, a decline from the previous year's ranking, indicating a deterioration in press freedom in Vietnam.

Suggested questions:

- Articles 109, 117, and 331 of the Vietnamese Penal Code are broadly and vaguely worded, according to international legal experts. These provisions are often arbitrarily applied to imprison individuals for exercising speech rights protected under international human rights law. When does the member state intend to repeal these contentious provisions in line with international human rights law?
- Does the member state have plans to release individuals who are currently detained and imprisoned under Articles 109, 117, and 331 of the Penal Code, and ensure access to effective remedy?

[10] 'The Global Expression Report 2022' ARTICLE 19, https://www.article19.org/wp-content/uploads/2022/06/A19-GxR-CountryRankings-22.pdf

[11] YIU, P. (2022, December 14). *Asian countries top list for worst jailers of journalists: report*. Nikkei Asia; Nikkei Asia. https://asia.nikkei.com/Politics/International-relations/Asian-countries-top-list-for-worst-jailers-of-journalists-report

[12] *Vietnam*. (2023, April 27). Rsf.org. https://rsf.org/en/country/vietnam

2. 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 Vietnam'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 government's approach to regulating online expression. The US-based organization The 88 Project says in their Human Rights Report 2021 that:[13]

"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. As a matter of fact, we have firm evidence of at least six arrests in 2021 due to criticism of the government's health policy on COVID-19. We suspect there were many more minor incidents of harassment that were not reported or recorded. In our assessment, the discussion on social media, mainly Facebook, showed a heightened level of anger and frustration at the authorities and the state-run media."

3. Mandatory role of 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 Vietnam. 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

[13] The 88 Project. (2022, May 9). *Human Rights Report 2021 - The 88 Project*. The 88 Project. https://the88project.org/human-rights-report-2021

Vietnamese government's approach to dealing with online content, especially content circulated on cross-borders platforms such as Facebook and Google.

According to the law, the following types of speech are prohibited, which are vague and overbroad:

> **Article 16. Prevention of and dealing with information in cyberspace with contents being propaganda against the Socialist Republic of Vietnam; information contents which incite riots, disrupt security or cause public disorder; which cause embarrassment or are slanderous; or which violate economic management order**
>
> 1. Information in cyberspace with contents being propaganda against the Socialist Republic of Viet Nam comprises:
>
> (a) Distortion or defamation of the people's administrative authorities;
> (b) Psychological warfare, inciting an invasive war; causing division or hatred between [Vietnamese] ethnic groups, religions and people of all countries;
> (c) Insulting the [Vietnamese] people, the national flag, national emblem, national anthem, great men, leaders, famous people or national heroes.
>
> 2. Information in cyberspace with contents inciting riots, disrupting security or causing public disorder comprises:
>
> (a) Calling for, mobilizing, instigating, threatening or causing division, conducting armed activities or using violence to oppose the people's administrative authorities;
> (b) Calling for, mobilizing, inciting, threatening, or embroiling a mass/crowd of people to disrupt or oppose people [officials] conducting their official duties, or obstructing the activities of agencies or organizations causing instability to security and order.
>
> 3. Information in cyberspace which causes embarrassment or which is slanderous comprises:

(a) Serious infringement of the honour, reputation/prestige or dignity of other people;
(b) Invented or untruthful information infringing the honour, reputation or dignity of other agencies, organizations or individuals or causing loss and damage to their lawful rights and interests.

4. Information in cyberspace which violates economic management order comprises:

(a) Invented or untruthful information about products, goods, money, bonds, bills, cheques and other valuable papers;
(b) Invented or untruthful information in the sectors of finance, banking, e-commerce, epayment, currency trading, capital mobilization, multi-level trading and securities.

5. Information in cyberspace with invented or untruthful contents causing confusion amongst the Citizens, causing loss and damage to socio-economic activities, causing difficulties for the activities of State agencies or people performing their public duties [or] infringing the lawful rights and interests of other agencies, organizations and individuals.

Article 26 below clearly states that domestic and overseas services must censor content deemed to be offensive by Vietnamese law within 24 hours of receiving requests. Contrary to reporting that Viet Nam only adopted this 24-hour take-down rule in 2022,[14] the rule had actually already been incorporated into the Cybersecurity Law as early as 2018.

[14] Reuters. (2022, November 4). *Vietnam to require 24-hour take-down for "false" social media content*. Reuters; Reuters. https://www.reuters.com/technology/vietnam-require-24-hour-take-down-false-social-media-content-2022-11-04

Article 26. Assurance of information security in cyberspace

1. Information mentioned in Clause 1 through 5 Article 16 of this Law and other information that violates national security are not allowed on websites, web portals and social media pages of any organization or individual.

2. Domestic and overseas providers of telecommunications services, internet services and value-added services in Vietnam's cyberspace have the responsibility to:

[...]

b) Block and delete information mentioned in Clause 1 through 5 Article 16 of this Law on their services or information systems within 24 hours after a request is given by the cybersecurity force of the Ministry of Public Security or a competent authority of the Ministry of Information and Communications; keep a log of such events to serve investigation into cybersecurity violations for a certain period of time specified by the Government;

c) Stop providing or refuse to provide the aforementioned services for the organizations or individuals that post the information mentioned in Clause 1 through 5 Article 16 of this Law upon request by the cybersecurity force of the Ministry of Public Security or a competent authority of the Ministry of Information and Communications.

[...]

To prevent and respond to "cybersecurity emergencies", the law leaves room for the government 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.[15]

[15] Khôi Nguyên. (2020, January 9). *Đồng Tâm chống trả "tấn công": 3 công an và 1 người dân thiệt mạng*. Nguoi Viet Online. https://www.nguoi-viet.com/viet-nam/dong-tam-chong-tra-tan-cong-3-cong-an-va-1-nguoi-dan-thiet-mang

The Dong Tam incident occurred just outside Hanoi on the morning of January 9, 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.[16]

Suggested questions:

- Does Vietnamese law provide legal remedies for domestic technology companies and internet users to appeal or contest the government's administrative actions on content removal or internet shutdown? If not, is there any plan by the member state to introduce new legislation ensuring these fundamental rights using the UN Guiding Principles on Business and Human Rights as a basis?
- Is the member state aware that a law in France requiring takedown within 24 hours called "Avia Law" was struck down by the French Constitutional Council for being unconstitutionally infringing freedom of speech? Is the member state aware that Germany's NetzDG does not give special powers to government bodies to request takedowns to the technology companies, and therefore does not leave room for political abuse? Is the member state aware of the Manila Principles for Intermediary Liability?

[16] *2020/60 "Revisiting the Role of Social Media in the Dong Tam Land Dispute" by Mai Thanh Truong*. (2020). Iseas.edu.sg. 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

4. Decree 72/2013/ND-CP's restrictions on general information websites and requirements for enterprises operating online

Decree 72/2013/ND-CP ("Decree 72") was issued in 2013 and arguably the first time Vietnam's internet regulations drew a significant degree of attention from both domestic and international actors. Apart from the types of speech that are prohibited similar to other laws and regulations previously adopted, including vaguely defined anti-state and immoral types of speeches, Decree 72 inherits the censorship provisions from its predecessor - Decree 97/2008/ND-CP - as follows:

1. General information websites are not allowed to publish their own content but to share content from permitted state media outlets only;
2. Enterprises must obtain a license from the authorities before they can operate a general information website or a social network;
3. Enterprises must meet many onerous conditions in terms of personnel, financial capacity, technical infrastructure before they can be granted a license.

5. Administrative penalties for illegal online speech

Decree 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 - 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, 102 of the Decree 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 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.

Violator	**Year**	**Penalty**	**Reason**
N.H.H[17]	2021	7.5 million VND	A statement made on an online Zalo group about Vietnam'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."
N.T.T.L.[18]	2022	10 million VND	A statement made during an online stream about Vietnam's then-President, which was considered insulting and inappropriate.
Thai Trac Mieu[19]	2021	7.5 million VND	A Facebook comment criticizing a group of volunteers from a Northern province who came to assist Ho Chi

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

[18] Đức Văn. (2022, September 6). *Xử phạt nữ streamer phát ngôn xúc phạm lãnh đạo cấp cao*. Báo Điện Tử Dân Trí; Báo Dân Trí. https://dantri.com.vn/xa-hoi/xu-phat-nu-streamer-phat-ngon-xuc-pham-lanh-dao-cap-cao-20220906202510587.htm

[19] *MC Trác Thúy Miêu bị xử phạt vi phạm hành chính vì phát ngôn gây kích động trên mạng xã hội*. (2023). Abei.gov.vn. 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

			Minh City, a Southern province, at the peak of the COVID-19 outbreak.

Table 2: Some cases of administrative fines imposed on internet users.

SURVEILLANCE AND THE RIGHT TO PRIVACY

1. Data localization

The Cybersecurity Law, for the first time, 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 53/2013/ND-CP lowers the requirement by a triggering provision that says if foreign companies do not comply with the Vietnamese government's requests of content removal and users' data, the government may order them to localize users' data and open local offices/branches (Article 26). Once requested by the MPS minister, the company has 12 months to comply and the data must be stored in Viet Nam for at least 24 months (Article 27).

2. Government's access to user data without independent oversight

The Cybersecurity Law and Decree 53 mandates that companies provide data to the government upon request, lacking procedural safeguards. Similarly, Decree 72 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.

3. Mandatory real-name identity registration for social media users

The Cybersecurity Law requires both domestic and foreign service providers to authenticate users' information at registration. In July 2023, the Ministry of Information and Communication proposed a draft decree to supersede Decree 72, 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.[20] This proposed regulation targets online anonymity, a fundamental aspect of privacy in the digital age.

4. Government's broad and vague scope of collecting and processing personal data, potentially allowing unlimited access

Decree 13/2023/ND-CP is the first comprehensive legal document on personal data protection, which went into effect on July 1, 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.[21]

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

- to protect the life and health of the data subject or others in an emergency situation,

[20] *Vietnam's identity verification mandate will violate international human rights - Access Now*. (2023, August 16). Access Now. https://www.accessnow.org/press-release/vietnam-social-media-verification

[21] Stuchfield, E. (2023, May 19). *Decree 13/2023/ND-CP on Personal Data Protection*. WFW; Watson Farley & Williams. https://www.wfw.com/articles/decree-13-2023-nd-cp-on-personal-data-protection/#:~:text=Decree%2013%20defines%20%E2%80%9Cprocessing%20of,%2C%20supplying%2C%20assigning%2C%20deleting%2C

- disclosure of personal data in accordance with the law;
- 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;
- to fulfill obligations under contracts the data subjects with relevant agencies, organizations and individuals as prescribed by law; and
- to serve operations by regulatory authorities as prescribed by relevant laws.

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).

While such provisions are common in data protection laws globally, they pose a unique risk in Vietnam. 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. However, the absence of a similarly restrictive interpretation in Viet Nam means that Article 13.4.b effectively reduces, rather than enhances, the 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 (MPS). This decree empowers the MPS to halt the transfer of personal data abroad if it is used in activities that undermine the interests and national security of the Socialist Republic of Vietnam, 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).

Suggested questions:

- Has the member state considered alternatives to data localization, assuming that it is being proposed to facilitate law enforcement and investigation activities on cyberspace? For instance, many member states have resorted to the Budapest Convention and its progeny because data localization threatens free expression and the right to privacy.
- Has the member state considered adding procedural safeguards to the Cybersecurity Law, Decree 53 and Decree 72 for accessing the user data? For instance, many member states have required the law enforcement to seek approval for search, seizure, and wiretapping from independent bodies in the form of "warrants".
- Does the member state provide legal remedies for domestic technology companies and internet users to appeal or contest the government's administrative actions on collecting and processing personal data? If not, is there any plan by the government to introduce new legislation ensuring these fundamental rights?
- Has the member state considered removing the real-name identity registration requirement from the Cybersecurity Law, the draft decree set to replace Decree 72/2013/ND-CP, and other relevant legal documents?
- Is the member state aware that registration requirements constitute an interference with the right to freedom of expression and must be justified under the three-part test, i.e. be provided by law, in pursuit of a legitimate aim, and necessary and proportionate to that aim?
- Has the member state considered refining the definition of "law" in Articles 13 and 17 of Decree 13 (the data protection decree) so that only democratically legitimate actions such as the democratically elected legislature's actions may exempt the consent requirements?

We respectfully express our hope that the esteemed Human Rights Committee will consider adopting a List of Issues (LOI) for the forthcoming 4th Review, in advance of the 140th Session of the Human Rights Committee.