



**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS FOR THE
PREPARATION BY THE HUMAN RIGHTS COMMITTEE OF A LIST OF ISSUES FOR THE
EXAMINATION OF VIET NAM'S FOURTH PERIODIC REPORT UNDER THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

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Submission of the International Commission of Jurists for the Preparation by the Human Rights Committee of a List of Issues for the Examination of Viet Nam's Fourth Periodic Report under the International Covenant on Civil and Political Rights

Background

1. During its 140th session, from 4 March 2024 to 28 March 2024, the Human Rights Committee will prepare and adopt a List of Issues (LOI) for its examination of Viet Nam's implementation of the International Covenant on Civil and Political Rights (ICCPR), including in light of Viet Nam's fourth periodic report under the ICCPR.
2. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Committee's preparation of its LOI on Viet Nam. In the present submission, the ICJ draws the attention of the Committee to its concerns about Viet Nam's implementation of and compliance with some of its obligations under the ICCPR.
3. These concerns have not been adequately addressed in the State's report and pertain to:
 - (i) The rights to freedom of expression and information and to privacy (articles 19 and 17);
 - (ii) The death penalty (articles 6 and 7); and
 - (iii) The independence of the judiciary and the right to a fair trial (article 14).
4. In addition, the ICJ is concerned that Viet Nam has failed to ensure the right to an effective remedy, in compliance with its obligations under article 2(3) of the ICCPR, in respect of the above-mentioned concerns and the credible evidence of violations of Covenant rights they disclose.

The rights to freedom of expression and information and to privacy (articles 19 and 17) as well as the right to an effective remedy (article 2(3))

5. In 2019, following its review of Viet Nam's third periodic review, the Committee recommended that Viet Nam should, "as a matter of urgency, take all necessary steps, including revising legislation, to end violations of the right to freedom of expression offline and online".¹
6. However, since then, Viet Nam has failed to implement this recommendation. In spite of its assertion in its State report that ensuring "freedom of speech, freedom of the press and the right to information for all is a consistent policy" of Viet Nam,² the authorities have instead escalated their arbitrary restrictions on the right to freedom of expression, contrary to international human rights law, including article 19 of the 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

7. 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

¹ Human Rights Committee, *Concluding observations on the third periodic report of Viet Nam*, UN Doc. CCPR/C/VNM/CO/3, 29 August 2019 ("CCPR/C/VNM/CO/3"), para. 46.

² The Socialist Republic of Viet Nam, "4th Periodic Report on the Implementation of the International Covenant on Civil and Political Rights", March 2023 ("Viet Nam, 4th State Report"), para. 90.

rights defenders (HRDs) and journalists.³ 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”.⁴

8. The abovementioned “offences”, and the harsh criminal sanctions that may be imposed on those convicted of them, contravene the principles of legality,⁵ harm,⁶ legitimate purpose, necessity and proportionality under general principles of criminal law and human rights law.⁷
9. According to a database maintained by The 88 Project, a non-governmental organization, as of November 2023, at least 63 individuals had been charged under article 117, and 65 individuals under article 331 since January 2018.⁸ 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;⁹ (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;¹⁰ and (iii)

³ English translation of the 2015 Penal Code available at: <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>

⁴ Articles 117 and 331, among other problematic legal provisions, were the subject of a recent communication from several UN independent human rights 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.

⁵ 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](#) (“The 8 March Principles”), published by the ICJ in March 2023: “Principle 1 – Principle of Legality”.

⁶ See, for example, [The 8 March Principles](#): “Principle 2 – Harm Principle”.

⁷ 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”; “Principle 8 – Legitimate Exercise of Human Rights”; and “Principle 13 – Criminal Law Sanctions”.

⁸ 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/>.

⁹ 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/>.

¹⁰ 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->

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.¹¹

10. The arbitrary arrests and detentions pursuant to articles 117 and 331 are often accompanied by reports of detainees being held incommunicado for long periods, by reports of violations of the right to a fair trial, and by concerns about treatment in detention.¹²
11. 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 2022.¹³ It was reported that, while in pre-trial 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.¹⁴ 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.¹⁵ The authorities have also detained another environmental HRD, Ngo Thi To Nhen, since September 2023, purportedly over charges of "appropriating documents", which upon conviction may lead to a sentence of up to five years' imprisonment.¹⁶

Censorship of online content

12. The government has extrajudicially restricted access to purportedly "illegal" online content through the enactment and use of overbroad legal provisions, including the Law

[journalist-nguyen-lan-thangs-criminal-conviction-is-a-gross-miscarriage-of-justice-which-should-be-immediately-quashed/](#).

¹¹ ICJ, Dictating the Internet Vietnam Report, p. 30.

¹² 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/>.

¹³ 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>.

¹⁴ 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.

¹⁵ A/HRC/WGAD/2023/22, paras 74 – 77. The civil society organizations that the four environmental HRDs managed were also forced to dissolve after their arrests. See: Project 88 Report, pp. 55 – 59.

¹⁶ Straits Times, "Vietnam confirms arrest of energy think-tank chief", 1 October 2023, available at: <https://www.straitstimes.com/asia/se-asia/vietnam-confirms-arrest-of-energy-think-tank-chief>.

on Cybersecurity (LOCS), read in conjunction with article 19 of Decree 53;¹⁷ and article 5 of the Decree No. 72/2013/ND-CP (Decree 72).¹⁸ 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,¹⁹ in spite of Viet Nam’s claim that the law “neither obstructs nor restricts the freedom of expression in the cyberspace”.²⁰

13. 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
14. 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 guaranteed under article 17 and 19 of the ICCPR, respectively.

¹⁷ Article 19 of Decree 53, which provides guidance on the implementation of the Law on Cybersecurity, 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/decreed-53-provides-long-awaited-guidance-on-implementation-of-vietnams-cybersecurity-law/>; ICJ, Dictating the Internet Vietnam Report, p. 35;

¹⁸ 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/>.

¹⁹ 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.

²⁰ Viet Nam, 4th State Report, para. 98.

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/>.

Death penalty (articles 6 and 7) and the right to an effective remedy (article 2(3))

15. In 2019, the Committee urged Viet Nam to, *inter alia*, consider “introducing a moratorium on the application of capital punishment”; “amend the Penal Code to further reduce the number of crimes subject to the death penalty and ensure that such punishment is retained only for the most serious crimes, that is, for crimes of extreme gravity involving intentional killing”; and publish “official figures regarding death sentences and executions, disaggregated by sex, age, ethnicity, religion and crime”.²⁵
16. However, since 2019, Viet Nam has failed to take 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, Viet Nam continues to retain capital punishment for crimes not qualifying as the “most serious crimes” (i.e., intentional killings) under international human rights law,²⁶ and it continues to carry out executions.
17. 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”.²⁷ Since 2019, Viet Nam has not reduced the number of capital crimes, retaining a total of 18 offences still potentially carrying the death penalty.²⁸
18. 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.²⁹ 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.
19. In addition, there have been numerous reports of violations of fair trial guarantees and procedural irregularities in criminal proceedings resulting in the imposition of the death penalty, with allegations of torture and forced confessions being used to convict defendants.³⁰ 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 and sentence him to death in proceedings that were also marked by procedural irregularities.³¹ 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 2023.³²

²⁵ CCPR/C/VNM/CO/3, para. 24.

²⁶ 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.

²⁷ Article 40, Penal Code.

²⁸ 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; Viet Nam, 4th State Report, para. 34.

²⁹ Human Rights Committee, *General comment No. 36, Article 6: right to life*, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 38.

³⁰ CCPR/C/VNM/CO/3, para. 23 – 24; CCPR/C/GC/36, para. 41.

³¹ 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/>.

³² 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/>.

20. 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.³³
21. 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 2021.³⁴

Independence of the judiciary and right to a fair trial (article 14) and the right to an effective remedy (article 2(3))

22. In 2019, the Committee recommended that Viet Nam should, *inter alia*, "take immediate steps to protect the independence and impartiality of the judiciary and the procuracy", and "guarantee that they are free to operate without interference". It also urged Viet Nam to ensure the "right to a fair trial without undue delay", and that "lawyers are able to advise and represent persons charged with criminal offences in accordance with generally recognized professional ethics, without restrictions, influence, pressure or undue interference from any quarter".
23. Despite these recommendations, concern remains about the independence and impartiality of the judiciary, especially with respect to its role in 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 instigated against them, to sanction them for their work representing human rights defenders and political dissidents in politically sensitive cases.

Independence of the judiciary

24. In spite of Viet Nam's implementation of its judicial reform strategy aimed at, *inter alia*, strengthening the independence of the judiciary,³⁵ 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 previously underscored by the Committee in 2019.³⁶

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/>; 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>.

³⁴ Amnesty International, *Global Report: Death Sentences and Executions 2021*, 24 May 2022, available at: <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

³⁵ Vietnam Law & Legal 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>.

³⁶ CCPR/C/VNM/CO/3, para. 33 – 34. The Procuracy exercises the power to prosecute individuals before the Courts.

25. 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.³⁷ 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".³⁸
26. There have been numerous allegations that the CPV and the executive are sometimes "directly involved in oversight of political and high-profile cases".³⁹ 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.⁴⁰ 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".⁴¹
27. 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 guaranteed under article 14 of the ICCPR.

Right to a fair trial and attacks on lawyers

28. 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 Committee itself has previously 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".⁴²

³⁷ 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>.

³⁸ 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>.

³⁹ 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.

⁴⁰ 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.

⁴¹ 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.

⁴² CCPR/C/VNM/CO/3, paras 35 – 36.

29. 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 legal counsel 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.
30. 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.⁴³

Recommendations

31. In light of the above, the ICJ recommends that the following questions be included in the LOI for the examination of Viet Nam:

On the rights to freedom of expression and privacy

32. Please respond to the reports of the continued crackdown on freedom of expression, both offline and online, especially against human rights defenders and journalists. With reference to articles 117, 200 and 331 of the 2015 Penal Code, please elaborate on their compatibility with article 19 of the ICCPR, and indicate the number of persons arrested, detained, charged and/or convicted under these provisions and any measures taken towards their release.
33. Please provide detailed statistics on the number of websites and online content blocked during the reporting period. Please also provide detailed statistics on the number of demands for content restrictions that were sent to internet intermediaries, including social media platforms. For these restrictions, clearly indicate the reasons for such blocking and the legal bases for the restrictions. With reference to the Law on Cybersecurity, Decree 53 and Decree No. 72/2013/ND-CP, please elaborate on the compatibility of these online restrictions and their legal basis, if any, with article 19 of the ICCPR.
34. Please provide information on the new draft Decree 72 intended to replace the existing Decree 72, and elaborate on its compatibility with article 19, as well as article 17, of the ICCPR, particularly the provisions that require service providers to “proactively monitor and remove illegal content, services, and applications within a 24-hour window”, and mandatory real identity registration requirements for all social media accounts. Please describe the legal safeguards that ensure that decisions infringing on freedom of expression are subject to sufficient judicial oversight, including prior authorization of

⁴³ 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>. The case involved six individuals from the Tinh That Bong Lai Temple, an independent Buddhist temple, who were convicted under art. 331 of the Penal Code for “abusing democratic freedoms”. The monks and nuns of the temple had been accused in the media of “incest”, “seeking personal gains” and “committing fraud”. See, The Vietnamese, “The Case Of Tinh That Bong Lai Temple: What You Need To Know”, 15 July 2022, available at: <https://www.thevietnamese.org/2022/07/the-case-of-tinh-that-bong-lai-temple-what-you-need-to-know/>; and The Vietnamese, “Tinh That Bong Lai Practitioners Sentenced To Combined More Than 23 Years In Prison”, 23 July 2022, available at: <https://www.thevietnamese.org/2022/07/tinh-that-bong-lai-practitioners-sentenced-to-combined-more-than-23-years-in-prison/>.

decisions by an impartial and independent judicial authority, and express guarantees of the right to appeal.

On the death penalty

35. Please elaborate on the measures taken in the reporting period towards halting all impending executions of individuals and commuting their sentences, and imposing an immediate moratorium on the use of the death penalty with a view to abolishing capital punishment.
36. Please provide data on the number of persons executed during the reporting cycle and currently under death sentence. Please elaborate on the measures taken towards ensuring that there is sufficient transparency with respect to the death penalty, including through making sure that essential information relevant to a specific planned execution is 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

37. Please elaborate on the steps taken 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.
38. Please respond to the reports that the executive is involved in the oversight of political and high-profile cases, and provide more information on the use of joint meetings between the investigatory agency, prosecution and the court to come to a consensus on how to adjudicate a case before trial. Please elaborate on how these arrangements are compatible with the right to a fair trial.
39. Please provide more information on the steps taken to ensure that the right to a fair trial is 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.
40. Please provide information on whether prompt, impartial and effective investigations have been undertaken in relation to cases where there have been credible allegations of torture or other cruel, inhuman or degrading treatment by law enforcement agencies. Please provide information of whether the alleged perpetrators, when warranted by the evidence, have been brought to justice, and whether victims have been provided with access to an effective remedy and reparation.
41. Please respond to credible reports that arbitrary criminal investigations are being used against lawyers aimed at impairing their legitimate work as human rights lawyers and their right to freedom of expression. Please provide information on the measures that have been taken 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.

On the right to an effective remedy

42. Please provide information about the steps taken to guarantee the right to an effective remedy for the above-mentioned human rights violations, as well as other instances where there is credible evidence of human rights violations, and the measures taken to address impunity for human rights violations in compliance with the Covenant.