



**VĂN BÚT VIỆT NAM HẢI NGOẠI
VIETNAMESE ABROAD PEN CENTRE**

*Hiển dương những Tiếng Nói của Lương Tâm và các Tiếng Lòng Vang Vọng của người Việt Nam khắp thế giới
Promote the Voices of Conscience and the Echoes of Compassion of Vietnamese across the Globe*

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**SUBMISSION
TO THE OFFICE OF
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I. INTRODUCTION

1. The **Vietnamese Abroad PEN Centre** (PEN Vietnam) founded in 1978 is an organization of writers, poets, musicians and composers, *etc.*, from across the globe promoting Vietnamese literature and culture and to express deep concern for human rights' violations, especially those oppressive campaigns against writers, poets, musicians and composers, *etc.*, in Vietnam. The Vietnamese Abroad PEN Centre has many active members in Canada and the United States of America. The PEN Vietnam's website is **PENVietnam.org** posting its long history, public programs and activities.

2. The Vietnamese Abroad PEN Centre appreciates the opportunity to contribute by way of submission on the current situation of serious human rights' violations in Socialist Republic of Vietnam (*hereinafter referred to as 'Socialist Vietnam'*), especially concerning the *freedom of association, freedom of thought and freedom of speech*.

3. PEN Vietnam's members hope that this Submission will illuminate Socialist Vietnam's repressive policy and, consequently, encourages the Vietnamese government to commit to change to respect democratic pluralism and basic human rights, including the *freedom of association, freedom of thought and freedom of speech*.

4. Since the last UPR Submission by Vietnamese Abroad PEN Centre to the 32nd Session (January-February 2019), the human rights situation in Socialist Republic of Vietnam has deteriorated significantly with the draconian application of the Criminal Code's **Article 331** and **Article 117** [*analyzed hereinafter in Section II*] to reduce civic space and to incriminate discourses of national issues even during the difficult time when Vietnamese citizens suffered greatly from mass unemployment and inflated Việt-Á Covid-19 test prices to restrictive lockdowns and excessive airline charges on government-approved return flights. There were more arrests of vocal dissidents, among the well-known activists are Dr. Phạm Chí Dũng, a novelist and founder of Independent Journalists Association, who was sentenced to 15 year imprisonment, and Phạm Đoan Trang, an author demanding free election, who was sentenced to 9 year imprisonment [*see Section VI re Latest Developments*].

5. Vietnamese Abroad PEN Centre is deeply concerned about **Vietnam's newly proposed legislation in July 2023 requiring social media users to register their name and telephone number in order to access and post views**. This proposed law effectively eliminates citizens' online privacy and opens up their personal information for potentially adverse hacking activities and probable abuses. In defense of this serious attempt to eliminate online privacy and to control citizens' activities, Deputy Minister of Information and Communications Nguyen Thanh Lam stated that "*There are times when the authorities identify social media account owners who violate the law but cannot trace them due to their use of cross-border applications.*"

II. REPRESSIVE POLICY AGAINST VOICES OF CONSCIENCE

6. Vietnamese citizens' democratic freedoms are stipulated in Articles 24 and 25 of the Constitution as follows:

*“Everyone has the right to freedom of belief, religion, to follow or not to follow any religion. The religious equality before the law.
The State respects and protects the right to freedom of belief and religion.
No one may violate freedom of belief or religion or take advantage of belief or religion to violate the law.
Citizens have the right to freedom of speech, freedom of the press, access to information, assembly, association, and demonstration. The exercise of these rights is regulated by law.”*

7. Vietnam's Constitution stipulates that *“The State guarantees and promotes the People's mastery; acknowledges, respects, protects and guarantees **human rights and citizens' rights**; implements the objectives of prosperous people, state powers, democracy, justice, civilization, and all that people enjoy that is abundant and free for a happy life with conditions for all-round development.”* (Article 3).

8. The fundamental rights of Vietnamese citizens are constitutionally codified, nevertheless, the Vietnamese government pays only lip service to such enshrined rights and repeatedly violated the said constitutionally guaranteed rights of citizens and, in particular, of writers, poets, musicians and composers, etc., and social activists.

9. The Vietnamese government has often applied the Criminal Code to silence voices of conscience and reduce civic space. The following two Articles 117 and 331 in Vietnam's Criminal Code are extremely vague with unjust lengthy sentences and should be removed for being contrary to the freedoms guaranteed by Vietnam's Constitution:

Article 117: Crime of making, storing, disseminating or propagating information, documents and items aimed at opposing the State of the Socialist Republic of Vietnam

1. Any person who commits one of the following acts against the State of the Socialist Republic of Vietnam shall be sentenced to **between 5 and 12 years of imprisonment**:
 - a) Making, storing, disseminating or propagating information, documents and items with content that **distorts or defames** the people's government;
 - b) Making, storing, disseminating or propagating information, documents and items with fabricated content, causing confusion among the people;
 - c) Making, storing, disseminating or propagating information, documents and items that cause **psychological warfare**.
2. Committing the crime in particularly serious cases shall be punished with **imprisonment from 10 to 20 years**.
3. People who prepare to commit this crime shall be sentenced to **imprisonment from 1 year to 5 years**.”

Article 331: Anyone who **takes advantage of the rights** to freedom of speech, freedom of the press, freedom of belief, religion, freedom of assembly, association and other democratic freedoms to infringe upon **the interests** of the State, the rights, legitimate interests of organizations or individuals, shall be subject to a warning, non-custodial reform for up to 3 years or imprisonment **from 6 months to 3 years**.

- Committing a crime that adversely **affects security, order, and social safety**, shall be sentenced to **imprisonment from 2 to 7 years**.”

Any opinion critical of government policies or against corrupt officials [as in the corruption cases of inflated Việt-Á Covid-19 test prices and excessive airline charges on government-approved return flights involving multiple high-ranking officials at ministerial level] could land one in prison if framed as having violated either Articles 117 or Article 331 in Vietnam’s Criminal Code.

10. The Vietnamese government executes harsh measures and often abuses the Court system to:

10.1. Continuingly suppress the *freedom of thought* and *freedom of speech*;

10.2. Continuingly prevent the exercise of *freedom of association* by preventing writers to form independent associations, workers to form independent unions, farmers to form support groups, *etc.*; and

10.3. Arbitrarily detain and prosecute activists including writers, poets, musicians and composers, *etc.*, who express opinions on important issues that the government does not wish to discuss openly.

11. Peaceful activists and human right advocates in Vietnam are constantly facing security force’s harassment, beating and arbitrary arrest and subject to requested “*administrative interview*” (in reality, these interviews are illegal arrest and detention regularly conducted by local security officials).

12. The Vietnamese military also created *Force 47* of 10,000 cyber troops to fight “*wrongful views online*.” Its purposes include identifying and harassing advocates with “*wrongful views online*.” Government’s so-called “*opinion workers*” are very active online to spread partisan information to influence public opinion.

III. SUPPRESSING THE FREEDOM OF THOUGHT AND FREEDOM OF SPEECH

13. The *freedom of association*, *freedom of thought* and *freedom of speech* are guaranteed by the current Constitution of Socialist Vietnam as well as the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* to which the Vietnamese government agreed to adhere.

14. In reality, “*human rights and citizens’ rights*” are not respected by the Vietnamese government which undertakes two (2) approaches to suppress these fundamental rights:

- A) the state's complete control over the flow of information; and
- B) the state's use of the Penal Code to detain and prosecute all persons voicing opinions contrary to the official state position.

III.A Information Control: All media outlets are controlled by the Vietnamese government through editorial and licensing officials appointed by the Vietnamese Communist Party through the *Ministry of Information and Communication*.

15. Independent associations of writers and journalists are not recognized by the Vietnamese governments, and thus their leaders and members are under surveillance.

16. Complete censorship is the official policy that is strictly followed. No material could be published or distributed without the consent of screeners approved by the *Ministry of Information and Communication*. Underground publishing does exist but at the risk of prosecution and lengthy imprisonment. Vietnam's current *Law On Publication* (2012) "*applies to agencies, organizations, individuals and foreign organizations operating in Vietnam, foreign individuals residing in Vietnam related to publishing activities*" (Article 2) and contains rules that are both broad and extremely vague, and therefore opens to unlimited abuses by public officials:

"1. Seriously prohibiting the publishing, printing and release of publications with the following contents:

- a) Conducting propaganda against the Socialist Republic of Vietnam and destroying the unity of the whole nation;
- b) Conducting propaganda and incitement war of aggression, causing hatred between nations and peoples; conducting incitement of violence; spreading reactionary ideology, obscene and depraved lifestyle, criminal acts, social evils, superstition and destruction of habits and customs;
- c) Disclosing the state secrets, personal secrets and other secrets prescribed by law;
- e) Distorting historical truth, denying revolutionary achievements; offending nation, well-known persons, national heroes; failing to express or properly express sovereignty; slandering and insulting the reputation of the agency, organization and dignity of the individual.

2. It is strictly forbidden to perform the following acts:

- a) Publishing without registration and publishing decision or publishing license;
- b) Changing, distorting the content of the manuscripts which have been signed for approval by or non-business document manuscript with the seal of the publishing licensing agencies;
- c) Illicit and false printing, illegal re-printing of publications

- d) Releasing publications without legitimate origin or failing to submit copyright deposit
- e) Publishing, printing and releasing publications which have been suspended from release, recovering, confiscating, banning from circulation, destroying or illegally importing publications;
- f) Other prohibited acts as prescribed by law.” (Article 10)

17. It is therefore virtually impossible to publish or distribute anything that is not pre-approved by Vietnam’s *Ministry of Information and Communication*.

18. As an example to highlight official censorship, the unapproved book entitled “*Chính trị bình dân*” (*Popular Politics*) by Phạm Đoan Trang was prohibited from distribution, and subsequently couriers of the said book were intercepted and harassed by Vietnam’s security force. The most recent example (May 2022) involves Nguyen Thi Thinh Thy whose book entitled “*Dare to Look Back*” won the 7th Van Viet Literature Award created by the Vietnamese Independent Writers’ Association, which alleged that the author was pressured by the government to decline the prize.

III.B Abuse of the Penal Code: The Vietnamese government often uses of the criminal law system to search, harass and prosecute all persons including writers and artists, who collect and share information and voice opinions contrary to the official state position.

19. Vietnam’s 2013 Constitution stipulates that “1. *All citizens are equal before the law. 2. No one shall be discriminated against based on his or her political, civic, economic, cultural or social life..*” (Article 16) and “1. *Everyone shall enjoy the inviolability of the individual and the legal protection of his or her life, health, honour and dignity and is protected against torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health and offence against honour and dignity. 2. No one shall be arrested in the absence of a decision by the People’s Court, a decision or sanction of the People’s Procuracy except in cases of flagrant offences. Taking a person into, or holding him in custody shall be decreed by statute.*” (Article 20)

20. In reality, the Penal Code and the Court system are used extensively by the Vietnamese government to prosecute all persons, including writers and social activists, whom it views as real or potential *enemies of the state*.

21. Various sections from tax evasion to attempted overthrowing the socialist government in the Penal Code are invoked in almost all cases that the Vietnamese government deems to be anti-Socialist even though, in many instances, the only act involved was the dissemination of information available publicly on the Internet.

22. It is interesting to note that Vietnam’s Penal Code includes Chapter XV on “OFFENCES AGAINST PERSONAL LIBERTY, CITIZENS’ RIGHTS TO FREEDOM AND DEMOCRACY” listing crimes for “*Illegal arrest, detention, or imprisonment of a person*” (Article 157), “*Infringement upon citizens’ right to association*” (Article 163), “*Infringement*

upon the freedom of religion” (Article 164), “Infringement upon freedom of speech, freedom of the press, the right of access to information, and the right to protest of citizens” (Article 167). Despite the numerous human rights’ violations with well-documented evidence, no official has ever been charged and prosecuted by the Vietnamese government pursuant to these provisions.

IV. PREVENTING THE EXERCISE OF FREEDOM OF ASSOCIATION

23. The 2013 Constitution continues to place the Vietnamese Communist Party as the only political force in the country, and consequently the government does not tolerate the establishment of any group that is not controlled by the Communist Party through the umbrella organization called *Fatherland Front (Mat Tran To Quoc*. Note that the term *Mat Tran* or *Front* used here portraying a constant war against non-Communist elements).

24. There are on-going efforts by writers to form independent associations, workers to form independent unions, farmers to form support groups, etc. These groups of citizens with common objectives, however, are not permitted to hold meetings freely, and their civilian leaders are harassed constantly and soon or later would face prosecution on drummed-up criminal charges.

25. In recent years the Vietnamese government viewed any group that raises concerns over China’s territorial claims and/or the Formosa Ha Tinh’s environmental disaster as an attack on the government, and thus it sought to prosecute anyone, who actively disseminated material facts on these subjects and the negative consequences faced by the affected victims such as fishermen, who lost their livelihood because of Formosa Ha Tinh’s enormous chemical disaster or China’s armed violence on the high sea.

V. ARBITRARY DETENTION AND PROSECUTION OF PEACEFUL ACTIVISTS

26. The legal system in Vietnam in form appears to protect all fundamental rights but, in practice, it is used to attack all rights exercised contrary to the Vietnamese Communist Party’s interests and socialist directives. Sadly, the Court system is legislatively tasked with this anti-democratic purpose: *“The Courts have the task to protect the socialist legislation; to protect the socialist regime and the people’s mastery”* (Article 1, Law on Organization of the People’s Courts).

27. As of the date of this Submission by the Vietnamese Abroad PEN Centre, there are at least 120 known (*and independently verified*) dissidents incarcerated because of their express political view. The Vietnamese government, however, claims that it detains no “political prisoner.”

28. Beside political prisoners, there are prisoners of conscience including religious prisoners of conscience (a well-respected Buddhist monk, several Mennonite leaders, a Catholic priest and some lay Catholics).

29. Torture is commonly used in Socialist Vietnam's prisons causing death to known detainees and led to public outcries but the practice continues to be permitted by the Vietnamese government. Beside torture, every abusive tactic is used by the Vietnamese government against citizens possessing contrary views; such abuses include, but not limited to, arbitrary arrest, fabrication of evidence, denial of proper legal representation, barrier to access to public trials, predetermined verdicts, harsh sentences, *etc.* To highlight the excessive force often used against detainees, on September 5, 2023, 28-year-old Bui Van Hai accused of stealing 2 dogs was detained by Duc Linh District police then died thereafter. His family members revealed that his body was covered with bruises and accused "*the officers of beating him to death.*"

VI. LATEST DEVELOPMENTS RAISING PARTICULAR CONCERN

Since the last UPR 32nd Session (2019) Socialist Republic of Vietnam's human rights situation has deteriorated significantly with the draconian application of the Criminal Code to reduce civic space and to incriminate activists. In addition to the arrest and prosecution pursuant to Article 117 (2015 Criminal Code, revised 2017) of Dr. **Phạm Chí Dũng**, a novelist and founder of Independent Journalists Association, who was sentenced to 15 year imprisonment in December 2020, and **Phạm Doan Trang**, an author demanding free election, who was sentenced to 9 year imprisonment in December 2021, other notable social activists were also arrested and/or prosecuted pursuant various Articles in the Criminal Code:

30. August 2023: Vietnamese Appellate Court rejected the appeal of social activist **Bui Tuan Lam**, known as "*Onion Bae*," who was sentenced to 5 ½ year imprisonment under Article 117 of the Criminal Code.

31. August 2023: Vietnamese Appellate Court rejected the appeal of social activist **Tran Van Bang**, who was sentenced to 8 year imprisonment under Article 117 of the Criminal Code.

32. August 2023: **Hoang Van Luan**, 35 years old, was arrested in Ha Tinh under Article 331 of the Criminal Code for organizing petition drives to urge authorities to complete a promised water supply project for residents in the Vung Ang Economic Zone that suffered a devastating toxic waste spill in 2016.

33. July 2023: Anti-corruption journalist **Duong Van Thai** was charged with "*propaganda against the State*" pursuant to Article 117 of the Criminal Code. He was allegedly kidnapped and brought back to Vietnam on April 13, 2023 from Thailand where he sought asylum.

34. July 2023: **Phan Son Tung** was sentenced to 6 year imprisonment pursuant to Article 117 of the Criminal Code for calling for the formation of the Prosperous Vietnam Party to challenge the Communist Party's leadership.

35. June 2023: Music lecturer **Dang Dang Phuoc** was sentenced in Dak Lak province to 8 year imprisonment pursuant to Article 117 of the Criminal Code for posting his view on educational issues, human rights violations, corrupt officials and injustice on social media.
36. June 2023: Prominent environmental human rights defender **Hoang Thi Minh Hong** was arrested in Ho Chi Minh city.
37. March 2023: The severe sentences pursuant to Article 331 of the Criminal Code of **Nguyen Thai Hung** (4 year imprisonment) and his wife **Vu Thi Kim Hoang** (2 1/2 year imprisonment) for producing “*Telling the Truth TV*” channel on YouTube were confirmed by the Vietnamese Appellate Court in Dong Nai Province.
38. March 2023: Land rights activist **Truong Van Dung** was sentenced to six years in prison for “*conducting anti-state propaganda*” pursuant to Article 88 of Vietnam’s 1999 Criminal Code.
39. February 2023: **Le Minh The** was charged with “*abusing the rights to freedom and democracy to violate the State’s interests and legitimate rights and interests of organizations and individuals*” pursuant to Article 331 of the Criminal Code for his “*illegal content*” postings on social media.
40. December 2022: Religious freedom campaigner **Y An Hdrue**, 52, and fellow worshiper **Y Pok Eban**, 37, were detained police on their way to celebrate Christmas service at the Evangelical Church of Christ in Dak Lak province.
41. October 2022: “*The Voice of the People – Le Ha Television*” creator **Le Manh Ha** was sentenced to 8 years in prison pursuant to Article 117 of the Criminal Code for campaigning for farmers who were displaced by a hydroelectric project in Tuyen Quang province.
42. August 2022: Activist **Le Anh Hung**, a blogger for Voice of America and member of The Independent Journalists Association and the Brotherhood for Democracy, was sentenced to 8 years in prison pursuant to Article 331 of the Criminal Code.
43. July 2022: Human rights defender and well-known blogger **Nguyen Lan Thang**, 47, was arrested and charged with “*conducting anti-state propaganda*” pursuant to Article 117 of the Criminal Code.
44. June 2022: **Nguyen Duy Linh** from Ben Tre province was sentenced to 8 years in prison pursuant to Article 117 of the Criminal Code for posting stories on social media criticizing the government.
45. April 2022: Facebook user **Dang Nhu Quynh** was arrested in Hanoi for expressing opinions about high-profile financial crimes involving Trinh Van Quyet, chairman of FLC Group, and Do Anh Dung, the chairman of property developer Tan Hoang Minh Group.

46. April 2022: Journalist **Nguyen Hoai Nam** was sentenced by Ho Chi Minh Court to 3 1/2 years in prison pursuant to Article 331 of the Criminal Code for criticizing the government's handling of a corruption case.

47. December 2021: Journalist **Lê Trong Hung** was sentenced in Hanoi to 5 years in prison pursuant to Article 117 of the Criminal Code for his involvement in *Chan Hung Viet Nam TV* (*Vietnam Renaissance TV*), a social media channel exposing cases of corruption and illegal land expropriation.

VII. RECOMMENDATIONS

48.1 The Vietnamese government must release unconditionally and immediately the above-named activists and all other political prisoners.

48.2 Vietnam should not adopt the newly proposed legislation requiring social media users to register their name and telephone number because it effectively eliminates citizens' online privacy and opens up their personal information for potentially adverse hacking activities and probable abuses.

48.3 Vietnam should remove Article 117 and Article 331 from Vietnam's Criminal Code because the provisions therein are extremely vague with unjust lengthy sentences and contrary to the freedoms guaranteed by Vietnam's Constitution.

48.4 Vietnam should actively investigate, charge and prosecute all officials and members of the security force, who infringed on citizens' fundamental rights including the *freedom of association, freedom of thought and freedom of speech* pursuant to applicable provisions of the Penal Code such as "*Illegal arrest, detention, or imprisonment of a person*" (Article 157), "*Infringement upon citizens' right to association*" (Article 163), "*Infringement upon the freedom of religion*" (Article 164), "*Infringement upon freedom of speech, freedom of the press, the right of access to information, and the right to protest of citizens*" (Article 167).

48.5 Vietnam must recognize and respect independent writers' organizations, independent workers' unions, farmer's support groups, *etc.*, as civil institutions with all the rights pertaining to civil institutions and organizations.

48.6 Vietnam should establish a permanent and independent human right monitoring body composed of independent members non-affiliated with the government or the Vietnamese Communist Party. This body is empowered by law and given resources to investigate, prosecute and punish any law enforcement or government official for human right violations.

48.7 Vietnam should submit quarterly public reports to the UN Human Rights Council (HRC) detailing any improvement in fundamental freedoms based on UN-approved benchmarks and recommendations.

48.8 Vietnam should remove all restrictions on public or private publications as well as free access to and distribution of political materials available on the Internet.

48.9 The Vietnamese government must return all buildings and lands confiscated from various religious and cultural organizations.

48.10 The Vietnamese government must return the building and land of PEN Vietnam that it seized in April 1975.

48.11 Vietnam should amend its Constitution to remove the Communist Party as the only leading political force in Vietnam to guarantee all citizens true democratic rights and fundamental freedoms.

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VIETNAMESE ABROAD PEN CENTRE

Prepared by: Lloyd Duong, *Esq.*
B.Comm.Hon., MBA, JD
Formerly President of Vietnamese Abroad PEN Centre
Presently WiPC Steering Committee Secretary

lloydduong@penvietnam.org

Lloyd Duong Attorneys Atrium
2377 Dundas Street West
Toronto, ON
M6P1X2