

ANALYSIS OF VIETNAM’S INTERNET FREEDOM SITUATION FOLLOWING THE ADOPTION OF THE 2018 CYBERSECURITY LAW

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EXECUTIVE SUMMARY

This research is a follow-up on a comprehensive research of Vietnam’s Internet regulations conducted by Boat People SOS in 2018 with a grant from International Center for Non-Profit Law (ICNL).¹ It provides updated information on new Internet regulations and the central and local governments’ practices of implementing the regulations.

The research’s findings show that after passing the controversial Cybersecurity Law in June 2018, the Vietnamese government has failed to issue a decree to provide guidance of how to implement the law, a routine that usually is conducted by the executive branch shortly after the passage of a piece of legislation at the National Assembly. Due to the government’s arbitrary use of national secrets regulations, it is uncertain whether or not there is already a decree.

Another major finding is that the government has been trying to indirectly provide guidance of implementation of the Cybersecurity Law by issuing decrees that are, on the surface, meant to be detailing other laws. This can be interpreted as a way of avoiding domestic and international criticism since the Cybersecurity Law and its initial drafted decree have received widespread condemnation.

In the meantime, both the central and local governments are not waiting for detailed guidance of the Cybersecurity Law to start implementing what the law says because the Cybersecurity Law is in fact only a part of many laws and regulations that govern online expression. By conducting administrative, criminal and economic measures, the government has been actively forcing citizens and technology companies (mainly foreign enterprises) to accept a significantly more repressive Internet environment and a much narrower range of doing businesses in Vietnam.

¹ The findings of this 2018 research were incorporated in a joint submission to the UN Human Rights Council for the 2019 Universal Periodic Review of Vietnam: <https://dvov.org/wp-content/uploads/2018/07/Vietnam-UPR-2019-joint-submission-on-freedoms-of-thought-and-expression-1.pdf>

VIETNAM'S HUMAN RIGHTS OBLIGATIONS UNDER THE INTERNATIONAL LAW

Vietnam is a state member of the United Nations and has ratified the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, two core components of the International Bill on Human Rights that concern freedom of speech.

Furthermore, Vietnam is obligated to implement accepted recommendations from United Nations' bodies, such as the UN Human Rights Council and the UN Human Rights Committee. Among the recommendations are:²

- “Urgently, take all necessary steps, including revising legislation, to end violations of the right to freedom of expression offline and online, and ensure that restrictions do not go beyond the strictly defined limitations set forth in article 19 of the Covenant, taking into account Committee’s general comment No. 34 (2011) on the freedoms of opinion and expression.” (Human Rights Committee - 2019)
- “Promote pluralistic media that can operate free from undue State interference.” (Human Rights Committee - 2019)
- “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.” (Human Rights Committee - 2019)
- “Ensure that restrictions do not go beyond the strictly defined limitations set forth in article 19 of the Covenant, taking into account Committee’s general comment No. 34 (2011) on the freedoms of opinion and expression.” (Human Rights Committee - 2019)
- “Improve protection of the rights to peaceful assembly and expression by reviewing existing legislation, and publishing and implementing clear, transparent guidelines on security personnel conduct in managing peaceful demonstrations.” (Universal Periodic Review 2019)

As this research focuses on Vietnam’s legal developments, please refer to the recent report titled “Dictating the Internet: Curtailing Free Expression and Information Online in Vietnam” by the

² Recommended Actions on Civil and Political Rights in Viet Nam From United Nations Human Rights Mechanisms, *Human Rights Space and Centre for Civil and Political Rights (CCPR)*, 2020. Available at: https://ccprcentre.org/files/media/Recommended_Actions_WEB.pdf

International Commission of Jurists for more information about Vietnam’s human rights obligations under the international law.³

UPDATES ON LAWS AND REGULATIONS

Decree 15/2020/NĐ-CP

On February 03, 2020, the Vietnamese government issued Decree 15/2020/NĐ-CP (“Decree 15”), signed by the Prime Minister, to stipulate penalties for administrative violations in the fields of postal services, telecommunications, radio frequency, information technology and electronic transactions. This decree replaces Decree 174/2013/NĐ-CP (“Decree 174”).

This legal document issued by the central government’s executive branch went into effect on April 15, 2020, in the middle of the COVID-19 pandemic, and although it covers a wide range of administrative violations, the decree has been widely seen as a measure to counter fake news on the Internet about the pandemic. However, this decree was likely to be prepared well before the pandemic and should be considered as the government’s ongoing effort to control the Internet. Here are the key takeaways that concern online speech:

- Decree 15 maintains administrative sanctions against owners of social networks and of news sites on various forms of online speech as stated in Decree 174, including providing/sharing “fake or false information with the aims of distorting, slandering or damaging the prestige, honor and dignity of other organizations, authorities or individuals”, “information with the aims of encouraging unsound customs, superstitions or pornography, or which is not comfortable with the national good traditions and customs,” “fictitious information with the aims of causing a panic among the population, inciting violence, crimes, social evils, gambling or serving gambling activities,” “images of Vietnam’s map which does not indicate the entire and accurate national sovereignty.”
- Decree 15 expands the scope of application of its regulations to social media users, making it clear that users are subject to the sanctions. This addresses the ambiguity in Article 66 of Decree 174, the wording of which did not clearly indicate applicability to individual Internet users – the authorities did apply Article 66 to individuals anyway.⁴ On the other hand, Article 65 of Decree 174 is applicable to owners of social networks only, but the Ministry of Information and Communications did apply it to an individual in a well-

³ Dictating the Internet: Curtailing Free Expression and Information Online in Vietnam, *International Commission of Jurists*, 2020, p. 38-39. Available at: <https://www.icj.org/wp-content/uploads/2020/12/Vietnam-Freedom-of-expression-Publications-reports-thematic-reports-2020-ENG.pdf>

⁴ Bị xử phạt hành chính 7,5 triệu đồng vì phát ngôn của mình trên mạng xã hội, Chủ tịch Công ty Alibaba nói gì? *Nhà Đầu Tư*, 2019. Available at: <https://nhadautu.vn/bi-xu-phat-hanh-chinh-75-trieu-dong-vi-phat-ngon-cua-minh-tren-mang-xa-hoi-chu-tich-cong-ty-alibaba-noi-gi-d26038.html>

publicized case in 2018.⁵ The new decree makes it totally clear that social media users are facing severe financial consequences if they committed the above-mentioned violations.

- Decree 15 maintains that social networks owners, website owners, and Internet service providers shall be fined should they not store and provide user data for the authorities upon request.

The International Commission of Jurists made the following comment on the Cybersecurity Law and Decree 15:

“While combating misinformation online is a legitimate policy concern, these recent laws do not appear to have been passed for that purpose in good faith. They violate the principles of legality and legitimate purpose, as vague and overbroad provisions do not enable individuals or networks to be able to clearly define what information can violate ‘national interests’ or ‘good traditions’ and regulate their conduct accordingly. These provisions also allow for unfettered discretion of authorities in determining who ‘distorts the people’s government’ or acts ‘against the State’ online. The stipulation of severe penalties for vaguely worded crimes further violates the principle of proportionality. These shortcomings, at the very least, require independent, impartial and effective oversight, redress and accountability mechanisms to ensure that the laws are not invoked in violation of fundamental rights, and that when such violations do occur, individuals and organizations are able to seek and be provided with effective remedies and reparations. These mechanisms are absent, heightening concerns that these laws will be wielded in a non-human rights compliant manner against companies, networks and their individual users.”⁶

2018 Law on Protection of State Secrets

Vietnam’s National Assembly passed the Law on Protection of State Secrets on November 15, 2018 and the legislation piece came into force on July 1, 2020, replacing the Ordinance 30/2000/PL-UBTVQH on Protection of State Secrets.⁷ Following the adoption of the law, Decree 26/2020/NĐ-CP (dated February 28, 2020)⁸ and the Prime Minister’s Decision 960/QĐ-TTg

⁵ Daniel Hauer đã đến làm việc về việc xúc phạm Đại tướng Võ Nguyên Giáp, *Người Lao Động*, 2018. Available at: <https://nld.com.vn/thoi-su/daniel-hauer-da-den-lam-viec-ve-viec-xuc-pham-dai-tuong-vo-nguyen-giap-20180130164028886.htm>

⁶ Dictating the Internet: Curtailing Free Expression and Information Online in Vietnam, *International Commission of Jurists*, 2020, p. 38-39. Available at: <https://www.icj.org/wp-content/uploads/2020/12/Vietnam-Freedom-of-expression-Publications-reports-thematic-reports-2020-ENG.pdf>

⁷ Law on Protection of State Secrets. Available at: <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=141824&Keyword=>

⁸ Decree 26/2020/NĐ-CP. Available at: <https://thuvienphapluat.vn/van-ban/bo-may-hanh-chinh/Nghi-dinh-26-2020-ND-CP-huong-dan-Luat-Bao-ve-bi-mat-nha-nuoc-435873.aspx>

(dated July 7, 2020)⁹, ¹⁰ were issued to provide guidance on how to implement the law. Although this legal document does not directly involve online speech, it effectively prohibits Internet users from making and disseminating information that is considered state secrets under the law.

This decision arbitrarily and massively expands the scope of state secrets to include vague terms such as “the Party’s and the State’s policies”, “activities of the Party’s Central Committee, Politburo, Secretary Committee, and the Party’s and the State’s leaders,” “information that has negative effect on the political, economic and social situation,” and specific matters such as “constitution and law making activities,” “information about investigation and [...] trials [...],” “information about the physical conditions of the Party’s and the State’s high-ranking leaders,” etc.

The decision indicates that any form of making, spreading information about the above-mentioned matters, and expression of one’s opinions on these matters shall be considered as violations of the law and subject to either administrative sanctions under Decree 15 or criminal punishment under the 2015 Penal Code. As the law is worded vaguely, it gives law enforcement and the courts significant leeway for interpretation, which potentially leads to the arbitrary application of the law and violations of the right to freedom of speech. One prime example is Decision 960’s classification of the various types of information relating to how the government handles religious affairs as confidential, secret, and top secret. The types of information covered by Decision 960 include the government’s policies of dealing with “complicated belief and religious issues”, “documents containing information about people who abuse belief and religious activities to overthrow the government...” and government communications with religious leaders and dignitaries. See Appendix A for a more in-depth analysis of Decision 960.

Then, on November 3, 2020, the Prime Minister issued Decision 1722/QĐ-TTg,¹¹ classifying certain internal documents of the Vietnamese Communist Party, especially those relating to the mobilization and control of the mass, as state secrets. These documents include, among others, communications and minutes of meetings with leaders and influential people of the different religions and ethnic populations. Most astounding is Article 3, which classifies as state secret information about communist party members assigned to covertly operate within religions. The government thus admits the infiltration of religious organizations by communist party members and would punish anyone disclosing information about the infiltrators. Like Decision 960, Decision 1722 would not only affect freedom of expression but may adversely impact freedom of religion. See Appendix B for a more in-depth analysis of Decision 1722.

⁹ Prime Minister’s Decision 960/QĐ-TTg. Available at: <https://thuvienphapluat.vn/van-ban/bo-may-hanh-chinh/Quyết-dinh-960-QĐ-TTg-2020-Danh-muc-bi-mat-nha-nuoc-linh-vuc-Noi-vu-446809.aspx>

¹⁰ English translation of Decision 960/QĐ-TTg with comments by BPSOS: https://dvov.org/wp-content/uploads/2020/10/PM-Decision-Secrets_En-960_QĐ-TTg.pdf

¹¹ Prime Minister’s Decision 1722/QĐ-TTg. Available at: <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Quyết-dinh-1722-QĐ-TTg-2020-Danh-muc-bi-mat-nha-nuoc-cua-Dang-456651.aspx>

The Draft Decree to Implement the 2018 Cybersecurity Law

The legal system in Vietnam works in a way that needs various types of legal documents and instructions (decree, circular, decision, and official correspondence) from the executive branch to implement legislations passed by the National Assembly (law, ordinance, resolution). After the passage of the Cybersecurity Law in June 2018, it was expected that at least one decree would be issued to provide further guidance and lay out certain procedures for implementation by government agencies. The government did follow that routine, attempting twice to bring a decree into effect on January 1, 2019, the day that the Cybersecurity Law took effect. However, the implementing decree was never officially issued, probably due to widespread backlash from both domestic and international actors.

The first attempt was unofficially made known to the public in early October 2018 by non-state actors, when the Ministry of Public Security (MPS), the government body in charge of drafting the decree, was in the middle of a process of consulting relevant agencies and companies.¹² A copy of the drafted decree dated October 3, 2018 was leaked to the independent media and was analyzed by technical and legal experts, with the following findings:

- The draft decree details the term “personal data” in the Cybersecurity Law to include: (1) identity data: names, dates of birth, place of birth, nationality, occupation, job title, residential address, contact address, email address, phone numbers, identity documents’ numbers, social security number, credit card number, health conditions, medical records, financial records, hobbies, talents, political opinions, ethnic origin, race, philosophical belief, social status, biological data; (2) self-made data: content that is downloaded or uploaded; (3) personal relationships: information about friends and their connections; and (4) Internet accounts, IP addresses, search logs, chat logs, time of transactions, devices information.
- Social network owners and content providers must store the above-mentioned data permanently and provide them to the government upon request. Data on IP addresses, chat logs, search logs must be stored for 36 months. If a company shuts down its operations, it is obligated to hand over all the data to the Department of Cyber Security and Hi-tech Crime Prevention (A05) of the Ministry of Public Security.
- The draft decree intended to grant relevant government agencies and enterprises one year from January 1, 2019 to prepare to store and provide data to the government. Foreign

¹² Bộ Công an muốn quản lý số thẻ tín dụng, log chat và quan điểm chính trị của người dùng Internet, *Luật Khoa*, 2018. Available at: <https://www.luatkhoa.org/2018/10/bo-cong-an-muon-quan-ly-so-the-tin-dung-log-chat-va-quan-diem-chinh-tri-cua-nguoi-dung-Internet/>

companies would also have one year to set up branch/representative offices in Vietnam as required by the law.

The draft decree, in fact, clearly intended to expand the government's authority over Internet users' personal data, granting the MPS' A05 unchecked access to the data and power to determine what to do with the data for an unlimited period of time without having to obtain consent from users who own and the company who collects the data. Expanding the scope of application and authority is a usual practice of the government when issuing decrees, although the practice is a direct violation of the law and the Constitution. However, without a proper judicial review mechanism, these violations have never been put in check, despite the fact that the Ministry of Justice has publicly admitted that tens of thousands of legal documents are either unconstitutional or illegal.¹³ On November 2, 2018, the Ministry of Public Security officially released the draft decree with minor modifications compared to the initial version. Following are the most notable modifications:

- It removed some types of personal data from its definition, such as political opinions.
- It narrowed down the authority of the Chief of A05 over companies' data, granting the Minister of Public Security the power of requesting data.

The new draft was planned to be released for public consultation for two months before taking effect on January 1, 2019. However, the government went silent shortly after announcing the new draft and has never issued the decree since then.

From the very limited public information that we were able to collect, the Minister of Public Security, General To Lam, announced in a cabinet meeting on May 30, 2020 that his ministry had submitted two draft decrees to the Office of the Government for review. There was no mention of what the two draft decrees were about. The Minister of the Office of the Government responded that because the documents involved many complicated matters, Prime Minister Nguyen Xuan Phuc had ordered a careful review and a consultation with international organizations, diplomats, foreign investors; thus, the issuance of the documents had been delayed.¹⁴

In late October 2020, Minister To Lam made another public statement announcing that his ministry had completed the drafting process of one decree and submitted it to the Office of the Government, waiting for it to be issued.¹⁵

¹³ 10 tháng, 9.017 văn bản pháp luật vi hiến, trái luật, *Tuoi Tre*, 2015. Available at: <https://tuoitre.vn/van-con-ne-nang-trong-xu-ly-van-ban-699345.htm>

¹⁴ Nội bộ không minh bạch thì khó cải cách với bên ngoài, *Vietnam's Government's website*, 2020. Available at: <http://baochinhphu.vn/thoi-su/noi-bo-khong-minh-bach-thi-kho-cai-cach-voi-ben-ngoai/367190.vgp>

¹⁵ Bộ Công an đang chờ nghị định hướng dẫn chi tiết luật An ninh mạng, *Bao Dau tu*, 2020. Available at: <https://baodautu.vn/bo-cong-an-dang-cho-nghi-dinh-huong-dan-chi-tiet-luat-an-ninh-mang-d132301.html>.

There is still no public access to the documents that General To Lam mentioned. This is potentially a direct violation of the 2015 Law on Promulgation of Legal Documents concerning the principle of transparency pertinent to the legal document drafting process (Article 5) and the requirement of consultation of draft decrees (Article 91).¹⁶ And given the fact that some legal documents in Vietnam are classified as secret documents, there is still a chance that a decree relating to the Cybersecurity Law has been issued but is covered by the Law on Protection of State Secrets.

The Government's approval for drafting a decree on protection of personal data

While the public is still not being made aware of the content of the draft decree that the government is considering, another decree has been in the making, concerning protection of personal data on the Internet.

On September 29, 2020, the Prime Minister's cabinet issued a resolution approving a decree proposal submitted by the Ministry of Public Security to start the process of drafting the said decree.¹⁷ The cabinet's website stated that the Ministry of Public Security made it clear that this was a challenging issue of the digital era in which Internet users' personal data are in need of protection to advance their right to express personal opinions and the overall right to freedom of speech.

The resolution¹⁸ sets a deadline for the submission of the draft decree in the first quarter of 2021. A file stored on the Ministry of Public Security's server shows a skeleton of the draft.¹⁹ The file cites the 2004 National Security Law and the 2018 Cybersecurity Law as legal grounds, and has a definition of "sensitive personal data" that includes "political and religious opinions", "ethnicity or race", "physical conditions", "genetic information", "biological records", "sex, sexual life", and "criminal records". The information provides us a sense of the drafting process direction, although it does not suggest anything certain.

¹⁶ Law on Promulgation of Legal Documents. Available at: <https://thuvienphapluat.vn/van-ban/bo-may-hanh-chinh/Luat-ban-hanh-van-ban-quy-pham-phap-luat-2015-282382.aspx>

¹⁷ Chính phủ thông qua đề nghị xây dựng Nghị định bảo vệ dữ liệu cá nhân, *Vietnam's Government's website*, 2020. Available at: <http://baochinhphu.vn/Chi-dao-quyet-dinh-cua-Chinh-phu-Thu-tuong-Chinh-phu/Chinh-phu-thong-qua-de-nghi-xay-dung-Nghi-dinh-bao-ve-du-lieu-ca-nhan/409104.vgp>

¹⁸ Available at: http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=2&_page=1&mode=detail&document_id=201114

¹⁹ Available at: <https://bit.ly/2WXeyvQ>

The Draft Amendment to Decree 72/2013/NĐ-CP

The Ministry of Information and Telecommunications has been quietly consulting several government agencies and companies on a draft amendment to Decree 72/2013/NĐ-CP, which is widely known as one of the main regulations on Internet freedom in Vietnam.²⁰ Although the ministry has publicized the amendment on their website, the mainstream media in Vietnam has not paid much attention to its development. Provisions concerning online speech include:

- Foreign entities that provide cross-border information to more than 1 million users in Vietnam or store data servers in Vietnam must inform the ministry about their identities and contact details.
- Foreign entities must cooperate with the ministry to remove information deemed to be illegal under Vietnam's laws. Otherwise, their services shall be blocked in Vietnam.
- Domestic entities that operate data centers must inform the ministry as soon as they discover illegal information stored in their facilities.

By proposing the above-mentioned amendments, the ministry has the intention of putting Decree 72 in line with the 2018 Cybersecurity Law, effectively providing detailed guidance on how to implement the law. If approved by the cabinet, the amended decree will play an important role in regulating online speech in Vietnam, especially affecting foreign service providers such as Facebook, Twitter, Google, etc.

THE IMPLEMENTATION OF THE LAW

Although in theory, the 2018 Cybersecurity Law is not being implemented due to the lack of an accompanying implementing decree, we have witnessed a surge in cases of citizens being punished for online speech either via administrative or criminal measures or through increased pressure on foreign online service providers. Freedom House's Freedom on the Net 2020 report scores Vietnam 22/100, two points less than its previous 2019 report due to the worsened situation²¹, while Reporters Without Borders ranks Vietnam at 175/180 countries on its 2020 Press Freedom Index, which is one grade lower than the 2019 ranking.²²

²⁰ Available at:

https://mic.gov.vn/Pages/DuThaoVanBan/XemYKienDongGop.aspx?iDDTVB_DuThaoVanBan=1991&replyUrl=/pages/duthaovanban/danh sachduthaovanban.aspx

²¹ Freedom on the Net 2020, *Freedom House*, 2020. Available at: <https://freedomhouse.org/country/vietnam/freedom-net/2020>

²² Reporters Without Borders, 2020. Available at: <https://rsf.org/en/vietnam>

In the following part, we categorize and analyze how the Vietnamese government has implemented the existing Internet regulations.

Criminal punishment

The Penal Code is undoubtedly one of the most potent tools that the Vietnamese government uses to suppress freedom of expression in general and online speech in particular. The code has been traditionally used to persecute activists, independent journalists, and dissidents. However, over the past two years, we have witnessed a new development in the way the government persecutes citizens: they go after ordinary citizens who have no considerable background of activism.

According to The 88 Project’s 2019 report on political prisoners and activists at risk in Vietnam, “[t]he crackdown worsened during the year in several notable areas, including the ramped up arrests and prosecution of ordinary citizens who expressed their opinions on online platforms. Forty-percent of those arrested in 2019 were online commentators with no extensive history of activism and almost half of those arrested in 2019 were charged with ‘conducting propaganda against the state,’ an increase from previous years. Seventeen people were sentenced to between 5-9 years in prison, and ten were sentenced to 10 years or more.”²³

Cases of ordinary citizens being targeted (data collected and verified by The 88 Project):

- On August 23, 2019, Duong Thi Lanh was sentenced to eight years in prison and two years of probation by The People’s Court of Dak Nong province for “making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam,” under Article 117 of the 2015 Penal Code. According to the indictment, the investigation police stated that from June 2017 onward, Lanh had created and used 13 Facebook accounts to make over 300 postings with anti-state content.²⁴
- On August 21, 2019, Huynh Dac Tuy, director of Tuy Nguyet construction company, was sentenced to six years in prison and three years of probation (story in Vietnamese). He was charged with “producing, storing, disseminating and propagating information, documents against the Socialist Republic of Vietnam,” in accordance with Article 117 of Vietnam’s 2015 Criminal Code, for posting commentary on Facebook that was critical of the state. He is one in a string of people in recent months who have been interrogated, detained, and/or imprisoned for sharing their views online.²⁵

²³ 2019 Report on Political Prisoners and Activists at Risk in Vietnam, *The 88 Project*, 2020. Available at: <https://the88project.org/2019-report/>

²⁴ Available at: <https://the88project.org/profile/299/duong-thi-lanh/>

²⁵ Available at: <https://the88project.org/profile/270/huynh-dac-tuy/>

- Quach Nguyen Anh Khoa is an ordinary citizen with no professional or extensive history of activism. He only used his Facebook account to criticize the Party leadership and the public management of the current regime. Khoa’s arrest date is unknown, thus we listed his arrest date as his trial date for the purposes of this profile. He was tried on June 13, 2019 and sentenced to six months in prison. He was likely released from prison by the end of 2019. Since his arrest date is unknown, so is his actual release date.²⁶

Cases of activists and independent journalists being targeted (data collected and verified by The 88 Project):

- Three members of the Independent Journalists Association of Vietnam (IJAVN) were sentenced to a total of 37 years in prison after a trial lasting half a day [on January 5, 2021]. Pham Chi Dung, 55, received 15 years; Nguyen Tuong Thuy, 69, received 11 years; and Le Huu Minh Tuan, 32, received 11 years. All three were convicted of “anti-state propaganda” under Article 117 of the 2015 Criminal Code. Mr. Dung is a high-profiled figure among both Ho Chi Minh City Communist Party and pro-democracy activists. The website of the Independent Journalists Association of Vietnam, which is also a news website called the Vietnam Times (Viet Nam Thoi Bao), has become inaccessible after Dung’s arrest.²⁷ The trial’s judges convicted the three defendants based on the Procuracy Office’s indictment that says the defendants committed the crime as they wrote and published “anti state” content via the online newspaper Vietnam Times.²⁸
- Democracy activist and independent journalist Pham Doan Trang was arrested on October 6, 2020 and charged with “propaganda against the state” under the Article 88 of Vietnam’s 1999 Penal Code and “producing, storing, disseminating and propagating information, documents against the Socialist Republic of Vietnam” under the Article 117 of the 2015 Penal Code. She is one of the most high-profile activists and leading independent journalists who authored high-quality publications on politics, laws, and human rights.²⁹ On December 28, 2020, the Vietnamese government, through its Permanent Mission to the United Nations Office in Geneva (Switzerland), responded to a joint communication sent by various UN mandate holders that “the arrest of Pham Thi Doan Trang is to investigate violations of the law, abuse of social network and internet to post information that distorts the truth with a view to causing public anxiety, slandering and harming the reputation of individuals and organizations. These acts were conducted for the purpose of overthrowing the State of Vietnam. Therefore, the arrest of Pham Thi Doan Trang in order to investigate

²⁶ Available at: <https://the88project.org/profile/455/quach-nguyen-anh-khoa/>

²⁷ Available at: <https://the88project.org/profile/431/pham-chi-dung/>

²⁸ 37 năm tù cho ba nhà báo tự do, *Luat Khoa*, 2021. Available at: <https://www.luatkhoa.org/2021/01/37-nam-tu-cho-ba-nha-bao-tu-do/>

²⁹ Available at: <https://the88project.org/profile/286/pham-doan-trang/>

and clarify her offences is necessary and totally consistent with conventions on human rights to which Vietnam is a party, including Article 19.3 of the ICCPR.”³⁰

- Journalist Truong Chau Huu Danh was arrested in Can Tho Province on December 16, 2020 and charged with “abusing democratic freedoms” under Article 331 of the 2015 Criminal Code. The 38-year-old has worked for several state-run newspapers. In recent years, he became better known for supporting anti-corruption protests against the “Built, Operate and Transfer” (BOT) tollbooths and for posting remarks on Facebook about the violent police raid in Dong Tam Commune and other social unrests. Colleagues describe him as an even-keeled, objective reporter and expressed surprise at his arrest.³¹

Administrative measures

Since 2018, we have observed that the government, both at the central and local levels, has actively used administrative measures to fine ordinary citizens for online speech. Decree 174 and its successor, Decree 15, form the legal ground for fining people.

We have documented dozens of cases from 2018 to 2020 and found that the vast majority of them involved allegedly making/spreading fake news on Facebook. Many of them occurred during the COVID-19 pandemic. However, some of the COVID-19-related cases in fact involved criticisms against government officials. Below is a sample of cases compiled from the mainstream media.

- Ms. Nguyen Thi Huyen Trang was fined 12.5 million VND (approximately US\$550) on August 6, 2019 by Bac Ninh Province’s local government for posting allegedly fake news on Facebook. Her post contains a picture of two young men robbing a bag from a woman on the street, saying “Widely known as a livable city but the Bac Ninh City recently has a lot of robbery cases, angering the public”, and “Truly panic. Here is the picture, plate number 99, robbing in daylight.”³²
- Mr. Le Hoai Nam was fined 10 million VND (approximately US\$450) on August 30, 2019 by Lam Dong Province’s local government for posting, two days earlier, information on Facebook deemed fake news by the government. His post says: “Right now, near Lien Nghia market, a cruel beheading just happened. The police are currently investigating the case.”³³

³⁰ Available at: <https://dvov.org/wp-content/uploads/2021/01/NV-163-VNM.20.pdf>

³¹ Available at: <https://the88project.org/profile/378/truong-chau-huu-danh/>

³² Bị phạt 12,5 triệu đồng vì đăng tin sai sự thật lên Facebook, *Thanh Nien*, 2020. Available at: <https://thanhvien.vn/thoi-su/bi-phat-125-trieu-dong-vi-dang-tin-sai-su-that-len-facebook-1111670.html>

³³ Xử lý vi phạm hành chính hành vi cung cấp nội dung thông tin sai sự thật trên mạng xã hội (Facebook.com), *Lam Dong’s Department of Information and Communications*, 2019. Available at:

- N. T. M. K. was fined 10 million VND (approximately US\$450) on August 4, 2020 by Binh Phuoc Province’s local government for posting what amounted to hearsay on Facebook: “Everyone, Thuan Loi has positive cases already. Dong Xoai, be careful. Try to protect yourself until this pandemic is over.”³⁴
- Ms. Vu Thi Hanh was fined 7.5 million VND (approximately US\$350) on August 22, 2020 by Thai Nguyen Province’s local government for posting what the government considered as fake news on Facebook: “The characteristics of coronavirus is similar to HIV and Ebola; sharing prescription, symptoms, and methods of prevention.”³⁵
- N. A. D. was fined 7.5 million VND (approximately US\$350) on October 9, 2020 by Gia Lai Province’s local government on allegation of posting fake news on Facebook. The content of his posts, dated from 2018, are said to have insulted government officials and police.³⁶

In addition, the COVID-19 pandemic has effectively created a convenient situation for the government to put in place new measures to silent critics and to surveil citizens on a massive scale. Not only the administrative sanctions are being utilized on a scale that had never been seen before to punish online speech, under the guise of fighting the pandemic, the government took the unprecedented move of forcing citizens to install a tracing App called Bluezone that has the capability to collect and upload users’ contact history to government’s servers. Technical experts have raised serious concerns about its privacy threat,³⁷ but the government has successfully had the App installed on a sizable number of devices: 10,000,000 installs through Google Play³⁸ by December 16, 2020; although there are no statistics of iPhone installs, there are almost 20,000 people who have rated it on Appstore.³⁹

Forcing foreign online service providers to comply with local law

Since the adoption of the 2018 Cybersecurity Law, the Vietnamese government has become significantly more aggressive in forcing foreign online service providers, such as Facebook and

<https://lamdong.gov.vn/sites/stttt/thanhtra/thanhtr-bc-xb/SitePages/xu-ly-vi-pham-hanh-chinh-hanh-vi-cung-cap-noi-dung-thong-tin-sai-su-that-tren-mang-xa-hoi-facebookcom.aspx>

³⁴ Phạt 10 triệu đồng cô gái đưa tin sai về COVID-19, *Cong an Nhan dan*, 2020. Available at:

<http://cand.com.vn/Thong-tin-phap-luat/Xu-phat-1-phu-nu-dua-tin-ve-COVID-19-sai-su-that-605706/>

³⁵ Xử phạt đối tượng đăng tin sai sự thật liên quan đến dịch COVID-19, *Thai Nguyen TV*, 2020. Available at: <https://thainguyentv.vn/xu-phat-doi-tuong-dang-tin-sai-su-that-lien-quan-den-dich-covid-19-80810.html>

³⁶ Đăng sai sự thật lên Facebook, bị phạt 7,5 triệu đồng, *Phap luat TP. Ho Chi Minh*, 2020. Available at: <https://plo.vn/an-ninh-trat-tu/dang-sai-su-that-len-facebook-bi-phat-75-trieu-dong-943002.html>

³⁷ Bluezone - Electronic mask, *App Assay*, 2020. Available at: <https://www.appassay.org/apps/bluezone/>

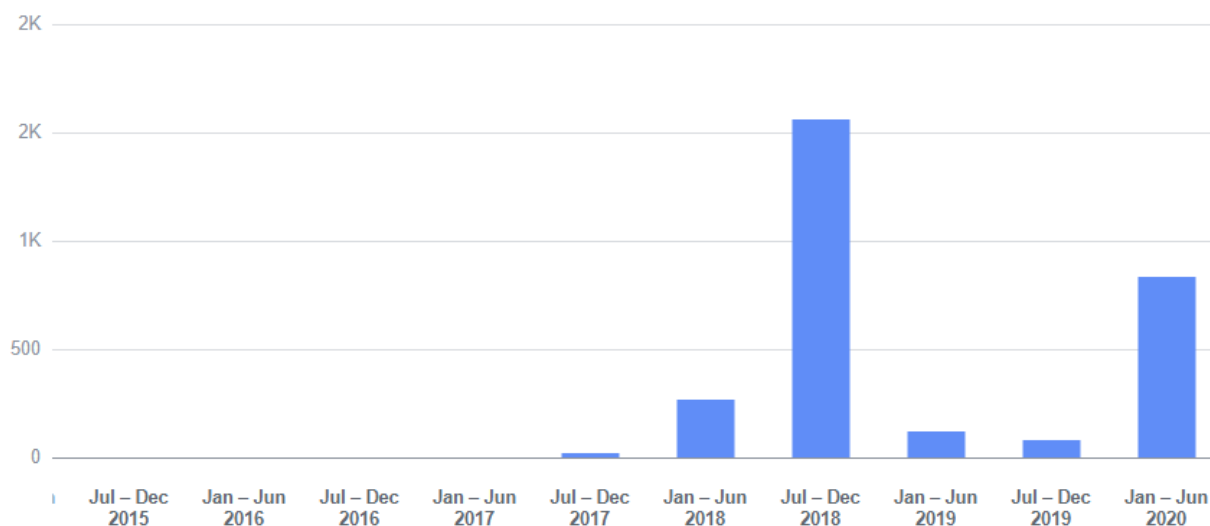
³⁸ Available at: <https://play.google.com/store/apps/details?id=com.mic.bluezone>

³⁹ Available at: <https://apps.apple.com/vn/app/bluezone/id1508062685?ls=1>

Google, to comply with local law. We have analyzed the recent developments and categorized the government's measures into three groups: formal requests, technical measure, and economic measure.

Formal requests: The Ministry of Information and Communications has made large scale requests to Facebook and Google, demanding them to comply with local law by giving up users' data and restricting content.

According to a report submitted to the National Assembly by Minister of Information and Communications, Mr. Nguyen Manh Hung, in October 2020, Facebook has removed over 2,000 posts in 2020 alone, an increase of 500% compared to 2019. The rate of requests being accepted by Facebook is 95%. Especially requests to remove (alleged) fake news about COVID-19 has been accepted 100%. The rate is about 90% with Google. Minister Nguyen Manh Hung emphasized that the rate of blocking/removing content deemed to be propaganda against the Party, the State and its leaders has increased to the highest level ever.⁴⁰ Facebook's CEO Mark Zuckerberg admitted under oath during a hearing at the United States' Senate on November 17, 2020 that he believed Facebook might have suspended postings by land rights activists per the Vietnamese government's requests, and that they had been trying to comply with local laws.⁴¹ The chart below shows the numbers of content restrictions conducted by Facebook⁴² throughout the years.



⁴⁰ Facebook sẽ chặn quảng cáo chính trị từ các tài khoản phản động, *Cong an Nhan dan*, 2020. Available at: http://congan.com.vn/tin-chinh/facebook-se-chan-quang-cao-chinh-tri-tu-cac-tai-khoan-phan-dong_100905.html

⁴¹ Mark Zuckerberg bị Thượng nghị sĩ Mỹ chất vấn vì 'cúi mình' trước chính phủ Việt Nam, *VOA Vietnamese Services*, November 18, 2020. Available at: <https://www.voatiengviet.com/a/mark-zuckerberg-b%E1%BB%8B-th%C6%B0%E1%BB%A3ng-ngh%E1%BB%8B-s%C4%A9-m%E1%BB%B9-ch%E1%BA%A5t-v%E1%BA%A5n-v%C3%AC-c%C3%BAi-m%C3%ACnh-tr%C6%B0%E1%BB%9Bc-ch%C3%ADnh-ph%E1%BB%A7-vi%E1%BB%87t-nam/5667083.html>

⁴² Facebook Transparency Report. Available at: <https://transparency.facebook.com/content-restrictions/country/VN>

Technical measure: In early 2020, following the violent incident in Dong Tam village in which the government was widely condemned for human rights violations, the Vietnamese government took an unusual measure to force Facebook to comply with the local law: slowing down Facebook traffic in Vietnam for months. Facebook officials told Reuters that the traffic restrictions were carried out by state-owned data centers where Facebook stored its cached data, to put more pressure on Facebook to restrict anti-state content.⁴³ The government seemed to remove the restrictions in early April as Facebook complied with its requests. Facebook services resumed to normalcy, and, as mentioned above, in October the Minister of Information and Communications reported that the rate of accepted requests had been all time high.

Economic measure: According to Minister Nguyen Manh Hung’s report, his ministry has also reached an agreement with Facebook to block advertisements sponsored by pages or accounts of “reactionary, terrorist organizations.” Consequently, these pages and accounts can’t reach certain categories of audience, thus limiting these users/actors from having further influence over other Facebook users.

Minister Nguyen Manh Hung also reported that Google had agreed to not share advertising revenue for content makers (especially Youtubers and bloggers using Google AdSense) whose content was considered illegal under local law. Given the fact that advertising revenue share is a major reason, if not the most important reason, why people produce anti-state content on Youtube, this new development will potentially discourage a considerable number of people from joining the video market on Youtube, effectively making it easier for the government to handle information published on the platform.

The role of the Department of Cybersecurity and High-Tech Crime Prevention and Control (Ministry of Public Security)

The Department of Cybersecurity and High-Tech Crime Prevention and Control (A05) is a recently established government agency under the Ministry of Public Security, operating since August 2018, two months after the passage of the Cybersecurity Law.⁴⁴ Its functions are not new, however, because the department actually resulted from the merger of two MPS’s agencies: the Department of Cybersecurity (established in 2014) and the Department of High-Tech Crime Prevention (established in 2010).

⁴³ Exclusive: Facebook agreed to censor posts after Vietnam slowed traffic - sources, *Reuters*, 2020. Available at: <https://www.reuters.com/article/us-vietnam-facebook-exclusive-idUSKCN2232JX>

⁴⁴ Cyber Security Department announces action plan for remaining months of 2018, *Ministry of Public Security*, 2020. Available at: <http://en.bocongan.gov.vn/news-events/cyber-security-department-announces-action-plan-for-remaining-months-of-2018-t5129.html>

Since then, A05 has been playing an active role in controlling the Internet in Vietnam, especially in controlling the flow of information. According to the MPS's report posted on its website:

“In 2019, the department successfully investigated 27 specialized criminal cases and coordinated with other investigation agencies at all levels to prosecute 15 criminal cases and 121 arrestees as well as extradite 555 foreign criminals to its foreign counterparts.

“The department also detected and successfully handled many cases of State secret leaks on the Internet while expanding cooperation with foreign partners in the fight against hi-tech crime.

“The department also actively provided correct information in the fight against fake and distorted information in the cyberspace. During the year, it, in coordination with Central-level agencies, ministries and localities, maintained safety and security for the national information network as well as information networks of ministries, agencies and local authorities.”⁴⁵

We do not have access to the department's data on their operations in 2020, but a Vietnamese article published on May 28, 2020 in the MPS's magazine called *An ninh Thế giới* (*Global Security*) clearly shows how deeply the department was involved in controlling online speech during the COVID-19 pandemic: “Directly countered 13 special targets and coordinated with local police to verify the identity of and summon 1,300 people, criminally charged 4 people, and fined 300 people.”⁴⁶

We have records of the department's name being shown in summon notices sent to dissidents such as Dr. Nguyen Quang A⁴⁷ (saying Dr. Nguyen was summoned by the Hanoi Police per the department's request) and being mentioned in press reports on the arrest of independent journalists Truong Chau Huu Danh on December 17, 2020⁴⁸ (saying the Can Tho City Police charged and arrested Mr. Truong in coordination with A05).

It would take further studies to understand the exact role of A05 and what the department has been doing. However, the available data suggests that the Department of Cybersecurity and High-Tech Crime Prevention and Control and the Ministry of Information and Communications not only play key roles in controlling the Internet by the law, but also actively implement the law.

⁴⁵ Department of Cyber Security and Hi-tech Crime Prevention requested to effectively prevent cyber crimes, *Ministry of Public Security*, 2019. Available at: <http://en.bocongan.gov.vn/tintuc/Pages/news-events.aspx?ItemID=6391>

⁴⁶ Những cuộc đấu trí trên không gian mạng, *An ninh Thế giới*, 2020. Available at: <http://antg.cand.com.vn/Khoa-hoc-Ky-thuat-hinh-su/Nhung-cuoc-dau-tri-tren-khong-gian-mang-596629/>

⁴⁷ Facebook Nguyen Quang A, accessed on December 23, 2020. Available at: <https://www.facebook.com/photo?fbid=2980936135467742&set=pcb.2980932885468067>

⁴⁸ Đăng khám xét nơi ở của Facebooker Trương Châu Hữu Danh, *PLO*, 2020. Available at: <https://plo.vn/an-ninh-trat-tu/dang-kham-xet-noi-o-cua-facebooker-truong-chau-huu-danh-956441.html>

RECOMMENDATIONS

With the Vietnamese government becoming more sophisticated and aggressive in regulating the Internet, we recommend that international organizations, foreign governments, and civil society organizations:

- To monitor the implementing regulations as they are drafted and convince/pressure the Vietnamese government to adopt more human rights-friendly standards, especially those agreed upon in signed free trade agreements (FTAs) or during FTA negotiations;
- To monitor and pressure multinational technology companies, such as Facebook and Google, to improve their content policies towards universal values of freedom of expression, resisting unreasonable government requests from Vietnam and other countries;
- To sanction Vietnam and the Vietnamese government officials using provisions of FTAs and Magnitsky-like laws for their violations of Internet freedom in Vietnam.
- To raise awareness among Vietnamese citizens of the Internet regulations in general and the Cybersecurity Law in particular, as well as how to protect privacy and enhance security while using the Internet.

Appendix A -- Through classification of state secrets, Vietnam's Prime Minister increasingly restricts freedom of religion

Analysis by Vietnam Civil Rights Project (a joint project of BPSOS and VN-CAT)

Vietnam's Law on Protecting State Secrets (Law No. 29/2018/QH14) prescribing the handling, use, and protection of state secrets became effective on July 1, 2020. On February 28, 2020, the Central Government issued Decree No. 26/2020/NĐ-CP, which became effective on July 1, to elaborate on certain provisions of this law.

On July 7, 2020, the Prime Minister signed Decision 960/QĐ-TTg, pursuant to the input from the Minister of Home Affairs and Minister of Public Security, designating categories of state secrets. Parts of the law and the Prime Minister's Decision No. 960/QĐ-Ttg severely violate the Vietnamese people's freedom of religion.

For example, Clause 1.c, Article 7 of the Law on Protecting State Secrets, specifies that "Strategy and projects related to the people, religion, and undertakings related to the people or religion aiming to protect national security and ensure public order and security," are state secrets. Furthermore, Article 9 of this law specifies that the Prime Minister has the responsibility for issuing the list of state secrets based on lists proposed by a number of individuals, agencies and organizations.

Decision No. 960/QĐ-Ttg formalizes a list of state secrets at different security classification levels, for domestic applications. The following provisions directly affect the freedom to religion or belief and may derogate Article 18 of the International Covenant on Civil and Political Rights.

State secrets at ultra-secret level:

(Article 1, Clauses 1 and 2)

- Not yet released action plans for approaches, strategies, objectives, policies, countermeasures, and processes to address complex, national level issues related to belief and religion.
- Documents related to those who use the cover of belief or religion to conduct activities aiming to overthrow the government or undermine national independence, sovereignty, unity, territorial integrity, and the socialist system of government and the Socialist Republic of Vietnam.

State secrets at top secret level:

(Article 2, Clauses 1 and 4)

- Proposals, plans, action plans, guidance, notifications of guidance, conclusions and decisions of heads of ministries, committees and organizations of the central government; the legislative branch (People's Council) and executive branch (People's Committee) of provinces; cities under the authority of the central government; and the executive branch of districts, cities, towns under the authority of provinces when a proposal, plan, decision, etc. is related to an assessment of the

effects on politics and national security, of the operation of a religious organization or belief-based establishment;

- Information and documents related to belief and religion, including:
 - Programs, plans, reports/minutes of meetings, reports on results, notices on the outcomes of discussions by senior officials of ministries, committees, government agencies, Party secretaries of provinces and cities, the legislative branch and executive branch of governments of provinces and cities under the authority of the central government with clergy members, functionaries, monastics, dignitaries in important positions in their religious organizations or subordinate organizations; foreign-based organizations and individuals in important positions in their religious organizations or subordinate organizations;
 - Plans, reports, guidance, and documents requesting information on official positions with respect to complex situations involving religious or belief-based activities impacting national security, politics, and foreign relations;
 - Documents related to comments on and evaluation of personnel of religious or belief-based organizations, the activities of such organizations, the activities of entities with a political agenda, and activities of individuals in religious organizations and their subordinate organizations which affect national security;
 - Reports containing comments or evaluation of those using religious or belief-based activities to undermine national security, public order and security.

State secrets at the secret level:

(Article 3, Clauses 8 and 9.a)

- Information and documents related to belief and religion, including:
 - Not yet released documents and correspondence related to the resolution of complex issues involving belief and religion;
 - Not yet released action plans, guidance, proposals, or requests for input pertaining to resolving complex issues involving belief and religion;
 - Documents and information related to the activities of members of religious organizations and their subordinate organizations when competent government officials have selected and placed them in their positions, or have struggled against them;
 - Not yet released reports on government activities targeting belief and religion which can cause political and socio-economic impacts;
 - Not yet released proposals, project plans and plans related to long-term positions, policy and approaches for managing activities targeting belief and religion when such materials can cause socio-economic impacts;
 - Notifications and reports related to belief and religion containing assessments of adherents, religious and belief-based organizations, religious individuals; assessments

- of the landscape of belief and religion; and top-level directions on how the government should deal with the belief and religion sector;
- Government expenditures on countermeasures targeting members of religious organizations and their subordinate organizations.
- Databases containing materials related to religion and belief or related to public administration matters which have not yet been made public, when such databases are kept at national records repositories and records repositories of provinces and cities under the authority of the central government.

The above-mentioned provisions would have dire consequences on three aspects of freedom of religion.

First, freedom of religion is a basic human right. This has been affirmed in Article 18 of the International Covenant on Civil and Political Rights. Vietnam has codified this in Article 24 of the 2013 Constitution and Article 6 of the 2016 Law on Belief and Religion. Consequently, documents which have the effect of regulating or prescribing compliance with laws related to this right must contain language aiming to protect the right instead of conveying the intent to direct from the top, restrict, or ban the exercise of this right. The Law on Protecting State Secrets paved the way for Decision 960 to use security classification to put religion-related issues out of the people's reach.

Second, the Law on Protecting State Secrets and Decision 960 set forth a series of measures to grossly and visibly intervene in the religious sphere in a coercive and manipulative way. The ruling party is authorized to set forth its "policy and stance with respect to religion" and then unilaterally ban access thereto, including denying the opportunity to suggest modifications, in view of the ultra-secret classification. This indicates that the Vietnamese government still affirms its total opposition to religion and considers religion to be a mortal enemy which it must fight instead of cooperatively seeking a path to co-existence.

Third, Article 2.4 of Decision 960 is particularly troubling in light of the government's favorable treatment of religious organizations operating under its umbrella, including: (1) those created by the government for use as instruments to repress independent churches that the government has outlawed; (2) those co-opted by the government in return for being registered or recognized. Anyone exposing these organizations' collaboration with the government could be prosecuted for possessing and/or disclosing top state secrets. On the other hand, members of religious organizations targeted by the government would not be able to defend themselves if information used against them is treated as top state secret and therefore not accessible to them or their lawyer. The ramification of this decision is not hard to imagine considering that a number of recent arrests have been reportedly made based on charges of unauthorized possession or dissemination of state secrets. Decision 960/QĐ-TTg would only aggravate the already negative impacts of the Law on Belief and Religion on followers of religions that are outlawed, religious groups that are not recognized by the government, and religious freedom advocates.

In addition, the two documents authorize the ruling party to use the national budget to buy or manipulate influential clerics. This is very unconscionable because, as a result of Oriental culture, Vietnamese religious adherents still look up to their spiritual leaders to varying degrees. Thus, the government needs only to corrupt clerics to achieve its goal of subjugating religious organizations. In Decision 960, funds earmarked for influencing or co-opting clerics are publicly called “expenditures on countermeasures targeting members of religious organizations”.

The Law on Protecting State Secrets and Decision 960 are real threats to freedom of religion and warrant scrutiny by UN mandate holders and the international community in general.

References:

Original text of Decision 960:

<https://thuvienphapluat.vn/van-ban/bo-may-hanh-chinh/Quyet-dinh-960-QD-TTg-2020-Danh-muc-bi-mat-nha-nuoc-linh-vuc-Noi-vu-446809.aspx>

English translation by BPSOS (unofficial):

https://dvov.org/wp-content/uploads/2020/10/PM-Decision-Secrets_En-960_QD-TTg.pdf

Appendix B -- Vietnamese Prime Minister Continues to Issue Executive Prescriptions Affecting Religious Freedom

Analysis by Vietnam Civil Rights Project (a joint project of BPSOS and VN-CAT)

On November 3, 2020, the Prime Minister of Vietnam promulgated Decision 1722/QĐ-Ttg to prescribe the handling of state secrets designated by the Communist Party. This document containing prescriptions which rank lower than laws was intended to enable the implementation of the Law on Protecting State Secrets and was effective on the date it was signed. The document contains a number of noteworthy provisions:

Nebulous Definition of State Secrets

The government is a special societal organization. It is the only organization brought into existence by the “capital investments” of all those who live in a country or an electoral district. This capital consists of the human rights and civil rights of all the people, regardless of their social class. For this reason, a government is the sole organization with the authority to govern a country or a part thereof. The government keeps public life in motion by using the legal system that the people and the government have jointly established through balancing various interests.

Political parties are also organizations with deep socio-historical roots. A political party is an organization whose members share the same goals and views. Political parties do not include all the people. However, a political party may be in a position to exercise the power of the government. This particular aspect dictates that the party must be constrained by the laws which the government has promulgated.

It follows that there cannot be STATE SECRETS BASED ON THE PARTY’S DEFINITION. State secrets should be defined with the people in mind. A political party needs to protect its own secrets, the secrets of a group of individuals.

It is up to this group to create a list of their secrets and decide how to handle such secrets. The Prime Minister, as the head of the Executive Branch, should not have issued the list of secrets for a group of individuals.

Having said that, a political party may operate only within boundaries prescribed by the law and, therefore, any list of party secrets should be developed through legislation by the National Assembly.

Appointment of Communist Party Members as Religious Leaders, a form of Religious Subversion

Just like Decision 960/QĐ-Ttg issued by the Prime Minister, which was effective as of July 7, 2020, Decision 1722/QĐ-Ttg lists several secrets pertaining to religious organizations. The security classification varies, depending on the category of secrets.

The Top Secret and Ultra Secret classification apply to measures addressing complex religious issues, decisions, findings, notices, reports, communications, and guidance on religious issues issued by the Politburo, Secretariat, and mass mobilization committees at the central government level, provincial secretariat level, and district secretariat level. (Clause 5 of Article 1 and Clause 7 of Article 2).

The Secret classification applies to the following types of documents: work notepads, work diaries, meeting minutes notebooks, progress meeting minutes notebooks of secretariats, agencies, and party organizations containing materials on complex issues of ethnic minorities and religion; reports, notices, communications and guidance issued by secretariats, mass mobilization committees of secretariats, and agencies and party organizations containing materials on projects aiming at ethnic minorities, religion and belief, and addressing national security and public order and security; the formation of religious associations and alliances, etc. (Clause 1.d of Article 3 and Clauses 7.a and 7.b of Article 3)

A common thread of these provisions is that they treat religion as an issue to resolve. Consequently, such legal prescriptions⁴⁹ clearly violate religious freedom which should be protected by the law as stipulated by Article 18 of the International Covenant on Civil and Political Rights. Additionally, the prescriptive provisions link religious issues to national security and ethnic minorities. This linkage can be exploited to justify religious persecution and incite the undermining of national solidarity through promoting chauvinism in the mainstream for the purpose of suppressing small religious communities.

Furthermore, another extremely dangerous instrument is the Secret classification provision in Clauses 7c and 7d of Article 3: “c) Not yet released resolutions, decisions, findings, instructions, statements, reports, communications and guidance issued by secretariats and party organizations at all levels on the selection and placement, by competent authorities, of party members inside religious organizations to implement their mission.

d) Reports and documents issued by secretariats and party organizations at all levels on the selection, placement, and activation of core groups and movements within religious organizations.”

Using such language, the government has conferred the mantle of legality on its planting agents in religious organizations to gather information or subvert religious activities.

Thus, together with Decision 960 which conferred the mantle of legality on using money and the promise of high positions to buy clerics, Decision 1722 has fully developed the tactics used to control religious organizations through the manipulation or corruption of the spiritual leadership of religious organizations.

⁴⁹Prescriptions: Documents or other types of messaging containing prescriptive provisions used repeatedly to adjust a relationship.

What Led up to This?

Each issue has a causal factor and fallout. Here, the cause is a logic chain which we need to look at.

Stepping back a few years, we can easily see that the Vietnamese government used extremely violent and lawless measures to persecute religious organizations. From the unjustifiable 1978 verdict aiming to destroy the Cao Dai Church to its persecution of thousands of Catholics and Protestants and mass imprisonment of victims. However, such measures are no longer used or even used more discreetly but have been replaced with legal measures. From this, we need to first recognize that the Vietnamese government must resort to more subtle and discreet measures as it is losing its dominance while the people are becoming more knowledgeable and the international community continues to be watchful.

This subtle and discreet measure reflects a clever approach focusing on the Achilles heel of religious followers who are overly dependent on their spiritual leaders. The concentration of power in any individual, coupled with self-interest, will always pose a potential risk in terms of turning this leader into an autocrat in deeds and in thoughts whom the regime might be able to control or buy.

Consequently, if we examined the above-mentioned logic chain from a strategic vantage, we should be able to quickly see the approach to counter the strategy of using religious leaders to subjugate their adherents. Although the government has shown its cunning in adopting the new strategy, this change is also an indicator of the people's growth in awareness and capacity. The above-mentioned issue which just surfaced will be resolved if every adherent refuses to let anyone else affect his or her religious freedom. Then, the new strategy will not be able to bring the results which the Vietnamese government hopes for.

An Illustrative Case of Communist Party Member in the Role of a High-Ranking Buddhist Monk

On March 13, 2018 the official website of **The People's Army of Vietnam** printed the obituary for the Most Venerable Thich Thanh Sam, disclosing that he was recipient of the Vietnamese Communist Party's 50-year membership insignia. Below is our English translation of the obituary:

Most Venerable Thich Thanh Sam passed away

On March 13, 2018, the Central Religious Affairs Committee issued the following announcement on the funeral of Most Venerable Thich Thanh Sam:

Most Venerable Thich Thanh Sam - Deputy Leader, Clerical Council of the Vietnam Buddhist Church - was a high-ranking cleric of the Vietnam Buddhist Church who was influential and highly respected by Buddhist clergy members and Buddhist followers in Vietnam and abroad for

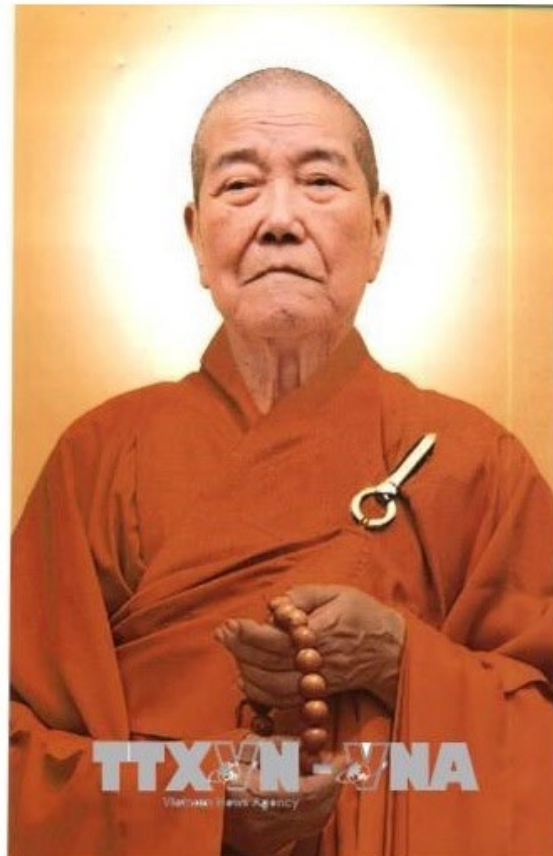
his many contributions to Buddhism and the people. He received several awards: First Class Independence Award, Third Class Independence Award; Second Class War of Resistance Award; National Solidarity Medal; and a plaque for his 50-year Communist Party membership.

Original obituary: <https://www.qdnd.vn/ban-doc/tin-buon/hoa-thuong-thich-thanh-sam-vien-tich-533604>

Hòa thượng Thích Thanh Sam viên tịch

Ngày 13-3-2018, Ban Tôn giáo Chính phủ đã có thông báo về lễ tang Hòa thượng Thích Thanh Sam, với nội dung như sau:

Hòa thượng Thích Thanh Sam - Phó Pháp chủ Hội đồng Chứng minh Giáo hội Phật giáo Việt Nam, một vị giáo phẩm cao cấp của Giáo hội Phật giáo Việt Nam, có uy tín và ảnh hưởng lớn đối với Tăng ni, Phật tử trong và ngoài nước, có nhiều đóng góp cho đạo pháp và dân tộc. Hòa thượng đã được tặng thưởng các danh hiệu: Huân chương Độc lập Hạng Nhất, Ba; Huân chương Kháng chiến Hạng Nhì; Huy chương Đại đoàn kết toàn dân tộc; Huy hiệu 50 năm tuổi Đảng.



Hòa thượng Thích Thanh Sam