



JOINT SUBMISSION RESPONDING TO GENERAL ASSEMBLY RESOLUTION 74/157 ON “THE SAFETY OF JOURNALISTS AND THE ISSUE OF IMPUNITY”

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EXECUTIVE SUMMARY

This joint submission responds to the call for input by the Chief of Rule of Law and Democracy Section of the Rule of Law, Equality and Non-Discrimination Branch, Office of the United Nations High Commissioner for Human Rights. It was collectively prepared by:

- Boat People SOS (BPSOS)
- Independent Journalists Association of Vietnam (IJAVN)
- Vietnam Coalition Against Torture (VN-CAT)

This submission builds on comprehensive research of Vietnam's Internet regulations conducted by BPSOS in 2018¹ and BPSOS's joint submission to the UN Special Rapporteur on Freedom of Expression in February 2021,² and provides updated information on the central and local governments' practices of implementing the laws and regulations that restrict freedom of expression, both online and offline. In addition to the controversial Cybersecurity Law passed by the National Assembly in June 2018, the Vietnamese government has issued decrees that further restrict the freedom of expression on the Internet. 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. At the same time, the government has sent an alarmingly large number of journalists to prison for violating Article 117 of the Vietnamese penal code for "creating, storing and disseminating information and materials against the Socialist Republic of Vietnam" and Article 331 for "abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens."



1 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>

2 Disinformation: threat to religious and indigenous communities and to human rights defenders in Vietnam, joint submission to the UN Special Rapporteur on Freedom of Expression, February 15, 2021. Available at: <https://dvov.org/wp-content/uploads/2021/04/BPSOS-Analysis-of-Vietnam's-Internet-freedom-situation-following-the-adoption-of-the-2018-Cybersecurity-Law-Jan-2021.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:³

- "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)

More information about Vietnam's human rights obligations under international law can be found in the recent report titled "Dictating the Internet: Curtailing Free Expression and Information Online in Vietnam" by the International Commission of Jurists.⁴

3 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

4 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>

UPDATES ON LAWS AND REGULATIONS

Decree 15/2020/ND-CP

On February 03, 2020, the Vietnamese government issued Decree 15/2020/ND-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/ND-CP (“Decree 174”).

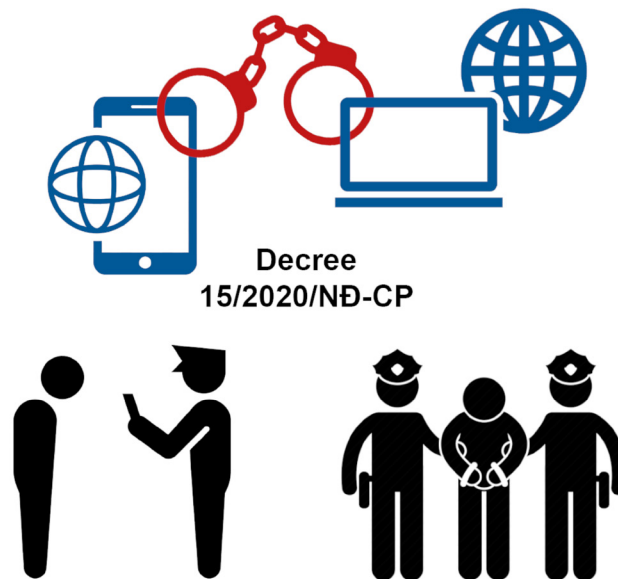
This legal document issued by the central government’s executive branch went into effect on April 15, 2020, in the middle of the COVID-19 pandemic, and although it covers a wide range of administrative violations, the decree has been widely seen as a measure to counter fake news on the Internet about 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.⁵ 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-publicized case in 2018.⁶ The new decree makes it totally clear that social media users are facing severe financial consequences if they committed the above-mentioned violations.

5 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>

6 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>

- 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.”⁷

⁷ 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>

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.⁸ Following the adoption of the law, Decree 26/2020/ND-CP (dated February 28, 2020)⁹ and the Prime Minister's Decision 960/QĐ-TTg (dated July 7, 2020)^{10, 11} 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.

Then, on November 3, 2020, the Prime Minister issued Decision 1722/QĐ-TTg,¹² 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

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

9 Decree 26/2020/ND-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>

10 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>

11 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

12 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>

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.

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.¹³ 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.

13 Bộ Công an muốn quản lý số thẻ tin 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/>

- 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 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.¹⁴

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.¹⁵

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.¹⁶

14 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>

15 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>

16 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).¹⁷ 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.¹⁸ 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 resolution¹⁹ 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.²⁰ 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.

The Draft Amendment to Decree 72/2013/ND-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

17 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>

18 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>

19 Resolution No. 138/NQ-CP. Available at: http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=2&_page=1&mode=detail&document_id=201114

20 Draft of decree on protection of personal data. Available at: <https://bit.ly/2WXcyvQ>

one of the main regulations on Internet freedom in Vietnam.²¹ 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 situation²², 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.²³

In the following sections, 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

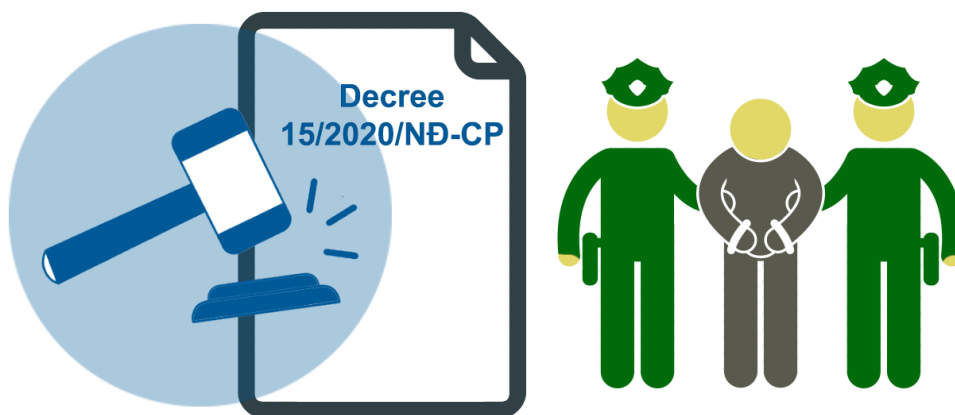
21 Announcement of the Ministry of Information and Communication. Available at: https://mic.gov.vn/Pages/DuThaoVanBan/XemYKienDongGop.aspx?iDDTVB_DuThaoVanBan=1991&replyUrl=/pages/duthaovanban/danh sachduthaovanban.aspx

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

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

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."²⁴



Vietnam has escalated its assault on independent journalists since 2019:

- Truong Duy Nhat, a journalist formerly working for the state-run media turned independent blogger exposing high-level graft in the government and denounced land grabbing, was abducted in Bangkok, Thailand on January 26, 2019, with the help of the Thai police. At the time, Nhat was a contributor to Radio Free Asia. Two days later, he resurfaced in Ha Noi at a detention center run by the Ministry of Public Security. An arrest warrant was issued against him by the Ministry of Public Security on that same day, meaning that his abduction in Thailand predated the arrest warrant. On September 18, 2020, the UN Working Group on Arbitrary Detention (WGAD) rendered its opinion about the arrest of Truong Duy Nhat: *“Mr. Nhat was detained by Thai and Vietnamese agents for reporting on corruption and incompetence in the Government of Viet Nam. The response from Viet Nam, assisted by Thailand, was unnecessary, disproportionate and unlawful. On March 9, 2020, he was sentenced to 10 years in prison for the ambiguous charges of ‘abusing his position and power while on duty’.”*
- 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

24 2019 Report on Political Prisoners and Activists at Risk in Vietnam, *The 88 Project*, 2020. Available at: <https://the88project.org/2019-report/>

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.²⁵ 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.²⁶ On January 18, 2021, BPSOS and International Human Rights Advocates submitted a petition to the UN Working Group on Arbitrary Detention on behalf of Pham Chi Dung, Nguyen Tuong Thuy and Le Huu Minh Tuan.

- 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.²⁷ 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 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.”*²⁸
- Journalist Truong Chau Huu Danh was arrested in Can Tho Province on December 16, 2020 and charged with “abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens.” under Article 331 of the 2015 Criminal Code. The 38-year-old has worked for several state-run newspapers. In recent years, he and a number of young journalists published “Bao Sach” (Clean Newspaper) and 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

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

26 “37 năm tù cho ba nhà báo tự do,” *Luat Khoa*, 2021. Available at: <https://www.luatkhoea.org/2021/01/37-nam-tu-cho-ba-nha-bao-tu-do/>

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

28 Vietnam’s response No. V-163-VNM.20. Available at: <https://dvov.org/wp-content/uploads/2021/01/NV-163-VNM.20.pdf>

other social unrests. Colleagues describe him as an even-keeled, objective reporter and expressed surprise at his arrest.²⁹

- On April 20, 2021, the Police of Can Tho Province arrested three colleagues of Truong Chau Huu Danh who co-published “Bao Sach”: Nguyen Thanh Nha, Doan Kien Giang and Nguyen Phuoc Trung Bao. They were charged under the same Article 331 as Truong Chau Huu Danh. These three journalists specifically exposed irregularities in the handling of a death sentence by People’s Supreme Court President Nguyen Hoa Binh, who was recently elected to the Politburo of the Vietnamese Communist Party.³⁰
- On April 2, 2021, Nguyen Hoai Nam, a journalist who previously worked for several state-run newspapers, was arrested under Article 331.³¹ In 2018, he exposed corruption by 15 management officials at Vietnam Inland Waterways Administration, leading to the arrest of its Deputy Head and two senior officials. He continued to press for the remaining 12 officials to be duly investigated. His arrest has been widely viewed by the public as the government’s attempt to stop his pressing for broader investigation into this incident of high-level graft.
- On February 10, 2021, Phan Bui Bao Thy, Bureau Chief of the magazine *Giao Duc va Thoi Dai* (Age and Education), was arrested by the police of Quang Tri Province and charged under Article 331 after running a series of investigative reports into corruption by government officials, including the deputy minister of culture, tourism and sports, Nguyen Van Hung, and Quang Tri Province’s president, Vo Van Hung.³²
- On February 10, 2021, arrested along with Phan Bui Bao Thy was his associate at Age and Education newspaper *Le Anh Dung*. The latter was also charged under Article 331.³³
- Journalist Tran Thi Tuyet Dieu was arrested by the police of Phu Yen Province on August 21, 2020 on the charge of violating article 117 of the Vietnamese penal code for “creating, storing and disseminating information and materials against the Socialist Republic of Vietnam.” A former employee of a state-run newspaper, Ms. Dieu published news and commentary on Facebook relating to socio-economic issues including corruption, the environment, and human rights issues. On April 23, 2021 she was sentenced to eight years for writing anti-state stories and sharing them on social media.³⁴

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

30 Three more independent reporters arrested in Vietnam, *RSF*, April 22, 2021. Available at: <https://rsf.org/en/news/three-more-independent-reporters-arrested-vietnam>

31 “Former reporter held for infringing upon state interests,” *VNExpress*, April 3, 2021. Available at: <https://e.vnexpress.net/news/news/former-reporter-held-for-infringing-upon-state-interests-4257588.html>

32 Vietnamese magazine reporter held for “abusing democratic freedoms,” *RSF*, February 16, 2021. Available at: <https://rsf.org/en/news/vietnamese-magazine-reporter-held-abusing-democratic-freedoms>

33 Vietnamese State Media Bloggers Held on Defamation Charge for Criticizing Officials, *RFA*, February 16, 2021. Available at: <https://www.rfa.org/english/news/vietnam/charge-02162021170442.html>

34 “Vietnamese Journalist Gets Eight Years for ‘Anti-State’ Writings,” *RFA*, April 23, 2021. Available at: <https://www.rfa.org/english/news/vietnam/dieu-04232021175353.html>

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.³⁵
- 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.³⁶
- 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.³⁷
- On January 7, 2021, Nguyen Van Nhanh, resident of Trang Bom District, Dong Nai Province, was sentenced to one year in prison for "causing embarrassment" to the Chair and Vice-Chair of Trang Bom District in a Facebook livestream video. He denounced these two district government officials of being biased in addressing a dispute matter affecting his and other families in his neighborhood. These two government officials reported Nhanh to the public security office, which decided to prosecute him. In court Nhanh argued that his frank evaluation of the performance of public servants should not constitute a criminal offense. He also pointed out that his two accusers were not present in court and therefore not available for cross-examination. Regardless, the court went ahead and sentenced him to one year of imprisonment.³⁸
- On September 18, 2020, Quach Duy, a former official at the municipal People's Committee, was arrested for having posted many articles and photos on his Facebook account. According to the People's Procuracy, three such postings had content defaming the honor and prestige of former

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

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

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

38 "Livestream "nói xấu" chủ tịch huyện trên facebook, lĩnh án 1 năm tù", *Lao Động*, January 7, 2021. Available at: <https://laodong.vn/phap-luat/livestream-noi-xau-chu-tich-huyen-tren-facebook-linh-an-1-nam-tu-868706.ldo>

Party and State leaders and city leaders. On April 15, 2021, he was sentenced to four and a half years of imprisonment.³⁹

- Dinh Thi Thu Thuy, an aquaculture engineer and environmental activist, was arrested on April 18, 2020 by approximately 50 police officers of Hau Giang Province. She was charged of “conducting anti-state propaganda” for five Facebook posts criticizing economic and cybersecurity laws, the government’s handling of the pandemic, and environmental issues. The authority claimed that the postings “satirized, ridiculed, and offended” Party leaders. She was held incommunicado for nearly eight months after her arrest and she was not permitted to consult with an attorney until one month before her court date on January 20, 2021. After a short trial, which lasted just four hours, Ms. Thuy was sentenced to seven years in prison. On April 21, 2021, BPSOS, International Human Rights Advocates, NextGen for a Better Future and Vietnamese Women for Human Rights submitted a joint petition to the UN Working Group on Arbitrary Detention on behalf of Ms. Thuy.⁴⁰
- Le Thi Binh, a Facebook user, was sentenced to two years in prison by the People’s Court in Can Tho Province under Article 331. She allegedly used different Facebook accounts from October 2019 to November 2020 to “conduct livestreams and post and share articles that defamed, offended, and distorted Party and State organizations and leaders.”⁴¹
- Le Chi Thanh, a Youtuber known for live streaming incidents of police wrongdoings, was arrested by the Thu Duc Province police on April 14 and charged with “obstructing officials carrying out government duties.” Thanh, 37, was a police captain who used to work at the Z30 Prison and was later transferred to Xuan Loc Prison. He was fired from his post in July 2020. Thanh is being held incommunicado and is not allowed to see a lawyer until the investigation is finished.⁴²

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, using Decree 174 and its successor, Decree 15, as the legal ground.

We have documented dozens of cases from 2018 to early 2021 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.

39 “Man jailed for abusing freedom, democracy rights,” *Vietnam Plus*, April 26, 2021. Available at: <https://en.vietnamplus.vn/man-jailed-for-abusing-freedom-democracy-rights/200172.vnp>

40 “Vietnam Jails Environmental Activist for 7 Years Over Facebook Posts,” *VOA*, January 22, 2021. Available at: <https://www.voanews.com/press-freedom/vietnam-jails-environmental-activist-7-years-over-facebook-posts>

41 “Facebooker imprisoned for anti-Party, anti-State propaganda,” *Vietnam Plus*, April 22, 2021. Available at: <https://en.vietnamplus.vn/facebooker-imprisoned-for-antiparty-antistate-propaganda/200489.vnp>

42 Vietnam Free Expression Newsletter No. 15/2021 – Week of April 12-18, *The 88 Project*, April 19, 2021. Available at: <https://the88project.org/newsletter-no-15-2021/>

- 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."⁴³
- 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."⁴⁴
- 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."⁴⁵
- 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."⁴⁶
- 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.⁴⁷
- N.Q.M was fined 7.5 million VND (approximately US\$350) on April 13, 2021 by Bac Giang Province's local government on allegation of "Providing false information, distorting, hurting the reputation of offices or organizations" because of his post on Facebook on April 7: "The government is rotten, putting money in it and wrong things would turn right. It is true that justice in Vietnam is just a farce."⁴⁸

43 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>

44 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: <https://lamdong.gov.vn/sites/sttt/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>

45 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/>

46 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>

47 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>

48 Bị phạt 7,5 triệu đồng vì lên Facebook xuyên tạc 'công lý chỉ là nghệ sĩ hài', *VTC news*, 2021. Available at: <https://vtc.vn/bi-phat-7-5-trieu-dong-vi-len-facebook-xuyen-tac-cong-ly-chi-la-nghe-si-hai-ar606427.html>

- Tran Hai Dang was fined 7.5 million VND (approximately US\$350) on February 18, 2021 by Bac Giang Province's local government for posting, one day earlier, after being forced to stay in the Covid-19 quarantine camp: "Those fools (civil servant) of the commune, district... I will burn your house, brat."⁴⁹
- Nguyen Huy Hung was fined 7.5 million VND (approximately US\$350) on March 29, 2021 by Ha Noi City's local government because of his comment on a group on Zalo (a popular chatting platform in Vietnam) about the election of delegates to the National Assembly and People's Councils: "Vote or not vote, it doesn't matter. It's all pre-sorted out."⁵⁰
- H.X.H. was fined 7.5 million VND (approximately US\$350) on February 10, 2021 by Gia Lai Province's local government for posting on Facebook. His post was deemed as false information on the COVID-19 pandemic: "Gia Lai was in a state of chaos, many cases were not identified, we only know when we have already had symptoms, soon all of Pleiku would test positive."⁵¹
- Hoang Thi Ph. was fined 5 million VND (approximately US\$230) on April 5, 2021 by Thua Thien Hue Province's government for posting on her Facebook: "Phong Hai Commune police who patrol and control traffic safety do not perform their functions and duties and have made mistakes."⁵²

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,⁵³ but the government has successfully had the App installed on a sizable number of devices: 10,000,000 installs through Google Play⁵⁴ by December 16, 2020; although there are no statistics of iPhone installs, there are almost 20,000 people who have rated it on Appstore.⁵⁵

49 Bắc Giang: Bị phạt 7,5 triệu đồng vì nói xấu, huyện là "bọn ngu", *Giao Thong*, 2021. Available at: <https://www.baogiaothong.vn/bac-giang-bi-phat-75-trieu-dong-vi-noi-xa-huyen-la-bon-ngu-d496281.html>

50 Tung tin thất thiệt về bầu cử trên nhóm mạng, bị phạt 7,5 triệu đồng, *Tuoi Tre*, 2021. Available at: <https://tuoitre.vn/tung-tin-that-thiet-ve-bau-cu-tren-nhom-mang-bi-phat-7-5-trieu-dong-20210329190400552.htm>

51 Tung tin sai sự thật, người đàn ông bị phạt 7,5 triệu đồng, *Ngươi Lao Dong*, 2021. Available at: <https://nld.com.vn/thoi-su/tung-tin-sai-su-that-nguoi-dan-ong-bi-phat-75-trieu-dong-20210210190847084.htm>

52 Bị xử phạt 5 triệu đồng vì chia sẻ bài viết sai sự thật, bôi nhọ công an xã, *Ngươi Lao Dong*, 2021. Available at: <https://nld.com.vn/phap-luat/bi-xu-phat-5-trieu-dong-vi-chia-se-bai-viet-sai-su-that-boi-nho-cong-an-xa-20210405201014884.htm>

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

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

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

Uneven application of the law

While cybersecurity law and related decrees ostensibly target fake news, their application suggests that their real purpose is to silence critics of the government while government-created “non-state actors” have been practically accorded exemption. The case of Cao Dai adherent Tran Ngoc Suong serves as illustration.

In April 2020, Mr. Nguyen Thanh Tam, head of the government-created Cao Dai Sect issued and publicized an order to expel Mr. Suong from the Cao Dai Religion. Followers of Mr. Tam then distributed his order to Cao Dai followers to discredit and defame Mr. Suong, falsely implicating that he had been excommunicated from his religion. A government official informed Mr. Suong’s co-religionists of the expulsion order and pointed out that he no longer qualified as a Cao Dai lay leader. In fact, the Cao Dai Religion is different from the government-created Cao Dai Sect. In 1978, the government practically outlawed the Cao Dai Religion.

Around the same time, on April 21, 2020, multiple websites posted a picture of Mr. Suong in an article titled: “Need to harshly punish Tran Ngoc Suong ‘s violations of the Law on Religion and Belief.” The article is filled with hateful comments, fabrication, and slander about Mr. Suong without either contacting him for verification of information or citing supporting evidence. The acts of spreading disinformation and deceiving public opinion directly violated Decree 15/2020/ND-CP, Article 34 of the Civil Code, Article 155 of the Penal Code, and Sub-article 7.5 of the 2015 Law on Cyber Information Security, No. 86/2015/QH13.

On June 18, 2020, Mr. Tran Ngoc Suong filed a defamation lawsuit against Mr. Nguyen Thanh Tam and other clerics of the government-created Cao Dai Sect, and requested the public security police to investigate the said websites.

The People’s Court of Hoa Thanh Town decided not to review Mr. Suong’s complaint. On September 21, 2020, Mr. Suong filed a complaint with the Chief Justice of the People’s Court of Tay Ninh Province and the Chief Justice of the People’s Court of Hoa Thanh Town. He did not receive a response. On December 04, 2020, Mr. Suong followed up with a request to the Chief Justice of the People’s Court of Hoa Thanh Town, the Chief Justice of the People’s Court of Tay Ninh Province, and the Chief Justice of the People’s Supreme Court urging the courts to sort it out among themselves and let him know which one would review the lawsuit and hear the case. On December 11, 2020, the People’s Court of Hoa Thanh Town notified Mr. Suong that his lawsuit was rejected for lack of jurisdiction without explaining which other court would have jurisdiction. One may conclude that Vietnam’s court system has dismissed Mr. Suong’s lawsuit out of expediency, simply to protect the government-created Cao Dai Sect.

On May 25, Mr. Suong filed a request with the Office of Information and Communications of Tien Giang Province and the Ministry of Information and Communications for information of the individuals and/or entities behind the websites that defamed him. On June 9, the provincial Office of Information and Communications responded, acknowledging that the said websites violated provision 7.5 of the 2015 Law on Cyber Information Security, No. 86/2015/QH13; however, they argued, provision 17.2 of the

same law stipulates that the government must protect the identity of internet users.

To overcome this administrative roadblock, on July 23, 2020 Mr. Suong filed a petition with the People's Court of Go Cong Town, requesting the court to declare that the defaming information about him is untrue. On July 28, 2020, he received the notification from the court concluding that his request does not fall under its jurisdiction.

On August 04, 2020, Mr. Suong filed a complaint with the People's Court of Go Cong Town for rejecting his petition. On August 11, 2020, Judge Vo Thi Lan sent Mr. Suong a court decision stating that the authority to interpret the Civil Code and the Civil Procedure Code lays with the National Assembly. On August 28, 2020, Mr. Suong sent a request to the Chief Justice of the People's Supreme Court asking the Chief Justice to provide guidance on the competence authority responsible for interpreting the Civil Code and the Civil Procedure Code. His request was summarily rejected.

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 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.

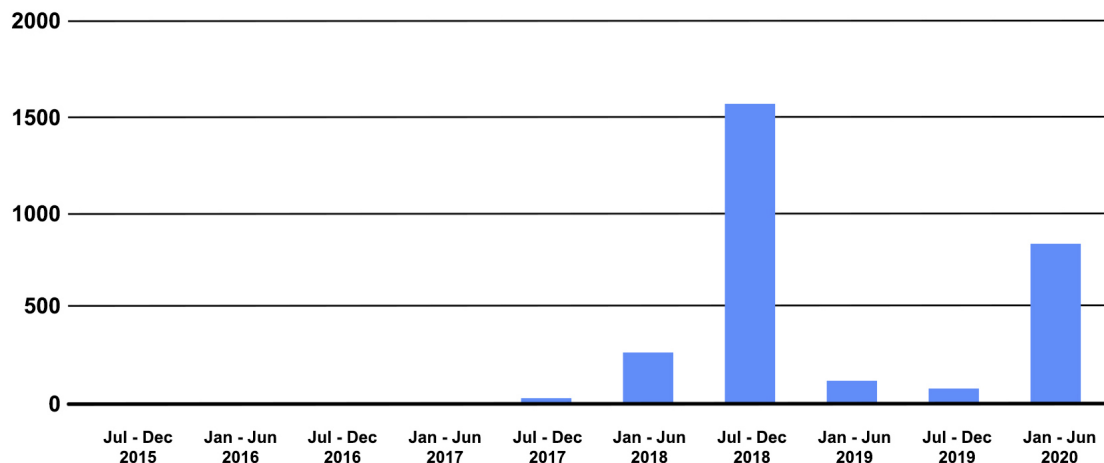
Formal requests: The Ministry of Information and Communications has made large scale requests to Facebook and Google, demanding them to comply with local law by giving up users' data and restricting content.

According to a report submitted to the National Assembly by then 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.⁵⁶ 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.⁵⁷ The chart below shows the numbers of content restrictions conducted by Facebook⁵⁸ throughout the years.

⁵⁶ Facebook sẽ chặn quảng cáo chính trị từ các tài khoản phân động, *Cong an Nhan dan*, 2020. Available at: http://congan.com.vn/tin-chinh/facebook-se-chan-quang-cao-chinh-tri-tu-cac-tai-khoanphan-dong_100905.html

⁵⁷ 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>

⁵⁸ 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.⁵⁹ 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 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.

⁵⁹ 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>

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.⁶⁰ 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).

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."⁶¹

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."⁶²

We have records of the department's name being shown in summon notices sent to dissidents such as Dr. Nguyen Quang A⁶³ (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

60 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>

61 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>

62 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/>

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

Danh on December 17, 2020⁶⁴ (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.

SURVEILLANCE AND INTERCEPTION OF COMMUNICATIONS

In 2017, Volexity, a Washington, D.C.-based cyber security firm, discovered that OceanLotus or APT32, long suspected of being funded by the Vietnamese government, was behind a sophisticated massive digital surveillance campaign against human rights defenders, independent journalists, and pro-democracy groups. In 2019, Volexity publicly exposed the operations of OceanLotus, which basically include two distinct strategies:

- Compromise Vietnamese-language news websites that are critical of the regime to gather information about site visitors, using a web profiling framework, and deliver malware.
- Set up and operate fictitious activist, news, and anti-corruption websites and use them to track and attack website visitors:

“Volexity believes it is likely that individuals are targeted through these websites in two ways. The first is through profiling frameworks that exist on many of the pages that can be used to identify and evaluate information about users that visit the website by happenstance. The second is through individually targeting victims who are sent links to specific news containing malware delivery logic through spear phishing and social media messages.

When the users visit a page with an infection chain on it, malicious JavaScript is loaded. The exact workflow of the script varies between different infected pages but generally there are two parts:

1. *A script to capture and store information about the visitor;*
2. *A second script which socially engineers targets into downloading a fake software update or document. The exact nature of the malware downloaded is sometimes configured based on the user’s browser and the content.”⁶⁵*

64 Đàng 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>

65 “OceanLotus: Extending Cyber Espionage Operations Through Fake Websites,” Volexity website, November 6, 2020. Available at: <https://www.volexity.com/blog/2020/11/06/oceanlotus-extending-cyber-espionage-operations-through-fake-websites/>

In recent years, OceanLotus significantly stepped up its attack against journalists. In 2020, Bui Thanh Hieu, a well-known blogger under the pen name Nguoi Buon Gio (Wind Trader), faced hacking attacks to the point he had to seek protection from German police. In an October 2020 article published by Die Zeit newspaper and public service broadcaster BR, Marina Mai, a freelancer with the Berlin-based daily *Taz*, reported being targeted via an email that appeared to be legitimate but contained malware. Cybersecurity experts traced these attacks to OceanLotus.⁶⁶

In December 2020, cybersecurity investigators at Facebook publicly exposed OceanLotus's operations, after having traced this hacking group to an IT company that operates openly in Ho Chi Minh City: CyberOne Group.⁶⁷

RECOMMENDATIONS

With the Vietnamese government becoming more sophisticated and aggressive in regulating the Internet, we recommend that the Office of the UN High Commissioner for Human Rights:

- Follow up with the Vietnamese Government about amending existing laws and decrees relating to freedom of expression to be in compliance with Article 19 of the ICCPR and with recommendations that have been communicated to it by UN Treaty Bodies, UN Special Rapporteurs, the UN Human Rights Committee, and the UN Human Rights Council;
- 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;
- Consider cyber-surveillance of and cyber-attack against human rights defenders who report rights violations to UN special procedures as acts of intimidation and/or reprisal;
- Ensure that the Office of the Resident Coordinator in Vietnam includes in its consultation process journalists being targeted by the government and relatives of those in prison;
- Call on the Vietnamese Government, in light of its announced intention to join the UN Human Rights Council, to release all journalists who have been imprisoned for expressing their views, exposing corruption, or holding government officials accountable for their public service.

66 "How Vietnam-based hacking operation OceanLotus targets journalists," Committee to Protect Journalists, February 1, 2021. Available at: <https://cpj.org/2021/02/vietnam-based-hacking-oceanlotus-targets-journalists/>

67 "Facebook tracks 'OceanLotus' hackers to IT firm in Vietnam," Reuters, December 20, 2020. Available at: <https://www.reuters.com/article/facebook-vietnam-cyber/facebook-tracks-oceanlotus-hackers-to-it-firm-in-vietnam-idUSKBN28L03Y>