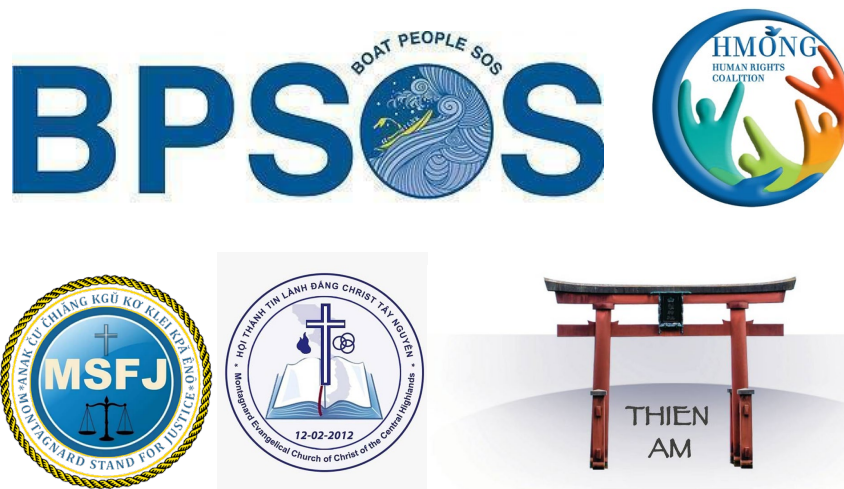


# **Joint Submission to the 4th Universal Periodic Review of Vietnam**

46<sup>th</sup> Session of the UN Universal Periodic Review

## **Topics Covered: Rights of the Child Freedom of Expression**

**OCTOBER 2023**



**Joint Submission to the 4th Universal Periodic Review of Vietnam**

## 46<sup>th</sup> Session of the UN Universal Periodic Review

**Prepared by:**

Boat People SOS (BPSOS)  
6066 Leesburg Pike, Suite 100  
Falls Church, VA 22041, USA  
(703) 538-2190  
Email: [info@bpsos.org](mailto:info@bpsos.org)  
Website: <https://www.bpsos.org/>

**In association with:**

H'mong for Human Rights  
Bangkok, Thailand  
Email: [hmonghrc@gmail.com](mailto:hmonghrc@gmail.com)  
Website: <https://hmonghrc.org>

Montagnards Stand for Justice  
Bangkok, Thailand  
Email: [montagnardstandforjustice@gmail.com](mailto:montagnardstandforjustice@gmail.com)  
Website: [msfjustice.org](http://msfjustice.org)

Evangelical Church of Christ of the Central  
Highlands  
Durham, North Carolina, USA  
Email: [aga.ductin@gmail.com](mailto:aga.ductin@gmail.com)

Friends of Thien Am Zen Monastery  
Sarasota, Florida  
Email: [tanyanguyendo311@gmail.com](mailto:tanyanguyendo311@gmail.com)

## Introduction

This report provides the result of a study undertaken by the Boat People SOS (BPSOS) in partnership with the Evangelical Church of Christ of the Central Highlands, H'mong for Human Rights, Montagnards Stand for Justice (MSFJ), and Friends of Thiên Am Zen Monastery.

This joint submission addresses the following areas of concern that have received numerous recommendations from Vietnam's third Universal Periodic Review (UPR) in January 2019:

- (1) Rights of the Child
- (2) Freedom of Expression

## Rights of the Child

On the 3rd UPR, Vietnam accept recommendations from Jordan<sup>1</sup>, Kenya<sup>2</sup>, Oman<sup>3</sup>, Poland<sup>4</sup>, Slovenia<sup>5</sup>, Kazakhstan, and the Islamic Republic of Iran<sup>6</sup>.

### The Children of Subdivision 181 in Vietnam Who Endures Dangerous Conditions to Attend School

Subdivision 181, located in the Central Highlands of Vietnam, is home to more than 700 Protestant Christian H'mong people. This community was founded approximately two decades prior by people who fled or were evicted from their home villages in the Vietnamese Northwestern Highlands.

Since the people in Subdivision 181 were not registered into the National Identification system, children in both locales struggled to attend school regularly. Most families were forced to send their children off to live and register in other families' "*households*" (often the families of those

---

<sup>1</sup> 38.28 Further mainstream the provisions of the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities into school textbooks

<sup>2</sup> 38.289 Continue its efforts to prevent and reduce statelessness through, among others, enabling reacquisition of Vietnamese nationality, and prevent children's statelessness

<sup>3</sup> 38.20 Support international cooperation and dialogue and the sharing of experience with other countries concerning reform of the judicial system

<sup>4</sup> 38.271 Take further measures to strengthen the implementation of the rights of the child and consider the establishment of an independent child rights monitoring mechanism

<sup>5</sup> 38.272 Change the definition of the child to all persons under 18 years of age, in line with the Convention on the Rights of the Child

<sup>6</sup> 38.276 Continue its efforts to protect all children from sexual exploitation and trafficking, including through public awareness-raising

located in urban areas) for their children to attend school. Other children who stayed in their villages had to travel at least 14 km to reach the nearest school. Consequently, numerous children dropped out of school to enter the labor force. Furthermore, a number of children in Subdivision 181 were prevented from boarding in schools because school officials deemed them “filthy children” (trẻ con sống bẩn).

In hopes of providing their children with a more accessible education, the communities of Subdivision 181 came together in 2020 to build several makeshift classrooms furnished with tables and chairs for conducting local classes for children residents. Despite these efforts, these classrooms were eventually abandoned because of a lack of teachers and disallowed from use by the local authority.

On 4 May 2021, people in Subdivision 181 sent a letter to the local authority to ask about their children’s education. In late May, they received a response indicating that:

*“[t]he District People's Committee has no plans to build schools and send teachers to teach there....[since] the entire land area of households located in Subdivision 181 is illegally encroaching land in the forestry land area.” However, rather than providing local access to education, the People’s Committee decreed that children “who are of school-age in Subdivision 181 ... have been set and arranged to study at schools in Lieng S’ronh commune according to Educational Law” (Document No. 582 /UBND-TD).*

As the new school year began in September 2021, the children in Subdivision 181 once again had to return to classes, but without access to locally accessible education, these children must travel long distances to reach the schools in Lieng S’ronh commune of which they were assigned. To attend school daily, the children have had to make temporary homes in local sheds near the school.

These makeshift sheds are hazardous for these children, rudimentarily constructed from wood, corrugated iron sheets, and canvas. A shed that is little more than 18m<sup>2</sup> often houses up to 10 children in dangerously cramped conditions.

Despite meager means, some parents opted to rent an abandoned shanty for their children. The cost of even such a derelict shelter is a significant investment for the families in Subdivision 181. The rental fee of the house is about 100,000 VND (about 4 USD) per month per child, whilst the monthly average income of a family in subdivision 181 is little more than 500,000 VND (about 21 USD).

Under these conditions, the children have had to rely upon one another to subsist. Elementary-aged children have had to cook and do housework while attending school on their own as their

parents worked. Without due supervision, these circumstances are dangerous to the children and can potentially result in unwanted accidents.

In the Concluding Observations of its 2022 review of Vietnam, the CRC Committee raised concern about the impact of statelessness on H'mong and other ethnic children:

*“To address disparities in access to all public services by girls, children in remote areas, children with disabilities...” and “To ensure that all children, including children belonging to ethnic or religious minority or indigenous groups and migrant children, have access to household registration”<sup>7</sup>*

Even though the CRC committee has brought this situation to the attention of the Vietnamese Government, nothing has changed. In 2022, BPSOS helped to rescue five H'mong, including three minors from this Subdivision, who were trafficked to Cambodia for labour exploitation. Poverty caused by statelessness led to such tragic outcomes.

On 9 & 10 November, 2021, two Hmong Christians in Subdivision 181 (who provided information to produce this report) were detained and forced to sign pledges to terminate all contacts with “foreign entities,” including Western diplomats and BPSOS.

See more about the case here:

<https://www.ohchr.org/sites/default/files/2022-01/Boat-People-SOS.pdf>

### Forced religious renunciation toward Christian H'mong children in Kỳ Sơn District, Nghệ An Province

#### *Confiscating four children's birth certificates*

Mrs. L, a mother of four, awaiting her husband, KV, a U.S. citizen, to complete the immigration sponsorship required for their reunion in the United States. In September 2022, it was discovered that both she and her husband were Christians, leading local authorities to seize her children's birth certificates in an attempt to obstruct their emigration process. This action extended to the confiscation of all personal documents belonging to Mrs. L and her children, accompanied by threats of expulsion from their village and a blockade on their emigration plans. The Police of Na

---

<sup>7</sup> CRC/C/VNM/CO/5-6. Available at:

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=En&CountryID=192](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=En&CountryID=192)

Loi Commune told Mrs. L that if she abandoned her Christian faith, they would return the birth certificates.

*Forcing mothers to abandon their children as a means of punishment*

Mrs. Lầu Y Tòng, Mrs. Lầu Y Lý, and Mrs. Lầu Y Hua are three Hmong sisters who were forced to recant their religion, abandon all their assets, divorce their husbands, and leave their children behind. After Lầu Y Tòng refused to abandon God, the Authority of Tà Cạ Commune, Kỳ Sơn District, along with her father-in-law, who also worked for the government, immediately forced Lầu Y Tòng to sign the divorce application that was written in Vietnamese. She was compelled to sign it out of fear without understanding its content because she couldn't read Vietnamese. It turned out that, by signing it, she agreed to “willingly” leave her village while letting her husband keep her cash, motorbike, their jointly owned land and cattle, and her two children, aged 17 and 13.

In early 2023, Tòng's two younger sisters, Lầu Y Lý and Lầu Y Hua, were beaten by their in-laws as they resisted the authority of Kỳ Sơn District's order to renounce Christianity, they secretly left their respective homes at night, each with her own infant. Besides the infant she brought along, Lầu Y Lý left behind her two children, seven and ten years old.

In early August 2023, they left for Thailand. Note that the local government had, in March 2023, punished Lầu Y Hua by not allowing her newborn daughter to have the same surname as the father, according to traditional H'mong customs. All three sisters were accorded refugee status by the UN High Commissioner for Refugees (UNHCR) in early October 2023.

The ten child monks of the Zen Hermitage Buddhist Group

Thiền Am Bên Bờ Vũ Trụ (Zen Hermitage on the Edge of the Universe) is a small, unaffiliated Buddhist Group. Its members have faced severe persecution for their religious beliefs. Persecution takes multiple forms, including imprisonment, defamation, confiscation of property, torture and psychological persecution. The persecutors are government authorities, the state-controlled media, certain clergy members of the government-created Buddhist Church of Vietnam (BCV), and the corrupt judicial system.

Based on allegations made by two BCV leaders, in July 2022, the People’s Court sentenced the group’s 92-year-old founder, five young monks and a volunteer to a total of 23.5 years of imprisonment under Article 331 of Vietnam’s Penal Code – “abusing freedom of speech, freedom of the press, freedom of religion, freedom of association, and other democratic freedoms” to “infringe upon the rights and interests of other people and the State”<sup>8</sup>.

Those two BCV leaders accused this group of distorting Buddha’s teachings, wearing Buddhist robes, using Buddhist terminologies and displaying Buddha’s statues without their approval. One BCV leader, Most Venerable Thích Nhật Từ, also claimed being defamed when Mr Lê Tùng Vân reportedly observed, in a private meeting among group members, that he was “ignorant as a cow”. This observation was made in response to Thích Nhật Từ’s publicly accusing the group’s ten child monks of being “products of incest”. These children were so traumatised and ashamed that they had to skip school.

These child monks were picked up by Mr. Lê Tùng Vân after being abandoned by biological parents. They were adopted by female monks of the Zen Hermitage Group, who are listed as “mothers” on their birth certificates. As part of their education, the child monks were not only taught Buddhist virtues and practices but also trained in drawing, painting, music, singing, acting and other performing arts. Many of them developed amazing talents and attracted national attention.

In 2014, Lê Thanh Huyền Trân, age 12, won second place in a national singing contest (The Voice Kids). She was invited to many televised musical shows but had to quit performing after she was told to shed her religious appearance and hide her religious background on stage.

In 2017, two young monks of this group, Lê Thanh Hoàn Nguyên and Lê Thanh Nhất Nguyên, age 17 and 16 at the time, participated in the Tuyệt Đỉnh Song Ca (Top Singing Duets) talent show. They reached the final stage but were dropped out of the contest due to the opposition of the government-created Buddhist Church of Vietnam (BCV), which arbitrarily dictated that monks should not sing on stage even though the two young monks were not affiliated with BCV.

---

<sup>8</sup> IRFBA Chair’s Statement on Vietnamese Religious Prisoners of Conscience: Lê Tùng Vân, Lê Thanh Trùng Dương, Lê Thanh Hoàn Nguyên, Lê Thanh Nhất Nguyên, Cao Thị Cúc, and Lê Thanh Nhị Nguyên, September 13, 2023, available at: <https://www.state.gov/irfba-chairs-statement-on-vietnamese-religious-prisoners-of-conscience/>

Also in 2018, five child monks, aged 3 to 4, lovingly called “The Five Child Monks” Band, won the first prize in a stand-up comedy contest on national television. They won first prize again the following year, earning the title of “The Youngest Talents in Vietnam’s Guinness in 2019.” Their film production “Luật Nhân Quả” (The Law of Karma) was submitted for screening at International New York Children Film Festival Contestants, Sarasota Children Film Festival Contestants, and Los Angeles International Film Festival Contestants. Their YouTube channel “5 Chú Tiểu – Thiền Am Bên Bờ Vũ Trụ” had 2.12 million subscribers. It generated significant revenue to support the Zen Hermitage group’s good work. These sensational achievements inspired many fans in Vietnam and overseas to support the good work of the Zen Hermitage Group.

Once reaching adulthood, some children decided to stay in monkhood and take care of the next generation of child monks; others left the facility to pursue their own careers but often came back to assist the group in diverse capacities.

At the UN Review of Vietnam by the UN Committee on the Rights of the Child in Geneva in September, Committee Vice-Chair Dr Rinchen Chopel asked the Vietnamese delegation about Thích Nhật Từ’s “products of incest” statement that was so traumatising and hurtful to the children but received no response from the Vietnamese delegation. In fact, this BCV monk enjoyed absolute impunity while Buddhist monks of the Zen Hermitage group were sent to prison simply for making an observation about him in private.

A few days after the review in Geneva, on 24 September, the police raided the facility of the Zen Hermitage group. All members, primarily women, the elderly and children, were dragged, strangled and pinned down for mucous samples; their hair was removed painfully with tweezers. This was the fourth time the police forcibly took samples of the Zen Hermitage members for DNA tests to support the BCV monk’s statement about the children being “products of incest.” Test results were never released.

By the time the Zen Hermitage group was practically dismantled in early 2022, the child monks lived happily as part of the only family they had ever known, had so much fun while developing amazing talents, and looked forward to a fulfilling life. According to a mental health expert knowledgeable about their case, the incest accusations caused psychological damages to the children who were old enough to understand it: *“In the case of the [Zen Hermitage] children, the*



*risks are higher due to likely disruption within the family that would erode the children's emotional support system, psychological parent figures being absent on detention, Master Le's health declining, the children being out of the school setting, and likely community rejection.”<sup>9</sup>*

In early 2023, three human rights lawyers who represented the Zen Hermitage Group were themselves criminally investigated under Article 331<sup>10</sup>. They, however, successfully fled to the U.S. Left without protection; members of this Buddhist Group are pleading for protection, particularly for the ten child monks who cannot speak for themselves.

#### Recommendations:

- (1) Revise the definition of children to below 18 in accordance with international law;
- (2) Develop and implement child-focused policies that address issues like access to quality education with a particular focus on children in far-flung areas;
- (3) Issue birth certificates to all undocumented Hmong and Montagnard children and ID cards to their parents.

#### **Freedom of Expression**

During the January 2019 UPR, Vietnam accepted in part recommendations from Mexico<sup>11</sup>, Portugal<sup>12</sup>, Seychelles<sup>13</sup>, and Czechia<sup>14</sup> and accepted Chile<sup>15</sup>, Brazil<sup>16</sup>, Luxembourg<sup>17</sup>, Ireland

---

<sup>9</sup> Negative Impacts of Religious Persecution on Ten Child Monks at Thiền Am Bên Bờ Vũ Trụ (TABBV), BPSOS, 15 August, 2022, available at: <https://dvov.org/wp-content/uploads/2022/08/BPSOS-UNCRC-report-on-TABBV-for-public-release.pdf>

<sup>10</sup> Vietnam: Cease spurious criminal investigation against human rights lawyer Dang Dinh Manh, International Commission of Jurists, 14 March, 2023, available at: <https://www.icj.org/vietnam-cease-spurious-criminal-investigation-against-human-rights-lawyer-dang-dinh-manh/>

<sup>11</sup> 38.17 Respond positively to requests from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

<sup>12</sup> 38.194 Abolish prior censorship in all fields of cultural creation and other forms of expression, both online and offline, including by bringing the restriction on freedom of expression under the 2016 press law into line with international standards and by fostering a pluralistic and independent media environment

<sup>13</sup> 38.197 Review and amend national legislation in order to enable the effective exercise of the rights to freedom of expression and peaceful assembly in line with the standards enshrined in the International Covenant on Civil and Political Rights

<sup>14</sup> 38.214 Nurture a culture of free expression online and offline and release all imprisoned human rights defenders, including bloggers and political dissenters, and put an end to their harassment

<sup>15</sup> 38.42 Enhance efforts to comply with the recommendations accepted during the second universal periodic review cycle on guaranteeing the right to freedom of expression

<sup>16</sup> 38.174 Consider revising national legislation, including the law on belief and religion and the media laws, in order to harmonize it with international standards regarding the right to freedom of expression and of religion

<sup>17</sup> 38.179 Protect civil and political rights, especially freedom of expression, peaceful assembly and association

(38.184)<sup>18</sup>, Peru<sup>19</sup>, Japan<sup>20</sup>, Romania<sup>21</sup>, Italy<sup>22</sup> Spain<sup>23</sup>, United Kingdom of Great Britain and Northern Ireland<sup>24</sup> while not accepting Finland<sup>25</sup>, Germany<sup>26</sup>, Argentina<sup>27</sup>, Ireland(38.185)<sup>28</sup>, New Zealand<sup>29</sup>, Sweden<sup>30</sup>, Austria<sup>31</sup>, Canada<sup>32</sup>, and Poland<sup>33</sup>.

### The 2018 Cyber Security Law

The Vietnamese Government continuously violated the freedom of expression online and offline, especially during the time of COVID-19, based on the 2018 Cyber Security Law and the 2018

---

<sup>18</sup> 38.184 Lift restrictions on freedom of expression, and particularly online freedom, in line with Viet Nam's obligations under international law

<sup>19</sup> 38.189 Strengthen efforts to ensure freedom of expression, including in the digital environment

<sup>20</sup> 38.195 Ensure freedom of expression, including online, and promote actions to ensure the freedom and independence of the media

<sup>21</sup> 38.196 Continue the measures aimed at lifting all restrictions on the right to freedom of opinion and expression and to allow bloggers, journalists and other Internet users to promote and protect human rights

<sup>22</sup> 38.198 Adopt measures in line with international standards to guarantee freedom of association, opinion and expression, including online, and to ensure that journalists, human rights defenders and NGOs can operate freely

<sup>23</sup> 38.200 Adopt legislative changes to guarantee the protection and free exercise of freedom of expression, association and peaceful assembly

<sup>24</sup> 38.203 Improve protection of the rights to freedom of peaceful assembly and expression by reviewing existing legislation, and publishing and implementing clear, transparent guidelines on security personnel conduct in managing peaceful demonstrations

<sup>25</sup> 38.167 Repeal or amend the Penal Code and the cybersecurity law so that provisions relating to national security are clearly defined or removed, to ensure that they cannot be applied in an arbitrary manner to endanger any forms of freedom of expression, including Internet freedom

<sup>26</sup> 38.171 Review all convictions based on laws restricting freedom of expression and opinion, in particular articles 79 and 88 of the Penal Code, according to the revised penalty ranges

<sup>27</sup> 38.177 Take the necessary measures to ensure the freedom of expression of human rights defenders and journalists, in particular by investigating and punishing perpetrators of threats and reprisals against them

<sup>28</sup> 38.185 Cybersecurity decrees should include clear provisions for interpretation of the law on cybersecurity in accordance with international standards on freedom of expression

<sup>29</sup> 38.187 Ensure that the legal framework protects freedom of expression both offline and online and accordingly amend the penal law and the law on cybersecurity to ensure consistency with international human rights law, including the International Covenant on Civil and Political Rights (New Zealand); Ensure that freedom of expression is protected online and offline by amending national security provisions in the Penal Code, the cybersecurity law and its implementing decree so as to comply with article 19 of the International Covenant on Civil and Political Rights and other commitments (Sweden); Guarantee the rights to freedom of expression and freedom of assembly and amend the Penal Code and the cybersecurity law to make sure that the limitations on the right to freedom of expression are in line with the International Covenant on Civil and Political Rights (Austria); Review the Penal Code and the law on cybersecurity to harmonize them with international standards related to the freedom of expression, association and assembly (Canada);

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> 38.191 Release all human rights defenders as well as political and religious activists detained for the peaceful expression of their political opinions or religious beliefs

Law on Protection of State Secrets. In 2021, BPSOS published a report Analysis Of Vietnam's Internet Freedom Situation Following the Adoption Of The 2018 Cyber Security Law<sup>34</sup>.

The 2018 Cybersecurity Law introduced several major provisions, including data localisation, heightened government control over online content, and establishment of local offices within Vietnam. It notably vested authorities with extensive discretion to decide when expressive acts should be deemed "illegal." Furthermore, the existing national laws of Vietnam lack robust safeguards for privacy, and the provisions within the cyber security law have the potential to facilitate government efforts in identifying and prosecuting individuals involved in peaceful online activities.

The passage of the 2018 Cybersecurity Law prompted mass protests in Vietnam and attracted criticisms from the international community. However, it is not the only legal obstacle to freedom of expression. The Vietnamese Government has used many other legal instruments to restrict freedom of expression and the press severely. In recent years, we have observed 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 2023 report scores Vietnam 22/100<sup>35</sup> while Reporters Without Borders ranks Vietnam at 178/180 countries on its 2023 Press Freedom Index, only above China and North Korea.<sup>36</sup>

#### Decree 15/2020/ND-CP

On 3 February 2020, the Vietnamese government issued Decree 15/2020/ND-CP ("Decree 15")<sup>37</sup>, signed by the Prime Minister, to stipulate penalties for administrative violations in the fields of postal services, telecommunications, radio frequency, information technology and electronic

---

<sup>34</sup> Available at: <https://dvov.org/wp-content/uploads/2021/02/BPSOS-Analysis-of-Vietnams-Internet-freedom-situation-following-the-adoption-of-the-2018-Cybersecurity-Law-Jan-2021.pdf>

<sup>35</sup> Freedom on the Net, 2023, Freedom House, available at: <https://freedomhouse.org/country/vietnam/freedom-net/2023>

<sup>36</sup> 2023 World Press Freedom Index – journalism threatened by fake content industry, Reporters Without Borders, 2023, available at: <https://rsf.org/en/country/vietnam>

<sup>37</sup> Decree 15/2020/ND-CP in Vietnam, Decree 15/2020/ND-CP penalties for administrative violations against regulations on postal services in Vietnam." 2020. Thư viện pháp luật. <https://thuvienphapluat.vn/van-ban/EN/Cong-nghe-thong-tin/Decree-15-2020-ND-CP-penalties-for-administrative-violations-against-regulations-on-postal-services/438738/tieng-anh.aspx>.

transactions. This decree replaces Decree 174/2013/ND-CP (“Decree 174”)<sup>38</sup>. 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. The International Commission of Jurists commented 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.”*<sup>39</sup>

The Vietnamese government has increasingly fined citizens for online speech; we documented dozens of cases citing Decree 15/2020/NĐ-CP. Most cases involved alleged fake news on

---

<sup>38</sup> Decree 174/2013/ND-CP regulates penalties for administrative violations of post, telecommunications and information technology. (2013, November 13). Thư viện pháp luật. Available at: <https://thuvienphapluat.vn/van-ban/Cong-nghe-thong-tin/Nghi-dinh-174-2013-ND-CP-quy-dinh-xu-phat-vi-pham-hanh-chinh-buu-chinh-vien-thong-cong-nghe-thong-tin-213651.aspx>

<sup>39</sup> 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>

Facebook, often during the COVID-19 pandemic. However, it's important to note that some of the cases related to COVID-19 actually involved individuals who were critical of government officials rather than spreading false information. This pattern raises concerns about the restriction of free expression and the use of administrative measures to penalise online speech in Vietnam.

### 2018 Law on Protection of State Secrets and Related Decisions

Vietnam's National Assembly passed the Law on Protection of State Secrets on 15 November 2018, and the legislation piece came into force on 1 July 2020, replacing the Ordinance 30/2000/PL-UBTVQH on Protection of State Secrets.<sup>40</sup> Following the adoption of the law, Decree 26/2020/ND-CP (dated 28 February 2020)<sup>41</sup> and the Prime Minister's Decision 960/QĐ-TTg (dated 7 July 2020)<sup>42, 43</sup> 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 expanded 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 harms the political, economic and social situation,” and specific matters such as “constitution and law-making activities,” “information about the 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 expressing 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

---

<sup>40</sup> Law on Protection of State Secrets. Available at: <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=141824&Keyword=>

<sup>41</sup> 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>

<sup>42</sup> 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>

<sup>43</sup> 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](https://dvov.org/wp-content/uploads/2020/10/PM-Decision-Secrets_En-960_QĐ-TTg.pdf)

significant leeway for interpretation, potentially leading 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.

On 3 November, 2020, Vietnam's Prime Minister issued Decision 1722/QĐ-TTg,<sup>44</sup> classifying certain internal documents of the Vietnamese Communist Party, especially those relating to the mobilisation and control of the masses, as state secrets. These documents include, among others, communications and minutes of meetings with leaders and influential people of different religions and ethnic populations. Most astounding is Article 3, which classifies as state secret information about communist party members assigned to operate within religions covertly. 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.

#### Articles 117 and 331 of the Penal Code

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 traditionally persecuted activists, independent journalists, and dissidents. However, over the past five years, we have witnessed a new development in the way the government persecutes citizens: they go after ordinary citizens who have no considerable background in activism.

According to the International Commission of Jurists (ICJ), Article 331 (abusing democratic freedoms) is *"inconsistent with international human rights law protecting the right to freedom of expression as it is vague and overbroad, and unnecessarily and disproportionately limits the*

---

<sup>44</sup> Prime Minister's Decision 1722/QĐ-TTg. Available at: <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Quyet-dinh-1722-QD-TTg-2020-Danh-muc-bi-mat-nha-nuoc-cua-Dang-456651.aspx>

*legitimate activities of human rights defenders and lawyers.*” The case of Zen Hermitage Buddhist Group illustrates how the government uses Article 331 to stifle freedom of expression.

Article 117, “*making, storing, spreading information, materials, items for the purpose of opposing the State,*” is another law provision often used to repress freedom of expression. It was used to silence critics of the extrajudicial killing of Mr. Lê Đình Kinh during a police raid on 9 January 2020 against residents of Đồng Tâm Village in Hà Nội. Other prominent cases include:

- (1) Trịnh Bá Phương was sentenced on 15 December 2021 to 10 years of imprisonment and five years of probation.<sup>45</sup>
- (2) Trịnh Bá Tư, brother of Phương, was sentenced on 5 May, 2021 to eight years of imprisonment followed by three years of probation.<sup>46</sup>
- (3) Mrs Cấn Thị Thêu, mother of Phương and Tư, was sentenced on 5 May, 2021 to eight years of imprisonment followed by three years of probation.<sup>47</sup>
- (4) Ms Nguyễn Thị Tâm, a neighbour of Ms. Cấn Thị Thêu, was sentenced on 15 December, 2021 to six years in prison with three years’ probation.<sup>48</sup>
- (5) Ms. Phạm Đoan Trang, a well-known human rights defender and author, was sentenced on 14 December 2021 to nine years in prison<sup>49</sup>.
- (6) Mr. Lê Văn Dũng (aka Dũng Vova), an independent online reporter known by his pen name Lê Dũng Vova, was sentenced on 23 March, 2022, to five years in prison and five subsequent years of probation.<sup>50</sup>

---

<sup>45</sup> Vietnamese land rights activists draw heavy prison terms in Hanoi trial, RFA, December 15, 2021, available at: <https://www.rfa.org/english/news/vietnam/trial-12152021155542.html>

<sup>46</sup> “Viet Nam: Mother and son unjustly convicted in ‘travesty of justice’.” Amnesty International, May 5, 2021. Available at: <https://www.amnesty.org/en/latest/news/2021/05/viet-nam-mother-son-unjustly-convicted/>

<sup>47</sup> “Viet Nam: Mother and son unjustly convicted in ‘travesty of justice’.” Amnesty International, May 5, 2021. Available at: <https://www.amnesty.org/en/latest/news/2021/05/viet-nam-mother-son-unjustly-convicted/>

<sup>48</sup> Vietnamese land rights activists draw heavy prison terms in Hanoi trial, RFA, December 15, 2021, available at: <https://www.rfa.org/english/news/vietnam/trial-12152021155542.html>

<sup>49</sup> The Upheld Conviction of Pham Doan Trang, US Department of State, August 25, 2022, available at: <https://www.state.gov/the-upheld-conviction-of-pham-doan-trang/>

<sup>50</sup> Vietnamese journalist Le Van Dung sentenced to 5 years in prison, Committee to Protect Journalists, March 23, 2022, available at: <https://cpj.org/2022/03/vietnamese-journalist-le-van-dung-sentenced-to-5-years-in-prison/>



- (7) Ms. Nguyễn Thuý Hạnh, a well-known advocate for prisoners of conscience in Vietnam, was arrested by the public security police on 7 April, 2021 and charged under article 117 of the Penal Code.<sup>51</sup> She has been sent to a psychiatric ward on and off while awaiting trial<sup>52</sup>, <sup>53</sup>.
- (8) Mr. Nguyễn Bảo Tiên, a member of the Liberal Publishing House, an independent book publisher, was arrested, arbitrarily detained and sentenced to 6 years and six months in prison under Article 117<sup>54</sup>.
- (9) Mr. Đỗ Nam Trung, a main voice of criticisms of the build-operate-transfer highways that Vietnam has adopted in recent years, was charged with “*spreading materials against the State*” under Article 117 of Vietnam’s Penal Code<sup>55</sup>.

#### Forcing Foreign Online Service Providers to comply with local law

Since adopting 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 analysed the recent developments and categorised the government’s measures into three groups: formal requests, technical measures, and economic measures.

*Formal requests:* 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%. Requests to remove (alleged) fake news about COVID-19 has been accepted 100%. The rate is about 90% with Google. Minister Nguyen Manh

---

<sup>51</sup> Viet Nam: Prominent human rights defender Nguyen Thuy Hanh arrested and charged , Amnesty International, April 8, 2021, available at: <https://www.amnesty.org/en/latest/news/2021/04/nguyen-thuy-hanh-arrested-and-charged/>

<sup>52</sup> “Nhà hoạt động Nguyễn Thuý Hạnh bị đưa vào viện tâm thần (Activist Nguyen Thuy Hanh taken to psychiatric ward),” VOA, May 6, 2022, available at: <https://www.voatiengviet.com/a/nha-hoat-dong-nguyen-thuy-hanh-bi-dua-vao-vien-tam-than/6560616.html>

<sup>53</sup> Locked inside our home, HRW 2022, available at: [https://www.hrw.org/sites/default/files/media\\_2022/02/vietnam0222\\_web.pdf](https://www.hrw.org/sites/default/files/media_2022/02/vietnam0222_web.pdf)

<sup>54</sup> Opinion of Working Group on Arbitrary Detention, number: A/HRC/WGAD/2022/35. 2 June 2022. Available at: <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-35-Vietnam-AEV.pdf>

<sup>55</sup> Trung Do Nam | Front Line Defenders.” *Front Line Defenders* |, <https://www.frontlinedefenders.org/en/profile/trung-do-nam>. Accessed 11 October 2023.



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.<sup>56</sup> 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.<sup>57</sup> The chart below shows the number of content restrictions conducted by Facebook<sup>58</sup> throughout the years.

*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 centres where Facebook stored its cached data to put more pressure on Facebook to restrict anti-state content.<sup>59</sup> 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 at an 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 audiences, 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)

---

<sup>56</sup> Facebook sẽ chặn quảng cáo chính trị từ các tài khoản phản động (Facebook will block political ads from reactionary accounts), *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](http://congan.com.vn/tin-chinh/facebook-se-chan-quang-cao-chinh-tri-tu-cac-tai-khoan-phan-dong_100905.html)

<sup>57</sup> 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>

<sup>58</sup> Facebook Transparency Report. Available at: <https://transparency.facebook.com/content-restrictions/country/VN>

<sup>59</sup> 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>

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.<sup>60</sup> 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.

#### Recommendations:

- (1) Release all journalists who have been imprisoned for expressing their views, exposing corruption, or holding government officials accountable for their public service.
- (2) Repeal Articles 117 and 331 of the Penal Code and amend the 2018 Law on Protection of State Secrets and Related Decisions and Decree 15/2020/ND-CP to be in compliance with the International Covenant on Civil and Political Rights (ICCPR).
- (3) Release all prisoners detained or imprisoned under Article 117 or Article 331, including but not limited to Cấn Thị Thêu, Trịnh Bá Tư, Trịnh Bá Phương, Nguyễn Thị Tâm, Phạm Đoan Trang, Lê Văn Dũng, Nguyễn Bảo Tiên, Đỗ Nam Trung, and Nguyễn Thuý Hạnh.

---

<sup>60</sup> 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>