



Joint Submission by PEN International, Vietnamese Abroad PEN Centre and PEN America in Advance of the Fourth Universal Periodic Review of the Socialist Republic of Vietnam

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<p>PEN International Contact: Ross Holder Email: Ross.Holder@pen-international.org Website: https://www.pen-international.org/</p>	<p>PEN America Contact: Anh-Thu Vo Email: avo@pen.org Website: https://pen.org/</p>
<p>Vietnamese Abroad PEN Centre Contact: Lloyd Dung Email: lloydduong@penvietnam.org Website: https://vietpen.org/</p>	

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with registration number 1117088.
International PEN's registered office
is 167-169 Great Portland Street,
London W1W 5PF

Executive summary

1. The submitting organisations welcome the opportunity to contribute to the fourth cycle of the Universal Periodic Review (UPR) of the Socialist Republic of Vietnam (“Vietnam”). This submission focuses on compliance with international human rights obligations with respect to freedom of expression and other rights, in particular concerns relating to:
 - Primary legislation used to restrict freedom of expression
 - Freedom of expression online
 - The treatment of writers and artists

Recommendations are provided following each section.

2. During the previous UPR cycle in 2019, Vietnam supported 15 recommendations regarding freedom of expression.ⁱ However in practice, Vietnam has failed its obligation to uphold and defend various rights,ⁱⁱ including the right to the freedom of expression. The Vietnamese government has effective control of all traditional media, including the press, television, radio, and other publications.ⁱⁱⁱ The Vietnamese government has continued to arbitrarily detain individuals who have criticised the government, often disregarding due process and the right to a fair trial, despite “supporting” 15 recommendations on administration of justice and fair trial during the previous UPR cycle.^{iv} The Vietnamese government has continued to pass digital policies that curtail free expression, cultural rights, and violate privacy.

Primary legislation used to restrict freedom of expression

3. Although Article 25 of Vietnam’s Constitution guarantees the right to freedom of opinion and speech, free expression remains suppressed in Vietnam. The Vietnamese government has continued to arrest, charge, and imprison writers for making critical statements against the Vietnamese government under the guise of violating Article 117 and 331 of the 2015 Penal Code.^v Article 117 states that “Making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam”; whereas Article 331 states that “Abusing democratic freedoms to infringe upon the interests of the State, lawful rights, and interests of organisations and/or citizens”.^{vi} Article 117’s broad language criminalising propaganda against the state can be used to suppress any critical speech, while Article 331’s prohibition of the “abuse of democratic freedoms” has been utilised to criminalise peaceful activities and expressions, causing direct censorship and prohibiting the diversity of opinions. In the previous UPR cycle, Vietnam “noted” the seven recommendations related to repealing or amending these articles in the 2015 Penal Code.^{vii}

4. Vietnam passed the Cybersecurity Law in 2018, which required platforms to store data locally and gave the government control over online content and data.^{viii} The clauses in Article 5 of Vietnam’s Cybersecurity Law (2018) are concerning due to their potential violations of both the right to free expression and privacy as it requires the deletion or removal of unlawful or false information in cyberspace when linked to national security or the interests of individuals. These clauses and subsequent orders often result in censorship and curtailing freedom of expression. The broad definitions of “unlawful” or “false” information can be exploited to silence legitimate speech. Furthermore, collecting e-data tied to security breaches or individual rights raises privacy concerns due to insufficient safeguards, potentially infringing on privacy. Additionally, measures allowing the freezing or restriction of information systems and the suspension or withdrawal of domain names is an overly broad restriction and has a chilling effect on free expression, potentially enabling authorities to control or shut down online platforms and content, thereby suppressing dissenting voices and limiting the dissemination of information and ideas. Furthermore, Article 8 of the Cybersecurity Law (2018) prohibits actions such as distorting history and prohibiting false information, which raises free expression concerns since broad and subjective definitions of these offences may lead to the censorship of legitimate expression and the suppression of dissenting viewpoints. Vietnam “noted” the six recommendations to repeal and/or amend the Cybersecurity Law (2018) during the previous UPR review cycle.^{ix}
5. Since the previous UPR cycle, in 2022 the Vietnamese government passed Decree No. 53/2022/ND-CP which details the implementation of the Cybersecurity Law (2018), increasing government access to personal data and the ability to crackdown on dissidents.^x In particular, it stipulates that foreign companies must comply with censorship requirements and provide user data to the Vietnamese government when there is an alleged violation of the Cybersecurity Law (2018).^{xi} In such cases, the Minister of Public Security will require these companies to store user data and have to open their physical offices in Vietnam. The requirement for foreign companies to provide user data to the Vietnamese government when alleged violations of the Cybersecurity Law (2018) occur can infringe on individuals’ right to privacy. This access to personal data can be used to monitor and target individuals, potentially leading to self-censorship and inhibiting the free expression of dissenting views. The mandate for companies to store user data and establish physical offices in Vietnam if they do not comply with government requests further raises privacy concerns as it would increase the government's ability to access and control user data.
6. In November 2022, the Ministry of Information and Communications implemented regulations mandating the removal of content deemed “false” from social media platforms within 24 hours upon receiving an official request.^{xii} Authorities have demanded that companies utilise artificial intelligence to identify and remove “false” information.^{xiii} The

UN Special Rapporteur on freedom of opinion and expression has stated that laws which empower authorities with broad discretionary powers to compel social media platforms to remove content they perceive as illegal, including disinformation or “fake news”, effectively result in the suppression of legitimate online expressions, often without adequate due process or prior court orders, which is a violation of the freedom of expression.^{xiv} The term “false” information can be subjective and overly broad and violate the principle of legality that requires laws to be “sufficiently clear and precise.”^{xv} It may not always be clear-cut what constitutes false information, and this ambiguity can lead to overreach and censorship of legitimate expressions and opinions. These regulations have a chilling effect on free expression. In addition, the regulations fail to meet the test of proportionality and necessity. Mandating removal within a 24-hour timeframe essentially functions as a type of prior restraint, which means that content is restricted before it has the opportunity to be thoroughly assessed for accuracy or legitimacy.^{xvi} Vietnam’s new draft Decree 72^{xvii} has several proposals that would have dangerous implications on free expression and privacy. Under Article 26-3(đ), foreign organisations and individuals that serve as intermediaries including general information websites, electronic newspapers or magazines, when providing cross-border information to users in Vietnam must collect names, date of birth, email, and mobile phone numbers.^{xviii} Whereas, under 30-2(a), the draft decree requires intermediaries including general websites and social media platforms that operate in Vietnam to collect names, date of birth, emails, and mobile phone numbers, and national ID, and passport information. This information must be stored for at least two years and must be provided to State authorities upon request. Requiring identification for social media platforms compromises the online privacy of individuals and deters people from freely expressing their opinions.^{xix} Article 26-3(h) would allow the Vietnamese government the ability to order tech companies to temporarily or permanently block a social network account, community page, or group that allegedly violates the law within 48 hours of the complaint.^{xx} The rapid response requirement may lead to over-censorship by tech companies, as it risks incentivising them to pre-emptively block content or accounts to avoid potential penalties or legal repercussions. This can lead to self-censorship and casts a chilling effect on free expression.

7. Recommendations:

- Amend current legislation to abide by international human rights law particularly on freedom of expression and right to privacy in accordance with the International Covenant on Civil and Political Rights and Universal Declaration on Human Rights. Specifically, we recommend the revision of the following laws:
 - Vietnam Penal Code (2015) and the removal of Articles 117 and 331 and any other restrictions infringing on the freedom of expression.

- Cybersecurity Law (2018) Articles 5 and 8 and Decree 53 to ensure proper safeguards for free expression and privacy.
- Review and revise draft Decree 72 and remove Articles 26 and 30 to abide by international human rights standards.
- Repeal the regulation that mandates the removal of content deemed “false” from social media platforms within 24 hours upon receiving an official request. Refrain from implementing any directives that require the removal of content without sufficient procedural safeguards to avoid unintended consequences resembling censorship and mandates to provide personal information.

Freedom of expression online

8. Internet usage has proliferated in Vietnam over the past decade with approximately 77.93 million internet users (79.1% of the population) and approximately 70 million social media users (71% of the population) in January 2023.^{xxi} Since the majority of traditional avenues of free expression are under the control of the Vietnamese government, many Vietnamese people have turned to Facebook (67.2% of the population) as their primary platform.^{xxii} As usage of the internet and social media has expanded, the Vietnamese government has effectively implemented legislation that has expanded control over the public’s access to the internet and social media which has directly infringed on free expression and privacy rights. The Cybersecurity Law (2018) and Decree 53 expanded the government’s ability to obtain access to personal data.^{xxiii} Despite avoiding the wholesale blocking of major social media and communication platforms, the government has pressured companies like Meta, the parent company of the social media network Facebook, to comply with content restrictions, leading to concerns about online freedom of expression and access to information. Meta has repeatedly accommodated Vietnamese authorities’ demands to censor criticism and has created a list of Vietnamese Communist Party members who may not be criticised on their platforms.^{xxiv} In 2021, the Ministry of Information and Communications collaborated with government authorities to block approximately 2,000 websites, images, and articles that they deemed were “toxic”,^{xxv} which is a clear act of government censorship and violation of free expression.^{xxvi}
9. Dissident voices are often harassed and falsely reported by coordinated pro-government digital militias known collectively as Force 47.^{xxvii} Vietnam created a 10,000-member cyber military force called Force 47 in 2015 to monitor and suppress digital free expression, primarily on platforms like Facebook and YouTube. Over time, this force expanded, including a citizen-led affiliate group called E47, and employed tactics like doxing, mass reporting on Facebook to remove pages, and exploiting the platform’s challenging appeals process, which strains targeted individuals due to a shortage of Vietnamese-language specialists for assistance.

10. Recommendations:

- Establish clear criteria and procedures for determining legal violations on social media platforms. Ensure transparency in the decision-making process and allow individuals or groups whose accounts are blocked to seek redress through an impartial and independent body.
- Refrain from requiring companies to provide user data unless a legitimate legal process, such as a court order, is followed, and ensure individuals' right to privacy and prevent unwarranted government access to personal information.
- Implement robust data protection measures for user data stored within Vietnam, including strict safeguards against unauthorised access and misuse. Adhere to international data protection standards to ensure the privacy rights of individuals are respected.
- Cease the activities of Force 47 and E47 involving mass reporting and doxing of accounts and posts.

The treatment of writers and artists

11. The Vietnamese government has systematically infringed upon individuals' fundamental right to freely express their opinions, thoughts, and criticisms. The suppression of dissent and control over communication channels infringe upon the right to participate in society, access information, and engage in cultural practices, all of which are integral aspects of social, cultural, and political rights. Writers, artists, and creators in Vietnam continue to face severe suppression of free expression as their works are systematically censored and restricted. Writing and art spur inquiry and challenge orthodoxies, allowing people to reflect on their present and imagine a different future. The right to freedom of expression is fundamental to writers' and artists' work. Only in an environment where free expression is respected can people enjoy full participation in political, social, and cultural rights.
12. In PEN America's 2022 Freedom to Write Index, Vietnam tied for fourth place globally among countries imprisoning writers, with 16 detained writers.^{xxviii} In correlation with the government's increased access to platform data, there appears to have been an increase in arrests and imprisonment of online commentators in Vietnam. Writers who criticise the government on issues such as human rights abuses, women's rights, corruption, territorial disputes, environmental rights, and/or COVID-19 policies are often harassed, arrested, or imprisoned. Nearly all writers imprisoned in Vietnam—15 out of 16—are online commentators who use Facebook as their primary platform.^{xxix} Vietnamese authorities censor and primarily target high-profile blogs, websites, and content that are perceived as

threats to the Vietnamese Communist Party's rule, including discussions of social unrest, political dissent, advocacy for human rights and democracy, and criticism of the government's handling of border and maritime disputes with China. Several critical websites, including Luật Khoa, The Vietnamese, Việt Nam Thời báo, Báo Tiếng Dân, Diễn đàn Xã hội Dân sự, and Bauxite Vietnam, are generally inaccessible.^{xxx}

13. Vietnam has consistently violated due process and the right to a fair trial in cases involving online commentators. These violations include arbitrary arrests and detentions without formal charges or legal justification, incommunicado and extended periods of pretrial detention, failure to ensure expeditious trials, limited access to legal representation, secretive and closed trials, lack of access to evidence for the defence, and intimidation or harassment of lawyers representing the accused. These practices not only undermine the principles of due process and the right to a fair trial but also raise concerns about the independence of the judiciary and the overall fairness of legal proceedings in Vietnam. These violations collectively deprive individuals of their fundamental rights to a fair and just legal process and casts a chilling effect on freedom of expression and other related rights.
14. The imposition of lengthy prison sentences on writers in Vietnam represents a clear violation of international law, notably contravening the principles articulated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Such extended sentences are deemed neither necessary nor proportionate for the alleged offences, thereby undermining the international legal standards governing the treatment of individuals and the protection of their right to freedom of expression.
15. A prime example of Vietnam's violation of free expression and targeting of writers is the prosecution and imprisonment of renowned writer and blogger Pham Doan Trang. In December 2021, four Vietnamese human rights defenders, including Pham Doan Trang, received prison sentences for alleged anti-state propaganda within three days. Pham Doan Trang, a prominent advocate for human rights and democracy, had been imprisoned since October 2020 on charges of disseminating anti-state propaganda under Article 88 (now Article 117 of Vietnam's 2015 Penal Code).^{xxxii} She endured over a year of incommunicado detention until October 2021 when she finally met with one of her lawyers.^{xxxiii} In the same month, the UN Working Group on Arbitrary Detention declared her detention arbitrary and called for her immediate release.^{xxxiii} On December 14, 2021, Pham Doan Trang was sentenced to nine years in prison, exceeding the prosecutor's request.^{xxxiv} She was given just one day's notice of her trial date, which lasted only a few hours, and her human rights writings and interviews with international media were used as evidence.^{xxxv} Her appeal in August 2022 was rejected, and her sentence was upheld.^{xxxvi}

16. Additionally, Vietnamese authorities continue to intimidate and threaten writers and artists and their families with travel bans and by confiscating equipment. Meanwhile, it has been documented that individuals have been detained and belongings confiscated due to their artistic work.

17. Recommendations:

- Cease persecution of writers and artists, release them from prison, and unconditionally drop all charges.
- Establish protection and development programs for cultural figures including writers and artists and organisations.

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