

SHRINKING SPACES

**Assessment of Human Rights in Vietnam
during the 2nd Cycle of its
Universal Periodic Review**



Vietnam Committee on Human Rights
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Introduction

In January 2019, Vietnam will come before the UN Human Rights Council for the 3rd Cycle of its Universal Periodic Review (UPR). Its first UPR was in May 2009, and the second in February 2014. A total of 227 recommendations were made by states at the 2nd UPR Cycle to improve human rights protection in Vietnam. The Vietnamese government accepted 182 of these recommendations¹ and according to its mid-term report to the UN Human Rights Council, “*by February 2017, 129 of these 182 recommendations had been successfully realized.*”²

However, reports from Vietnam give a very different view. According to extensive information received by the Vietnam Committee on Human Rights (VCHR) during the period under review, not only did Vietnam make limited progress in implementing UPR recommendations, but on the contrary, the authorities embarked on one of the worst crack-downs in years on freedom of expression, religion or belief, peaceful assembly, association and economic and social rights.

Civil society was the main target of this crackdown. During this period, some of Vietnam’s most prominent human rights defenders, bloggers and online journalists were arrested. Several were condemned to harsh prison sentences at unfair trials; others are still languishing in jail awaiting judgment, often for periods far exceeding the limits defined in the Criminal Procedures Code. Unprecedented Police brutality, physical assaults and harassment of civil society activists and their families escalated sharply during this period, creating a pervasive climate of fear. Vietnam also sought to “export” its dissidents by giving some prisoners early release on condition they emigrate immediately. Others were “deported” – one French-Vietnamese activist was stripped of his Vietnamese nationality and sent back to France.

As 2017 drew to a close, repression against civil society activists intensified. In An Giang province on 21 December, five people were sentenced to prison terms of up to five years on charges of “*anti-state propaganda*” for possessing flags belonging to the former Republic of (South) Vietnam. On 28 December, nine activists were condemned to a total of 83 years in prison in Binh Định for circulating pamphlets deemed to “*oppose the Party and the state*”. In 2017 alone, Vietnam arbitrarily detained or convicted at least 46 civil society activists, including seven women, for peaceful human rights activities, and at least 23 received prison terms ranging from three to 14 years. This trend continued in January and February 2018, with least 16 civil society activists condemned to a total of 95 ½

¹ *Report of the Working Group on the Universal Periodic Review of Viet Nam*, A/HRC/26/6, 2 April 2014, and Addendum 1: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review.

² “New developments in National Legislation on Human Rights and Updates on the Implementation of the 2nd UPR Cycle Recommendations accepted by Vietnam”, 29 March 2017. A/HRC/27/38.

years in prison, including medical doctor Hồ Văn Hải (four years prison) and Hoàng Đức Bình (14 years prison), both for denouncing the Formosa toxic waste disaster, and ten Hoà Hảo Buddhists jailed from two to twelve years. At least 130 prisoners of conscience are estimated to be currently detained in Vietnam.

On 15th January 2018, Communist Party Secretary-general Nguyễn Phú Trọng commended the “increased efficiency” of security forces in this crackdown, who had *“taken a leading role in uncovering, neutralizing and disabling the conspiracy and sabotage activities of reactionary, hostile forces, and preventing the establishment of political opposition groups in the country”*. He urged security forces to redouble their efforts in 2018 to suppress government critics, especially on the Internet, saying that measures to neutralize opposition movements were still insufficient.³

Alongside political repression, Vietnam used the law to restrict the exercise of human rights, introducing an arsenal of new legislation that criminalizes independent political or religious activities. These legal restrictions, which are totally inconsistent with Vietnam’s international human rights obligations, serve to justify the government’s claim that *“there are no political prisoners in Vietnam, only people who violate Vietnamese law”*.

These legal restrictions are reinforced by countless Communist Party directives that control all aspects of citizens’ lives. In November 2017, the Communist Party issued “Regulation 102” which states that any member of the VCP who advocates *“the separation of powers”, “independent civil society” or “multi-party democracy”* will be immediately expelled. Other causes for expulsion include criticizing *“Marxist-Leninism or Ho Chi Minh thinking, socialist legality or the market economy with socialist orientations”*. In Vietnam’s one-Party state, expulsion from the Communist Party is a serious sanction. Party membership opens doors to job opportunities, connections, influence, access to university and a range of financial privileges and prerogatives which would all be lost if a person is expelled⁴.

This report gives an overview of the shrinking space for civil society over the past three years created by these restrictive policies and practices, in contrast with the pledges made by Vietnam at its 2nd UPR Cycle in 2014. Although there are no officially-recognized independent civil society organizations or NGOs in Vietnam – the government’s report talks only of “VPOs” (Vietnamese people’s organizations) – the past few years have seen a mushrooming of informal civil society groups calling for freedom of expression, the press and Internet, worker rights, protection of the environment, freedom of religion and belief, land rights and social justice. Vietnam’s unprecedentedly fierce crackdown seems to be a determined effort to stifle these essential civil society voices once and for all.

³ Nguyễn Phú Trọng, Opening speech at the 73rd National conference of Public Security, Hanoi, 15.1.2018, Ministry of Public Security Online Newsletter, http://mps.gov.vn/web/guest/ct_trangchu/-/vcmsviewcontent/GbkG/2004/2102/39530

⁴ *Party members advocating civil society will be expelled*, Radio Free Asia, 6.12.2017 <http://www.rfa.org/vietnamese/news/vietnamnews/vcp-to-expel-members-whoever-call-for-civil-society-mechanism-12062017091802.html>

Rule *by* Law: Vietnam's use of the Law to Restrict Human Rights

In its mid-term UPR report to the UN Human Rights Council (*see footnote 2*), Vietnam said that 66 laws and 3 Ordinances had been supplemented, amended or promulgated in the 2014-2016 period. This includes key legislation such as the Criminal Code, Criminal Procedures Code, Law on Belief and Religion, the Press Law, the Law on Access to Information etc. In many cases, these new or amended laws did not enhance human rights protection, but increased restrictions on the exercise of human rights.

The 2017 Amended Criminal Code

Vietnam accepted recommendations by several states at the 1st and 2nd UPR to bring the 1999 Criminal Code into line with Vietnam's obligations as state party to the UN International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR). The amended Criminal Code was adopted in November 2015. Because of numerous errors in the text – a fact initially revealed by independent bloggers in Vietnam – it was reviewed again by the National Assembly. The final version was adopted in June 2017, and came into force on 1st January 2018.

Contrary to Vietnam's pledges, however, the amended Criminal Code does not conform to international human rights standards. Vaguely-worded "national security crimes" which have been roundly denounced by the UN Human Rights Committee and many UN Special Procedures were not amended or abrogated. In fact, one new national security crime – "*terrorism against the state*" (Article 113 in the new code) was added, which carries the death penalty. Ambiguous offenses such as "*undermining national solidarity, sowing divisions between religious and non-religious people*", (Article 87), "*abusing democratic freedoms to encroach on the interests of the state*" (Article 258) remain in place – only the numbers have changed.

In fact, the change in numbers of these national security crimes may have been one of Vietnam's motivations for amending the Criminal Code. Thanks to decades of advocacy by VCHR, international organizations and more recently by activists in Vietnam, the international community is very familiar with the numbers and contents of these crimes, especially Articles 79, 87, 88 and 285, which were specifically raised at the 2nd Cycle of the UPR by Australia, Canada and France. Since the amended Criminal Code came into force on 1st January 2018, the new numbers must now be learned – Article 79 on "*activities aimed at overthrowing the people's administration*" is now Article 109; Article 87 ("*undermining the unity policy,*" "*sowing divisions between religious people and non-religious people*") is Article 116; Article 88 "*conducting propaganda against the Socialist Republic of Vietnam*") is Article 117; Article 258 ("*abusing democratic freedoms to infringe upon the interests of the State*") is now Article 331. We publish a table of corresponding old and new numbers of national security crimes (*see Annex II*).

In some cases, the amended Criminal Code imposes even harsher restrictions on the right to freedom of opinion and expression than the old one. For example, Article 88 on "*conducting propaganda against the Socialist Republic of Vietnam*" is now "*causing,*

storing and distributing information and documents against the State of the Socialist Republic of Vietnam”, which is open to a wider interpretation.

Vague provisions criminalizing the “*preparation of the offense*” have been added to several crimes, such as Article 79 on subversion, or “*activities aimed at overthrowing the people’s administration*” (which carries the death penalty) and Articles 88 and 87. “Preparation” (“*chuẩn bị*” in Vietnamese) could mean anything from a thought process to the physical preparation to commit an act. These new provisions give the authorities greater leeway to punish perceived critics and stifle dissent. This is especially alarming in view of the government crackdown in 2014-2017, in which Article 79 has been increasingly invoked to convict peaceful pro-democracy activists and human rights defenders. Below are some of the civil society activists arrested or sentenced under Article 79 in the recent crack-down.



Pastor Nguyễn Trung Tôn, Phạm Văn Trội, Trương Minh Đức, Nguyễn Bắc Truyền, Nguyễn Trung Trực

On 27 July 2017, army veteran and writer **Lê Đình Lượng** was arrested and charged under Article 79 for calling for a boycott of parliamentary and people’s council elections. On 30 July, the Ministry of Public Security announced that human rights lawyer **Nguyễn Văn Đài** and his assistant Ms. **Lê Thu Hà** would stand trial under Article 79 (as well as Article 88 as initially announced). Five other members of the “*the Nguyễn Văn Đài clique*” (**Phạm Văn Trội**, **Pastor Nguyễn Trung Tôn**, **journalist Trương Minh Đức**, **Nguyễn Bắc Truyền** and **Nguyễn Trung Trực**), arrested in July-August 2017 face the same charges. (Nguyễn Văn Đài and his assistant have been detained since December 2015 for founding the “*Brotherhood for Democracy*” and holding informal workshops on human rights in the Vietnamese Constitution. On 17 October 2017, a sixth member of the group, **Trần Thị Xuân**, was also arrested. She is accused of being a member of the “*Brotherhood*” and staging protests in 2016 against the Formosa ecological disaster in central Vietnam. **Lưu Văn Vinh** and **Nguyễn Văn Đức Độ** were arrested in November 2016, **Trần Kim Anh** and **Lê Thanh Tùng** were condemned to 13 and 12 years in prison respectively in December 2016 and their sentence was upheld on appeal on appeal on 26 May 2017. On 28 December 2017, the People’s Court in Bình Định sentenced a group of nine people to a total of 83 years in prison for distributing leaflets perceived to be “anti-state”. **Nguyễn Quang Thanh** and **Tạ Tấn Lộc** received 14-year sentences and **Huỳnh Hữu Đạt** was sentenced to 13 years in prison under Article 79.

Lawyers in Vietnam have expressed deep concern about **Article 19** of the amended Criminal Code which requires them to reveal information about their clients. In June 2017, the President of the Vietnamese Federation of Lawyers **Đỗ Ngọc Thịnh** wrote to the

National Assembly calling for this clause to be removed. **Article 19 (3)** of the amended Criminal Code states that *“if the defender of an offender has knowledge of the crime that was committed or participated in by the person he/she defends while performing the defender’s duties, the defender shall not bear criminal responsibility as specified in Clause 1 of this Article, except for failure to report crimes against national security or other extremely serious crimes specified in Article 389 hereof”*.

Article 19 is a step backwards from the 1999 Criminal Code because it breaches the principle of lawyer/client confidentiality, and contradicts Article 73 of the 2015 amended Criminal Procedures Code which states that lawyers should not reveal any such information about their clients.

“National Security” – a Pretext to Suppress Dissent

Vietnam rejected recommendations to revise national security provisions in the Criminal Code at both UPR cycles (*see Annex 1*), and claims in its 2017 mid-term report to the UN that these national security clauses conform to the limitations on human rights defined in the UDHR and the ICCPR to protect national security or public order, public health or morality. However, Vietnam’s claim is wrong. International law, unlike Vietnamese legislation, makes a clear distinction between violent acts and the exercise of peaceful political dissent. International law allows no limitations on the grounds of *“infringing upon the rights of the State”* as does Vietnamese law (Article 258 of the Criminal Code).

Moreover, the Johannesburg Principles ⁵ which define national security limitations state clearly that “the peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties.” The Principles stress that expressions such as nonviolent advocacy of political change, criticism of the government or government officials, or reporting alleged violations of international human rights law shall not constitute a threat to national security.

“The peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties.”

Johannesburg Principles on Freedom of Expression, National Security and Access to Information, 1996

Yet during this period, Vietnam persisted in violating these fundamental principles, and even flaunted its disregard of its international obligations. On the very eve of the European Union-Vietnam Human Rights Dialogue in Hanoi on 1st December 2017, Police intercepted and interrogated three civil society activists for several hours simply for participating in a briefing on the dialogue at the EU Delegation in Hanoi. Just days before, on 27 November, a court in Hà Tĩnh sentenced 22 year-old blogger **Nguyễn Văn Hóa** to seven years in prison at a secret trial on charges of “spreading anti-state propaganda” (Article 88) because he used Facebook and other online platforms to post videos, photographs and commentary about the disastrous toxic spill caused by the Formosa steel

⁵ The Johannesburg Principles on Freedom of Expression, National Security and Access to Information, 1996.

factory which killed marine life and ruined the livelihood of fishermen along a 120-mile stretch of coastline in central Vietnam.

The Law on Belief and Religion

In November 2016, Vietnam adopted its very first Law on Belief and Religion, which came into force on 1st January 2018⁶. This new law was hailed as an important step forward by many international specialists, firstly because it was the first time Vietnam passed a law on this issue, replacing a string of Ordinances, decrees and regulations, and also because the government had canvassed the opinion of certain “State-recognized” religious communities on the draft, and accepted input from a number of international and religious legal specialists. The UN Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt offered to help in drafting the law, but Vietnam refused.

Whilst the input of international legal specialists reportedly improved several aspects of the law, the criticisms raised by Vietnam’s religious communities were largely ignored⁷, and non-recognized organizations such as the Unified Buddhist Church of Vietnam (UBCV), Vietnam’s largest religious community, were not even consulted. The result is that the new law, although it streamlines the process of registration and recognition, grants recognized religions the right to legal personality and reduces the waiting time for obtaining state registration, remains a deeply flawed text which reinforces state management and control of religions rather than providing a framework for the protection of freedom of religion or belief in Vietnam.



Former UN Special Rapporteur
for Freedom of Religion or Belief,
Heiner Bielefeldt

The major problem is the government’s registration and recognition process, and the lack of a clear legal status for religious communities that cannot, or choose not to register with the state. According to international law, freedom of religion or belief cannot be contingent on any process of notification, authorization, recognition or registration. As the former UN Special Rapporteur Heiner Bielefeldt said in his report on his visit to Vietnam in 2014, *“the right to freedom of religion or belief is a universal right which can never be “created” by administrative procedures. Rather, it is the other way around: registration should be an offer by the State but not a compulsory legal requirement”*.⁸

At its 2nd UPR Cycle, Vietnam accepted the recommendation to “reduce administrative obstacles and registration requirements applicable to peaceful religious activities by

⁶ The US State Department 2016 Report on International Religious Freedom gives a detailed analysis of the law on Belief and Religion. <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2016&dliid=268780>

⁷ Comments on the 4th and 5th Draft Law, Catholic Bishops Conference of Vietnam, <http://gpquinhon.org/qn/news/GIAO-HOI-VIET-NAM/Thu-cua-HDGMVN-gop-y-Du-thao-Luat-Tin-nguong-Ton-giao-5238/#.V9AIDzUSb55> and <http://ttmucvusaigon.org/tin-tuc/english/comment-and-petition--4th-draft---laws-on-belief-and-religion/>

⁸ Report by the UN Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, 30 January 2015, Mission to Vietnam, 21-21 July 2014, A/HRC/28/66/Add.2.

registered and non-registered religious groups in order to guarantee freedom of religion or belief” (Canada). The adoption of this new law shows it is not upholding this pledge.

Although there is no article in the new law that outlaws non-recognized religious organizations, the process is very clear. The definition of a religious organization is “*a grouping of believers, dignitaries, auxiliaries and clergy of a religion, which is organized according to a given structure recognized by the State*” (our emphasis) (Article 2.12). To obtain State recognition, religious groups must first obtain a certificate of “registration for religious activities” with the local or national representatives of the government’s “Government Committee for Religious Affairs” (GCRA – *Ban Tôn Giáo Chính Phủ*). Once legally registered, they must operate for at least five years before they can apply for recognition.

However, registration – the first step on the long road to recognition - will only be granted if “*the content of religious activities does not violate any provision in Article 5 of this Law*” (Article 18.6). Article 5 on “strictly prohibited acts” is the “Catch-22” article which invokes the ambiguous criteria embedded in all Vietnamese legislation. “Strictly prohibited” are all belief and religious activities that: “*a) Undermine national defense, national security, national sovereignty, public order, public safety, and the environment; b) Do harm to social ethics or others’ health, life, dignity, honor, or property; c) Hinder the exercise of citizen’s rights and duties; d) Separate different ethnic groups; separate people with belief and religion and people without belief and religion, separate people following different beliefs and religions*”. The authorities may also refuse religious groups’ applications at any stage of the process. The law does not define the criteria for refusal, but states simply that the competent authorities must explain their reasons in writing, and that there is no right of appeal.

Independent religious groups such as the Unified Buddhist Church of Vietnam, Khmer Krom Buddhists, many Protestant house churches, independent Hoa Hao or Cao Dai who do not apply for registration because they do not accept the Community Party’s intrusive interference into internal religious affairs will be extremely vulnerable now that this law has come into force.

In September 2017, a top-level security official, Mr Vũ Chiến Thắng, former MPS Head of Security for the Tây-Bắc region, was appointed Chairman of the Government Committee of Religious Affairs, the body that oversees religious affairs in Vietnam.

Administrative Restrictions on Belief and Religion

In recent months, the government has raced to prepare for the new law’s enforcement by issuing a number of new decisions and decrees. On 8th March 2017, Prime Minister Nguyễn Xuân Phúc issued Decision 306/QĐ-TTg with a “Plan to Implement the Law on Belief and Religion” calling on government agencies at all levels to “*establish a roadmap to guarantee that the Law will be implemented in a uniform, complete and synchronized manner on a nationwide scale by 1st January 2018*”. A follow-up plan was issued by the

Ministry of the Interior on 29th March 2017. The two plans mobilize the participation of the Ministry of the Interior, the Government Board of Religious Affairs, the Prime Minister's Office, the Communist Party's Central Mobilization Department, the Vietnam Fatherland Front and the Ministries of Finance, Justice and Public Security. Alongside the training and deployment of religious cadres, the Plans call for increased vigilance and sanctions against those who *"violate regulations on religion or belief"*.

Administrative sanctions for violations, including heavy fines, are outlined in a draft *"Decree on administrative sanctions in the domain of belief and religion"* posted on several government portals and published in the State-controlled press in July 2017. The Decree will come into force in June 2018. Under the 4-chapter, 38-article draft decree, a wide range of abuses of religious freedom will be sanctioned by fines of up to VND 30 million (USD 1,322) for an individual and VND 60 million (USD 2,643) for an organization. Violations include *"abusing the right to freedom of belief or religion to infringe upon, or persuade or entice others to infringe upon the interests of the state and the legitimate interests of organizations and individuals; abusing the right to freedom of belief or religion to engage in fabrication or slander under any form aimed at opposing the Socialist Republic of Vietnam"* (Article 6.4a and 4b). Religious groups that engage in activities without obtaining the registration certificate stipulated in the new Law on Belief and Religion risk fines of up to 30 million VNDs (Article 7:4a). This is prohibitively high for a country such as Vietnam, where the average annual income is around USD 2,200.

A draft *"Decree regulating certain matters and methods for implementing the Law on Belief and Religion"* has also been posted on the GCRA website. With five chapters and 32 articles, it establishes a detailed time-frame for filing requests and notifications, issuing replies and conducting activities, and regulates state control over religious activities in every domain. This Implementation Decree should replace the current Decree 92.

Legal Restrictions on Freedom of Expression: the Amended Press Law

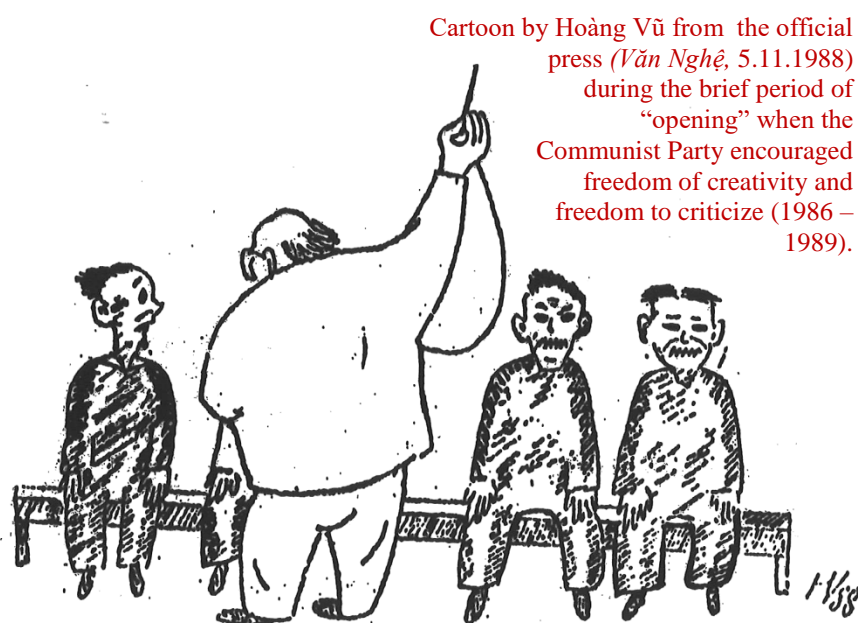
The amended Press Law, which came into force on 1st January 2017, significantly reduces the already limited space for freedom of expression and the press. It increases the number of "prohibited acts" from four to thirteen. All are unduly vague and place wide-ranging restrictions on the media. Banned activities include publishing *"distorted information about the Socialist Republic of Vietnam"* perceived to *"defame the people's government"*, *"run contrary to the country's international unity policies"*, *"cause alarm amongst the people"* or *"sow division between the people and State authorities"*. The diffusion of *"confidential information"* and *"state secrets"* is banned, and the lack of a clear definition of these terms enables the authorities to apply this classification to virtually any document. Contrary to recommendations accepted by Vietnam at the 2nd UPR Cycle to bring Vietnam's laws into line with international standards, the amended Press Law continues to criminalize a wide range of activities which are left solely to the appreciation of the state, such as *"propagating depraved lifestyles"*, *"violating the country's traditions and values"*, or *"distorting history, denying revolutionary achievements or offending the nation or its heroes"*.

Concerning freedom of religion or belief, the amended Press Law bans all publication on “superstition”, without defining the term, and incorporates “national security” provisions from the Criminal Code such as “causing division between non-religious and religious people, people of different religions, between religious people and State authorities.” Disturbingly, the law adds a new prohibition on information which “offends people’s religious belief”. This evokes the “defamation of religions” debate which has raised grave concerns in the United Nations and within civil society worldwide as an impediment to freedom of expression.

Despite strong pressure from Vietnamese citizens and the international community, including recommendations by Australia and Norway at its 2014 UPR (accepted by Vietnam), the amended Press Law makes no provision for independent or privately-owned newspapers. All publications must submit to the censorship and control of the Communist Party of Vietnam.

Shrinking Internet Freedom

Vietnam has actively promoted Internet penetration to support its economic development – the country has some 57 million internet users (more than 60% of the population) and over 50 million social media accounts. At the same time, the authorities feel increasingly threatened by the development of Internet as a platform for civic activism, “citizens’ journalism” and the expression of independent views. In October 2017, Prime Minister Nguyễn Xuân Phúc told the National Assembly that the government’s priority was to “struggle against wrongful or hostile views and toxic, bad information, and deal severely with those who abuse democracy to fabricate news and incite or create social instability”.⁹



Cartoon by Hoàng Vũ from the official press (*Văn Nghệ*, 5.11.1988) during the brief period of “opening” when the Communist Party encouraged freedom of creativity and freedom to criticize (1986 – 1989).

During the recent crackdown, Vietnam intensified efforts to suppress freedom of expression online. The authorities adopted new legal restrictions on the internet and social media, hacked or blocked websites, arrested bloggers and journalists and launched increasingly sophisticated cyber attacks against civil society activists.

⁹ PM calls for sanctions against those who abuse democracy and create instability”. Thời Sự, 23.10.2017 <http://quochoi.org/thu-tuong-xu-ly-nghiem-cac-truong-hop-loi-dung-dan-chu-dua-tin-bai-kich-dong.html>

On 25th December 2017, Lt.-General Nguyễn Trọng Nghĩa, deputy head of the People's Army's political department, announced at a Conference in Ho Chi Minh City that a brigade of over 10,000 cyber warriors named "Force 47" is currently deployed to fight "wrongful views" spreading on the internet. Its members are *"both red and expert"*¹⁰, *they have steadfast political views, they are well-educated and skilled in the highest technologies necessary to fulfill their task*" he said.¹¹ The main tasks of Force 47, which is made up of military personnel, consist of targeting critics and activists, launching smear campaigns and cyber attacks against them and spreading government propaganda to counter dissenting views.

Force 47 and its 10,000 cyber brigade is under the Ministry of Defence but its mandate is similar to the Ministry of Public Security's **"Department of Cyber-security"** (*Cục An Ninh Mạng*), known by its code-name **A68**. In operation since 2010-2011, the Department was officially made public on 28 August 2014 by MPS Minister Trần Đại Quang (now President of Vietnam), following top-level directives from the Politburo (Resolution 36-NQ.TW, 1.7.2014) the Secretariat of the Communist Party's Central Committee (Directive 28-CT/TW, 16.9.2013) and the Prime Minister (Directive 15/CT-TTG, 7.6.2014) to *"increase security controls on the Internet in the new situation"*.

Cyber-security personnel are recruited amongst the best university students. In a letter to FPT University in Hanoi (9 July 2013), the MPS specified that candidates for A68 must be graduate engineers with a good command of English, *"advanced specialist knowledge, expert media skills, and must be committed to working in public security on a long-term basis"*.

Force 47, with over 10,000 cyber warriors deployed to counter dissenting views on the Internet, is a new weapon in the war against freedom of expression in Vietnam

In January 2018, Communist Party Secretary-general Nguyễn Phú Trọng stressed the crucial role of the Public Security forces in *"controlling information and propaganda, shaping public opinion and struggling to counter all wrong or hostile views, especially on the Internet"*.¹²

Force 47 and its 10,000 cyber army is a sophisticated new addition to Vietnam's legion of government-hired Internet opinion shapers (*đur luận viên*), who are paid to denounce online critics and manipulate public opinion. This tactic apes the Chinese model, where "Internet Moderators" have been operating for the past two decades (the people derisively call them the "50 Cent Party" because they do the Party's work for a pittance, often for free). Today, these opinion shapers are supported by "bots" which disseminate their comments on a massive scale. In its 2017 report *"Freedom on the Net"*, Freedom House

¹⁰ This expression dates back to the Chinese Cultural Revolution, when political rectitude and professional skill were perceived as mutually exclusive qualities. With the death of Mao, China recognized the need to be "both red and expert". The use of this expression by a top Vietnamese General underscores Vietnam's continued emulation of its northern neighbour.

¹¹ Over 10,000 cyber warriors in Force 47 engaged in the struggle on the Internet, Tuổi Trẻ, 25.12.2017. <https://tuoitre.vn/hon-10-000-nguoi-trong-luc-luong-47-dau-tranh-tren-mang-20171225150602912.htm>

¹² Idem note 3.

named Vietnam as one of 30 countries which pay commentators and political bots to attack activists and advance anti-democratic agendas, noting that *“the effects of these rapidly-spreading techniques on democracy and civic activism are potentially devastating.”*¹³

Activists in Vietnam said that many websites had been hacked or subjected to DDoS attacks in November 2017. In May 2017, General Nguyễn Danh Công, Head of the Secretariat of the Ministry of Public Security (MPS) reported that the MPS had *“successfully blocked thousands of websites and blogs that posted wrongful, reactionary contents.”*¹⁴

A Draft Law on Cybersecurity, prepared by the MPS, is currently up for debate in the National Assembly. The draft confers the MPS with broad powers to govern cybersecurity matters, including developing cybersecurity strategies, controlling “prohibited content” and “anti-government activities” and supervising cybersecurity activities of telecoms and Internet service providers. If adopted as such, the law would require foreign companies such as Google, Facebook, Skype and Viber to have offices and servers in Vietnam, and place serious restrictions on freedom of expression online.

Administrative Sanctions for “Harmful” Content on Facebook

In June 2017, the Ministry of Information and Communications (MIC) announced it was preparing regulations to impose fines of up to VND50 million (\$2,200, equivalent to the average yearly salary in Vietnam) for those using social media to spread *“false or libelous information that defames individuals or organizations”*. Facebook is the most popular social media, and Vietnam ranks 7th amongst Facebook’s top users in numbers. In January 2017, the MIC issued a circular requiring Facebook and sites with more than one million Vietnam-based users to collaborate with authorities to block “toxic” content, and asked Google to remove clips from its video site Youtube that it said *“slandered and defamed Vietnamese leaders.”*¹⁵ Google removed some 4,500 video clips by the end of 2017¹⁶. Activists in Vietnam report that blocked content is not restricted to subjects such as pornography or hate-speech, but extends to criticisms of the government, appeals for democracy, human rights and anything perceived to be “anti-state”.

New Law on Access to Information

The Law on Access to Information, which takes effect on 1st July 2018, raises serious concerns on freedom of expression and the right to know, or the right of individuals to

¹³ Michael J. Abramowitz, President of Freedom House. See 2017 Report on “Freedom on the Net”

<https://freedomhouse.org/article/new-report-freedom-net-2017-manipulating-social-media-undermine-democracy>

¹⁴ “Ministry of Public Security destroys 123 dangerous criminal gangs in May”, VTC News, 18.5 2017. <https://vtc.vn/ngan-chan-kip-thoi-hang-nghin-trang-web-phan-dong-d323767.html>

¹⁵ *Bill demanding Google, Facebook to install domestic servers raises eyebrows in Vietnam*, 3 November 2017 <https://e.vnexpress.net/news/news/bill-demanding-google-facebook-install-domestic-servers-raises-eyebrows-in-vietnam-3665331.html>

¹⁶ *“Facebook removes 159 anti-government accounts at Vietnam’s request: official”*, VNExpress, 22 December 2017, <https://e.vnexpress.net/news/news/facebook-removes-159-anti-government-accounts-at-vietnam-s-request-official-3688612.html>

access information held by public authorities. The 2015 draft of this law was severely criticized by the Canadian Centre for Law and Democracy, which placed Vietnam near the bottom (93rd out of 102) of a list of countries rated for their access to information legislation. First and foremost, citizens' right to access to information does not appear to be an inherent right in Vietnam, but one which only exists as regulated by law.

Furthermore, the Law does not override existing legislation, but stipulates a number of grounds for restricting access to information which are unacceptable under international law. These include "*state secrets*", which are not defined, or vague terms such as "*social order and ethics*", "*State security*", "*interests of the nation, people and State*", or "*propaganda*". Moreover, the public will only have access to information issued after the law comes into force, and only information declassified by government. There is no time frame provided for the declassification of information

Under the law, citizens who seek access to information must explain why they need this information, and provide details of their names, addresses and ID or passport numbers. The authorities are not obliged to provide receipts to those who request information, which deprives citizens of proof in case of dispute. Where access to information is denied, the authorities do not have to provide the reasons for their refusal, and the citizens have no alternative mechanisms of recourse. "*Wrongful use of information*" is subject to sanctions.

Journalists Barred Access to National Assembly Debates

In July 2017, the National Assembly's Standing Committee announced that journalists will henceforth be barred from meetings of the Standing Committee at the Vietnamese National Assembly. This decision breaks with a long-standing tradition in which reporters – all members of the state-controlled media – have been able to regularly attend meetings and report on parliamentary debates.

Starting from 13th July, the day of the announcement, reporters are only allowed to attend the first five minutes of meetings, and are handed press releases at the end of each meeting resuming the details of the debates. The move is supposedly meant to enable members of the Standing Committee to discuss "sensitive" topics more openly and in-depth without fear of leaking "national secrets".

International freedom of expression organizations such as Article 19 strongly denounced this decision which "*runs counter to international human rights standards on the right to information, and should be immediately reversed to restore transparency in Vietnam's parliamentary process*". The UK-based NGO stressed that "journalists should be afforded maximum access to parliaments in order to report on the legislative process and the work of elected representatives. This is required as part of the rights to freedom of expression and information (Article 19) and the right to participate in public affairs (Article 25) of the International Covenant on Civil and Political Rights (ICCPR), to which Vietnam is a party".

Restrictions on the Right to Peaceful Demonstration

In March 2016, the Minister of Public Security issued new regulations that restrict the right to demonstrate and give Police broad powers to crack down on public gatherings outside Courts when trials are in session.

Circular 13/2016/TT-BCA on “*Regulations on the duties of the People’s Security forces in protecting Court hearings*”, issued by former MPS Minister General Trần Đại Quang on 10 March took effect on 24 April 2016. The Circular instructs Security Police on how to maintain security enforcement during Court hearings and ensure the protection of court officials, lawyers, witnesses, evidence and people attending the trial (Article 3). Whereas these are customary measures in countries respectful of the rule of law, Circular 13 contains a clause on “*Handling situations of gatherings causing public disorder in the vicinity of trials*” (Article 14) which violates internationally-recognized rights to freedom of assembly.

Under Article 14, if people gather outside a trial, Police must first issue verbal warnings to dispel them. But if the demonstrators do not comply, Police may “*immediately deploy forces to prevent the disturbance of public order, isolate and arrest opposition elements, instigators and leaders of the disturbance*”. Given the broad interpretation of “disturbing public order” in the Vietnamese Criminal Code which makes no distinction between violent acts and the legitimate exercise of freedom of expression and assembly, Circular 13 virtually gives Security forces *carte-blanche* to suppress demonstrations and arrest human rights defenders protesting unfair trials or expressing solidarity with fellow activists.

Rare Statistics reveal Escalating Use of the Death Penalty

A report made public – by accident according to activists in Vietnam – on the website of the Ministry of Public Security in March 2017 reveals that Vietnam executed a total of 429 prisoners between August 2013 and June 2016. This figure places Vietnam 5th on a list of the world’s top executioners following China, Iran, Pakistan, Saudi Arabia, and topping the United States in 2015. According to Amnesty International¹⁷, Vietnam had the world’s third-highest execution rate over that period, after China and Iran.

The report (05/BC-BCA-C81), dated 4 January 2017, gave an overview of the use of the death penalty in Vietnam over the past five years (2011-2016), since the Law on Execution of Criminal Judgments and the Decree on Execution by Lethal Injection were adopted by the National Assembly¹⁸. To cope with the large number of executions, the report said that five new execution compounds were being built to supplement the five currently operational in Hanoi, Ho Chi Minh City, Nghệ An, Sơn La and Đắk Lắk, and Security officials were being rapidly trained to administer lethal injections.

¹⁷ The Death Penalty in 2016 - <https://www.amnesty.org/en/latest/news/2017/04/death-penalty-2016-facts-and-figures/>

¹⁸ The Death Penalty in Vietnam, VCHR – Report presented at the 6th World Congress against the Death Penalty, Oslo, June 2016 - <http://queme.org/app/uploads/2016/06/The-Death-Penalty-in-Vietnam-VCHR-2016.pdf>

The report gives a rare insight into the status of death sentences and executions in Vietnam's communist state and the situation of prisoners on death row. Such information has been unavailable since 2004, when Vietnam classed statistics on the death penalty as "*state secrets*". According to the report, 681 prisoners were awaiting execution in June 2016, 80 were granted stay of execution and retrial because of wrongful convictions, and 36 prisoners died on death row in the five year period.

The high number of deaths reported by the Ministry of Public Security report confirms media concerns about the growing suicide rate on Vietnam's death row, which is the 12th largest in the world. Prisoners are not informed of their execution in advance, and many prefer to die rather than live with the terror of waiting for an unknown execution day, e.g. Nguyễn Tiến Công, 35, who committed suicide on death row in June 2013 in Haiphong. The report also noted that many prisons do not have special quarters for prisoners condemned to death, which causes "*complications in the management of prisoners*".

Another section of the report, referring to the period from 2011 to 2016, said 261,840 inmates had received vocational training, a term that rights activists say essentially means forced labour. In addition, it reported that the remains or ashes of 2,812 prisoners were approved for collection by family members, suggesting a high rate of deaths in custody for a prison population that the government says numbers less than 150,000.

Torture and Deaths in Police Custody

Since Vietnam's 2nd UPR Cycle, alarming reports have emerged about the number of prisoners who have died in police custody. Prominent blogger Nguyễn Ngọc Như Quỳnh researched and compiled a document entitled "Stop Police killing civilians – SKC" with 31 such cases, based on reports in the official press. This was one of the documents seized by Police and used as evidence to arrest and convict her of "*spreading propaganda against the SRV*". She was sentenced to 10 years in prison at an unfair trial on 29 June 2017.

On 3rd May 2015, Hoa Hao Buddhist **Nguyễn Hữu Tấn** died in police custody in Vĩnh Long province only hours after he was arrested on charges of "*propaganda against the SRV*" (article 88). The authorities claimed that Mr. Tấn committed suicide by cutting his own throat with a letter opener. However, his injuries suggest that he was tortured in police custody, and the police's explanations and "evidence" of his suicide were inconsistent and contradictory.



Nguyễn Hữu Tấn's body with his neck-wound sewn up by Police

Following Mr. Tấn's death, police pressured his father, Mr. Quang, to allow them to perform the autopsy in prison. Mr. Quang refused, and asked to take his son's body home.

By the time Police released the body, it had been cleaned and the cut on his throat was sewn up. Police screwed the coffin shut before bringing it to the family's home. When the family attempted to take photographs of the body, police destroyed and confiscated their phones. The police threatened to arrest and prosecute all adult members of the family for anti-state activities.

In 2015, 17-year-old **Đỗ Đăng Dư** was in good health when he was arrested in Hanoi, accused by police of stealing about \$90. A few weeks later, he fell into a coma. The police initially said that his severe head and leg wounds had been caused by falls in the bathroom, but his family said he had bruises and injuries all over his body, and they believed he was tortured in prison. Dư died in the prison hospital a few days later. The next month, two of his families' lawyers were assaulted outside their homes by eight masked men. There are many reports of such suspicious deaths in the official media.

Reprisals against Activists Cooperating with UN Mechanisms

Vietnam accepted recommendations to foster a safe and enabling environment for all civil society actors, including those who cooperate with international mechanisms. However, several human rights defenders were subjected to reprisals after Vietnam's UPR in February 2014. In his annual report on reprisals against human rights defenders in August 2014, UN Secretary General Ban Ki-moon raised the case of **Lê Công Cầu** in Vietnam¹⁹:



FIDH and VCHR Side-event in February 2014, with video messages by Lê Công Cầu and Thích Quảng Độ

“On 19 May 2014, four special procedures mandate holders raised allegations of acts of intimidation and reprisal against Le Cong Cau, head of the Buddhist Youth Movement. Mr. Cau had participated by means of an audio message at a side event called “Banned civil society voices” [organized by the FIDH and the VCHR, our note] on 4 February 2014, before the universal periodic review of Viet Nam had taken place. (...) Mr. Cau was rearrested on 16 February 2014 and taken to Truong An district police station, where he was interrogated about his audio message at the side event. On 14 April 2014, Mr. Cau was informed by an official of the Thua Thien-Hue police that he would remain under house arrest for the duration of the investigation of his case”.

Police Brutality and Physical Assaults

Between 2014 and 2017, incidents of Police brutality and physical assaults by plain clothed security agents or hired thugs intensified on an unprecedented scale. Hundreds of

¹⁹ “Cooperation with the United Nations, its representatives and mechanisms in the field of human rights”. August 27 2014.

photos, Youtube videos and reports were posted by victims of attacks on their Facebook accounts and other social media. Whilst the authorities denied allegations that security police were involved in these assaults, many activists recognized their assailants as officers who had been present during Police interrogations. This rising violence was documented by Human Rights Watch in a report published in June 2017. Whilst most of the attacks described in the report occurred in 2016, civil society and media reports indicate that attacks increased in 2017.

Photos, videos and reports concerned assaults against human rights defenders, activists and followers of independent religious groups in Hanoi, Ho Chi Minh City, the Central Highlands, Nghệ An, Hà Tĩnh, Vũng Tàu, Thừa Thiên-Huế and many other areas. In one incident on 18 August 2017, 15 friends and relatives of detained dissident Lê Đình Lượng were beaten by Police in Vinh when they came to ask for news of Mr. Lượng. Six were detained for interrogation and were beaten again.



Pastor Nguyễn Trung Tôn after his attack in February 2017

In many cases, activists were kidnapped and thrown into cars, sometimes by masked men, then brutally beaten, stripped of their cell phones, wallets and other personal belongings and abandoned in remote areas. This was the case of Pastor **Nguyễn Trung Tôn** and his colleague **Nguyễn Viết Tứ** in Quảng Bình province in February 2017; **Trần Hoàng Phúc** and **Huỳnh Thanh Phát** in Nghệ An in June 2017; human rights lawyer **Nguyễn Văn Đài** in December 2015.

Intimidation, Threats and Travel Restrictions

Police also used threats and intimidation to deter members of independent religious groups such as the Unified Buddhist Church of Vietnam (UBCV) and Hoa Hao Buddhists from attending prayers and religious festivals. During the Vesak (Birth of Buddha), police visited the homes of UBCV followers, warning that their children would be expelled from



Trần Thị Nga after an assault in 2014.
Her arm and leg were broken.

school or people would lose their jobs if they attended “reactionary” UBCV pagodas. In May 2017, Police also intimidated and harassed members of the Buddhist Youth Movement (*Gia đình Phật tử*) including **Lê Văn Khá**, **Lê Văn Thọ**, **Văn Đình Tất**, **Trương Phiên** and others to prevent them organizing youth camps.

In some cases, activists were subjected to death threats. Plainclothed security agents threatened former political prisoner **Lê Quốc Quân** on 8 June

2017, the day after he met with visiting US Senator John McCain and discussed ongoing human rights abuses in Vietnam.

Lawyer **Võ An Đôn**, who has defended many rights activists, including Nguyễn Ngọc Như Quỳnh, has also received several death threats from both police and “hired thugs”, as well as regular harassment by the authorities. On 26 November 2017, the Bar Association of Phú Yên Province revoked his lawyer’s license just three days before the appeal trial of Nguyễn Ngọc Như Quỳnh. He was unable to defend her, and the Appeal Court upheld her 10-year prison sentence.



UBCV monk Thích Thanh Quang and Lê Công Cầu assaulted by thugs under the eyes of the Police (photo from Lê Công Cầu’s video message to the UPR in 2014).

Travel restrictions, both inside the country and overseas, are another facet of the shrinking spaces for civil society in Vietnam.

In 2016, Police prevented Buddhist Youth leader **Lê Công Cầu** and UBCV Deputy Leader **Thích Thanh Quang** from travelling to Ho Chi Minh City to meet a diplomatic delegation from Australia visiting Vietnam. In May 2017, Police in Huế intercepted Lê Công Cầu as he prepared to travel to Ho Chi Minh City at the request of the UBCV Patriarch Thích Quảng Độ. Lê Công Cầu staged a week-long hunger strike in protest. In June 2017, worker rights activist Đỗ Thị Minh Hạnh was prevented from leaving the country to visit her mother in Austria who was in poor health.

Exporting, Deporting and Suppressing Dissent

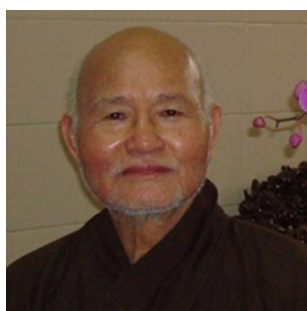
Since its 2nd UPR Cycle, Vietnam has intensified arrests and convictions of civil society activists and human rights defenders. None have been charged with perpetrating violent acts. They are all detained for the nonviolent expression of their legitimate political convictions or religious beliefs. Medical doctor **Hồ Văn Hải**, for example, was sentenced to four years in prison at a closed trial in February 2018 simply for posting concerns on his Facebook about the consequences of the Formosa pollution disaster.

In some cases, Vietnam has “exported” its dissidents, granting them early release on condition that they leave the country. Lutheran Pastor **Nguyễn Công Chính** was released on July 28th 2017 before the end of his 11-year sentence. His release was conditioned on his immediate departure to the United States. Pastor Chính must complete his prison sentence if ever he returns to Vietnam.

In other cases, dissidents were deported. On 25th July 2017, French-Vietnamese blogger and former political prisoner **Phạm Minh Hoàng** was stripped of his Vietnamese nationality and deported to France. On his arrival in Paris, he described how Vietnamese police had surrounded his house and taken him away with no prior warning. He was allowed to meet French consular officials but not even allowed to say goodbye to his wife, Lê Thị Kiều Oanh.

In most cases, Vietnam has resorted to political repression and arbitrary detention to silence its critics and suppress dissent. Below are some examples of prominent human rights defenders, bloggers, and civil society activists in detention or under house arrest during this period.

Human Rights Defenders and Bloggers in Detention



Most Venerable
Thích Quảng Độ

Most Venerable Thích Quảng Độ, aged 89, Vietnam's longest-detained political prisoner, is currently under house arrest at the Thanh Minh Zen Monastery in Ho Chi Minh City (Saigon) without any justification or charge. Leader of the non-recognized Unified Buddhist Church of Vietnam (UBCV), he has been detained under house arrest almost uninterruptedly since 2001, prior to which he spent 10 years in internal exile and over six years in prison – a total of more than three decades of detention simply for peaceful advocacy of democracy, religious freedom and human rights.

Thích Quảng Độ is deprived of citizenship rights and his communications are monitored. In May 2017, he asked his assistant Lê Công Cầu to take him to Huế, central Vietnam. Police intercepted the phone call, subjected Lê Công Cầu to interrogations, and warned him that Thích Quảng Độ was “not welcome in Huế”. Thích Quảng Độ is a 16-time Nobel Peace Prize nominee, Rafto prize laureate, scholar, writer, and a leading figure in the movement for democracy in Vietnam.



Nguyễn Hữu Vinh
(Anh Ba Sàm)

Nguyễn Hữu Vinh (Anh Ba Sàm), 61, one of Vietnam's most influential bloggers, is serving a five year sentence on charges of “*abusing democratic freedoms to infringe upon the interests of the state*” (Article 258 of the Criminal Code). He was arrested in May 2014 and sentenced at an unfair trial at the Hanoi Supreme People's Court on 23 March 2016 along with his assistant **Nguyễn Thị Minh Thúy**, who received a three year sentence (she has since been released on completing her sentence). His conviction was upheld on 22 September 2016 at an appeal trial held behind closed doors. Vinh's wife, Lê Thị Minh Hà, was not allowed to visit her husband in detention. Nguyễn Hữu Vinh is a former police officer and

Communist Party member from a prominent communist family. His blog *Ba Sàm* (Talking Nonsense) contained news on politics, economics, culture and society, including “inside” news and comment on government officials and communist Party members. The blog was extremely popular, with several million readers at the time of his arrest.



Nguyễn Văn Đài

Nguyễn Văn Đài, 48, a human rights lawyer and founder of the “Brotherhood for Democracy” (*Hội Anh Em Dân Chủ*), was arrested in Hanoi on 16 December 2015 as he prepared to meet delegates from the European Union who had come for the fifth EU-Vietnam Human Rights Dialogue, held the previous day. He was accused of “*spreading propaganda against the SRV*” (Article 88 of the Criminal Code) along with his assistant **Lê Thu Hà** and detained incommunicado for 19 months in B14 prison near Hanoi. On 30 July 2017, the Ministry of Public Security (MPS) announced that lawyer Đài and his assistant will be charged with the capital crime of subversion (Article 79 of the Code) as well as Article 88, along with five other members of his group. If convicted, they face a prison sentence of between 12 and 20 years, life imprisonment or the death penalty. Nguyễn Văn Đài previously spent four years in prison (2007-2011) under Article 88 for giving pro bono legal advice to religious communities and fellow human rights defenders, and holding informal workshops on human rights. He was awarded the 2017 Human Rights Prize by the German Association of Judges. Vietnam prevented his wife from traveling to Germany to receive the award on his behalf.



Nguyễn Ngọc Như Quỳnh at her trial, 2017

Nguyễn Ngọc Như Quỳnh, 38, alias “Mẹ Nấm” (Mother Mushroom after the nick-name of her daughter), one of Vietnam’s best-known bloggers and human rights defenders, was condemned to 10 years in prison on 29 June 2017 by the People’s Court in Khánh Hòa on charges of “*spreading propaganda against the SRV*” (Article 88). The sentence was upheld on appeal on 30th November 2017. Security Police arrested Như Quỳnh on 10 October 2016 after investigating over 400 articles she wrote and posted on Facebook and social networks (over 1,180 pages), and a document entitled “Stop Police killing civilians” that gave details of 31 cases of people who died in Police custody. Khánh Hòa Police said *she “put forward pessimistic, one-sided views that upset and confused people’s minds and undermined their trust [in the Communist Party]”*. Như Quỳnh, who was first arrested in 2009, is one of the first human rights defenders in Vietnam to have used the Internet and social media to document human rights violations. In 2015 she was named “Defender of the Year” by the Swedish organization *Civil Rights Defenders*, and awarded the “International Women of Courage” prize by the US Department of State on March 29, 2017. She is a single mother with two small children. Her mother says that Như Quỳnh’s health has deteriorated in prison, and that she is not allowed to receive the food and medicines sent by her family. On 7 February 2018, she was transferred to Prison No 5 in Yên Định, Thanh Hóa province, over 1,00 kilometres from her home, without any

warning to her family. In an Opinion issued on May 30, 2017, the United Nations Working Group on Arbitrary Detention (WGAD) declared Nguyễn Ngọc Như Quỳnh's detention arbitrarily and called for her immediate release²⁰.



Trần Thị Nga on the day of
her arrest, 21.1.2017

Trần Thị Nga, 40, an outspoken human rights defender, labour rights and land rights activist was sentenced to nine years in prison and five years house arrest at a one-day trial on 25 July 2017 by the People's Court in Hanoi. The sentence was upheld on appeal on 22 December 2017. Nga's sentence came barely one month after the conviction of Nguyễn Ngọc Như Quỳnh under the same charges of "*propaganda against the SRV*". Security officers barred her husband and children from the court, along with supporters and independent journalists. Trần Thị Nga was arrested on 21 January 2017 at her home in Phú Lý, northern Vietnam. She is the mother of four children, the youngest of whom is only four years old. Trần Thị Nga has suffered repeated intimidation, harassment, detention, interrogation, and physical assaults because of her human rights activities. In May 2014, a group of five men assaulted her with iron rods, breaking her arm and leg. Trần Thị Nga's health condition has deteriorated in prison as a result of a mucosal injury sustained during the beating in 2014. According to her lawyer, she has been refused proper medical treatment in prison.



Dr. Hồ Văn Hải

Dr. Hồ Văn Hải, 54, was condemned to four years in prison and two years house arrest for "*propaganda against the state*" (former Article 88 of the criminal Code, now Article 117) at a virtually secret trial in Ho Chi Minh City on 1st February 2018. He was arrested on 2nd November 2016 and charged with writing articles calling for a boycott of the elections and protesting the grave pollution caused by the Taiwanese steel plant Formosa. Formerly a doctor at Chợ Rẫy, the largest hospital in Ho Chi Minh City, he opened his own clinic in 2004, and began writing articles on his blog about education, the environment and the country's political affairs in 2009. As a doctor, he was especially concerned about the long-term effects of the Formosa toxic waste spill which polluted over 200 kilometres of seas along the coasts of central Vietnam and caused the deaths of millions of fish.

Conclusions

Although Vietnam has adopted new laws and regulations, some of which correspond to its pledges under the 2nd UPR Cycle, it has failed to ensure that new and amended legislation conforms to the international human rights instruments to which it has acceded. Arresting and detaining human rights human rights and civil society activists because "*they have*

²⁰ UNWGAD Opinion A/HRC/WGAD/2017/27, seventy-eight session, April 19-28, 2017, May 30, 2017.

violated Vietnamese law” is no justification. As the UN Working Group on Arbitrary Detention has stated, national legislation must be consistent with the provisions of the UN Declaration of Universal Rights and the relevant treaties to which Vietnam has acceded. “Even if the detention is in conformity with national legislation, the Working Group must ensure that it is also consistent with the relevant provisions of international law”.²¹

Vietnam has failed to ensure an enabling environment for civil society, tolerating and even fostering an escalation of Police brutality and physical assaults by thugs and plain-clothed security agents on peaceful civil society activists and their families, often under the eyes of the Police. Perpetrators of violence have often not been brought to justice.

Vietnam has failed to promote freedom of religion or belief by ignoring the views of the religious communities and maintaining a system of registration and recognition that is inconsistent with Article 18 of the ICCPR. Members of non-recognized religious communities remain vulnerable and do not enjoy the protection of the law.

Vietnam’s policies and practices over the past three years have significantly reduced the spaces for civil society in Vietnam. The use of police violence, censorship, harassment, intimidation and restrictive legislation to curb the exercise of human rights is a violation of the binding commitments Vietnam has undertaken as a state party to the ICCPR, ICESCR and many other key UN human rights instruments.

Recommendations

The **Vietnam Committee on Human Rights** urges Vietnam to:

- Immediately and unconditionally release all human rights defenders, bloggers, journalists, religious and political dissidents detained for the peaceful expression of their political and other opinions or religious beliefs;
- End censorship, surveillance, physical violence and all acts of harassment, including at the judicial level, against human rights defenders; comply with the provisions of the 1998 UN Declaration on Human Rights Defenders and invite the Special Rapporteur on Human Rights Defenders to visit Vietnam;
- Implement the recommendations of the UN Human Rights Committee by bringing domestic legislation into line with international human rights law and immediately repealing all legislation restricting the exercise of internationally recognised human rights; in particular, revise or abrogate the vaguely-defined “national security” provisions in the amended Criminal Code;

²¹ Opinion 27/2012, UN Working Group on Arbitrary Detention, A/HRC/WGAD/2012/27, 64th session, 27-31 August 2012.

- publicly condemn physical assaults, intimidation and other forms of harassment against bloggers, civil society activists and followers of independent religious bodies; investigate such acts of violence and prosecute those responsible, including local officials who order or condone such attacks;
- Guarantee the right to due process of law, including the right to a fair trial; defendants should be able to meet their lawyers to adequately prepare their defence; defence lawyers must have the right to present relevant evidence in court; defendants should be allowed to speak in their own defence;
- Ensure that the treatment of prisoners conforms with the UN Standard Minimum Rules on the Treatment of Prisoners; abolish forced labour and end practices of torture and ill-treatment of prisoners in police custody;
- Review the Law on Belief and Religion to ensure it is consistent with Article 18 of the UDHR; ensure freedom of religious activity for the Unified Buddhist Church of Vietnam (UBCV) and all other non-recognized religious organisations; revise all legislation that restricts the right to freedom of religion or belief;
- Guarantee freedom of media, authorize the publication of independent newspapers and cease legal sanctions and harassment against journalists and citizens expressing peaceful views through the printed media, Internet or radio;
- Adopt a Law on Associations that guarantees the right to form associations outside the framework of the Communist Party; promote a legal, administrative and fiscal framework that enables truly independent NGOs to operate without impediment, and thereby foster the emergence of a vibrant civil society in Vietnam ;
- Ensure that the new Law on Cyber Security currently under debate at the National Assembly conforms with guarantees of the right to freedom of expression enshrined in Article 19 of the ICCPR and in the Vietnamese Constitution.

Annex I: Key Recommendations on civil society and civil and political freedoms made by UN Member States at the 2nd Cycle of the Universal Periodic Review of Vietnam in 2014

No.	Country	Recommendations	Response by Vietnam
1.	Norway	143.2. In its implementation of Constitution article 69 [on the right to freedom of opinion, press freedom, the right to be informed, right to assemble, form associations and hold demonstrations], ensure compliance with its obligations under the International Covenant on Civil and Political Rights (ICCPR) ;	Accepted
2	Belgium	143.4. Ensure that any law governing the Internet is in compliance with the international human rights obligations of Viet Nam as a State party to ICCPR ;	Accepted
3	Bhutan	143.44. Raise awareness among its people of laws and regulations so that they can exercise their rights effectively and adequately;	Accepted
4	Mexico	143.74. Respond positively to the requests of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression for a visit;	Accepted
5	Germany	143.72. Extend a standing invitation to all special procedures mandate holders as a sign of goodwill to cooperate fully with all human rights mechanisms ;	Rejected
6	Hungary	143.73. Accept all outstanding and new requests from mandate holders to visit the country;	Rejected
7	Netherlands	143.87. Combat discrimination against women through anti-trafficking legislation; by ensuring women's entitlement to land in the Land Law; and by curbing domestic violence and violations of reproductive rights;	Accepted
8	Chile	143.88. Enact a law to fight against discrimination which guarantees the equality of all citizens, regardless of their sexual orientation and gender identity;	Accepted
9	Tunisia	143.42. Accelerate the process aimed at the establishment of a national human rights institution in conformity with the Paris Principles, and extend a standing invitation to special procedures;	Rejected
10	Sweden	143.112. Declare a moratorium on the capital punishment; until that, promptly reduce the number of offences subject to death penalty and publish statistics about the use of death penalty in Viet Nam ;	Rejected
11	Belgium	143.113. Publish precise information on the identity and number of convicted persons currently on death row;	Rejected

No.	Country	Recommendations	Response by Vietnam
12	Switzerland	143.115. Take into account the opinions of the Working Group on Arbitrary Detention on the release of around 30 persons detained arbitrarily since the last UPR	Rejected
13	New Zealand	143.116. Implement the opinions of the Working Group on Arbitrary Detention on individuals and release the individuals concerned	Rejected
14	Germany	143.117. Immediately release all prisoners held in arbitrary detention and recompense them as requested by the Working Group on Arbitrary Detention ;	Rejected
15	USA	143.118. Revise vague national security laws that are used to suppress universal rights, and unconditionally release all political prisoners, such as Dr. Cu Huy Ha Vu, Le Quoc Quan, Dieu Cay and Tran Huynh Duy Thuc ;	Rejected
16	Austria	143.136. Provide public information on the number of detention camps, including administrative detention centres for drug treatment set up by the police, the military and the Ministry of Labour, on the number of persons detained therein; as well as on all forms of work in which detainees are involved ;	Rejected
17	Denmark	143.151. Repeal or amend ambiguous provisions relating to national security in the Penal Code to prevent those provisions being applied in an arbitrary manner to stifle legitimate and peaceful dissent, debate and freedom of expression	Rejected
18	France	143.152. Repeal or modify the Penal Code relating to national security particularly Articles 79, 88 and 258, in order to prevent those articles from being applied in an arbitrary manner to impede freedom of opinion and expression, including on the Internet;	Rejected
19	Ireland	143.173. Facilitate the development of a safe and enabling environment for all civil society actors to freely associate and express their views by ensuring that national legislative provisions are not invoked to stifle legitimate and peaceful dissent ;	Accepted
20	Tunisia	143.167. Ensure a favourable environment for the activities of human rights defenders, journalists and other civil society actors ;	Accepted
21	Canada	143.226. Explore the possibilities for technical support, for instance through the Working Group on Enabling and Protecting Civil Society of the Community of Democracies;	Rejected
22	Japan	143.128. Continue to take measures to secure the rule of law, including by establishing a criminal justice system that gives due consideration to human rights ;	Accepted

No.	Country	Recommendations	Response by Vietnam
22	Cabo Verde	143.127. Expedite implementation of the reform of the judicial system and intensify within the system a culture of systematic respect of human rights;	Accepted
24	Canada	143.133. Take the necessary measures to guarantee its citizens' right to equality before the law, to be presumed innocent until proven guilty, and to a fair and public trial, as well as the right to freedom from arbitrary arrest or detention;	Accepted
25	Luxembourg	143.134. Guarantee the right of all persons to a fair trial and, in particular, allow for the presence without restriction of observers at court hearings;	Accepted
26	Denmark	143.135. Ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for at all stages of legal proceedings;	Accepted
27	Chile	143.139. Adjust the regulatory and legal framework to comply with international human rights standards in order to guarantee freedom of religion;	Accepted
28	Italy	143.142. Adopt further measures aimed at better guaranteeing freedom of religion, particularly by eliminating bureaucratic and administrative obstacles, which hinder the activities carried out by religious communities and groups ;	Accepted
29	Canada	143.143. Reduce administrative obstacles and registration requirements applicable to peaceful religious activities by registered and non-registered religious groups in order to guarantee freedom of religion or belief ;	Accepted
30	Lithuania	143.145. Take all necessary action to respect and promote the right to freedom of expression, peaceful assembly and association in line with its international human rights obligations ;	Accepted
31	Netherlands	143.148. Allow bloggers, journalists, other internet users and nongovernmental organizations (NGOs) to promote and protect human rights specifically by ensuring that laws concerning the Internet comply with the freedom of expression and information ;	Accepted
32	Luxembourg	143.149. Protect and guarantee respect for freedom of information and expression, particularly for journalists, bloggers and human rights defenders, and undertake a review of legislation governing the press to ensure its compliance with international standards;	Accepted
33	Finland	143.150. Take steps to amend its Penal Code to ensure that it cannot be applied in an arbitrary manner to prevent freedom of expression;	Accepted

No.	Country	Recommendations	Response by Vietnam
34	Ireland	143.154. Revise “Decree 72” and “Decree 174” relating to the management, provision and use of the Internet, to ensure their consistency with international human rights obligations, and in particular with Articles 19, 21 and 22 of ICCPR ;	Accepted
35	Australia	143.156. Give space to non-state media, and that make Criminal Code Articles 79, 88 and 258 more specific and consistent with international human rights obligations on freedom of expression;	Accepted
36	Canada	143.157. Amend the provisions concerning offences against national security which could restrict freedom of expression, including on the Internet, particularly articles 79, 88 and 258 of the Penal Code, to ensure its compliance with Viet Nam’s international obligations, including ICCPR ;	Accepted
37	Estonia	143.159. Undertake measures enabling unrestricted access and use of the Internet to all citizens and undertake measures to guarantee the freedom of opinion and expression to everyone, as well as the freedom of press and media in the country ;	Accepted
38	Czech Republic	143.160. Take measures to ensure the effective protection of the right to freedom of expression and information, as well as the independence of the media, and release all human rights defenders, journalists, and religious and political dissidents detained for the peaceful expression of their opinion;	Rejected
39	Norway	143.162. Give individuals, groups and organs of society the legitimacy and recognition to promote human rights and express their opinions or dissent publicly;	Accepted
40	Norway	143.163. Ensure that its legal framework allows for free and independent operation of national and international media in accordance with its international human rights obligations under ICCPR;	Accepted
41	Sweden	143.166. Ensure that freedom of expression is protected both offline and online and amend or remove vague provisions in the penal code, as well as new legislation to make sure that limitations on freedom of expression are strictly in line with ICCPR;	Accepted
42	Poland	143.165. Create conditions favourable to the realization of freedom of expression, both online and offline, freedom of association, and freedom of religion and belief ;	Accepted

No.	Country	Recommendations	Response by Vietnam
43	Spain	143.169. Encourage strengthening of NGOs by promoting a legal, administrative and fiscal framework in which such institutions can be created and developed and perform their activities without any obstacles and with freedom of expression ;	Accepted
44	France	143.172. Take measures to ensure freedom of association, peaceful assembly and demonstration;	Accepted
45	Czech Republic	143.174. Take concrete steps to create a friendly environment for NGOs, including by easing their registration requirements;	Accepted
46	Australia	143.175. Enact laws to provide for and regulate freedom of assembly and peaceful demonstration in line with ICCPR ;	Accepted
47	Greece	143.176. Adopt measures to end prosecution of peaceful protesters ;	Rejected
48	Czech Republic	143.177. Enhance equal political participation of its citizens, including by taking steps towards multi-party democracy ;	Rejected
49	Myanmar	143.178. Deepen grass-roots democracy and better facilitate the right of the people to participate in the formulation and implementation of policies, such as the participation of political and social organizations in the field of human rights;	Accepted
50	Cabo Verde	143.213. Ensure without delay effective protection of the rights of ethnic and religious minorities;	Accepted
51	Turkmenistan	143.227. Participate actively in the international programmes of technical assistance and capacity-building in the field of human rights;	Accepted

Annex II: New Numbers of National Security Offences in the Amended Criminal Code

Former Criminal Code	Name of the Offence	2017 Amended Criminal Code
Article 79	Activities aimed at overthrowing the people's administration	Article 109
Article 80	Spying	Article 110
<i>New</i>	Terrorism aimed at opposing the people's administration	Article 113
Article 87	Undermining the unity policy	Article 116
Article 88	Making, storing, disseminating information, documents, materials, items against the Socialist Republic of Vietnam (<i>formerly "Conducting propaganda against the SRV"</i>)	Article 117
Article 89	Disrupting Security	Article 118
<i>New</i>	Organizing, coercing or inciting others to flee abroad or defect to stay overseas with a view to opposing the people's administration	Article 120
Article 91	Fleeing abroad or defecting to stay overseas with a view to opposing the people's administration	Article 121
Article 245	Causing public disorder	Article 318
Article 258	Abusing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens	Article 331

Vietnam Committee on Human Rights (VCHR)

VCHR is a registered non-profit organisation, founded in Paris in 1975 to increase awareness of the human rights situation in Vietnam. It is affiliated to the FIDH, a Paris-based organisation with 164 affiliate leagues in countries all over the world.

The Vietnam Committee on Human Rights:

- monitors and reports violations of internationally-recognized human rights in Vietnam;
- informs members of Parliament, UN and government agencies, international organizations, labour unions, civil society and the media about violations of human rights and worker rights in Vietnam, organises conferences, cultural events and public lectures ;
- campaigns for the release of prisoners of conscience ;
- promotes Vietnamese culture and circulates news and comment on democracy and human rights through the publication of Vietnamese-language books, press releases and reports which are circulated inside Vietnam and to the Vietnamese Diaspora.
- Runs a weekly radio programme in Vietnamese on religious freedom, human rights and democracy which is broadcast on short-wave in Vietnam and available online.

Human Rights Monitoring

The Vietnam Committee on Human Rights testifies at the UN Human Rights Council and submits regular information to UN Special Procedures. It has submitted Shadow Reports on Vietnam's implementation of the ICCPR, ICESCR, CEDAW, CRC and ICERD, and stakeholder submissions to Vietnam's UPR in 2009 and 2014. The Vietnam Committee closely monitors the cases of political prisoners and informs UN agencies and Governments on their status and health. The Committee translates and publishes reports and testimonies sent from political prisoners in Vietnam.

Advocacy

VCHR works actively with governments and international organizations to mobilise support for human rights advancement in Vietnam. VCHR staff have testified at hearings at the US Congress and the European Parliament and conducted many advocacy trips in Europe, the USA and Asia (e.g. Australia, Belgium, Canada, Denmark, France, Holland, Japan, Norway, the Czech Republic, Sweden, the UK), meeting with Foreign Ministry officials, legislators, NGOs and labour movements. VCHR advocacy campaigns on religious freedom led to several Resolutions in the European Parliament, including an EP Resolution on Freedom of Expression Online and Off-line (2013).

Freedom of Religion or Belief

VCHR works to promote freedom of conscience and combat religious intolerance in Vietnam. It is a member of the **European Platform against Religious Intolerance and Belief (EPRID)**, and VCHR Vice-President Penelope Faulkner is a member of EPRID's Board of Coordinators. VCHR President Vo Van Ai is also International Spokesman of the Unified Buddhist Church (UBCV) and Director of the UBCV's information office, the **International Buddhist Information Bureau (IBIB)**.

Publications

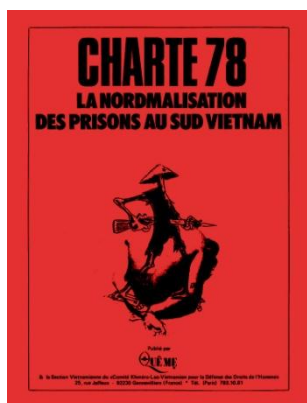
VCHR publishes regular reports on the situation of human rights and religious freedom in Vietnam – see *list in annex*. **VCHR President Vo Van Ai** contributes Op-Eds, articles and interviews to many international publications such as the *Wall Street Journal*, *Le Monde*, *Los Angeles Times*, *World Affairs Journal* etc. He is a recipient of the Società Libera Special Prize for Freedom (Italy, 2011).

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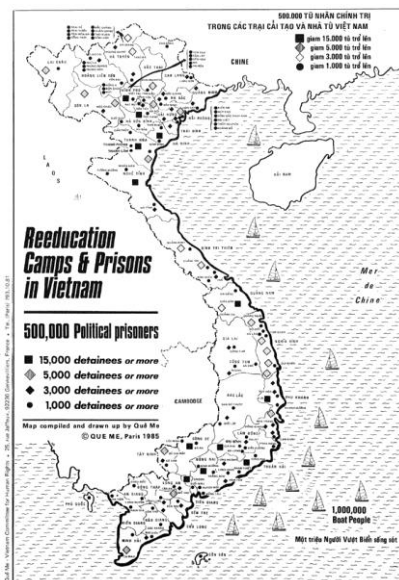
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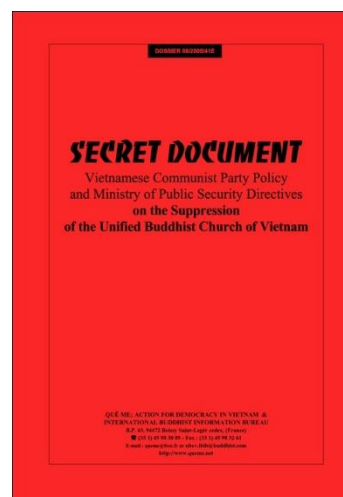
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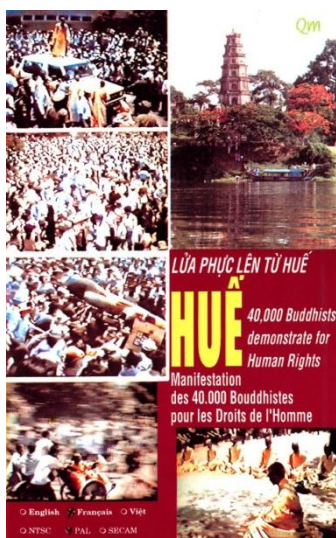
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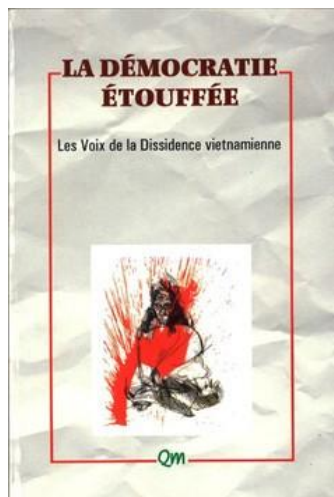
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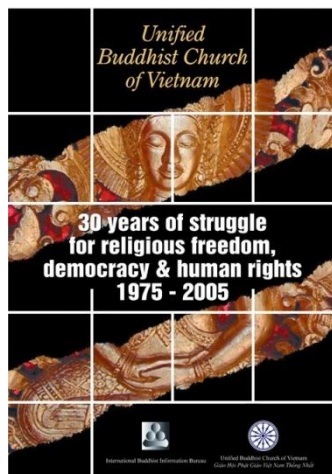
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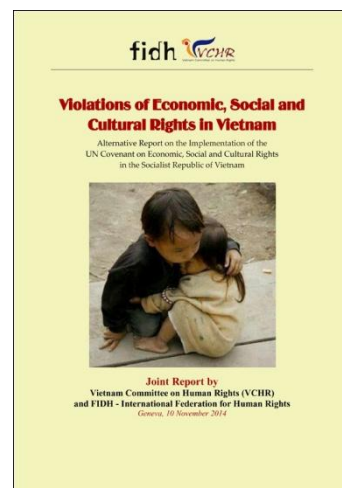
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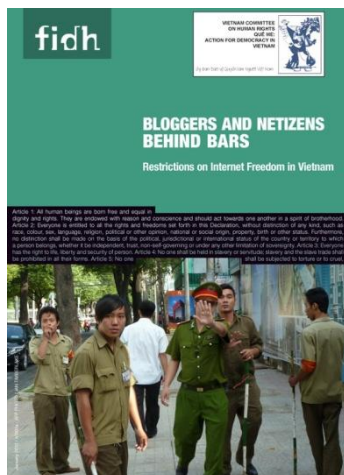
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