
Joint Submission of The 88 Project and the Global Human Rights Clinic of the University of Chicago Law School to the Universal Periodic Review of the Socialist Republic of Vietnam

UPR Mid-Term Submission to the UN Human Rights Council; Third Cycle

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The 88 Project¹ and the Global Human Rights Clinic at the University of Chicago Law School (GHRC)² contribute this submission³ to the Universal Periodic Review of the Socialist Republic of Vietnam. The submission addresses the troubling reality of Vietnam’s ongoing restrictions to freedom of expression.

¹ The 88 Project is a nonprofit organization that supports and encourages freedom of expression in Vietnam by sharing the stories of and advocating for Vietnamese activists who are persecuted because of peaceful dissent. Since its inception in 2012, The 88 Project has monitored and shared news about cases of political prisoners and activists at risk who are persecuted through exercising their rights to freedom of expression. Through its various projects—including a Database of Human Rights Violations, video interviews with activists, translations of activists’ writings, news and social media updates, and analysis pieces—The 88 Project seeks to bring visibility to the persecution of these activists to a larger, English-speaking audience, in hopes that its research can press for the improvement of freedom of expression protections and the release of political prisoners in Vietnam.

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² The GHRC is a practice-based course on human rights law and advocacy at the University of Chicago. Since its inception in 2013, law students, supervised by clinical faculty, have partnered with organizations on cases and projects to advance human rights through adjudication in domestic and international fora and other forms of advocacy, including fact-finding and documentation, research, legislation and policy development, and public awareness raising.

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³ This submission was researched and authored by students and staff at the GHRC, with input from The 88 Project. This Report represents the views and perspectives of the authors. It does not represent an institutional position of the University of Chicago Law School. The student research and drafting team includes: Jacob McGee (’21), Darby Findley (’22), and Keila Mayberry (’22). The faculty research and drafting team includes Claudia Flores, Clinical Professor of Law and Director of GHRC; and Mariana Olaizola Rosenblat, GHRC Fellow and Lecturer in Law. The research methodology is provided in Annex 1.

I. INTRODUCTION

1. The government of Vietnam continues to actively and systematically suppress the right to freedom of expression of its citizens. Although Vietnam has nominally committed to uphold freedom of expression in its Constitution and has undertaken such an obligation in several international human rights treaties, Vietnam regularly violates its citizens' freedom of speech. Vietnam's infringements on speech are particularly egregious in the online sphere. For merely attempting to exercise their rights to free expression, Vietnamese citizens are regularly harassed by police, arrested, denied access to legal counsel, tried, and sentenced to lengthy prison terms. Additionally, Vietnam has created a climate of fear within the country by actively monitoring and removing websites, blocking social media accounts, and censoring its citizens' social media posts. As a result, the citizens of Vietnam do not enjoy the right to freedom of expression.
2. This submission provides evidence of this suppression by Vietnam. The submission is based on extensive desk research, data collected by The 88 Project through its website⁴ and 14 first-person accounts documented through interviews by the authors of this report. All research is current until August 2021. Research findings reveal that repressive laws, as enshrined in the Law on Cybersecurity and several provisions of the Criminal Code, combined with multiple means of surveillance, coercion and abuse of state power, have effectively stifled freedom of expression in the country. As this submission will document, Vietnam has employed a panoply of repressive tactics, including media censorship, police violence, denial of access to counsel, inhumane jail conditions, sham trials, and overly harsh prison sentences to accomplish this task. Overall, the findings reveal a pattern of direct and systematic suppression of speech by Vietnam in direct contravention of international law.

II. LEGAL FRAMEWORK

A. THE CONSTITUTION

3. The Constitution of Vietnam guarantees the protections of human rights for all citizens.⁵ Among these rights are the rights to freedoms of: opinion and speech, the press, access to information, assembly, forming associations and holding demonstrations.⁶
4. Additionally, the Constitution guarantees citizens certain procedural rights, including the rights to a timely and public trial, to seek defense, to be regarded as innocent until proven guilty, and the right not to be convicted twice for the same offense.⁷

⁴ Database, The 88 Project, <https://the88project.org/>.

⁵ Constitution of the Socialist Republic of Vietnam, Art. 14 (2013), http://constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf.

⁶ *Id.*

⁷ *Id.* at Art. 31. Note, citizens are *not* guaranteed the right to have counsel provided should one be unable to secure counsel on one's own.

5. Article 14 of the Constitution, however, reserves the ability of Vietnam to suspend citizens' rights where "imperative circumstances," such as "national defense, national security, social order and security, social morality, and community well-being," call for such restrictions.⁸
6. Furthermore, the Constitution restricts citizen rights through duties to the State. Article 15 prohibits citizens from infringing on national interests in the practice of their rights,⁹ and Article 44 provides: "Citizens must show loyalty to their Fatherland. Treason is the most serious crime."¹⁰

B. THE 1999 AND 2015 CRIMINAL CODES

7. Vietnam has a number of other criminal statutes that directly or indirectly restrict freedom of expression. Among these are statutes that criminalize the following vaguely-defined behavior: disturbing public order,¹¹ abusing democratic interests,¹² establishing or joining an organization that opposes the government,¹³ sowing division between the State and the people or amongst the people,¹⁴ and disrupting security.¹⁵ Additionally, known activists have been prosecuted on extraneous charges, such as tax evasion.¹⁶
8. Article 117 of the 2015 Criminal Code (previously Article 88), criminalizes the "[m]aking, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam."¹⁷ Article 117 imposes a penalty of five to twelve years of imprisonment for creating, spreading, or storing materials that contain "distorted information about the people's government," "fabricated information to cause dismay among the people," or "items to cause psychological warfare."¹⁸ If the offense is deemed to be an "extremely

⁸ *Id.*

⁹ *Id.* at Art. 15.

¹⁰ *Id.* at Art. 44.

¹¹ Vietnam Criminal Code, No. 100/2015/QH13, Art. 318 (Nov. 27, 2015).

<http://www.derechos.org/intlaw/doc/vnm1.html>.

¹² *Id.* at Art. 331.

¹³ *Id.* at Art. 109.

¹⁴ *Id.* at Art. 116. Vietnam Criminal Code, No. 15/1999/QH10, Art. 87 (Dec. 21, 1999), <https://www.icj.org/wp-content/uploads/1999/12/VietNam-Penal-Code-1999-eng.pdf>.

¹⁵ *Id.* at Article 89; Vietnam Criminal Code, No. 100/2015/QH13, Art. 118 (Nov. 27, 2015).

¹⁶ *Database*, The 88 Project, <https://the88project.org/>; *See* Vietnam Criminal Code, No. 15/1999/QH10, Art. 161(1) (Dec. 21, 1999).

¹⁷ Vietnam Criminal Code, No. 100/2015/QH13, Art. 117 (Nov. 27, 2015).

¹⁸ *Id.*

serious case,” the accused may face 10 to 20 years in prison.¹⁹ Making preparations to engage in the restricted behavior carries a one- to five-year sentence.²⁰

C. THE 2018 LAW ON CYBERSECURITY

9. Vietnam’s 2018 Law on Cybersecurity requires technology companies specializing in internet-based communications, such as social media and online search engines (e.g. Facebook and Google) to remove content that is inconsistent with state interests,²¹ to store user data in Vietnam, and to set up offices within the country.²² Vietnam has claimed that the law is necessary to “protect national defense and ensure social order.”²³

III. VIETNAM’S INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS

A. RIGHT TO FREEDOM OF EXPRESSION

10. Article 19 of the International Covenant on Civil and Political Rights (ICCPR)²⁴ guarantees the right to freedom of expression. This right protects one’s ability to speak, write, or otherwise express opinions, beliefs, facts, or other views.²⁵ It is closely related to the freedom of assembly and protest, both of which are based on the understanding that freedom to speak and express one’s thoughts publicly are necessary to a functioning community and responsive state.²⁶
11. The circumstances in which free expression may be restricted under the Covenant are limited and subject to certain principles.²⁷ That is, permissible free speech restrictions must be

¹⁹ *Id.*

²⁰ *Id.*

²¹ This includes propaganda against the State and content which incites riots, disrupts security, causes public disorder, embarrassment, is slanderous or disrupts “economic management.” Law on Cybersecurity, No. 24/2018/QH14, Art. 16 (June 12, 2018), <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Cyber%20Security%202018.pdf> (unofficial translation).

²² *Id.* at art. 26.

²³ Timothy McLaughlin, *Under Vietnam’s New Cybersecurity Law, U.S. Tech Giants Face Stricter Censorship*, Washington Post (March 16, 2019), https://www.washingtonpost.com/world/asia_pacific/under-vietnams-new-cybersecurity-law-us-tech-giants-face-stricter-censorship/2019/03/16/8259cfae-3c24-11e9-a06c-3ec8ed509d15_story.html.

²⁴ The ICCPR was ratified by Vietnam in 1982. United Nations Human Rights Treaty Database, *Ratification Status for Vietnam*, Office of the High Commissioner of Human Rights, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=192&Lang=EN.

²⁵ International Covenant on Civil and Political Rights, art. 19, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

²⁶ UN Human Rights Committee, General Comment No. 34: Article 19 (Freedom of Opinions and Expression), 102nd Sess, adopted 12 September 2011, UN Doc CCPR/C/GC/34, ¶ 26 [hereinafter GC No. 34].

²⁷ ICCPR, art. 19 (3), Dec. 16, 1966, 999 U.N.T.S. 171.

prescribed by law,²⁸ must be in pursuit of a *legitimate aim*,²⁹ and must be *necessary* for achieving this legitimate purpose.³⁰

B. THE RIGHT TO A FAIR TRIAL

12. The right to a fair trial is guaranteed in Article 14 of the ICCPR and Articles 10 and 11 of the Universal Declaration of Human Rights. Under these instruments, State parties must guarantee every individual a “fair and public hearing by a competent, independent and impartial tribunal” and ensure that “[e]veryone charged with a penal offence has the right to be presumed innocent until proved guilty.”³¹

C. THE RIGHTS TO LIFE, SECURITY OF PERSON, AND FREEDOM FROM TORTURE

13. The rights to life, security of person, and freedom from torture are guaranteed by the ICCPR, the Convention Against Torture,³² and the Universal Declaration of Human Rights.³³ State parties to these treaties must guarantee every individual’s inherent right to life and freedom from torture and degrading treatment. Unlike the freedom of expression, the right to be free

²⁸ GC No. 34, ¶ 24. The regulating law “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.” (*Id.* at ¶ 25 (citing communication No. 578/1994, *de Groot v. The Netherlands*, Views adopted on 14 July 1995). That is, any restriction on speech enshrined in law make clear to the public the “sorts of expression [that] are properly restricted and [the] sorts [that] are not.” (*Id.*) Further, the law must not grant the State “unfettered discretion” to apply it and impose subsequent restrictions on free expression. (*Id.* (citing general comment No. 27)).

²⁹ *Id.* ¶ 28-32. This includes respect for the rights and reputations of others (*Id.*) and the protection of national security or of public order. (*Id.* ¶ 29. See Article 19(3)(b) of the ICCPR). The Human Rights Council has previously recognized that “extreme care must be taken” such that the State not abuse the national security which is highly susceptible to such mistreatment (*Id.* ¶ 30 (internal citations omitted)).

³⁰ *Id.* ¶ 33. A restriction violates the necessity requirement if the protection could be achieved by alternative means that are less restrictive of free expression (*Id.* (citing communication No. 359, 385/89, *Ballantyne, Davidson and McIntyre v. Canada*)). When invoking a restriction, the State must demonstrate “in [a] specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.” (*Id.* ¶ 35 (citing communication No. 926/2000, *Shin v. Republic of Korea* at 7.3 (A South Korean artist was arrested for distributing a piece of their artwork that critiqued foreign involvement by the United States and Japan in the conflict with North Korea. The artist was found to be threatening national security via “enemy-benefitting expression”).

³¹ ICCPR, art. 14; G.A. Res. 217 III (A), Universal Declaration of Human Rights, art. 11 (Dec. 10, 1948) [hereinafter UDHR].

³² Vietnam ratified the Convention Against Torture in 2015. United Nations Human Rights Treaty Database, *Ratification Status for Vietnam*, Office of the High Commissioner of Human Rights, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=192&Lang=EN.

³³ ICCPR, arts. 6 and 9; United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85, S. Treaty Doc. No. 100-20 (1988) [hereinafter CAT]; UDHR, art. 3.

from torture cannot be restricted, including for reasons pertaining to national security or public emergency.³⁴

IV. VIETNAM'S IMPERMISSIBLE RESTRICTIONS ON FREEDOM OF EXPRESSION

14. Despite recurrent admonishments from the UN Human Rights Council and other UN treaty bodies,³⁵ Vietnam has repeatedly flouted its obligations under the ICCPR, CAT and the UDHR and chosen, instead, to implement a coordinated program of speech suppression through intimidation, harassment, and coercion. Vietnam continues to do so today and, in the online space, is becoming more effective and sophisticated in its suppression of speech through online censorship, intimidation by law enforcement, and the imprisonment of activists without due process.
15. Over the past decade, Vietnam has engaged in focused efforts to monitor and suppress speech on social media, a forum that has been increasingly utilized by Vietnamese civil society and citizenry to communicate, share information, and remain informed. Due to Vietnam's successful suppression efforts, social media and other online fora are now dangerous places for Vietnamese citizens to express themselves. Doing so can result in criminal sanctions, harassment and abuse of their families and loved ones.

A. DE JURE VIOLATIONS

16. Vietnam's Criminal Code contains provisions restricting the freedom of expression that are overbroad and not narrowly tailored to achieve a legitimate aim, as required by international law. As such, these provisions are unlawful under the permissible restriction test³⁶ developed by the U.N. Human Rights Committee in General Comment 34 and applied in subsequent court decisions.³⁷

³⁴ CAT, art. 2, Dec. 10, 1984, 1465 U.N.T.S. 85, S. Treaty Doc. No. 100-20 (1988).

³⁵ UNHRC, *Report of the Working Group on the Universal Periodic Review Viet Nam*, 41st Sess, 28 March 2019, UN Doc A/HRC/41/7, ¶ 38; UNHRC, *Concluding Observations on the Third Periodic Report of Viet Nam*, 29 August 2019, UN Doc CCPR/C/VNM/CO/3, ¶ 25-30; UN Committee against Torture, *Concluding Observations on the Initial Report of Viet Nam*, 28 December 2018, UN Doc CAT/C/VNM/CO/1, ¶ 6-30; UNHRC, *Report of the Working Group on the Universal Periodic Review Viet Nam*, 26th Sess, 2 April 2014, UN Doc A/HRC/26/6, ¶ 143; UNHRC, *Report of the Working Group on the Universal Periodic Review Viet Nam*, 12th Sess, 5 October 2009, UN Doc A/HRC/12/11, ¶ 99-103.

³⁶ Under this test, restrictions to the freedom of expression are permissible under the ICCPR only if they are (1) prescribed by law, (2) enacted in pursuit of a legitimate aim recognized under the Covenant, and (3) the restriction is necessary to achieve said aim.

³⁷ GC No. 34. *See, e.g.*, UNHRC, 1553/2007, *Korneenko v Belarus*, UN No. CCPR/C/95/D/1553/2007, at 8.3; UNHRC, 1785/2008, *Olechkevitch v Belarus*, UN No. CCPR/C/107/D/1785/2008, at 8.4; UNHRC, 550/1993, *Faurisson v France*, UN No. CCPR/C/58/D/550/1993, at 9.6; Communications No. 1128/2002, *Marques v. Angola*; UNHRC, 1470/2006, *Toktakunov v Kyrgyzstan*, UN Doc CCPR/C/101/D/1470/2006, at 7.6; No. 1157/2003, *Coleman v. Australia*.

17. Restrictions on freedom of expression are contained in, inter alia, Articles 109,³⁸ 116,³⁹ 117,⁴⁰ 118,⁴¹ 318,⁴² and 331⁴³ of the Criminal Code.⁴⁴ Between July of 2016 (when the 2015 Criminal Code went into effect) and May 19, 2021 (when this submission was finalized), most activists who were criminally accused due to their expressive activities—such as advocating for democracy, human rights, anti-corruption and land rights—were charged under Article 318, followed by 17.4% under Article 117, and 11.7% under Article 331.⁴⁵
18. As written, these provisions are overbroad and lend themselves to arbitrary application. The law does not define key terms, such as “sowing division,” “disrupts security,” and “abuse,” and as such the provisions lack the specificity⁴⁶ required to safeguard the freedom of speech. Consequently, Vietnamese citizens do not have proper notice regarding the behavior that is or is not restricted.⁴⁷ Laws that are overbroad or vague have a chilling effect on speech; individuals may avoid speaking on certain matters because they are unsure what speech is prohibited.
19. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, emphasized this concern in her 2020 report on Ethiopia, noting that “vaguely formulated laws and regulations...violate the requirement under [A]rticle 19(3) of the International Covenant on Civil and Political Rights that restrictions be ‘provided by law’.”⁴⁸ The Special Rapporteur found laws criminalizing “hate speech” and “disinformation” to be overbroad and overly vague. The Rapporteur further stated that “[t]he scope of such an approach could be enormous” and that “the law’s excessive vagueness means that officials at

³⁸ Article 109 punishes those who establish or join organizations that “act[] against the people’s government.” Vietnam Criminal Code, [Art. 109](#) (2015), <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>.

³⁹ Article 116 punishes those who, for the purpose of opposing the government, aim to sow divisions between the government and the public, cause hostility between ethnic communities, create tension between religious groups, and “[s]abotag[e] the implementation of international solidarity policies.” *Id.*, [Art. 116](#).

⁴⁰ Article 117 prohibits people from making, storing, and spreading information for the purpose of opposing the State. *Id.*, [Art. 117](#).

⁴¹ Article 118 criminalizes actions which disrupt security or law enforcement activities. *Id.*, [Art. 118](#).

⁴² Article 318 penalizes those who disturb public peace in a way that negatively impacts safety, social order or security. *Id.*, [Art. 318](#).

⁴³ Article 331 makes it a crime for “any person who abuses the freedom of speech, freedom of the press, freedom of religion, freedom of association, and other democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens.” *Id.*, [Art. 331](#).

⁴⁴ For full translations of the penal code, see annex 2.

⁴⁵ *Map of Human Rights Violations* (Database), The 88 Project (last visited May 2021) <https://the88project.org/map/>

⁴⁶ The regulating law “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.” (UNHRC, General Comment No. 34: Article 19 (Freedom of Opinions and Expression), 102nd Sess, adopted 12 September 2011, UN Doc CCPR/C/GC/34, ¶ 25 (citing communication No. 578/1994, *de Groot v. The Netherlands*, Views adopted on 14 July 1995).

⁴⁷ Le Pham, interview with the authors, Feb. 16, 2021.

⁴⁸ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, stated in her 2020 report on Ethiopia that “vaguely formulated laws and regulations...violate the requirement under article 19 (3) of the International Covenant on Civil and Political Rights that restrictions be ‘provided by law’.” UNHRC, 44/49, *Visit to Ethiopia: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN No. A/HRC/44/49/Add.1, (2020) at 51.

the federal and regional levels would have practically unbounded discretion to determine whom to investigate and prosecute, resulting almost certainly in enforcement leading to a wave of arbitrary arrests and prosecutions.”⁴⁹ Additionally, the Rapporteur found provisions that appeared to disparately impact journalists and the press, such as a restriction on public comment on the economy, financial, or foreign affairs, to be especially suspect.⁵⁰ Where investigative reporters are unable to comment on such fundamental topics, citizens, who rely on these reporters for information, are denied an important avenue for receiving such information.

20. While some portions of Vietnam’s Criminal Code, such as Article 118, set forth particular illegal acts,⁵¹ others criminalize all speech made “for the purpose of opposing the people’s government,”⁵² which put in jeopardy the core of the right to speak itself. Criticism of the government and its representatives are paradigmatic examples of political discourse and matters of public concern, which the Human Rights Committee has deemed worthy of greater protection.⁵³ Vietnam has failed to demonstrate a compelling interest⁵⁴ for the restrictions, making them incompatible with Vietnam’s obligations under the ICCPR.
21. As noted above, Vietnam’s 2018 Law on Cybersecurity requires technology companies specializing in internet-based communications, such as social media and online search engines (e.g., Facebook and Google), to remove content that expresses views unfavorable to the government.⁵⁵ While Vietnam has previously stated that the law is necessary to “protect national defense and ensure social order,”⁵⁶ the law encroaches on a core component of, and reason for, the right to freedom of expression. As discussed above, the government’s interest in restricting dissenting views is not legitimate under international standards. Furthermore, the law gives Vietnam discretion in determining which speech endangers national security or social order and is therefore overbroad.
22. Each of the above provisions fails at least one portion of the permissible restriction test expounded by the U.N. Human Rights Committee. The restrictions Vietnam has placed on freedom of expression are not in pursuit of a legitimate aim recognized by the Covenant and are not necessary. Therefore, the *de jure* restrictions Vietnam has placed on expression are not permissible under the ICCPR and stand contrary to Vietnam’s international treaty commitments.

⁴⁹ *Id.* at 34.

⁵⁰ *Id.*

⁵¹ Vietnam Criminal Code, [Art. 118](https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf) (2015), <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>.

⁵² *Id.*

⁵³ GC No. 34, ¶ 28.

⁵⁴ This includes respect for the rights and reputations of others (GC No. 34, ¶ 28) and the protection of national security or of public order. (*Id.* ¶ 29. See Article 19(3)(b) of the ICCPR).

⁵⁵ Law on Cybersecurity (2018), <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Cyber%20Security%202018.pdf>.

⁵⁶ Timothy McLaughlin, *Under Vietnam’s New Cybersecurity Law, U.S. Tech Giants Face Stricter Censorship*, Washington Post (March 16, 2019), https://www.washingtonpost.com/world/asia_pacific/under-vietnams-new-cybersecurity-law-us-tech-giants-face-stricter-censorship/2019/03/16/8259cfae-3c24-11e9-a06c-3ec8ed509d15_story.html.

B. DE FACTO VIOLATIONS

23. Vietnam actively suppresses the free expression of activists and ordinary citizens through its actions and priorities. Official Vietnamese court documents confirm this fact⁵⁷ as does data provided by The 88 Project’s Database showing the extent of Vietnam’s systemic suppression of free speech. Since 2019 alone, The 88 Project has cataloged 111 activist arrests.⁵⁸ Of these arrests, 39 people were arrested solely for the content of their online speech.⁵⁹ The 88 Project has also cataloged 226 “incidents” of the State or related parties suppressing speech.⁶⁰ Most suppressive actions carried out by Vietnam are done through public security officers.⁶¹ Their most common tool of suppression is arrest and detention, but the State also engages in extraordinary measures to chill activists’ expression, such as subjecting them to surveillance, harassing them and their families, physically assaulting them in public or in private, forcing landlords to evict them, subjecting them to travel restrictions, and engaging in extrajudicial kidnappings.⁶² These various forms of suppression are documented and corroborated through in-depth interviews conducted by researchers, as described below.
24. The information below was collected by GHRC in interviews with Vietnamese activists and their family members, legal and policy advocates and human rights experts, who shared their first-person observations and experiences of State-sponsored speech suppression in Vietnam.

V. ACTIVE GOVERNMENT CENSORSHIP AND POLICE INTIMIDATION

A. SHUTTING DOWN WEBSITES

25. Vietnam frequently shuts down websites that are critical of government officials or the Communist Party of Vietnam.⁶³ The 88 Project website, for example, is blocked in Vietnam. When Vietnam disapproves of a website, it often announces through official media channels that the website is “reactionary” and blocks public access to the site.⁶⁴ Sometimes, the State blocks the site without any official announcement or justification. Lawyer and journalist Trinh

⁵⁷ Verdict for Political Prisoner Phan Kim Khanh, People’s Court of Thai Nguyen Province, Case No. 59/2017/HSST. The Vietnamese government itself acknowledges that Phan’s content simply explored subjects related to “democracy, human rights, and multi-party pluralism in Vietnam.” The court document confirms that Phan used his personal social media accounts and websites to discuss the need in Vietnam for a “multi-party system, de-politicized army, free elections, uncensored newspapers.” For these “crimes,” the government convicted Phan of “propaganda against the State” under Article 88 of the Criminal Code. The court stated that such activities presented a “one-dimensional pessimistic view, causing confusion and concern, affecting the people’s confidence in the leadership of the Party, the State, the Government, and the National Assembly.” Phan was sentenced to six years in prison, where he remains as of the date of this writing.

⁵⁸ *Database*, The 88 Project (last visited Oct. 22, 2021), <https://the88project.org/database/>.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Trinh Huu Long, interview by authors, Feb. 16, 2021.

⁶⁴ *Id.*; *Vietnam*, Freedom House (2020), <https://freedomhouse.org/country/vietnam/freedom-net/2020>.

Huu Long maintains a website from Taiwan that discusses internet freedom, religious freedom, criminal justice reform, and other human rights. His website is now banned in Vietnam without any process or justification.⁶⁵ While Long was able to leave Vietnam and now lives in Taiwan, one of the co-founders of his website is in jail in Vietnam for her political activism.⁶⁶ Other staff members of the website have been forced to use pseudonyms or remain anonymous for their own protection. The Vietnamese State not only electronically blocks websites which it disapproves of, but it also actively searches for and arrests the publishers themselves.⁶⁷

26. Authors and bloggers are keenly aware that their websites can be blocked or removed by the government at any time without any recourse or appeal. In fact, interviewees reported engaging in self-censorship, reluctant to criticize any government policies or any member of the Communist Party.⁶⁸ Rather than face arrest and imprisonment, bloggers and website creators stated that they simply accept Vietnam’s monitoring of the internet and try to work within the censorship system.⁶⁹ Others have moved their websites to servers outside the country.⁷⁰ People inside Vietnam cannot access these publications without a VPN, and many are thus cut off from information and ideas of public interest.⁷¹

B. SUPPRESSING SPEECH ON SOCIAL MEDIA

1. SOCIAL MEDIA SURVEILLANCE

27. Vietnam also actively engages in the suppression of speech on social media, specifically Facebook, which is the main news source for many Vietnamese people.⁷² Vietnam actively surveils the social media postings of its citizens.⁷³ A well-known blogger and activist observed, “The government has a massive online army that monitors all the postings that people put on

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *See Id.*; Do Nguyen Mai Khoi, interview with the authors, Mar. 28, 2021; Michael Caster, interview with the authors, Feb. 25, 2021; Anonymous expert #2, interview with the authors, Mar. 16, 2021; Le Pham, interview with the authors, Feb. 16, 2021; Nguyen Lam, interview with the authors, Mar. 26, 2021.

⁶⁹ Nguyen Lam, interview with the authors, Mar. 26, 2021.

⁷⁰ E.g., Trinh Huu Long publishes two online magazines from another country that are now completely banned in Vietnam. These magazines discuss human rights, freedom of expression, religious freedom, and criminal justice reform.

⁷¹ Trinh Huu Long, interview by authors, Feb. 16, 2021; *Vietnam*, Freedom House (2020), <https://freedomhouse.org/country/vietnam/freedom-net/2020>.

⁷² Le Pham, interview with the authors, Feb. 16, 2021.

⁷³ Pham Le Vuong Cac, interview with the authors, Apr. 6, 2021.

social media. They always read and follow what everyone says.”⁷⁴ Multiple interviewees and independent reports confirmed the presence of this state-sponsored cyber-army.⁷⁵

2. MANIPULATION OF COMMUNITY STANDARDS PROCEDURES

28. If Vietnam discovers online content it deems unfavorable, it engages in efforts to remove the posts and the accounts themselves without informing the users.⁷⁶ Specifically, when a Facebook post criticizes the government, Vietnam demands that Facebook remove the post and block the user’s account.⁷⁷ Under pressure from Vietnam, Facebook regularly complies with these requests for content removal.⁷⁸ In fact, Vietnam publishes an official report each year that lists the various social media accounts that the State shut down throughout the year, with Facebook’s acquiescence.⁷⁹ Mai Khoi, an interviewee and former singer in Vietnam, met with representatives from Facebook and provided the company with evidence of how its platform is being manipulated by the Vietnamese government to remove content. “But they didn’t do anything; they just say that they have to follow the government’s requests,” she explained.⁸⁰
29. In addition to blocking accounts, Vietnam exploits Facebook’s Community Standards tool by flagging posts for removal. Once a Facebook post is identified as containing content that Vietnam deems unfavorable, the State orders a member of its “online cyber-army” to post offensive content on the target account’s Facebook page; other members of the cyber-army then report this content as abuse, and Facebook blocks the target person’s account.⁸¹ In other instances, the government and its supporters have falsely reported that a Facebook user has died, flagging the account for removal.⁸² Mai Khoi noted that Facebook does not investigate the truth of the claim of the person’s death but simply shuts down the account every time they see the report.⁸³

⁷⁴ *Id.*

⁷⁵ Adam Bemma, *Vietnam’s Battalions of ‘Cyber-Armies’ Silencing Online Dissent*, Al Jazeera, Jan. 17, 2020, <https://www.aljazeera.com/news/2020/1/17/vietnams-battalions-of-cyber-armies-silencing-online-dissent> (accessed May 7, 2021); *Vietnam Unveils 10,000-Strong Cyber Unit to Combat ‘Wrong Views’*, Reuters, Dec. 26, 2017, <https://www.reuters.com/article/us-vietnam-security-cyber/vietnam-unveils-10000-strong-cyber-unit-to-combat-wrong-views-idUSKBN1EK0XN> (accessed May 7, 2021); Trinh Huu Long, interview by authors, Feb. 16, 2021; Anonymous expert #2, interview with the authors, Mar. 16, 2021.

⁷⁶ Nguyen Van Hai, interview with the authors, Apr. 7, 2021.

⁷⁷ Le Pham, interview with the authors, Feb. 16, 2021

⁷⁸ Rebecca Ratcliffe, *Facebook and YouTube Accused of Complicity in Vietnam Repression*, The Guardian, Nov. 20, 2020, <https://www.theguardian.com/world/2020/dec/01/facebook-youtube-google-accused-complicity-vietnam-repression> (accessed April 27, 2021).

⁷⁹ *Id.*

⁸⁰ Do Nguyen Mai Khoi, interview with the authors, Mar. 28, 2021.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

3. HACKING INTO ACCOUNTS

30. Not only does Vietnam remove social media posts and flag accounts, but there is evidence that it uses or collaborates with an army of hackers to disrupt websites and hack into the accounts of dissidents.⁸⁴ Amnesty International conducted extensive research into one of these hacking groups, Ocean Lotus, demonstrating the depth and breadth of the group’s processes in targeting Vietnamese political activists and human rights defenders.⁸⁵ Others interviewed for this report had also noted this practice.⁸⁶ One explained that the government uses hacking groups to send malware attachments through email that allows them to gain control over personal accounts.⁸⁷ While existing reports have not established a direct connection between Ocean Lotus and the Vietnamese government, some have asserted that the cyberespionage group is “aligned with Vietnamese government interests.”⁸⁸

4. CREATING AN ENVIRONMENT OF SELF-CENSORSHIP

31. Vietnam has been so successful at suppressing speech that activists now frequently engage in self-censorship. This censorship stems from preemptive fears of physical and economic coercion from the government. Those who engage in unfavorable speech may be harassed, detained, and imprisoned; moreover, for younger generations, “money talks” —in order to maintain good business relations, they must obey the government and keep silent.⁸⁹ As a result, “people are scared to speak up.”⁹⁰ They are keenly aware that their social media content will make its way to the government.⁹¹

32. There are some topics many “know” to be off-limits: criticism of the country, government or the Communist Party;⁹² criticism of state officials, particularly high-level leaders like members of the Politburo;⁹³ criticism of the police;⁹⁴ criticism of the army;⁹⁵ issues considered “state

⁸⁴ Trinh Huu Long, interview by authors, Feb. 16, 2021.

⁸⁵ Amnesty International, *Vietnamese Activists Targeted by Notorious Hacking Group*, Feb. 24, 2021, <https://www.amnesty.org/en/latest/news/2021/02/viet-nam-hacking-group-targets-activist> (accessed April 24, 2021).

⁸⁶ Pham Le Vuong Cac, interview with the authors, Apr. 6, 2021; Trinh Huu Long, interview by authors, Feb. 16, 2021.

⁸⁷ Do Nguyen Mai Khoi, interview with the authors, Mar. 28, 2021.

⁸⁸ Michael Caster, interview with the authors, Feb. 25, 2021. *See also* Nick Carr, “Cyber Espionage is Alive and Well: APT32 and the Threat to Global Corporations,” Threat Research Blog, May 14, 2013, <https://www.fireeye.com/blog/threat-research/2017/05/cyber-espionage-apt32.html> (accessed Jun. 17, 2021).

⁸⁹ Trinh Huu Long, interview by authors, Feb. 16, 2021.

⁹⁰ *Id.*

⁹¹ Anonymous expert #2, interview with the authors, Mar. 16, 2021

⁹² Do Nguyen Mai Khoi, interview with the authors, Mar. 28, 2021; Trinh Huu Long, interview by authors, Feb. 16, 2021; Anonymous expert #1, interview with the authors, Mar. 2, 2021; Anonymous expert #2, interview with the authors, Mar. 16, 2021; Nguyen Lam, interview with the authors, Mar. 26, 2021; Pham Le Vuong Cac, interview with the authors, Apr. 6, 2021.

⁹³ Trinh Huu Long, interview by authors, Feb. 16, 2021; , interview with the authors, Mar. 2, 2021; Do Nguyen Mai Khoi, interview with the authors, Mar. 28, 2021; Pham Le Vuong Cac, interview with the authors, Apr. 6, 2021.

⁹⁴ Trinh Huu Long, interview by authors, Feb. 16, 2021.

⁹⁵ *Id.*

secrets”;⁹⁶ anything that may “undermine the unity of the State,” such as advocating for or appearing sympathetic to ethnic and religious minorities;⁹⁷ human rights issues;⁹⁸ corruption in State institutions;⁹⁹ and restrictions on freedoms.¹⁰⁰

33. However, because of the State’s inconsistent application of free expression restrictions, some commentators find it difficult to know precisely which opinions will get them in trouble.¹⁰¹ This uncertainty leads to self-censorship. Two activists discussed how, when their Facebook posts are rejected for violating community standards without further explanation, “we just stop.”¹⁰² Le Quoc Quan said that the Law on Cybersecurity has exacerbated this ambiguity.¹⁰³ “Each of us has to determine for ourselves where the line is,” said Pham Le Vuong Cac. “We practice self-censorship too, and that is the only reason I could survive these 10 years.”¹⁰⁴

C. INTIMIDATION BY LAW ENFORCEMENT

34. When the Vietnamese government discovers online posts or other forms of expression that it wants to suppress, the police issue “invitations” to the speaker to discuss the content.¹⁰⁵ This form of coercion is intended to silence dissent before official criminal charges are brought. During these visits to the police station, officers pressure the speakers to refrain from further activism and collect information about their online expression. Nguyen Van Hai, a journalist and former political prisoner in Vietnam, said he was “invited” to the police station and detained many times so that the police could prevent him from attending protests.¹⁰⁶ “Typically, the precinct police come to your house and deliver this ‘invitation’ in cases of activists like me. If you don’t go, they send more ‘invitations.’ After a few times, if you still refuse, they send the plain-clothes secret police to wait until you get out of the house, and then they kidnap you. It has happened to me many times.”¹⁰⁷ Trinh Ba Phuong, currently imprisoned in Vietnam and convicted under Article 117, was also initially “invited” several times to the local police station to discuss his Facebook posts.¹⁰⁸ Dinh Thi Thu Thuy, another Vietnamese activist, was “constantly harassed by the local security police.” To suppress her

⁹⁶ Anonymous expert #1, interview with the authors, Mar. 2, 2021.

⁹⁷ Anonymous expert #1, interview with the authors, Mar. 2, 2021. Nguyen Lam, interview with the authors, Mar. 26, 2021.

⁹⁸ Do Nguyen Mai Khoi, interview with the authors, Mar. 28, 2021; Anonymous expert #2, interview with the authors, Mar. 16, 2021

⁹⁹ Do Nguyen Mai Khoi, interview with the authors, Mar. 28, 2021

¹⁰⁰ Michael Caster, interview with the authors, Feb. 25, 2021

¹⁰¹ Le Pham, interview with the authors, Feb. 16, 2021

¹⁰² Nguyen Lam, interview with the authors, Mar. 26, 2021.

¹⁰³ Le Quoc Quan, interview with the authors, Apr. 2, 2021.

¹⁰⁴ Pham Le Vuong Cac, interview with the authors, Apr. 6, 2021.

¹⁰⁵ Pham Le Vuong Cac, interview with the authors, Apr. 6, 2021. Do Thi Thu, interview with the authors, Apr. 5, 2021; Dinh Thi Thu Hien, interview with the authors, Apr. 5, 2021 (describing the experiences of her sister, Thu Thuy); Nguyen Van Hai, interview with the authors, Apr. 7, 2021.

¹⁰⁶ Nguyen Van Hai, interview with the authors, Apr. 7, 2021.

¹⁰⁷ *Id.*

¹⁰⁸ Do Thi Thu, interview with the authors, Apr. 5, 2021

expression, “they tried to persuade her, harass[ed] her [in] different ways,” and “invited” her to the police station multiple times.¹⁰⁹ She was ultimately arrested, convicted, and sentenced to prison.¹¹⁰

VI. GOVERNMENT PROSECUTION AND IMPRISONMENT OF ACTIVISTS WITHOUT DUE PROCESS

A. DENIAL OF LEGAL REPRESENTATION

35. Once a person is arrested, Vietnam regularly denies or substantially delays access to legal counsel.¹¹¹ One expert explained that pre-trial detentions in Article 117 cases typically last for several months, and during this time, detainees have no right to see a lawyer.¹¹² The Vietnamese police can detain people for an unlimited duration while conducting investigations into what they label as “extremely severe” national security crimes.¹¹³ In some instances, activists have been detained for over two years before their trials begin.¹¹⁴ If a national security crime does not meet the severity threshold, according to the Procuracy’s determination, individuals can still be detained for up to sixteen months—with a four-month detention period, which may be renewed three times. During pre-trial detention, the accused are routinely denied access to a lawyer.¹¹⁵ In fact, neither the activist nor a lawyer are even allowed to read the government’s investigative file or examine the official charges until after the investigation is complete.¹¹⁶ A trial can then take place as soon as two weeks after the investigation is concluded, leaving almost no time to prepare an adequate defense.
36. Multiple interviewees confirmed that they or their family members and friends have not been able to see a lawyer or prepare a defense against the government’s accusations.¹¹⁷ Dinh Thi Thu Thuy was only able to see a lawyer after she had been in detention for twelve months.¹¹⁸ A local Vietnamese law professor added: “I don’t think a lawyer can do anything to protect the activists. For all cases concerning activists, the lawyer is not even allowed to be present with the client until the actual trial happens. [And] for any substantive arguments the lawyer can make, the judge is still a Communist Party member and has to decide the case in line with

¹⁰⁹ Dinh Thi Thu Hien, interview with the authors, Apr. 5, 2021.

¹¹⁰ *Profile of Dinh Thi Thu Thuy*, The 88 Project, <https://the88project.org/profile/481/dinh-thi-thu-thuy/> (accessed April 24, 2021).

¹¹¹ Do Thi Thu, interview with the authors, Apr. 5, 2021.

¹¹² Anonymous expert #1, interview with the authors, Mar. 2, 2021.

¹¹³ Criminal Procedure Code, No. 101/2015/QH13, Art. 173 ¶ 5, (Nov. 27, 2015), <https://vanbanphapluat.co/law-no-101-2015-qh13-criminal-procedure-code>.

¹¹⁴ See *Nguyen Van Dai*, The 88 Project (last updated Feb. 20, 2020), <https://the88project.org/profile/48/nguyen-van-dai/>; *Le Thu Ha*, The 88 Project (last updated Feb. 20, 2020), <https://the88project.org/profile/4/le-thu-ha/>.

¹¹⁵ Pham Le Vuong Cac, interview with the authors, Apr. 6, 2021.

¹¹⁶ Anonymous expert #1, interview with the authors, Mar. 2, 2021.

¹¹⁷ Pham Le Vuong Cac, interview with the authors, Apr. 6, 2021; Do Thi Thu, interview with the authors, Apr. 5, 2021; Dinh Thi Thu Hien, interview with the authors, Apr. 5, 2021; Le Quoc Quan, interview with the authors, Apr. 2, 2021; Do Nguyen Mai Khoi, interview with the authors, Mar. 28, 2021; Le Pham, interview with the authors, Feb. 16, 2021.

¹¹⁸ Dinh Thi Thu Thuy, interview with the authors, Apr. 5, 2021.

the Party. In high-profile cases, there is the so-called ‘interdisciplinary judicial meetings’ (họp liên ngành tư pháp) where the court, the Procuracy, and the public security sit together and decide the appropriate outcome of the trial before it even happens.”¹¹⁹ The right to counsel, although theoretically guaranteed in the Vietnamese Constitution, is thus regularly and systematically violated by Vietnam.

B. ARBITRARY DETENTION AND CAPRICIOUS APPLICATION OF THE CRIMINAL CODE

37. Vietnamese activists regularly face arbitrary detention and a failure to be notified of the criminal charges against them. In 2019, 41 individuals were arrested for peaceful activism, and 61 individuals were tried for engaging in pro-democracy and free-expression advocacy (deemed “national security” crimes in those cases);¹²⁰ in 2020, during the COVID-19 pandemic, 35 individuals were arrested for peaceful activism and 27 individuals were tried for national security crimes.¹²¹ In 2020, one in five incidents tracked by The 88 Project involved arbitrary arrest and detention,¹²² and 34% of those arrested that year were subjected to prolonged, incommunicado detention.¹²³
38. Criminal prosecution is “based on the person, not on the act.”¹²⁴ No one knows exactly when or why the police decided to pursue charges against them at that time.¹²⁵ Trinh Ba Phuong was arrested after posting on Facebook about the Dong Tam village raid in which three villagers were killed by police. After his arrest, the police admitted to Phuong’s wife that despite his extended history of activism, had Phuong not spoken up about Dong Tam, he would not have been arrested. But the Dong Tam incident changed things because of the level of international attention the raid attracted. The “the Dong Tam incident is too big,” so Vietnam could not overlook Phuong’s activism without hurting “the credibility of the leadership.”¹²⁶ Average Vietnamese citizens are thus left wondering when and how they may exercise their freedom of expression while avoiding arbitrary arrest.

VII. MANIPULATION OF THIRD PARTIES AND ABUSE OF PROCESS

A. CONTROL OF SOCIAL MEDIA AND CORPORATE INACTION AND COMPLICITY

¹¹⁹ Le Pham, interview with the authors, Feb. 16, 2021.

¹²⁰ The 88 Project, 2019 Report on Political Prisoners and Activists at Risk in Vietnam, <https://the88project.org/wp-content/uploads/2020/06/PDF-2019-annual-report.pdf>.

¹²¹ The 88 Project, 2020 Human Rights Report Vietnam: our report on political prisoners and activists at risk, https://the88project.org/wp-content/uploads/2021/04/HR-Report-20_final.pdf

¹²² *Map of Human Rights Violations*, The 88 Project, <https://the88project.org/map/>.

¹²³ *Database*, The 88 Project, <https://the88project.org/database/>.

¹²⁴ Le Quoc Quan, interview with the authors, Apr. 2, 2021.

¹²⁵ *Id.*

¹²⁶ Do Thi Thu, interview with the authors, Apr. 5, 2021

39. As noted above, Vietnam has increasingly sought to control online expression, especially in the realm of social media. The failure of social media corporations, such as Facebook, to effectively resist Vietnam’s suppression of freedom of expression, has been the subject of numerous reports.¹²⁷ In fact, interviewees expressed frustration with what they viewed as complicity.¹²⁸ As activists described, when they try to post content on Facebook, their posts are immediately blocked as “violations of Facebook’s Community Standards.”¹²⁹ Some posts are removed hours later, and the user’s advertising accounts through Facebook are also suspended.¹³⁰ Facebook posts often disappear without notice or explanation.¹³¹ After the Dong Tam village raid, many activists attempted to disseminate news about the incident via Facebook, but their posts were deleted and their accounts blocked.¹³²
40. Despite some contradictory public statements, Facebook has chosen to defer to the Vietnamese State’s determination of what constitutes undesirable speech—that is, dissenting opinions and information that could put the government’s legitimacy in question.¹³³ Do Nguyen Mai Khoi, formerly a well-known singer in Vietnam, interviewed for this report, made attempts to engage Facebook in conversations about its deferential policies and the harms it is causing in Vietnam. She was met with indifference and inaction.¹³⁴ Reports indicate that the company regularly complies with government requests to censor posts that the government

¹²⁷ BBC News, *Vietnam: Facebook and Google ‘Complicit’ in Censorship*, Dec. 1, 2020, <https://www.bbc.com/news/world-asia-55140857> (accessed May 14, 2021); Amnesty International, *Viet Nam: Tech Giants Complicit in Industrial-Scale Repression*, Dec. 1, 2020, <https://www.amnesty.org/en/latest/news/2020/12/viet-nam-tech-giants-complicit> (accessed May 7, 2021); James Pearson, *Exclusive: Facebook Agreed to Censor Posts After Vietnam Slowed Traffic*, Reuters, Apr. 21, 2020, <https://www.reuters.com/article/us-vietnam-facebook-exclusive/exclusive-facebook-agreed-to-censor-posts-after-vietnam-slowed-traffic-sources-idUSKCN2232JX> (accessed May 7, 2021); David S. Cloud and Shashank Bengali, *Facebook Touts Free Speech. In Vietnam, It’s Aiding in Censorship*, LA Times, Oct. 22, 2020, <https://www.latimes.com/world-nation/story/2020-10-22/facebook-censorship-suppress-dissent-vietnam> (accessed May 7, 2021);

¹²⁸ Do Nguyen Mai Khoi, interview with the authors, Mar. 28, 2021; Do Thi Thu, interview with the authors, Apr. 5, 2021; Nguyen Van Hai, interview with the authors, Apr. 7, 2021; Le Pham, interview with the authors, Feb. 16, 2021.

¹²⁹ Nguyen Lam, interview with the authors, Mar. 26, 2021.

¹³⁰ *Id.*

¹³¹ Nguyen Van Hai, interview with the authors, Apr. 7, 2021.

¹³² *Id.*

¹³³ Facebook openly acknowledges that it censors content at the request of Vietnamese government officials. See Facebook Transparency Center, *Vietnam: Content Restrictions Based on Local Law*, <https://transparency.fb.com/data/content-restrictions/country/VN> (accessed Jul. 22, 2021) (“We restricted access to 2,205 items in Vietnam in response to reports from the Ministry of Information and Communications Authority of Broadcasting and Electronic Information (ABEI) and the Ministry of Public Security (MPS). Of these, 2,189 pieces of content were alleged to violate Decree No. 72/2013/ND-CP, including content opposing the Communist Party and the Government of Vietnam.”). See also, Rubio Presses Facebook, Twitter on Upholding American Values When Dealing With Authoritarian Governments, Sept. 5, 2018, <https://www.rubio.senate.gov/public/index.cfm/2018/9/video-rubio-presses-google-twitter-on-upholding-american-values-when-dealing-with-authoritarian-governments>; Salzburg Global Seminar, *Designs on the Future: How Should Online Speech be Governed?* YouTube, May 27, 2021, <https://www.youtube.com/watch?v=qFdXmGypKfQ&list=PLDHDHq7oPbv6JiWLb2LHnaeDy5i61b2xn> (starting at 29:50).

¹³⁴ Do Nguyen Mai Khoi, interview with the authors, Mar. 28, 2021

deems “anti-State.”¹³⁵ This is despite a public statement by its Chief Operating Officer Sheryl Sandberg that it would not be complicit in restricting speech in Vietnam.¹³⁶

B. HARMFUL CONSEQUENCES OF FAILURE TO COMPLY WITH SPEECH RESTRICTIONS

41. Those who engage in expression which the State considers unfavorable can face severe harmful consequences. Interviewees reported harm to their livelihoods. For participating in protests against China related to the South China Sea, Trinh Huu Long was fired by his boss and kicked out of his home by his landlords at the request of police officers.¹³⁷ They may be physically hurt; for example, protestors are frequently beaten up by police.¹³⁸ At one large protest, Thu Thuy described how the police swung clubs at the crowd.¹³⁹ For those who are arrested, torture is common and becomes more likely as persons resist or refuse to cooperate in the State’s investigations.¹⁴⁰ They experience psychological trauma. Pham Le Vuong Cac recounted the paranoia he felt when he began his activism.¹⁴¹ If he heard a dog bark in the middle of the night, he feared the police were coming to arrest him.¹⁴² His fears were not unfounded—he has received repeated warnings by the police that “bad things” will happen to him, like “traffic accidents,” if he continues to engage in activism.¹⁴³ Now, when he leaves his home, he sees plain-clothed police, who follow him from morning to night. “You never know if they will arrest you, kill you, attack you. You just don’t know.”¹⁴⁴ And they may have their liberty restricted, and face dire consequences as result.¹⁴⁵

¹³⁵ *Id.*

¹³⁶ *Rubio Presses Facebook, Twitter on Upholding American Values When Dealing With Authoritarian Governments*, Sept. 5, 2018, <https://www.rubio.senate.gov/public/index.cfm/2018/9/video-rubio-presses-google-twitter-on-upholding-american-values-when-dealing-with-authoritarian-governments>.

¹³⁷ Trinh Huu Long, interview by authors, Feb. 16, 2021.

¹³⁸ Nguyen Van Hai, interview with the authors, Apr. 7, 2021.

¹³⁹ Dinh Thi Thu Hien, interview with the authors, Apr. 5, 2021.

¹⁴⁰ Pham Le Vuong Cac, interview with the authors, Apr. 6, 2021.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ In May 2020, Amnesty International reported that two independent booksellers were detained and tortured by police in Ho Chi Minh City. *Vietnam: Independent Book Sellers Tortured by Police*, Amnesty International (May 14, 2020), <https://www.amnesty.org/en/documents/asa41/2325/2020/en/>. In July 2020, a blogger was beaten while confined to a psychiatric hospital, and Pham Doan Trang, a journalist, reported intense police harassment. *Vietnam*, Freedom House (2020), <https://freedomhouse.org/country/vietnam/freedom-net/2020>. In 2017, Human Rights Watch released a report documenting 36 incidents in which human rights activists and bloggers were beaten and threatened in the presence of police. For example, in 2016, Tran Thi Hong and Truong Minh Tam were detained for interrogation and then beaten inside a police station. *No Country for Human Rights Activists*, Human Rights Watch (June 18, 2017), <https://www.hrw.org/report/2017/06/19/no-country-human-rights-activists/assaults-bloggers-and-democracy-campaigners>.

42. The conditions in jails and prisons are “appalling”—especially for detainees charged with “national security” crimes, whose time in detention is designed to “break” them.¹⁴⁶ The 88 Project has found that political prisoners are, as a practice, subjected to harsh physical conditions, physical or psychological abuse, violence, torture, denial of adequate medical treatment, and solitary confinement.¹⁴⁷ The GHRC’s interviews with activists having direct experience with the criminal justice system in Vietnam confirmed this finding.¹⁴⁸
43. Prisoners who attempt to exercise their rights in detention are subject to abuse and torture. When Nguyen Van Hai exercised his right to remain silent, he was placed in solitary confinement.¹⁴⁹ When Do Thi Thu’s husband also exercised his right to remain silent, he was moved into a psychiatric facility, despite having no history of mental illness.¹⁵⁰ Dinh Thi Thu Hien’s sister, Thu Thuy, is currently imprisoned in Vietnam. Thu Thuy requested that she be allowed to receive supplies from her family, like food and water, which other prisoners were permitted to receive, and that she be allowed to contact her family members. Instead, she was placed in solitary confinement.¹⁵¹
44. Interviewee Nguyen Van Hai says that those in Vietnam attempting to engage in political expression deemed unfavorable by the government pay a high price: “imprisonment and their own blood.”¹⁵² Furthermore, if they seek assistance of the international community, such as the UN human rights mechanisms, they may face further intimidation and reprisals.¹⁵³ Several activists who managed to secure release through international pressure and advocacy have subsequently faced travel bans, preventing them from leaving the country or coming back. And if they return home, they are met with intensive surveillance.¹⁵⁴
45. Vietnam’s reprisals acutely affect the families and children of those targeted for their speech. Interviewee Do Thi Thu gave birth just days before her husband, her brother-in-law, and her mother-in-law were arrested.¹⁵⁵ In addition to the immense fear she felt for the well-being of her jailed husband and other family members, she had to care for a newborn child on her own. Dinh Thi Thu Hien told us that her nephew, after her sister was arrested and detained, was intuitively aware of the risks his mother faced in prison for having exercised her right to free expression.¹⁵⁶ During the first month, her nephew was “severely depressed: he wouldn’t eat;

¹⁴⁶ Anonymous expert #1, interview with the authors, Mar. 2, 2021.

¹⁴⁷ *Database*, The 88 Project, <https://the88project.org/database/>. The 88 Project, *Torture and Inhumane Treatment of Political Prisoners in Vietnam 2018-2020*, https://the88project.org/wp-content/uploads/2020/11/Torture-Report_final.pdf.

¹⁴⁸ Nguyen Van Hai, interview with the authors, Apr. 7, 2021; Do Thi Thu, interview with the authors, Apr. 5, 2021; Dinh Thi Thu Hien, interview with the authors, Apr. 5, 2021.

¹⁴⁹ Nguyen Van Hai, interview with the authors, Apr. 7, 2021.

¹⁵⁰ Do Thi Thu, interview with the authors, Apr. 5, 2021.

¹⁵¹ Dinh Thi Thu Hien, interview with the authors, Apr. 5, 2021.

¹⁵² Nguyen Van Hai, interview with the authors, Apr. 7, 2021.

¹⁵³ Anonymous expert #1, interview with the authors, Mar. 2, 2021.

¹⁵⁴ *Id.*

¹⁵⁵ Do Thi Thu, interview with the authors, Apr. 5, 2021.

¹⁵⁶ Dinh Thi Thu Hien, interview with the authors, Apr. 5, 2021.

he wouldn't sleep; he would sit alone by himself."¹⁵⁷ These severe harms are a direct result of Vietnam's violation of its international human rights obligations.

VIII. RECOMMENDATIONS AND CONCLUSION

46. The research for this report is based on twelve interviews of activists and their families as well as data collected by The 88 Project for the last four years. This combined evidence demonstrates a systematic effort to suppress free speech and expression by Vietnam. The State utilizes extensive means of surveillance and repression—including censoring media, employing police violence and harassment, denying activists access to counsel, housing political prisoners in inhumane detention conditions, performing sham trials, and sentencing critics with excessive sentences. The online sphere is a particular target for the State's suppression of speech. Vietnam actively monitors and removes websites, blocks social media accounts, and censors its citizens' social media posts. The country's domestic legal framework, including the Law on Cybersecurity and provisions in the Criminal Code, permits much of the State's suppression of speech. These laws grant broad discretion to the government to discriminate against citizens who express criticism of the State. Due to Vietnam's actions, in violation of international law, citizens are chilled from exercising their basic right to freedom of expression.
47. The authors of this report call on Vietnam to guarantee the freedom of expression by taking, *inter alia*, the following actions:
- a. Effectuating the unconditional release of all political prisoners, as their detentions directly contravene Vietnam's international commitments.
 - b. Revising provisions of the 2015 Criminal Code—specifically, Articles 109, 116, 117, 118, 318 and 331—to ensure that they comply with international law. Revisions should reduce the vagueness and overbreadth inherent in these laws. Vietnam must narrowly tailor these laws such that ordinary citizens have a clear and common understanding of the specific activities prohibited by law. Moreover, Vietnam must narrow these laws, such that they do not prohibit activities which are otherwise protected under international law.
 - c. Repealing the Law on Cybersecurity, which grants the government extraordinary power to restrict speech in online fora.
 - d. Supporting the U.N. Guiding Principles on Business and Human Rights and demanding that technology and social media companies abide by these guidelines in ensuring the respect of the right to freedom of expression, even where expression is in violation of non-compliant state laws such as Vietnam's current Law on Cybersecurity and criminal code provisions. As consistent with the Guiding Principles, all social media companies should refuse demands by any government – including the Vietnamese government – to use their platforms to suppress speech and censor legitimate expression.

¹⁵⁷ *Id.*

- e. Ensuring that citizens have access to websites which promote human rights and free expression. Access to these websites is essential to protecting the values of free expression, in particular ensuring an informed citizenry and open access to the marketplace of ideas.
- f. Disbanding any and all cyber-armies that flag social media posts and suppress speech through mass reporting.
- g. Renouncing harassment and other extrajudicial and unlawful investigatory tactics, including the use of 'invitations,' surveillance tactics, kidnappings, torture, physical violence and forced evictions carried out by law enforcement. In addition to plainly violating international law, these actions create a climate of fear, which serves to further chill speech that is lawful under international law.
- h. Bringing the treatment of prisoners and conditions in prisons in compliance with international law. Vietnam must stop subjecting political prisoners to physical or psychological abuse, torture, denial of adequate medical treatment, punitive prison transfers, solitary confinement, and denial of communication rights with family members.
- i. Guaranteeing to defendants accused of national security violations the right to counsel, which would attach from the moment of arrest, and the right to access any and all evidence that will be used against them at trial. Defendants are presumed innocent until proven guilty under international law and are guaranteed the right to a fair trial. The trial should be presided by an independent judiciary, free from political influence. Being able to mount a reasonably effective defense, which requires access to counsel and evidence, is critical to ensuring the realization of this right.

ANNEX 1: SUBMISSION METHODOLOGY

Research was conducted in the following stages: desk research, interviews, a primary review of court documents, and analysis of The 88 Project’s “Database of Persecuted Activists in Vietnam” (“Database”).

Desk Research

Student researchers reviewed relevant human rights treaties, and reviews of Vietnam’s implementation of its treaty obligations.

Interviews

The GHRC interviewed activists and their family members, legal and policy advocates and a human rights expert. The 88 Project, based on their extensive knowledge on freedom of expression issues in Vietnam, recommended interviewees to the GHRC with experiences considered representative of Vietnamese activists and human rights advocates; these interviewees often further recommended other persons, whom the later Clinic interviewed. All interviews were conducted using online video-chat platforms. Two students were present for every interview, and most interviews had a faculty member present. An interpreter was present where necessary or requested by the interviewee, and the same interpreter was used for every interview. Notes were taken during the interviews, which remain on file with the researchers.

Primary Review of Court Documents

The 88 Project obtained official court documents and trial transcripts from the case of Phan Kim Khanh who was prosecuted for violations of several laws. These documents were translated by the interpreter whom the clinic retained to facilitate interviews, discussed above.

Database

Since 2018, The 88 Project’s Database has tracked current political prisoners and activists at risk in Vietnam. Political prisoners are defined as those who have been jailed or had their freedom otherwise restricted because of their political or religious beliefs and activities, in contravention of their freedoms of opinion and expression. In Vietnam, this specifically includes those who have expressed criticism of the government or the Communist Party or engaged in other forms of social and political activism that the State has deemed to constitute a “national security” threat. Activists at risk include those who have been released from prison but remain under government surveillance, or those who have been sentenced to probation. Activists at risk also include those whom The 88 Project classifies—as opposed to those who self-identify—as persons engaged in speech or other expressive activities designed to bring about social or political change who experience government “harassment”—including physical attacks, interrogation, administrative fines, forced eviction, or passport denial. These government activities interfere with the ability of Vietnamese persons to freely seek, receive, and impart information and ideas, in contravention of their freedoms of opinion and expression. Because The 88 Project only includes as political prisoners and activists at risk those whom they can independently verify as meeting their criteria for classification as such, the actual number of political prisoners and activists at risk are “likely much higher” than that which is reported in the database.

ANNEX 2: SELECTED VIETNAM CRIMINAL CODE PROVISIONS

Source: Vietnam Criminal Code (2015), <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>.

Article 109. Activities against the people's government

Any person who establishes or joins an organization that acts against the people's government shall face the following sentences:

1. The organizer, instigator, or person whose activities cause serious consequences shall face a penalty of 12 - 20 years' imprisonment, life imprisonment, or death;
2. Any accomplice shall face a penalty of 05 - 12 years' imprisonment;
3. Any person who makes preparation for the commitment of this criminal offence shall face a penalty of 01 - 05 years' imprisonment.

Article 116. Sabotaging implementation of solidarity policies

1. Any person, for the purpose of opposing the people's government, commits any of the following acts shall face a penalty of 07 - 15 years' imprisonment:

- a) Sowing divisions between the classes of people, between the people and people's government, the people's armed forces, or socio-political organizations;
- b) Causing hostility, discrimination, secession, infringement upon equality rights among the ethnic communities of Vietnam;
- c) Sowing division between religion followers and non-followers, between religions, between religion followers and people's government or socio-political organizations;
- d) Sabotaging the implementation of international solidarity policies.

2. A less serious case of this offence shall carry a penalty of 02 - 07 years' imprisonment.

3. Any person who makes preparation for the commitment of this offence shall face a penalty of 06 - 36 months' imprisonment.

Article 117. Making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam

1. Any person, for the purpose of opposing the State of Socialist Republic of Vietnam, commits any of the following acts shall face a penalty of 05 - 12 years' imprisonment:

- a) Making, storing, spreading information, materials, items whose that contains distorted information about the people's government;
 - b) Making, storing, spreading information, materials, items whose that contains fabricated information to cause dismay among the people;
 - b) [sic] Making, storing, spreading information, materials, items to cause psychological warfare.
2. An extremely serious case of this offence shall carry a penalty of 10 - 20 years' imprisonment. 3. Any person who makes preparation for the commitment of this criminal offence shall face a penalty of 01 - 05 years' imprisonment.

Article 118. Disruption of security

1. Any person who, for the purpose of opposing the people's government, incites, persuades, gathers other people to disrupt security, resists law enforcement officers in the performance of their duties, obstruct the operation of agencies or organizations shall face a penalty of 05 - 15 years' imprisonment, except for the cases specified in Article 112 hereof.

2. Any accomplice shall face a penalty of 02 - 07 years' imprisonment.

3. Any person who makes preparation for the commitment of this offence shall face a penalty of 06 - 36 months' imprisonment.

Article 318. Disturbance or public order

1. Any person who causes disturbance of public order which negatively impacts social safety, order, or security, or previously incurred a civil penalty for the same offence or has a previous conviction for the same offence which has not been expunged, shall be liable to a fine of from VND 5,000,000 to VND 50,000,000 or face a penalty of up to 02 years' community sentence or 03 - 24 months' imprisonment.

2. This offence committed in any of the following cases shall carry a penalty of 02 - 07 years' imprisonment:

- a) The offence is committed by an organized group;
- b) The offence involves use of weapons or vandalism;

- c) The offence results in serious traffic congestion or suspension of public activities;
- d) The offender incites other people to cause disturbance;
- dd) [sic] The offender attacks the person who intervenes to maintain public order;
- e) Dangerous recidivism.

Article 331. Abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens

1. Any person who abuses the freedom of speech, freedom of the press, freedom of religion, freedom of association, and other democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens shall receive a warning or face a penalty of up to 03 years' community sentence or 06 - 36 months' imprisonment.
2. If the offence has a negative impact on social security, order, or safety, the offender shall face a penalty of 02 - 07 years' imprisonment.