

Vietnam's Steady Steps Towards Digital Authoritarianism

Quynh-Vi Tran

ED of Legal Initiatives for Vietnam (LIV)

www.liv.ngo

Discussion Notes: Vietnam and Its Penal Codes, including the 2018 Cybersecurity Law, being used against peaceful expressions of its citizens

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Vietnamese government has a long history of criminalization free speech. Starting with the Ordinance on punishing counterrevolution crimes issued by the National Assembly's Standing Committee and signed into law by then-president Ho Chi Minh in 1967, the VCP has consistently maintained a number of criminal provisions targeting dissidents in the 1985 and 1999 Penal Codes.

The current Penal Code - which replaces the 1999 code - inherits the same legal tendency and consists of three provisions that apply to all forms of speech, including the online one.

CRIMINALIZATION OF ONLINE DISSENT VOICES

Penal Code Articles 109, 117, and 331 of the Socialist Republic of Vietnam need to be abolished because they are the form of *sedition libel*.

Article 109 imposes sentences of “12-20 years imprisonment, life imprisonment, or death” for “any person who establishes or joins an organization that acts against the people’s government.”

Article 117 is concerned with information or material that opposes the Vietnamese government, imposing a penalty of 5-12 years imprisonment for “making, storing, or spreading information, materials, items that contain” distorted information about the government or are intended to cause psychological warfare.

Article 331 criminalizes the abuse of “democratic freedoms,” stating that any person who abuses the freedom of speech, press, association, and other democratic freedom to “infringe upon the interests of the State” can be imprisoned up to 3 years, or up to 7 years if “the offense has a negative impact on social security, order, or safety.

2018 Cybersecurity Law



What is the 2018 Cybersecurity Law

The government in Vietnam has created and enforced laws to suppress specific instances of public speech across various platforms and modes. This is one of those laws.

The 2018 Cybersecurity Law, in particular, give the Vietnamese government nearly unfettered control over the type of content that may be published online.

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Under Article 26 of the Cybersecurity Law, the government in Vietnam can request the takedown of certain content online, and the managing entity **must comply** with that request **within twenty-four hours** or face legal consequences.

Under Article 16 of the Cybersecurity Law, the content that the government can request to take down is **broadly defined**, including things like insults, calling for division, and content **the government decides** is untruthful.

How has the Cybersecurity Law been used?

The Cybersecurity Law is heavily used in Vietnam.

In 2022, Facebook blocked 2751 posts, Google removed 7935 videos from Youtube, and Tiktok blocked or removed 329 videos.

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As a more drastic measure, there are entire websites are regularly blocked by the Vietnamese government; the Ministry of Public Security (the national police) blocked over 2705 websites in 2022.

Our two websites:

www.luatkhoea.org and www.thevietnamese.org

have been regularly blocked inside the country.

The 2018 Cybersecurity Law is now being used with other Penal Codes to Imprison Dissents

Vietnam Sentences People under Article 331 of the Penal Code but also uses the 2018 Cybersecurity Law to **establish criminality**

On **March 1, 2024**, the People's Court of Ho Chi Minh City sentenced Dang Thi Han Ni to one year and six months in prison and her co-defendant, Tran Van Sy, to two years under Article 331 of the Penal Code.

In this case, the court rationalized that **the defendants violated the 2018 Cybersecurity Law, and those conducts were deemed to be “abusing democratic freedoms.”** In particular, the court found that the defendants have violated **subsections (a) and (b) of section 3, Article 16, and subsection (d) of section 1, Article 17 of the 2018 Cybersecurity Law.** The two defendants were also found to have violated subsection (d), section (1) of Article 5 of **Decree 72** on the management, provision, and usage of the internet and information from the internet in Vietnam.

Vietnam Deploys Cybersecurity Law to Fine Social Media Users

Vietnamese Miss World model fined for social media 'insults'

Southeast Asian nation is closing off internet while opening up supply chains



INTERNET SHUTDOWN

The government **often shuts down** the whole Internet in certain geographic regions or the entire websites throughout the country.

INTERNET SHUTDOWN (cont.)

Article 26 of the Cybersecurity Law allows the government to “**stop providing cyber information within a certain area or disconnect from the international internet gateway**” to respond to or prevent “**cybersecurity emergencies.**”

Under this article, a complete internet shutdown for a specific area, such as in **Dong Tam in January of 2020**, took place apparently disrupting the villagers’ social-media based resistance to a violent police attack on the villagers.

In **2020**, the ministry **threatened to shut down Facebook**, forcing it to comply with content restrictions. The ministry then **threatened to ban TikTok in 2023**.

PRIVACY AND SURVEILLANCE

Vietnam has two pillars of laws restricting privacy and conducting surveillance, which violate Article 17 of the ICCPR.

First, Vietnam engages in **data localization, data retention, state monopoly on internet service provision, and anonymity restriction**, all of which disproportionately enhance domestic surveillance capabilities of the authorities.

Second, Vietnam **authorizes the authorities' access to user data and surveillance on the users without procedural safeguards such as warrants.**

Data Retention and Localization

Decree 53 of the 2018 Cybersecurity Law “mandate[s] all domestic companies and many foreign companies, including social media platforms, telecommunications services, payment providers, and gaming platforms, to **store user data information locally.**”

The businesses fought back and this provision has been changed in the following decrees.

Anonymity restriction

In **July 2023**, the Ministry of Information and Communication proposed a draft decree to supersede **Decree 72**, enforcing **real-name identity registration for social media users with their actual names and phone numbers**.

This includes **mandatory identity verification for social media users**, tools for the government to scan platform content, and stricter measures against illegal content, including temporary and permanent blocks on accounts, groups, or channels violating laws multiple times. Foreign app stores **are also required to restrict access** to apps violating Vietnamese laws, and **technical blocks** will be imposed on non-compliant online content, services, and applications.

Furthermore, this decree **mandates that only licensed social media networks can offer live video streaming services or engage in revenue-generating activities**, excluding e-commerce. This draft decree represents a **significant push** towards eliminating social media anonymity and tightening control over the digital environment in Vietnam.

Warrantless Surveillance

Without legal warrants authorities regularly opened and censored targeted private mail; confiscated packages and letters; and monitored telephone conversations, email, text messages, blogs, and fax transmissions.

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Indeed, Article 193 of the Criminal Procedure Code authorizes the heads of investigation authorities to “**self-issue**” search warrants. Furthermore, the 2018 Cybersecurity Law mandates “internet services to...provide authorities access to data upon request **without any procedural safeguards**”.

The company must comply with any requests from the government.

Also, Decree 53 of the 2018 Cybersecurity Law requires companies to **provide user data to authorities upon request, without any safeguards**.

Internet Freedom needs to be saved in Vietnam

The cumulative effect of the above-mentioned regulations is a comprehensive framework for Internet governance that **prioritizes state security and control over the free flow of information.**

By targeting cross-border services, Vietnam aims to mitigate the challenges posed by the global nature of the internet to its governance model, ensuring that foreign platforms operate within the **confines of its legal and regulatory expectations.**

The evolution from Decree 72 through the proposed draft decree of 2023 illustrates a trajectory towards **increasingly restrictive internet governance**, reflecting the Vietnamese government's determination to maintain control over the digital sphere within its borders.