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**Submission to the UN Universal Periodic Review of Viet Nam
by PEN International, English PEN, ARTICLE 19 and Access**

For consideration at the 18th session of the UN working group in 2014

**17 June 2013
Introduction**

1. PEN International, English PEN, ARTICLE 19 and Access welcome the opportunity to contribute to the second cycle of the UPR process of Viet Nam. Given the areas of expertise of these organisations, this submission focuses on Viet Nam's compliance with its international human rights obligations in respect to freedom of expression.
2. In the 2009 Universal Periodic Review, Viet Nam accepted 94 of the recommendations of the Working Group. However, the Vietnamese government has failed to implement a number of these recommendations and continued to face international criticism for its actions in a number of areas related to the respect and protection of the right to freedom of expression. For example, the US Congress, in October 2009, passed a resolution calling on the Vietnamese government to respect Internet freedom and release imprisoned bloggers. More recently, on 18 April 2013, the European Parliament adopted an Urgent Resolution on Viet Nam, a large part of which was devoted to freedom of expression issues.
3. Rather than improving, the human rights situation in Viet Nam has continued to deteriorate since 2009, and in particular we are concerned about the state of freedom of expression, and the continued crackdown on writers, journalists, human rights defenders and activists. This submission will examine the following key issues:
 - State controlled media and lack of press freedom
 - Restrictive legislation on freedom of expression
 - o Constitution
 - o Executive Decree No. 2
 - o Internet regulation
 - o Right to information
 - Internet surveillance and cyber attacks on civil society
 - Persecution of writers, journalists, bloggers and human rights defenders

State controlled media and lack of press freedom

4. Although Viet Nam accepted recommendations (No. 48 and No. 52) to strengthen the right to freedom of expression and freedom of the press, considerable limitations on the right remain.
5. There is complete government control over print and broadcast journalism; all news publications in Viet Nam are owned and controlled by the government. Publications are generally associated with Communist Party-affiliated institutions or organizations.

Editors are summoned for regular meetings with the Central Propaganda Department (CPD) officials who set their weekly news agendas. At the same closed-door meetings, authorities review newspapers' coverage of the previous week, reprimanding editors who published unapproved content.

6. According to editors and reporters familiar with the CPD's guidelines, forbidden topics include the activities of political dissidents and activists, high-level official corruption, factional divisions inside the Communist Party, human rights issues, anti-China sentiments or protests, and any mention of ethnic differences between the country's once divided northern and southern regions, among others. As economic growth has recently started to slow, the list of forbidden topics has expanded to include criticism of the government's economic management, land conflicts between the government and local communities, and the business dealings of the Prime Minister's daughter.
7. The government does not acknowledge maintaining a formal blacklist of local journalists who have either flouted the CPD's directives or who are believed to have ties to political dissidents; however, journalists have insisted that such a list exists.

Restrictive legislation on freedom of expression

8. Although Viet Nam accepted recommendations to reform its law in accordance with international human rights law (No. 10 and No. 38), it failed to do so in relation to a number of laws, including in relation to the Internet (No. 47).

Constitution

9. Viet Nam is in the process of amending its Constitution. We welcome this process, and in particular commend the government's decision to publically circulate the Draft Constitution for open consultations. The proposed revisions include some positive features, namely affirming the respect for and guarantee of human rights, including the addition of new rights such as the right to enjoy and participate in cultural life (Article 44) and the freedom to choose one's language of communication (Article 45).
10. The Draft Constitution gives only limited protection to the right to freedom of expression and information. Article 26 of the Draft Constitution provides rudimentary protection of many distinct rights (freedom of opinion, freedom of speech, right to information, right to assembly and association and right to strike), without adequate protection given to each. We observe that the right to freedom of opinion should be protected without qualification and no law or constitutional provision should permit limitations on the right to hold an opinion. Moreover, in the Draft Constitution, the enjoyment of these rights is limited to citizens, which is also in violation of international standards.
11. Moreover, Article 15 of the Draft Constitution provides that all human rights may be restricted "in case of necessity for the purpose of national defence, national security, social order, ethics and community's health" (Article 15.2). This broad restriction does not comply with international standards, under which any limitations must be: provided for by law, pursue a legitimate aim, and be necessary and proportionate.

12. The Draft Constitution also contains broad and ill-defined restrictions on the “misuse” of religious freedom, human rights, and the right to lodge complaints against the state. These ambiguous qualifications on the enjoyment of human rights do not comply with international standards.
13. We also note that Viet Nam has not ratified the Optional Protocol to the ICCPR. Ratification of this instrument would give the Human Rights Committee, the treaty monitoring body for the ICCPR, the competence to receive individual complaints regarding Viet Nam’s compliance with its obligations under the ICCPR.

Executive Decree No. 2

14. Executive Decree No. 2 of 2011 on Administrative Responsibility for Press and Publication Activities, issued on 6 January 2011, gives authorities greater powers to penalize journalists, editors, and bloggers who report on issues deemed as sensitive to national security. It introduces fines for journalists who refuse to divulge their news sources or publish articles under pseudonyms. The Decree uses wide and arbitrary language, for example rules restricting the circulation on the Internet of materials “that encourage superstition, bad tradition and social evils.” The Decree also overburdens media workers with a regime of unnecessary registration, sanctions, bans and censorship. The Decree makes sharp distinctions between the rights of journalists accredited to the government versus independent bloggers, online reporters, and freelancers (Article 5), and imposes fines for actions such as the intimidation of reporters and unlawful seizure of their properties, however the protections notably do not extend to unaccredited reporters (Article 6).

Internet regulation

15. Since the first UPR cycle, the Vietnamese government have expanded its efforts to control the Internet. For example, a new draft executive decree proposed in April 2012, the Decree on Management, Provision and Use of Internet Services and Information on the Network aims to force foreign Internet companies like Facebook and Google to cooperate with authorities and require them to locate offices or appoint representatives in Viet Nam. (Only Yahoo! currently maintains an office in the country.) It would also require all Internet-related companies based in Viet Nam to house their servers in the country, a requirement that anonymous bloggers fear would jeopardize the security of their IP addresses. If the decree is enacted, it would make a wide range of intermediaries, including Internet Service Providers (ISPs), social media networks, interactive message boards, and individual blogs liable for third-party content, and those found to commit violations could face heavy penalties.

Right to information

16. Viet Nam accepted recommendations to guarantee in law the right to receive, seek and impart information (No. 45 and No. 46). We applaud the Vietnamese government’s efforts in drafting a new law on access to information since January 2009, however it has not yet been passed or implemented.

Internet surveillance and cyber attacks on civil society

17. Moreover, the Vietnamese authorities have engaged in both covert and open online surveillance and controls. In 2009, it was discovered that one of the most widely used

pieces of software for Vietnamese computer users, VPSKeys (a utility that allows Vietnamese characters to be entered on a standard keyboard), had been infected with malware. The software had been altered to allow remote groups to spy on the computer owner's key-presses, as well as hijack the host's Internet connection to participate in coordinated attacks on external websites. The Vietnamese authorities denied any involvement in the malware, but it is notable that the websites targeted were those critical of bauxite mining in Viet Nam, a particularly sensitive topic for the Vietnamese government.

18. The Vietnamese government has also engaged in open surveillance and monitoring of Internet traffic. Since 2009, the authorities have monitored Internet traffic at the international Internet gateways into Viet Nam, which are operated by the country's 15 or so private and government-run ISPs. Privately and publicly managed Internet cafés were required to check and record photo identification and store information about their customers' online activities. In October 2009, the government's telecommunications and media department installed in 300 Internet cafés in Hanoi new software designed to record and send reports to officials when users visited banned websites. According to local news reports, Department Director Pham Quoc Ban said that once the software was successfully tested, it would be extended to 3,000 more cafés across the city.
19. On 19 August 2009, Yahoo!'s 360° blog service, a platform that was immensely popular among Vietnamese bloggers, was closed down partially because it maintained its servers outside the country in Singapore. Yahoo! launched a new blogging service, 360° Plus, with servers inside Viet Nam. Bloggers concerned about maintaining anonymity moved to other foreign-hosted platforms, including WordPress and Blogspot, as well as social networking sites Facebook and Multiply. Facebook became inaccessible to many in late 2010, according to widespread reports, but the government denied involvement. The decision came after Deputy Minister of Information and Communication Do Quy Doan said that his ministry would seek the assistance of Google and Yahoo! to "regulate" the content of blogs and Web sites.
20. Vietnamese civil society organizations and actors -- including independent media, human rights defenders, and citizen activists -- come under a variety of attacks online by pro-government actors. The tactics used have changed over time -- initially focusing on targeting the email accounts of activists for compromise and takeover, and have evolved into more sophisticated attacks such as broad phishing, malware, and fake domain attacks. The implications of these attacks extend beyond the immediate actors they target, and more broadly hinder access to information, freedom of association, and freedom of expression for people in Viet Nam.
21. Denial-of-service (DoS) attacks make a website or web-based services inaccessible for the general populace, and is a tactic utilized by pro-government actors to silence independent media organizations, activists, and human rights defenders in Viet Nam. Besides infringing upon the right to freedom of expression of these actors, DoS attacks harm all Internet users in Viet Nam by denying people in the country the right to access information on the targeted sites. This silencing of political information is a direct violation of activists' freedom of expression and the right to receive information.

22. Civil society organizations and activists in Viet Nam have also been subject to account takeovers, often used in combination with other attacks. Stemming from fake domains or spear-phishing emails, these tactics are used to breach an Internet user's digital security in order to steal or read private account information. Phishing functions by establishing fake domains that collect account information or by sending emails attached with documents infected with malware. If the recipient accesses the malware-laden documents, his or her computer becomes compromised and third parties can obtain access to the individual's computer and files.
23. Malware targeting civil society actors in Viet Nam has become an increasing problem. In May 2013, it was revealed there were FinFisher servers in Viet Nam. FinFisher surreptitiously adds malware to mobile phones and computers through compromised documents and software updates, allowing the Vietnamese government to monitor communications and extract information including contacts, text messages, and emails. Such malware is an arbitrary interference on individuals' rights to privacy. In addition, popular websites for activists, such as blogs and independent media websites, have in particular been targeted to spread malware (known as watering hole attacks). Influential Vietnamese blogger Truong Duy Nhat was arrested on 26 May 2013, and after his arrest, visitors to his website would receive malware surreptitiously downloaded and installed onto their computers.
24. Website defacement has been used in Viet Nam as a tactic to suppress speech and influence public opinion. By changing the content of a website – such as an independent media website – without the website owners' permission, attackers can promote alternative views to the original website. This use of website defacement attempts to delegitimize independent media organizations and human rights activists, and interferes with the right of individuals in Viet Nam to receive information, and may hinder the right to freedom of association.
25. Fake Domain attacks have also become a popular tactic in Viet Nam. Fake domain attacks can take on several forms; they can mirror the exact information of a legitimate, targeted domain but serve malware, or they can falsely act as the legitimate, targeted domain and alter the content and views expressed on a website. In Viet Nam, we have seen the first category of fake domain attacks to be most prevalent, with similar negative impacts on rights as malware. This practice has the effect of violating the right of individuals in Viet Nam to privacy, hinder freedom of expression and reduce access to information.

Persecution of writers, journalists, bloggers and human rights defenders

26. Viet Nam accepted recommendations (No. 41 and No. 49) to take action to increase the accountability of State authorities for protection of human rights defenders as well as to review its Penal Code to limit its arbitrary interpretation by judges (No. 11). Nevertheless, arbitrary arrests and detentions of individuals exercising their right to freedom of expression persist.
27. The Vietnamese government has frequently used Article 88 of the Penal Code, "conducting propaganda against the Socialist Republic of Viet Nam", to arbitrarily imprison writers, bloggers, critics, and activists, and Article 79, "carrying out activities aimed at overthrowing the government," to silence critics. Article 88 calls for punishment of between 3-20 years in prison for such acts as "propaganda", "circulating documents or cultural products", or "psychological warfare" against the

government. In 2011 alone, the Vietnamese authorities used Article 88 of the Penal Code to convict at least 10 bloggers and activists for expressing their views. Article 79 specifically makes it a criminal offence to “carry out activities, establish or join organizations with intent to overthrow the people’s administration”. Those convicted under Article 79 may face anything from five years to life in prison.

28. There have been at least 40 cases of writers, journalists and bloggers serving sentences ranging from 2-16 years for their peaceful activism and critical writings. The number of writers arbitrarily detained in Viet Nam has more than tripled since 2009, while 24 of these cases were sentenced under Article 88 of the Penal Code (“Conducting propaganda against the Socialist Republic of Viet Nam”) and 13 cases under Article 79 of the Vietnamese Penal Code (“attempting to overthrow the government”).
29. There are serious concerns about the ill-treatment of prisoners in detention, including orchestrated attacks, lack of medical care, and unfair trials. There is also widespread surveillance and harassment of dissident writers and their families, particularly whilst serving probationary sentences. For example,
 - A distinguished writer, novelist, poet, essayist and activist, and former editor of the underground dissident magazine *To Quoc (Fatherland)*, Tran Khai Thanh Thuy has been under heavy surveillance and harassment since September 2006 for her critical writings published online. She had repeatedly been denounced and humiliated in public meetings organized by the Vietnamese authorities, and her home was attacked by mobs who called her a traitor and a prostitute and threatened to beat her. The police refused to protect her, calling for her to abandon her activism to ensure her safety. She was arrested on 8 October 2009 after she publicly expressed her support for six dissidents facing trial. Thanh Thuy was sentenced to three and a half years in prison on 5 February 2010 under Article 104 of the Penal Code at a trial, which lasted less than one day and did not comply with international standards of fairness. She was released on 5 July 2011 on condition that she accepted forced exile in the United States. She was forced to leave behind almost all of her personal items at the prison, including poetry written in detention, and was permitted less than 20 minutes to say good-bye to her husband. She suffers from long-term health problems as a result of ill-treatment and lack of medical care during her time in prison.
 - Another artist facing prosecution is a poet Bui Chat,a member of the poetry movement known as ‘Open Your Mouth’ (whose members write poetry using street language, and their mission is to shock and offend, and self-publish their work as it was unacceptable to state publishing houses). Their poetry meetings gained great popularity in Saigon but were then banned by the Vietnamese government. Bui Chat was later arrested, as he returned from Buenos Aires where he had travelled to receive the International Publisher’s Association (IPA) Freedom to Publish Award 2011. He was released two days later, on 2 May 2011, but has remained under heavy surveillance. He was briefly detained again on 5 June 2011 and held for twenty-four hours, apparently in order to prevent him from attending an award ceremony at the Swedish Embassy in Viet Nam. On 7 June 2011, four unknown assailants reportedly assaulted him whilst he was on his way home. He is currently unable to find permanent residency or employment as a result of government harassment.

- Writer and human rights activist Ho Thi Bich Khuong was arrested on 15 November 2011, and the next month was convicted of ‘Conducting propaganda against the Socialist Republic of Viet Nam’ under Article 88 of the Penal Code, at Nghe An People’s Court. Ho’s writings urged the release of prisoners of conscience and political detainees, and promote freedom of expression, religion and association. The prosecution alleged that Ho and Nguyen Trung Ton, a priest and fellow activist, had been collecting documents and writing several online articles which tarnished the reputation of the Socialist Republic of Viet Nam. Ho was also accused of giving interviews to foreign radio stations criticizing the government’s abuse of power and belonging to illegal human rights organizations. During the trial, she openly criticized the Communist Party. This was the third time that Ho had been arrested for her human rights work. Prior to this latest incarceration, she had also been attacked, threatened and subject to other brief detentions. There are concerns that Ho’s health is deteriorating as a result of the conditions of her detention. According to her family, Ho is said to have been attacked on various occasions by other inmates, orchestrated by prison authorities.
- Blogger Ta Phong Tan was arrested on 5 September 2011 and sentenced on 24 September 2012 to ten years in prison for ‘conducting propaganda against the state’ under article 88 of the Penal Code for her online writings for the banned website *Free Journalist Club (Cau Lac Bo Nha Bao Tu Do)* which she co-founded, and her own blog. She is known for her articles about corruption, abuse of power, land grabbing, among other issues. Her articles have been published in many mainstream media outlets in Viet Nam, including *Tuoi Tre* (*Youth*), *Nguoi Lao Dong* (*Labourer*), *Viet Nam net*, and the Vietnamese Service of the BBC. Her trial was repeatedly postponed, and did not comply with international standards of fairness. On 30 July 2012 her mother died after self-immolating outside government buildings in protest at her daughter’s detention, after months of harassment from public security officials.
- In January 2013, 13 bloggers and activists primarily belonging to the Redemptorist group of the Catholic Church were convicted by a People’s court under Article 79 of the Vietnamese Penal Code on charges of “attempting to overthrow the government”.

Recommendations:

30. Ratification of international instruments:

- Ratify the Optional Protocol to the ICCPR to give the Human Rights Committee the competence to receive individual complaints regarding Viet Nam’s compliance with its obligations under the ICCPR.

31. State controlled media and lack of press freedom:

- Relinquish state control over the entire country’s media, and create an enabling environment for the development of independent and pluralistic media.
- Refrain from dictating the media agenda through the CPD.

- Refrain from persecuting journalists who do not comply with the CPD's requirements.

32. Restrictive legislation on freedom of expression:

- Remove or clarify ambiguous and illegitimate qualifications on human rights protections in the constitution and in national laws.
 - Reform laws that restrict the right to freedom of expression to ensure they are: provided by law, pursue a legitimate aim, and are necessary in a democratic society.
 - Ensure that all new legislation or amendments to existing laws meet international standards on freedom of expression.
 - Amend the proposed Constitution in order to fully protect human rights, and separate and comprehensive protections should be given to the rights to: i) freedom of opinion; ii) freedom of expression; iii) access to information; iv) freedom of the press, and v) freedom of peaceful assembly and of association.
- In particular:
- The right to freedom of expression must be interpreted broadly and specify that the right includes the freedom to seek, receive and impart information.
 - The right to "be informed" should be reformulated to expressly protect the "right to access information."
 - The right to "assemble" should be reformulated as the "right to freedom of peaceful assembly," to reflect Article 21 of the ICCPR. The Constitution should establish a presumption in favour of holding an assembly.
 - The right to "freedom of the press" should include protections for media freedom and independence online as well as offline; guarantee editorial independence; protect the right of journalists to protect their sources; protect print and online media from any licensing or registration requirement; and provisions to guarantee the independence and pluralism of the broadcasting media sector.
 - Adopt a comprehensible law on access to information that fully complies with international standards in this area.

33. Persecution of writers, journalists, bloggers and human rights defenders:

- Refrain from harassing, threatening, criminalising or arresting writers, journalists, bloggers, political activists and other human rights defenders for reasons connected to their peaceful activities, including the legitimate exercise of their freedom of expression rights.
- Release writers, journalists, bloggers, political activists and other human rights defenders currently in detention for reasons connected to their peaceful activities, including the legitimate expression of their views.

34. Internet surveillance and cyber attacks on civil society:

- Repeal laws which place heavy restrictions on online anonymity, and which require ISPs to constrain freedom of expression.
- End the arbitrary surveillance of Internet users in Viet Nam.

- Ensure any communications surveillance is carried out only in line with international human rights obligations, respecting the requirements of necessity and proportionality.
- Respect the right of Internet users to access blogs and communications platforms based outside of Viet Nam.
- Refrain from interfering with and attacking the devices, accounts, and services used to facilitate the online activities and communications of Internet users in Viet Nam.

35. Extend a standing invitation to all of the UN Special Rapporteurs, and cooperate with them regarding communications and requests for country visits, including the mandates for:

- Freedom of opinion and expression
- Freedom of peaceful assembly and of association
- Human rights defenders