

The Laws of State Impunity

[Pham Doan Trang](#) –

Blogging has replaced journalism as the most dangerous job in Vietnam in the Internet era.

“It’s dangerous indeed. But it’s not a job, for we bloggers have never been paid for what we write,” said “J.,” a young Hanoi-based blogger. An administrator of a large online forum specializing in social and political issues, J. is more than aware of the risks bloggers like him are facing everyday: hackers, intimidating posts of state-sponsored cyber troops, and, worst of all, police discovery of their identities as “anti-state” bloggers.

“Bloggers are not paid as journalists are,” said J., “but we are doing the same thing mainstream media have been doing, or more precisely, have failed to do: exposing truths to the public that the government does not want them to know. In doing this, we face police harassment, detention and imprisonment.”

J. was not exaggerating. According to September 2013 estimate by the International Society for Human Rights (ISHR), at least 263 Vietnamese citizens, including bloggers, have been jailed since 2005 under charges of “infringing upon national security” and “infringing upon administrative management order.”

Of these hundreds of detainees, 68 were prosecuted under Article 88 of the Vietnamese Criminal Code (VCC) for “conducting propaganda against the state”, and 40 under Article 258, “abusing democratic freedoms to infringe upon the interests of the state.”

Behind these numbers are individual cases of people who dared to speak out. In fact, political bloggers in Vietnam have become familiar personalities in mainstream media for reporting on the arrest or trial of a previously obscure person but now charged with Article 88 or 258. These laws have proven to be effective scare tools used by the government to silence voices of dissent from the public.

The “handcuffs”

Bloggers sarcastically refer to Article 88 as the “handcuffs”, since the number 8 visually resembles these restraining devices used by law enforcement. Specifically, this law stipulates that those who make, store or disseminate information, including “documents and/or cultural products”, against the state shall be sentenced to between three and 12 years of imprisonment.

However, the law falls short of providing a clear description of contents that could be deemed “against the state”. Furthermore, the authority to interpret laws in Vietnam lies in a variety of entities ranging from the security forces, investigating body, to the procuratorates, the courts, or even ministries, although under Vietnamese laws, only the Standing Committee of the National Assembly holds this authority.

Before Article 88, there was Article 82 of the 1985 Vietnam Criminal Code, which was as repressive as any Soviet-styled penal law. Article 82 aimed to punish “propaganda against

socialism”, giving the same lengthy sentences of three to 12 years of imprisonment. There are no publicly available statistics on the number of detentions and charges under Article 82.

In 1999, a new penal code was issued which transformed Article 82 into Article 88, with the word “socialism” replaced by “the state”. The article now uses less abstract term but not necessarily less vague and broad.

Far from being restricted to cases of clearly subversive activities, Article 88 has been used to silence voices seeking a cleaner, more accountable government – something that, if the government would heed, could actually strengthen it.

Interpreting “the state”

One of the well known prisoners imprisoned under Article 88 is Cu Huy Ha Vu, a legal scholar, and son of a close ally of Vietnam founding father Ho Chi Minh. In 2009, Cu Huy Ha Vu filed a lawsuit against PM Nguyen Tan Dung, for allegedly starting a massive mining project that could be environmentally disastrous. In other countries, such a lawsuit may seem normal, but it was considered a watershed event in Vietnamese history.

Vu also contributed articles and gave interviews to overseas media agencies in which he straightforwardly criticized the ruling Communist Party and called for a multiparty democracy in Vietnam. In an interview with the Radio Free Asia, Vu said, “Today in Vietnam... a lot of state budget has been spent arbitrarily even on nefarious activities... In order to punish those corrupt gangs, I insist that the only way is to develop a multiparty system in Vietnam.”

In one of his articles published by the Vietnam Bauxite blog, Vu advocated the separation of powers, criticizing what he termed “the government, the court, and the national assembly uniting against the people.”

In 2010 Cu Huy Ha Vu was arrested and charged under Article 88. He was subsequently put on trial in a court composed of judges who were Vietnam Communist Party members, reinforcing his claim that under such a system the judiciary would be unable to be impartial. In 2011, Vu was given a seven-year imprisonment sentence.

Cu Huy Ha Vu’s trial loudly sent the message that, under the Vietnamese legal system, the Communist Party and its high-ranking members like the Prime Minister are untouchable, and immune from legal challenge. More importantly perhaps, the conviction made it clear that any such attempt is to be legally interpreted as “propaganda against the state”.

This case may be something already expected from a one-party state, and bloggers may already know that risk. However, as Nguyen Phuong Uyen, a student from the southern city of Long An, found out, even speaking for Vietnam and protesting to the aggressive acts of another country, specifically China, in the Southeast Asian sea dispute could put her in jail. She was arrested on 14 October 2012, just two days after her 20th birthday, and charged under Article 88. According to the indictment, Uyen and her companion, Dinh Nguyen Kha, their “crime” was producing pamphlets, slogans and paper flags that carried the following messages:

- “Long An’s patriot youth struggle for freedom and human rights;”

- “Patriotic youth are determined to eliminate communism and free the nation;” and
- “Long An is courageous and resolute in fighting communists for a free life.”

In addition, Uyen made a finger-writing in blood of the slogan, “China, get off the East Sea.” The indictment described this slogan as “not good content about China.”

It may well be argued that these slogans were not in opposition to “the people’s administration” but instead targeted an ideology. However, how a criticism against China could be interpreted as being against the Vietnamese state is simply hard to figure out.

In May 2013, the trial court imposed prison sentences of six years for Nguyen Phuong Uyen and eight for Dinh Nguyen Kha. These were reduced on appeal to three years suspended for Uyen and four years of imprisonment for Kha. Both the trial and the appeal were closed to their friends and family members; even the parents of Uyen and of Kha were not allowed in.

Conditional rights

Compared to “the handcuffs”, Article 258 of the 1999 Criminal Code seems less strict with sanctions including warnings and non-custodial reform for up to three years. In serious circumstances, offenders may be sentenced to between two and seven years of imprisonment.

The darker side is that Article 258 is more vague and broad worded, can be used against as many citizens as the police-dominated state wants. Offenders of Article 258 include “those who abuse the rights to freedom of speech, freedom of press, freedom of belief, religion, assembly, association and other democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens.”

Article 258 begins with a very specific list of the rights that cannot be “abused”. On the other hand, it also leaves an open interpretation for “other democratic freedoms” not initially listed. More seriously, it does not define what constitutes an “abuse” or “interests of the state” that cannot be infringed upon. In effect, Article 258 covers a broader range of acts than Article 88, which is limited only to acts which may be deemed as “propaganda”.

Following the boom of blogs and social media in Vietnam, there has been an increase in arrests and charges under Article 258.

Several incidents in 2013 demonstrate the escalation in the use of Article 258 in Vietnam as the country campaigned for membership in 2014-2016 in the United Nations Human Rights Council:

5 May: two bloggers were detained right after distributing copies of the Universal Declaration on Human Rights. Police accused them of abusing democratic freedoms to infringe upon the interests of the state.

Between 26 May and 15 June: three bloggers were arrested, two of them were well-known bloggers and journalists Truong Duy Nhat and Pham Viet Dao. The third blogger, Dinh Nhat Uy, is the elder brother of Dinh Nguyen Kha, an Article 88 detainee. The Dinhs thus gained the sad distinction of having two sons imprisoned for alleged violations of “national security” and “order”.

In October, police again used Article 258 to arrest two persons, Thao Quan Mua and Hoang Van Sang, in the northern province of Tuyen Quang for initiating a class action suit against authorities for suppressing Duong Van Minh, a Christian sect founded in 1989. Earlier in June, police demolished unauthorized religious shrines of the said sect on orders of the government Committee on Religious Affairs. Under Vietnamese Law, religious organizations must register before they can operate. This case has therefore seen the use of Article 258 against freedom of religious belief.

Broad discretion

The indictment of Dinh Nhat Uy was leaked to the online community in October and incited a public outcry for its childish arguments, including:

“In around 2010, Dinh Nhat Uy had his friend create a Facebook account whose nickname is Dinh Nhat Uy. Initially Uy only used it to send messages to friends. But as from around November 2012, after his younger brother Dinh Nguyen Kha was charged with conducting propaganda against the State of the Socialist Republic of Vietnam, this Facebook account was regularly used by Uy to post news, to share images and links, and to send messages....”

“(Using his Facebook page) Uy posted bad and false information about the State, organizations and individuals... Those images and articles were seen and read by many people. Many shared, pressed “like”, and gave comments, of which many comments smeared and insulted the State, organizations and citizens... On January 2, 2013, on posting the link into the article titled “Exposing the true face of the human right award Hellman/Hammett” published on trandaiquang.net [Tran Dai Quang is the name of the Vietnamese Minister of Public Security; trandaiquang.net appears to be a pro-government website], Uy commented, “What a lie. You [the author] can only cheat the fools.” Below this post of his, there were 18 people pressing “like” and 7 people giving comments, many of those comments were insulting.”

By imprisoning Uy for four months and then imposing a suspended 15 month sentence upon him, the state, in fact, targeted not only one individual but sent a warning to all social media users that they are potential offenders of Article 258. The charge against Dinh Nhat Uy did not specify which right he allegedly “abused”, although it is apparently the right to free expression.

In the face of such vague and broad restrictions, one may well ask: what are Vietnamese citizens allowed to do or speak about that will not be interpreted as an “abuse” of their rights? What are the boundaries of the “interest of the state”?

Answers to these questions will remain unknown because Article 258 gives authorities an almost unfettered discretion on using the law against the exercise of a broad range of civil rights. Such use can only be limited by the state’s justifications on how these were “abused” or infringed upon its ‘interests’.

Vietnamese bloggers, including “J.”, understand that these limits will grow tighter if they remain silent. Following these restrictions may mean that they will not be jailed, but it does not mean that they remain free.

Source:
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