



**Contribution to the Universal Periodic Review Mechanism
18th session of the Working Group of the Universal Periodic Review (UPR)**

**A UPR Submission on Vietnam by the International Publishers Association
(IPA) and PEN Norway**

17 June 2013

1. IPA and PEN Norway welcome the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the human rights situation in Vietnam. This submission will focus on the situation of publishers and writers, and provides:

- A. A follow-up to the recommendations accepted by Vietnam in the field of freedom of expression following the country's first UPR review on 8 May 2009;
- B. An overview of the Vietnamese publishing landscape;
- C. A detailed overview of the book censorship mechanisms at play;
- D. An overview of the latest developments in the field of freedom of expression;
- E. A roadmap to Freedom to Publish: A set of recommendations to the Vietnamese government aiming at supporting the Vietnamese authorities in improving the overall conditions for freedom of expression in the country.

2. This report is based upon interviews with more than 25 writers, publishers, human rights defenders, academics and foreign missions in Vietnam.

A: A follow-up to the recommendations accepted by Vietnam in the field of freedom of expression following the country's first UPR review on 8 May 2009:

3. In the field of freedom of expression, Vietnam accepted 8 recommendations from 8 different countries following its first UPR review in May 2009. However, to date, the Vietnamese government has not implemented, nor chosen to undertake any of the recommendations it had accepted in the field of freedom of expression in the country.

B: An overview of the Vietnamese publishing landscape:

4. Following the adoption of the 2004 Publishing Law, which replaced the 1993 Publishing Law, there are three levels in publishing in today's Vietnam:

- State (official/licensed) publishing;
- Private companies (in practice actual publishers);

- Underground (unlicensed) publishing.

Level 1: State/Official/Licensed publishing

5. In 2012, there were only 64 licensed publishers in Vietnam. According to Article 11 of the 2004 Publishing Law, the only entities which are permitted to establish publishing houses are as follows: Government bodies, political organisations, socio-economical organisations, and other organisations as stipulated by the Government. Thus, the support of a Communist party organisation, or an organisation linked to the party, is always needed to become a licensed publisher.

Level 2: Private companies/Investors

6. To date, there are no “private publishers” in Vietnam, in a strictly formal understanding of the words. The private sector, by law, cannot publish books. However, the 2004 Publishing Law represented limited progress for free publishing in Vietnam as it allowed publishing houses to associate with private companies, authors and owners of works for “preparation of manuscripts and the printing and distribution of each publication¹”. This is the second level. The private companies act as publishers: they deal with the authors, they edit the manuscripts, they make the layouts, they negotiate with the printing houses, they distribute the books, etc. However these new actors must buy the publishing permit from the official state-associated publishing houses (the owners of a publishing licence) for each title produced. The fee is comprised between 5 and 7% of the retail price of a book.

7. As in many developing nations, educational publishing represents 80% of the Vietnamese publishing market and the latter is entirely closed to private companies. The second largest segment of the publishing market, in a young country with a fast growing (urban) population, is children’s books. Private companies involved in publishing, which are around 100 nowadays, represent about half of this market. If the market were to be free, some official publishers would certainly go bankrupt, as their income is generated primarily from renting out their license to private companies.

Level 3: Underground publishing

8. Finally, the complex publications’ authorisation system existing in Vietnam has forced some to go underground. This is where – at third level - one finds the underground (i.e. unlicensed) publishing houses of Vietnam (*Nhà xuất bản*). Following the lead of *Giay Vun* (scrap paper), which was created 10 years ago, there are now around 30 underground publishing houses in Vietnam doing *samizdat* kind of publishing. The underground publishers cannot sell the books they publish as they are not licensed not only as publishing houses, but also as businesses. Bank transfers are not possible. Plain clothes police could for instance pretend to be buying the book. A distribution network is in place thanks to relations and friends throughout the country. The average print run is comprised between 500 and 700 copies. Due to the nature of underground publishing, where copies are spread through private networks, there are actually many more readers.

¹ Article 20, 2004 Publishing Law

C: A detailed overview of the book censorship mechanisms at play:

9. In Vietnam, the screening of books is a complex, opaque, at times irrational, and highly bureaucratic process that books and other written materials have to undergo prior to- and post- publication.

10. The 1992 Constitution of the Socialist Republic of Vietnam establishes Vietnam's economic and political systems and especially reaffirms the political change of "Doi Moi" (national renewal) initiated by the Communist Party at its 6th Congress in 1986. It sets out the fundamental rights and duties of the Vietnamese citizens, speaks of the principle of separation of powers and the structure of the State, and institutionalises the relationship between "the party as leader, the people as master and the State as administrator." Vietnam is in the process of amending a new Constitution. Draft Article 26, dealing with freedom of expression, fails to bring about any change vis-à-vis the status of freedom of expression. It uses the same wording as Article 69 of the current Constitution.

The 2004 Publishing Law delegates most of the pre-censorship work to government-approved publishing houses directors and chief-editors

11. Although freedom of expression is enshrined in the Constitutions of Vietnam² and Article 5 (item 2) of Vietnam's Publishing Law (2004³) stipulates that "Government does not screen texts prior to publication", our contacts in the Vietnamese publishing and writing communities reliably informed IPA that a complex screening mechanism involving the registration of publications with the authorities, the active role of the authorities in the editing process prior to publication (either directly or through the delegation of the editing to a government-approved chief-editor), the issuance of various permits, and the provision of copies of a printed work to the authorities for verification purposes severely restrict the freedom to publish in Vietnam. This government-controlled screening mechanism aims at allowing both pre- and post- publication censorship.

12. In Vietnam, close to 70 ministerial entities (at central or provincial level⁴) are said to be in position to censor books.

13. The directors, chief-editors and vice-directors of all publishing houses are approved by the government⁵. They can therefore be considered as quasi civil servants who can be removed and dismissed if a "mistake" is made. Since the passing of the 2004 Publishing Law, the screening and editing of manuscripts was delegated to these government-approved persons. If there was a doubt as whether a manuscript is breaching Article 10 of the Publishing Law (i.e. the list of prohibited content; see "The Taboo Subjects" on pp. 5-6), it is understood that the State Publishing house Director's responsibility is, in practice, to send the manuscript at higher level for scrutiny. In addition, Article 21 of the Publishing Law of 2004 makes it compulsory for the publishing house to evaluate certain works prior to the registration of its publishing plan should there be indications that they are in breach of Article 10: "works published abroad, works published before the August Revolution in 1945, works published between 1945 and 1954 in temporarily occupied zones, and works published from 1954 and April 1975 in

² Article 10 of the 1946 Constitution reads: "A Vietnamese citizen has the rights to freedoms: - of speech; of the press; - of association and meeting; -of belief; -of residence and of travel in the country and abroad". Article 69 of the 1992 Constitution reads: "The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, ..., in accordance with provisions of the law". This includes, among others, the 2004 Publishing Law.

³ Replaced the 1993 Publishing Law and was amended in June 2008. Since 2008, the publishing department has been under the authority of the Ministry of Information and Communication (before it was under the authority of the Ministry of Culture and Information).

⁴ Vietnam is divided into 58 provinces and 5 centrally governed cities.

⁵ They are "appointed, removed and dismissed" by the body managing the publishing house "after receiving written approval from the Ministry of Culture" (Art. 13 of 2004 Publishing Law).

Southern Vietnam”. In 1975 a list of banned books including dozens of titles was issued. To date, it is said that 90% of these books remain banned.

14. Article 13 of the 2004 Publishing Law stipulates that the managing body of a publishing house approves a publishing plan for the publishing house. Publishing plans are registered annually by publishing houses with the Ministry of Culture prior to conducting any publishing activities (Article 18). The director of the publishing house, according to Article 14, implements the publishing plan, signs a publishing decision for each manuscript on the basis of the registered publishing plan, and signs approval of proofs prior to sending for printing and approval for distribution.

15. Official publishers must register the new titles with the publishing department on a regular basis. They send the titles and corresponding summaries of the books they want to publish (The publishing house director signs and sends to the publishing department the approval letter). The process is said to take about 10 days on average. The publishing department then returns the list of books to be printed. Then the director of the publishing house signs the permission to print. It is the publishing department’s role to register, control, and revoke books. The publishing department usually does not screen books before printing, but after printing. Indeed the situation is usually clear cut and pre-publication screening takes place at government-approved editor and director level.

16. In other words, a form of pre-publication censorship takes place at publishing house level as publishing houses are necessarily cautious: they need to protect themselves as the government-approved directors and chief-editors are now responsible for content. Pre-publication censorship can also happen at Ministry level in case of sensitive titles touching upon Article 10 subjects, in particular sovereignty issues. In this case, the publishing department reportedly screens the manuscript and writes an evaluation report, which will lead to the book being published or censored.

Post-publication censorship: Enshrined in law

17. Post-publication censorship happens too. According to Article 27 of the Publishing Law of 2004, at least 10 days prior to distribution, the publishing house of the body with the publishing permit must submit three copies of the newly-printed book to the Ministry of Culture, and two more to a provincial people’s committee in case the latter issued the publishing permit. This 10-day window period, described in law as permitting copyright registration, offers a window for post-publication and pre-distribution censorship. In practice, post-publication censorship can occur at a later stage. Article 28 of the Publishing Law actually stipulates that the Ministry of Culture shall arrange for the reading of the submitted copies of publications (also the provincial people’s committees). Article 28 continues: “If it is discovered that a publication breaches the provisions of this Law, the Ministry of Culture or the People’s provincial committee shall apply measures for dealing with the breach in accordance with law and shall send a written notice requiring the publishing house to arrange evaluation of the contents”.

An example of post-publication censorship

18. According to various sources, there are hundreds of cases of publishing permits being revoked shortly after publishing. In 2011, a successful comic book on new Vietnamese proverbs was banned as content was deemed to be offensive. The book was quite successful. The withdrawal of the book from bookshops was ordered by the Ministry of Culture. The private company and the publishing house were fined several million Vietnamese dong. This is clearly a case in which technical rules were misused to practice post-publication censorship.

19. The authorities can change their mind between the two screening processes. A publishing permit can be withdrawn at any time. In addition, the complex, opaque, at times irrational, and highly bureaucratic process that books and other written materials have to undergo prior to- and post- publication reinforces self-censorship.

Breaching the law: A set of punitive measures

20. Article 30 of the 2004 Publishing Law lists the punitive measures, which can be taken in case of breaches to the Law (in particular Article 10): compulsory amendment of the publication prior to it being published, temporary suspension of distribution of the publication, retrieval, confiscation, prohibition from circulation or destruction of the publication, public apology, revocation or suspension of licence, criminal prosecution, etc.

21. A series of decrees adopted by government further rules publishing and details the provisions of the 2004 Publishing Law. For instance, a governmental decree dated 6 January 2011, and taking effect on 25 February 2011, provides for the “handling of administrative violations in press and publishing activities”. In this decree, 9 articles deal with the violations committed in publishing activities. A very high number of “administrative violations” are listed. For instance⁶, publishing without registering a publishing plan, or publishing without the publishing decision from the director’s publishing house, is punishable by a fine of between VND 10 and 20 million. Content-wise, publishing a map with wrong administrative boundaries, or publishing content promulgating obscene or depriving lifestyle, social vices or superstition undermining fine customs and practices can lead to the imposition of a fine between VND 20 and 30 million. Breaching Article 10 can lead to a higher fine between VND 30 and 40 million⁷. Publishing a map with the wrong administrative boundary, or obscene or promoting social vices content, may also lead to a forced apology, a forced withdrawal of the publications concerned. When publishing jointly with a private company, a fine of between VND 10 and 20 million can be imposed if the joint product was published with the approval signature from the director of the publishing house. Changing the content of the director approved joint publication is also punishable by a fine. Confiscation of the publications concerned is also listed as a possible consequence.

22. Importing products breaching Article 3 and Article 10 of the Publishing Law can be punished by a fine between VND 30 and 40 million. The publications concerned can also be confiscated. Article 3 of the Publishing Law defines publishing as an activity producing and distributing publications “introducing ideas from all sectors of social life, ethnic cultural values and the essential culture of mankind, satisfying the spiritual needs of the people and raising their intellectual standards, creating good and ethical standards for the Vietnamese people, expanding cultural exchange with other countries, contributing to socio-economic development, fighting ideology and conduct which are harmful to the national interest, and contributing to the building and protection of the Socialist Republic of Vietnam”.

The major taboo subjects

23. Article 10 of the 2004 Publishing Law lists the taboo subjects in the “conduct of publishing activities”:

⁶ Item 2, Article 17 of Decree No. 02/2011/ND-CP (both examples of the sentence beginning with “For instance, ...”).

⁷ The last three examples stem from Item 2, Article 18 of Decree No. 02/2011/ND-CP

“1. Propaganda against the Socialist Republic of Vietnam; destruction of the unity of all citizens.

2. Propaganda about or incitement towards war and aggression, causing rancour between the citizens and those of other countries; incitement towards violence; spread of reactionary ideology, depraved life styles, cruel acts, social evils and superstition, or destruction of good morals and customs.

3. Disclosure of secrets of the Party, State, military, defence, economics or external relations; disclosure of secrets from the private lives of individuals, and of other secrets as stipulated by law.

4. Distortion of historical facts; opposing the achievements of the revolution; offending citizens, great persons and heroes; slandering or harming the reputation of bodies and organizations or offending the honour and dignity of individuals”.

24. The list above is wide-ranging and the definition of each category is broad. Prime ministerial decrees have been issued to provide more detailed explanation. A government decree dated 6 January 2011 provides for handling of administrative violations in press and publishing activities.

25. The major taboo subjects can be summarized as follows:

a. anti-government propaganda (i.e. anti-communist party propaganda), politics, history, Hồ Chí Minh; b. religion; c. sex; d. traditional habits and customs.

D: An overview of the latest developments in the field of freedom of expression:

Harassment of writers and underground publishers: A few examples

26. The underground publishers are subject to regular interrogations by the cultural police and regular police intimidation. However, this far they have not been the target of real prison sentences. Direct censorship is avoided. Underground publishers are usually never told not to publish. However, the authorities clearly want underground publishers to avoid sensitive political issues as listed above. These include "negative social issues". Private companies involved in publishing are afraid of these subjects. Not to mention the official publishing houses, which control the system by giving the final *imprimatur*. Authors tackling these subjects have no other choice than turning to underground publishing houses. These authors are generally considered to be black-listed. Authors are more often targeted. Some are in jail under what has been described as false pretexts. However, underground publishers are also very often writers at the same time. The system has often been described as being Kafkaesque: Some people go to prison, some don't.

27. The possibility of prosecution is generally raised during a police interrogation. However, most of the time, general threats are being made. An underground publisher is also often threatened to be fired by his or her boss (in a newspaper for instance).

28. The cultural police, when interrogating an underground publisher, often ask the following questions: Where is the publishing house? How do you get money? Who distributes and reads the books? This forms part of a general pattern of harassment.

Recipient of 2011 IPA Freedom to Publish prize still under threat

29. Bùi Chát was arrested on 30 April 2011 on his return to Vietnam from Buenos Aires, where he was honoured with the Freedom to Publish award. He was temporarily released on 2 May, but remained under surveillance and subject to continuing

interrogation by the authorities in Vietnam. Bùi Chát was again temporarily detained on 5 and 6 June 2011, the day he was invited to attend the Swedish National Day Celebrations at the invitation of the Swedish Embassy in Vietnam. Sadly, his temporary arrest prevented him from attending this official function. He was detained for 24 hours at 4 Phan Dang Luu detention centre for interrogation of serious crimes, and was then released. Bùi Chát was then ordered to return for a new interrogation session on 7 June 2011. On 8 June this escalated into a physical attack on Bùi Chát by a group of assailants who may have been from police.

30. Bùi Chát was interrogated at least four times by police since his attack on 8 June 2011. His passport remains confiscated so he cannot travel abroad in blatant violation of Article 10 of Vietnam's 1946 Constitution. So are his prize certificate, and his laptop. He had to sign a document saying this was all his. His e-mail account was hacked. He does not know whether his phone conversations are tapped or not. He is regularly followed by plain clothes police.

31. The attack, the series of temporary arrests, the surveillance and the continued interrogation sessions amount to harassment, violate the international rule of law, and clearly contradict Bùi Chát's basic human rights.

E: Road Map to Freedom to Publish: A set of recommendations to the Vietnamese government aiming at supporting the Vietnamese authorities in improving the overall conditions for freedom of expression in the country.

32. Firstly, IPA requests that the passport of Bùi Chát, the recipient of its 2011 Freedom to Publish prize, his IPA Freedom to Publish award certificate, and his laptop be returned to him by the authorities unconditionally and immediately.

33. Secondly, IPA urges the Vietnamese authorities to pass the following amendments to the 2004 Publishing Law as an act of urgency to bring it into compliance with Article 19 of the International Covenant on Civil and Political Rights (ICCPR) by:

- ending the State Monopoly over publishing (printing and distribution were privatised, it is now high time that publishing is also privatized);
- ending the approval by Government of directors, vice-directors and chief editors of publishing houses;
- abolishing Article 10 of the Publishing Law;
- implementing Article 5 (item 2);
- repealing Article 3, and Article 7⁸;
- allowing foreign publishers to set up subsidiaries to produce or distribute books locally.

34. Thirdly, IPA urges the Vietnamese authorities to release immediately those publishers, writers, journalists and bloggers who are currently in prison or under house arrest for having exercised their constitutional rights to freedom of expression; the list of people concerned includes: Điều Cày, Trần Huỳnh Duy Thức, Lê Công Định, Cù Huy Hà Vũ, Lê Thăng Long, Nguyễn Tiến Trung, Phan Thanh Hải, Tạ Phong Tần, Đỗ Nam Hải, Nguyễn Mạnh Sơn, Ngô Quỳnh, Nguyễn Phong, Nguyễn Bình Thạnh, Phạm Thanh Nghiên, etc.

⁸ "The government unanimously manages State's publishing activities across the country. The Ministry for Culture and Communication is responsible for supporting the government in managing State's publishing activities"

35. Fourthly, IPA further encourages the Vietnamese authorities to extend the boundaries of their interpretation of Article 69 of the 1992 Constitution by:

- treating publishing like any business (once a company is registered, a private company or an underground publisher, it should operate without having to apply a special license);
- abolishing the publications registration system; obtaining the ISBN should be sufficient;
- stopping the harassment of writers and publishers who tackle sensitive issues (and their friends and family);
- respecting Article 10 of the 1946 Constitution by allowing writers and publishers to travel freely (by not confiscating their passport for instance);
- repealing or amending provisions in the 1999 Penal Code to ensure that ambiguous provisions relating to national security are clearly defined or removed, so they cannot be applied in an arbitrary manner to stifle legitimate dissent, debate, opposition and freedom of expression; in particular repeal Article 88⁹ of the Penal Code;
- removing all restrictions and arbitrary interference on the operation and use of the Internet that violate the right to freedom of expression and end practices, such as censorship, and surveillance.
- adopting an article protecting freedom of expression without qualification (in the current process amending the Constitution)
- abolish the Cultural Police and Internet Police.

⁹ Article 88.-Conducting propaganda against the Socialist Republic of Vietnam

1. Those who commit one of the following acts against the Socialist Republic of Vietnam shall be sentenced to between three and twelve years of imprisonment: a) Propagating against, distorting and/or defaming the people's administration; b) Propagating psychological warfare and spreading fabricated news in order to foment confusion among people; c) Making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Vietnam.

2. In the case of committing less serious crimes, the offenders shall be sentenced to between ten and twenty years of imprisonment.