



## REALIZING THE BARRIER TO THE PRACTICE OF E-DEMOCRACY IN VIETNAM

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### ABSTRACT

E-government can make the Government more transparent in the public eyes and make the interactions between agencies and the public more convenient, and ideally, increase the public trust by facilitating public participation, leading the so-called e-democracy. Then, this hypothesis raises the question as to whether (and to what extent), e-government can accompany with e-democracy, and in the case of Vietnam, the efforts to promote e-government are associated with the democratic performance of their political system? The intent of this paper is to provide answers to the questions what constitutes the barriers to the development of e-democracy in the case of Vietnam. In doing so, I will first concentrate on research to answer the question about how the legal framework of e-government has been built, how citizens might connect with government via the Internet, to obtain information, to give comment, to elect or vote anything related to public issues.

### INTRODUCTION

The word has been changed dramatically to be flatter, closer and more dangerous due to the evolution of information technology. Cyber environment therefore has been considered as an indispensable condition for the cause of industrialization and modernization in developing countries, thus shaping a motivation for not only administrative effectiveness but also international integration. A new trend has come, an up-to-date idea coming from the age of information technology is the

concept of “e-government” that highlights the role of technologies in facilitating the information flow from the government to citizen and *vice versa*<sup>1</sup>, or the role of the Internet continues in increasing public participation and public scrutiny<sup>2</sup>. E-government is considered one solution to disseminate government information and provide public services online via digital means<sup>3</sup>. Some public policy scholars have argued that e-government may improve public trust<sup>4</sup>, and enhance accountability and publicity (characteristics of democratic system), thus being labeled as “e-democracy”<sup>5</sup>.

E-democracy, as Steven Clift established in his article<sup>6</sup>, “[i]s the use of information and communications technologies and strategies by “democratic sectors” within the political processes of local communities, states/ regions, nations and on the global stage.” In this article, e-democracy will be analyzed following the extent to which the e-government system could facilitate and promote democratic sectors, namely, governmental transparency, elected officials, media, civil society, and international governmental organizations<sup>7</sup>. Needless to say, Vietnam has made many efforts to promote e-government and improve efficiency and effectiveness of public administration. The applications of e-democracy can be clarified as followed:

- Creating political dialogue in which citizens, and the community in general, engage in the political process.
- Facilitating citizen involvement in open meetings, cyber campaigns, feedback polls, public surveys and community forums such as e-voting.
- Improving public outreach processes through government electronic systems<sup>8</sup>.
- Increasing the transparency of the political process, for enhancing the direct involvement and participation of citizens<sup>9</sup>
- Fostering greater citizen participation enabled by the Internet, mobile communications, and other technologies in today’s representative democracy<sup>10</sup>
- Providing the Use of Social Media by Local Governments for electronic voting, online referendums, or to support the political parties in their dialog with the voters.<sup>11</sup>
- Enhancing the democratic process by encouraging online civic engagement.

<sup>1</sup> Silcock, R. (2001). What is e-government. *Parliamentary affairs*, 54(1), 88-101.

<sup>2</sup> Schelin, S. H. (2003, January). *E-government: An overview*. In Public information technology (pp. 120-137). IGI Publishing.

<sup>3</sup> West, D. (2000). Assessing e-government: the Internet. *Democracy and Service Delivery by State and Federal Governments*, Brown University.

<sup>4</sup> See, for example, Tolbert, C. J., & Mossberger, K. (2006). The effects of e-government on trust and confidence in government. *Public Administration Review*, 66(3), 354-369.

<sup>5</sup> Wong, W., & Welch, E. (2004). Does e-government promote accountability? A comparative analysis of website openness and government accountability. *Governance*, 17(2), 275-297.

<sup>6</sup> Clift, S. (2003). E-democracy, e-governance and public net-work. *Artículo en línea*. Publicus. net.

<sup>7</sup> *Ibid*

<sup>8</sup> Yun, H. J., & Opheim, C. (2012). New technology communication in American state governments: The impact on citizen participation. In Handbook of research on e-government in emerging economies: Adoption, e-participation, and legal frameworks (pp. 573-590). IGI Global.

<sup>9</sup> Ojo, A., Janowski, T., & Estevez, E. (2005). Determining Progress Towards e-Government: What are the core indicators?. In 5th European Conference on e-Government (ECEG2005). *Academic Conferences Limited*.

<sup>10</sup> Clift, S. L. (2004). E-government and Democracy. Representation and citizen engagement in the information age, 40.

<sup>11</sup> Anttiroiko, A. V. (2010). Innovation in democratic e-governance: Benefitting from Web 2.0 applications in the public sector. *International Journal of Electronic Government Research (IJEGR)*, 6(2), 18-36.

In a nutshell, e-government can make the Government more transparent in the public eyes and make the interactions between agencies and the public more convenient, and ideally, increase the public trust by facilitating public participation. Then, this hypothesis raises the question as to whether (and to what extent) Vietnam's efforts to promote e-government are associated with the democratic performance of their political system.

The intent of this paper is to provide answers to the questions what constitutes the barriers to the development of e-democracy in the case of Vietnam. In doing so, I will first concentrate on research to answer the question about how the legal framework of e-government has been built, how citizens might connect with government via the Internet, to obtain information, to give comment, to elect or vote anything related to public issues. Data of e-government performance from recent surveys will be used to sketch out the practice of e-democracy, whether progressively or not. This paper will conclude by discussing the barriers, especially the institutional obstacles that restrict the democratic application of e-government system.

***The path from E-government to E-democracy in Vietnam: Can they work in tandem?***

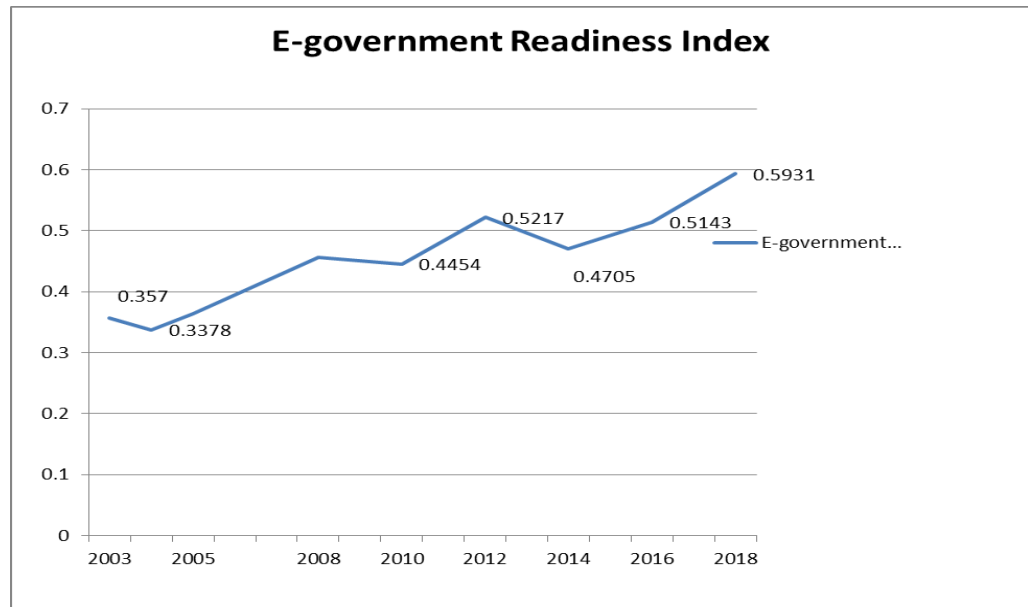
An evolution of global transparency trend contributed by the worldwide spread of democracy in the modern age, and the light of the advent and development of information technology, has been promoting the open government<sup>12</sup> around the world. In this tendency, developing countries have initially promoted e-government to fully comply with transparency requirements enshrined in many international agreements, especially FTAs.

Accordingly, Since Doi moi, Vietnam has tried to send a signal to the world that it has changed to openness by promoting "information work, the press, radio, television, cinema, publishing, libraries and other means of mass communication," but on the other hand, detrimental culture and information to national interest shall be prohibited.<sup>13</sup> With this trajectory, political leaders try to open their economy as much as they can for improving the growth resulting from international integration on the one hand, and attempt to maintain the *status quo* of political order on the other hand. As a result, the Vietnam Government has built and strengthened the system of e-government by encouraging certain kinds of national telecommunication, while maintaining the internet security policy that strictly controls the information flow. We can see the progress in the development of Vietnam's e-government by the gradual increase in E-government Readiness Indicator (UN E-government Survey) as follows:

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<sup>12</sup> The concept of "open government" has flourished over the past ten years, since the start of the Obama Administration in 2009, in *The Memorandum on Transparency and Open Government*- The White House (2009) which were then imitated by Australia (2010), European Commission (2013), and Canada (2014). See, for further information, Lathrop, D., & Ruma, L. (2010). *Open government: Collaboration, transparency, and participation in practice*. " O'Reilly Media, Inc." .

<sup>13</sup> Article 33, the 1992 Constitution



**Figure 1.** E-government Readiness Index of Vietnam (2003-2018)<sup>14</sup>

E-government Readiness includes three sub-indicators: Web measure index, telecommunication and infrastructure index, and the human capital index. It has been used to capture the overall availability of ICTs, and the ability of a country to implement e-government. In fact, this variable just reflects the efforts of governments in modernizing the governance by exploiting ICTs. As we can see in Figures 1, Vietnam has slightly and gradually increased the value of their E-government Readiness since 2003, though not consecutively, but the progressiveness is clear, reflects the efforts of Vietnam's Government in promoting its e-government system with the aims of being more transparent, attracting more foreign investment and providing more efficient public services. But unfortunately, the path from e-government to e-democracy, and open government is such a long, tough and rocky journey linked with democratization and political openness, creating a dilemma that will be discussed through this paper.

### ***When E-government is for the Government, not for the people***

E-government is considered one solution to disseminate government information and provide public services online via digital means (West, 2000)<sup>15</sup>. Some public policy scholars have argued that e-government may improve public trust (Tolbert & Mossberger, 2006)<sup>16</sup>, and enhance accountability and publicity (characteristics of democratic system), thus being labeled as “e-democracy” (Clift, 2004; W. Wong & Welch, 2004)<sup>17</sup>.

<sup>14</sup> The United Nations E-Government Surveys are available at <https://publicadministration.un.org/egovkb/en-us/Data/Country-Information/id/189-Viet-Nam/dataYear/2018> (last visited 14/08/2019).

<sup>15</sup> West, D. M. (2000). *Assessing E-government: The Internet, Democracy, and Service Delivery by State and Federal Governments*. Brown University, Providence, RI 029912.

<sup>16</sup> Tolbert, C. J., & Mossberger, K. (2006). The effects of e-government on trust and confidence in government. *Public administration review*, 66(3), 354-369.

<sup>17</sup> *Supranote* 10, 40.

The efforts of international organizations, especially the WTO, to reduce information asymmetry within state members have stimulated a global trend in utilizing ICTs in public administration. Globalization and harmonization under the umbrella of the WTO have created “[a] new set of complex and interactive stimuli, demands, and opportunities in the external environment of national public bureaucracies, whose origin is not traceable to any particular nation” (Wong & Welch, 2004, p.277). These “global pressures” ultimately push the domestic bureaucracies for a significant change. Vietnam, for example, has launched a series of national programs to strongly promote e-government from central to local authorities since 2000, in pursuit of the WTO membership. On October 17, 2000, the Political Bureau of the Communist Party of Vietnam Central Committee promulgated Resolution No.58-CT/TW<sup>18</sup> on accelerating the use and development of information technology for the causes of industrialization and modernization. Subsequently, the Government issued numerous administrative rulings to deploy the implementation of the Resolution No.58. One of the most important document is the Decision 112/2001/QĐ-TTg on ratifying the project on the state administrative management computerization in the 2001-2005 period,<sup>19</sup> in which the Vietnamese government defined that:

- Building the system of the state administrative management computerization for directly serving administrative processes.
- Computerizing public services in order to improve the capacity of administrative agencies in serving the people and enterprises comfortably and promptly.
- Establishing the informational network of e-banking, e-finance, e-custom and in national defense and security.

Modernization the administrative system toward building high quality e-government has been repeatedly emphasized in many legal documents issued by Prime Minister, including the Decision 136/2001/QĐ-TTg,<sup>20</sup> Decision 94/2006/QĐ-TTg,<sup>21</sup> Decision 30/2007/QĐ-TTg.<sup>22</sup> Prominently, on April 10, 2007, the Decree 64/2007/ND-CP<sup>23</sup> on information technology application in state agencies’ operations was enacted, through which the Government undertakes the responsibility to streamline, innovate, simplify and clarify all of administrative processes and bureaucracy’s activities. In this period, the Government determined that information technology is an indispensable condition for the cause of industrialization and modernization, e-government

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Wong, W., & Welch, E. (2004). Does e-government promote accountability? A comparative analysis of website openness and government accountability. *Governance*, 17(2), 275-297.

<sup>18</sup> It is necessary to reiterate that Resolution issued by the Communist party and its agencies is not officially recognized as one of legal document that listed in the Law on promulgation of legal documents (2008, 2014), but having noted that Vietnamese (and other socialist states as well) legal researches should begin at relative policies of Communist party, without which the laws and regulations would not have been passed and issued.

<sup>19</sup> The full text of the Decision is available at (Retrieved on Jan 6 2016) <http://thuvienphapluat.vn/archive/Quyết-dinh/112-2001-QĐ-TTg-vb71787t17.aspx>

<sup>20</sup> Available at <https://luatminhkhue.vn/en/decision/decision-no-136-2001-qđ-ttg-dated-september-17--2001-of-the-prime-minister-approving-the-overall-program-on-state-administrative-reform--the-2001-2010-period.aspx> (Retrieved Mar 3, 2016.)

<sup>21</sup> The full text of the Decision is available at (Retrieved on Mar 3, 2016) <http://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Decision-no-94-2006-QĐ-TTg-of-April-27-2006-approving-the-plan-on-state-administrative-reform-in-the-2006-2010-period-72988.aspx>

<sup>22</sup> Available at (Retrieved Mar 3, 2016.) [http://moj.gov.vn/vbqp/en/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=4349](http://moj.gov.vn/vbqp/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4349)

<sup>23</sup> The full text of the Decision is available at (Retrieved on Jan 6 2016) [https://moj.gov.vn/en/Documents/QĐ\\_Cúc%20CNTT.doc](https://moj.gov.vn/en/Documents/QĐ_Cúc%20CNTT.doc)

development is a motivation for not only administrative effectiveness but also international integration.

Connectively, another national program has been launched in 2011. On August 27, 2010, the Vice Prime Minister Nguyen Thien Nhan signed the Decision 1605/QĐ-TTg on<sup>24</sup> approving the national program on application of information technology to operations of state agencies during 2011-2015, to be continued with the National program on IT application in the operations of state agencies during period 2016-2020 (Prime Minister's Decision No.1819/QĐ-TTg dated Oct 26th, 2015)<sup>25</sup>, being aimed at building and consolidating information infrastructure as a basis for developing an e-government, extensively applying information technology in internal operations of state agencies, to raise productivity and reduce operating costs. Concrete targets include:

- Internal documents officially exchanged among state agencies shall be in electronic form.
- All meetings of the Prime Minister with ministries, ministerial-level agencies, government-attached agencies and provincial-level People's Committees may be held online.
- To provide e-data for most operations of state agencies. All state agencies of district, provincial department or equivalent or higher level will have e-portals or websites for providing sufficient information providing all public services online, and most basic public services online for people and businesses.

Needless to say, Vietnam has made many efforts to promote e-government and improve efficiency and effectiveness of public administration, resulting the significant development of e-government system as presented in Figure 1. However, as W. Wong and Welch (2004) argue, e-government may change the traditional relationship between government and citizens by facilitating the interaction thereof, through which public trust may be improved.

E-government can make the Government more transparent in the public eyes, and make the interactions between agencies and the public more convenient. Then, the question as to whether (and to what extent) Vietnam's efforts to promote e-government are associated with the democratic performance of the government system needs to be addressed.

### ***E-government and E-democracy: How to deal with the openness dilemma?***

Bearing in mind that public participation, one of the democratic performance as the UNCTAD described, can be evaluated by the degree of freedom of association and freedom of speech. In administrative law, public participation is a principle to ensure input legitimacy by building an effective procedure to consult, involve, and inform the public to participate in decision-making

<sup>24</sup> Retrieved from <http://vbqpp.lmpi.gov.vn/en-us/Pages/default.aspx?itemId=2f08f00c-71cf-4b07-bef8-b6b9a76ab9b6&list=documentDetail> (Jan 6, 2016)

<sup>25</sup> Vietnamese version of this document is available at [http://www2.chinhphu.vn/portal/page/portal/chinhphu/noi dung chuong trinh huoc giakhac?\\_piref33\\_14737\\_33\\_14736\\_14736.strutsAction=ViewDetailAction.do&\\_piref33\\_14737\\_33\\_14736\\_14736.docid=4079&\\_piref33\\_14737\\_33\\_14736\\_14736.substract=](http://www2.chinhphu.vn/portal/page/portal/chinhphu/noi dung chuong trinh huoc giakhac?_piref33_14737_33_14736_14736.strutsAction=ViewDetailAction.do&_piref33_14737_33_14736_14736.docid=4079&_piref33_14737_33_14736_14736.substract=)

processes (Smith, 1983)<sup>26</sup>. To find the answer for the aforementioned hypothesis relating to the accompanying of e-government and e-democracy, I use the E-participation index that extends the dimension of the UN Survey by focusing on the use of online services to facilitate provision of information by governments to citizens (“e-information sharing”), interaction with stakeholders (“e-consultation”), and engagement in decision-making processes (“e-decision making”)<sup>27</sup>, to examine the democratic performance of Vietnamese e-government system, as presented followingly:

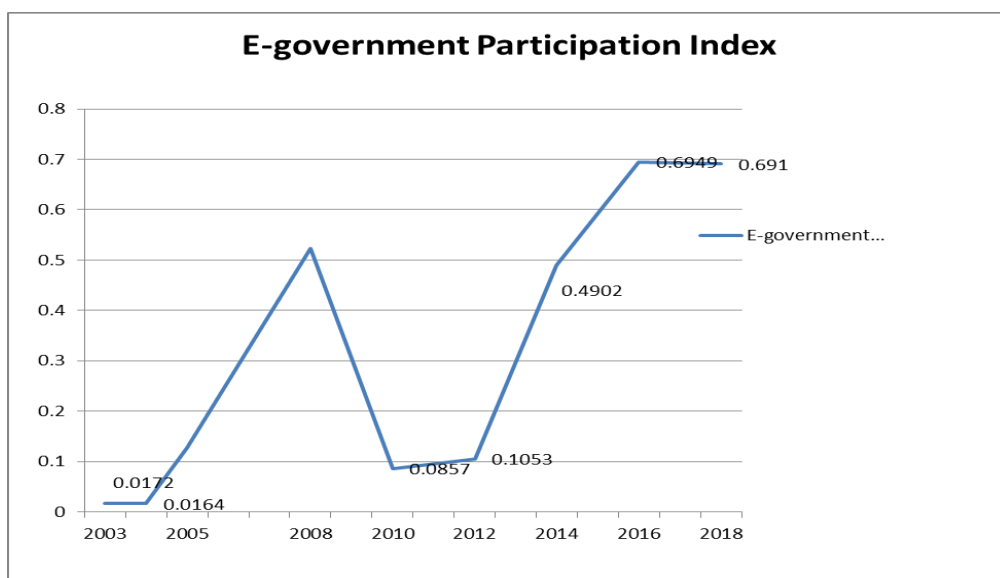


Figure 2. E-participation index of Vietnam (2003-2018)

We can argue that, e-participation is a key factor of e-democracy, as asserted by the EU<sup>28</sup>, as follows:

A key aspect to keep in mind when developing e-democracy tools is the objective of fostering citizens’ participation, and in particular youth participation. If we want to increase citizen’s participation in democratic life, and thus improve the quality of our European (e-)democracy, the first step will be to focus on the engagement of citizens. Before citizens will participate more actively in European politics, they need to see that their ideas can help shape EU decision-making and that their contributions can make a difference.

And the practice of Vietnam shows that e-government and e-democracy do not go hand in hand, the development and progressiveness of e-government is true, but e-democracy is not. For discussing about the barriers or constraints of this phenomenon, I start with the 4 barriers of e-democracy established by Professor Pratchett in his publication<sup>29</sup>, include:

<sup>26</sup> Smith, L. G. (1983). *Alternative Mechanisms for Public Participation in Environmental Policy Making*. *Environments*, 14(3), 21.

<sup>27</sup> Promoting participation of the citizenry is the cornerstone of socially inclusive governance. The goal of e-participation initiatives should be to improve the citizen’s access to information and public services; and promote participation in public decision-making which impacts the well-being of society, in general, and the individual, in particular.

<sup>28</sup> According to EU Parliament recommendation, *Citizens participation in the digital age e-democracy*, available at <https://europeanmovement.eu/citizens-participation-in-the-digital-age-e-democracy/>

<sup>29</sup> Pratchett, L. (2005) *Barriers to e-democracy: local government experiences and responses*. London: Office of the Deputy Prime Minister (National Project on Local e-Democracy)

### ***Democratic understanding: Socialist democracy versus Western democracy***

Democratic understanding is the way in which individuals, stakeholders define democratic problems and the solutions that they seek democracy. In the case of Vietnam, democratic values should be explained in accordance with political spheres, and then, a majority of Vietnamese people including state official or citizens do not understand or define the concept of democracy comprehensively and correctly. Many people think that democracy is an aspect of so-called “westernization”<sup>30</sup>. Dalton, et al. (2007) observe that there are 72 percent of the Vietnamese public (in the World Values Survey) say that democracy is the best form of government, the critics claim that this means they want to have the higher standard of living that they identify with the United States but not the U.S. system of government. This means, in Vietnam, many people confuse the value of democracy and prosperity.

The reason of this practice may come from the traditional culture, and the influential ideology. In Marxist Leninist ideology, socialist democracy seems to be different, in fact, the concept of democracy is politicalized and redefined to form the principle of centralized democracy<sup>31</sup>, as provided in the Constitution of Vietnam 1992. On the other hand, Under Confucian traditions, the Vietnamese people are generally taught that they have to place the interests of the society above those of the family and of themselves. They have to believe in the “lucid and skillful” policies made by the ruling party and the state. Therefore, debates will be limited and the voice tends to be weak. As Duong, M. N. (2004) mentions: The rights of each individual are respected on condition that they are not in opposition to those of the family, village and country. There is a danger in using the Asian values debate to maximise political and economic gains by blending local culture together with nationalism to legitimise a regime. However, at the same time, Confucianism continues to persist in a significant form in the ordinary lives of the people regardless of the political philosophy of the regime, thus, making the legitimisation argument less strong.<sup>32</sup>

In Vietnam, with Marxist-Leninist ideologies, Confucian practices, democratic performance as well as e-democracy.

### ***Institutional constraints: Transparency policy dilemma***

Institutional constraints are concerned with the potential barriers that may exist within state agencies that restrict democracy related complains, comments or speeches. E-democracy is neither a situation nor phenomenal consciousness, nor should it be perceived as such. Clearly, e-government and e-democracy are different mentions of the principle of transparency that can be considered to be an effective solution for overcoming the obstacles of integrity and accountability. Along these lines, Florini (200) simplifies the transparency concept by contrasting

<sup>30</sup> See, for example, Fukuyama, F. (2009). Westernization vs. Modernization. *New Perspectives Quarterly*, 26(2), 84-89.

<sup>31</sup> See, Pinkney, R. (2003). *Democracy in the third world* (p. 74). Boulder and London: Lynne Rienner Publishers.

<sup>32</sup> Duong, M. N. (2004). Grassroots democracy in Vietnamese communes. *Centre for Democratic Institutions, Research School of Social Sciences*, Australian National University.



it with secrecy<sup>33</sup>. Secrecy means intentionally hiding information from public eyes - something transparency strives to dismantle. In turn, secrecy will shape the institutional structure to restrict people participating.

Striking the optimal balance between transparency and secrecy has been considered as the most challenging legislative sessions relating to the right to know. The concept of the Congressional dilemma is that the government is required to comply with the principle of maximum disclosure while maintaining national security by secrecy policy. Undeniably, secrecy is useful for institutional stability, but it may conflict with some democratic characteristics including transparency and the right to know. Colaresi (2014)<sup>34</sup> defines this prominent challenge facing transition democracy as “secrecy dilemma.” He asserts that an open government is probable to insist on secrecy in order to protect the national security oversight institutions that can deter abuse and reassure the public accordingly. Solving the secrecy dilemma should be directly related to the question: How should the regime of exceptions be crafted so as to strike an appropriate balance between the right to know and the need to protect vital public interests?

History of freedom of information legislation around the world has consistently proven the instability and volatility of the regime of exceptions that virtually depends on different circumstances at different epochs. In fact, it is a fluctuation between transparency and secrecy that driven by socio-political factors. For example, the Freedom of information Act of the U.S. was enacted in 1966 that has been evaluated as a model of the right to know legislation for developing countries. Based on different circumstances of each U.S. presidency, the principles of transparency vary according to specific administrative rulings (Memorandum for the Heads of Executive Departments and Agencies.)<sup>35</sup> Consequently, the boundaries between transparency and secrecy can be a battlefield for their coexistence in a tandem.

Vietnamese governmental secrets protection is currently regulated by a new law: Law on state secrets protection 2018.<sup>36</sup> According to the law, the scope of state secrets is the range of important information in the 15 fields that cannot be disclosed, and if they are revealed or lost, national interests could be jeopardised, including a wide range of

- Political information,
- Information relating to national security and national defense
- Legislation information, information relating to judiciary
- Public affairs information
- National economic information
- Information of national resources and environments
- Information of science and technology
- Educational information
- Information of culture and sport
- Information of communication

<sup>33</sup> Florini, A. (2000). The end of secrecy. In *Power and Conflict in the Age of Transparency* (pp. 13-28). Palgrave Macmillan, New York.

<sup>34</sup> Colaresi, M. P. (2014). *Democracy Declassified: The Secrecy Dilemma in National Security*: Oxford University Press.

<sup>35</sup> Full text is available at <https://www.whitehouse.gov/presidential-actions/memorandum-heads-executive-departments-agencies/>

<sup>36</sup> See the full text in Vietnamese at <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Luat-Bao-ve-bi-mat-nha-nuoc-2018-337064.aspx>

- Information of health care and population
- Information relating to labour and social problems
- Information of state officials and public servants
- Information of anti-corruption activities

It is easy to observe that there is no limitation of restricted information, and any state’s information can be labeled as “secrecy” if national interests could be jeopardised once that information is revealed. These Important Information are classified corresponding with the state agencies (the Ministry) holding that information so as to which they have the right to decide which information is secret discretionarily. Clearly, the law stipulates that the Prime Minister issues the lists of state secrets, and the heads of top agencies compile the list of state secrets within their remits, giving the maximum discretion in their use of authorization and decentralization to shield government operations from the public scrutiny. Accordingly, the definition of state secrets can be described hereunder<sup>37</sup>:

**Table 1.** The Definition of State secrets

Contours	cases, affairs, documents, objects, venues, time, speech
Contents	important contents in the fields of: politics, national defense, security, external affairs, economy, science, technology and other fields
Conditions	1. The State does not publicize or has not yet publicized 2. The disclosure of which will cause harm to the State
Classification	1. Absolute secret: Level 1 2. Top secret: Level 2 3. Secret: Level 3

Ultimately, this policy of secrecy gives rise to informational ambivalence and the Law on access to information that getting effective on July 01, 2018 tends to become formalistic and instrumentalist. Undeniably, attacking the culture of secrecy of administrative apparatus is not an easy task in Vietnam, where state secrets legislation has been applied that “do not relate to any legitimate matter of national security, but rather to protect the government from embarrassment or exposure of wrongdoing, to conceal information about the functioning of public institutions” (Amnesty International, 1996).<sup>38</sup>

The transparency policy dilemma is that, the Law on Access to information was passed as an effort of Vietnam to achieve transparency institution, in order to adapt to the principle of transparency enshrined in the rule of international organizations; to become more attractive to foreign investors due to the ongoing political, social and economic reforms they eloquently declared, while insuring the stability of institution insofar as the passaged law on access to information cannot interrupt the political *status quo*. Ultimately, this policy dilemma gives rise to informational ambivalence and the law on access to information tends to be

<sup>37</sup> Article 8. Law on state secrets protection 2018

<sup>38</sup> Amnesty International, People’s Republic of China: State secrets - a pretext for repression, 14 May 1996, ASA 17/042/1996, available at: <http://www.refworld.org/docid/3ae6a9980.html> (accessed July 19, 2019).

formalistic and instrumentalist<sup>39</sup>. In turn, e-government system cannot make the institution or the state more transparent in the public eye; also, e-democracy can be treated as a risk where people can use it to attack the stability of the state.

To solve this struggle in Vietnam, I argue, we will need to address initially the secrecy system by reforming the state secrets legislation. Particularly, the new parliamentary law should be revised to replace the obsolete ordinance regulating state secrets. In this law, government secrecy, from the definition to the classification thereof should be provided clearly, legitimately and precisely. Legislators should take into account that secretive decision determined by small groups of elites cannot continue (Ann Florini, 2003, p. 168)<sup>40</sup>, with a presumption of an open government in which all restrictions to the right to information require a legitimate judgment and comprehensive consideration (Peters, 2013)<sup>41</sup>.

Accordingly, the fight for freedom of information, the condition for developing e-democracy in Vietnam should begin with legislative reforms in state secrets perspective, without which the Law on Access to information will likely become an innocuous law in a foreseeable prospect. Without which, with the culture of secrecy in Vietnam, we may have no hope for a better practice of e-democracy in the future.

### ***Structural limitations: adverse impact from the Cyber security law***

Structural limitations are concerned especially with the way the law or policies governing democratic activities impact on the practice of e-democracy. Not only the constraints of the law on state secrets protection, as discussed previously, the National Assembly finally passed the Cyber Security Law in 2018 despite many public's critics and even demonstrations. It is worthy to note that, this law was passed in a new step of consolidation of secrecy and political stability, and was labeled as "a totalitarian model of information control"<sup>42</sup>. The law will be applied to all agencies, organizations and individuals, public and private sectors, who will be defined as stakeholders of the protection of cybersecurity, which is broadly defined as the assurance that activities in cyberspace "*not causing harm to the national security, social order and safety, lawful rights and interests of agencies, organizations and individuals*". Specifically, foreign organisations, which have users residing in Vietnam such as Google, Facebook and other social networks will be regulated by this law. The cyber security legislation covers all networks of "*IT infrastructure, telecommunication, Internet, computer systems, databases, information processing, storage and controlling systems*"<sup>43</sup>, and regulates activities of every enterprise providing services in cyberspace and Internet users including "*e-commerce, websites, online forums, social networking and blogs*".

<sup>39</sup> See, Van Long, T. (2016). Vietnam's Draft Law on Access to Information: Solving the Transparency Policy Dilemma. *International Journal of Transparency and Accountability in Governance*, 2, 84-102.

<sup>40</sup> Florini, A. (2003). *The Coming Democracy: New Rules for Running a New World*: Island Press.

<sup>41</sup> Peters, A. (2013). Towards transparency as a global norm. In A. Bianchi, & Peters, A. (Ed.), *Transparency in International Law*: Cambridge University Press.

<sup>42</sup> The notion is borrowed from Bates, J. M. (2004). From State Monopoly to a Free Market of Ideas? Censorship in Poland, 1976-1989. *CRITICAL STUDIES*, 22, 141-168.

<sup>43</sup> Full text in Vietnamese: <https://luatvietnam.vn/an-ninh-quoc-gia/luat-an-ninh-mang-2018-luat-an-ninh-mang-so-24-2018-qb14-164904-d1.html>

As an unseparated part of the law on state secret protection, as discussed above, the Cyber security law provides a list of prohibitory acts in cyberspace as follows:

- Using cyberspace, IT and electronic media in order to breach the laws on national security, social order and safety;
- Organizing, activating, colluding, instigating, bribing, cheating or tricking, manipulating, training or drilling people to oppose the State of the Socialist Republic of Vietnam;
- Distorting history, denying revolutionary achievements, destroying the national solidarity block, conducting offences against religion, gender discrimination or racist acts;
- Providing false information, causing confusion among the citizens, causing harm to socioeconomic activities, causing difficulties for the operation of State agencies or of people performing public duties, or infringing the lawful rights and interests of other agencies, organizations and individuals;
- Activities being prostitution, social evils or human trafficking; publishing information which is lewd, depraved or criminal; or destroying the fine traditions and customs of the people, social ethics or health of the community; and
- Inciting, enticing or activating other people to commit crime.

Undeniably, the list of prohibition hereby discussed is somehow vague and easy to be abused by allowing the authority to maximum discretion. As a result, this new cyber security law has been continuously criticized by many scholars due to the fact that it can potentially impact economic development and democratic performance relating to freedoms of speech and expression. Similar to the Law on State secret protection, the Cyber Security law provides that all states agencies will have the discretion to determine which expression, status, comment or any information recored in internet to be labeled as “illegal” and restricted, and then punishment. Regulated by this any citizen- internet user will likely become more careful when they say or do something online, and if they try to connect online to any website in the system of e-gorvernment, all of their activities or saying may be overseen, and may be used as evidences for being accused.

When people are monitored what they are saying, many questions arised, how can they participate the political dialogue and engage in the political process online? Would they feel reluctant when they vote for members of National Assembly or local people’s councils online? Would they feel really comfort when giving their comments, critics or complains relating to policies or administrative aparatus via e-government webtsites?

As a result, Information flow will be censored strictly, interaction via internet will also be monitored, and e-democracy cannot be cultivated adequately at last.

### *Citizen restraints*

This barrier refers the extent to which there is a demand within the community for e-democracy. Linked to the 1<sup>st</sup> barrier relating to democratic understanding, democracy is somehow a sensitive topic to be discussed in the public, to be researched in any social sciences, to be claimed or requested to the state agencies. Therefore, e-democracy has not been yet regulated in any legal documents

relating to e-government. In the case of Vietnam, we can say that E-government is a system for providing official and formal information of the Government, and improving the quality of public services, but not for any performance of e-democracy.

Vietnam has recently implemented a “two-faces” policy, through which, it promotes the effectiveness of e-government and public services on the one hand, and controls and restricts the political e-participation on the other hand, as clearly presented in Figure 1 and 2 in which there is a disproportion in e-government and e-participation indices. This trajectory may be labeled as non-democratic openness that can be easily observed, as Wong and Welch (2004), in their empirical research, highlight this type of openness:

This means that transparency and interactivity can serve different and separated political and strategic functions for the bureaucracy. Bureaucrats can therefore use the web as a tool for information dissemination on the one hand while trying to use it to limit interaction on the other hand. For example, in a civil service system of a high mission level, bureaucracies show greater transparency but place greater interactivity restrictions in their websites. (...) [G]overnments can place what they want people to know, or what they believe they have a duty or desire to share in the public domain, yet, prefer to limit direct interaction (Wong and Welch, 2004, p.290)<sup>44</sup>.

Therefore, e-government does not always accompany with e-democracy because information technology is just a tool for governing in a modern state that may be or may be not democratic. Thus, the culture of bureaucracies, institutional infrastructure, and socio-political circumstances determine whether e-government may increase or decrease democratic accountability and participation. Generally, closed regimes tend to use Internet policy as a means to control the information flow in favor of political interests.

Similarly, Kalathil and Boas (2010, p. 24)<sup>45</sup> argue that states commonly use the Internet for two main purposes, e-government and propaganda. According to them, e-government is likely to contribute to public satisfaction with public services, and thus increasing public trust. On the other hand, government’s websites or portals may be used as a channel for propaganda to national or international audiences.

Conclusively, e-government is for the regime, not for the people. And along with the democracy practices, e-democracy cannot be implemented through this kind of e-government.

## CONCLUSION

Vietnam has tried to follow the steps of Singapore in building a comprehensive system of e-government in which administrative procedures and public services have been provided promptly and adequately, but transparency and democracy

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<sup>44</sup> *Supra* note 17

<sup>45</sup> Kalathil, S., & Boas, T. C. (2010). Open Networks, Closed regimes: The Impact of the Internet on Authoritarian Rule: Carnegie Endowment for International Peace.

have not automatically flow through this system. Vietnam becomes more transparent time after time in association with the promotion of e-government as discussed in previous section. However, building an open government to reach e-democracy seems to be too far to reach due to the so-called openness dilemma: How to be more transparent to open the economy for international integration in the one hand, and maintain the *status quo* of political order on the other? E-government therefore tends to be used as a tool for national propaganda rather than a way for engage people in political activities for improving democracy. This dilemma is deemed as a biggest barrier to e-democracy in the case of Vietnam. The future research shall needs to address the solutions for overcoming the institutional constrains toward greater democratic performance in the digital age.

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