

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 218/2 Cultural rights (2009) G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/18, 19/6, 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the trial and imprisonment of the two songwriters Mr. **Vo Minh Tri** and Mr. **Tran Vu Anh Binh**.

According to the information received:

Songwriter and performer Vo Minh Tri was arrested on in September 2011 and held for a week. Three months later, he was arrested by public security officers, who seized his computer and recording equipment. The artist is currently held at Trai tam giam Cong an, a public security temporary detention camp in Ho Chi Minh City, in solitary confinement. According to information received, Vo Minh Tri writes about social and human rights issues, including poverty and police violence.

Songwriter and blogger Tran Vu Anh Binh was arrested on 19 September 2012 by plain-clothed police, who confiscated his audiovisual equipment and computers. He is currently also held at Trai tam giam Cong an, where he was initially kept in solitary confinement. It is further reported that the artist is now being granted one family visit per month. According to information received, Tran Vu Anh Binh has written songs dealing with social matters and human rights, and denouncing social injustice and abuse of power. He is also credited with writing the music for

“Courage in the Dark Prison”, a song that reportedly expresses support for imprisoned blogger Nguyen Van Hai. Mr. Hai was the subject of an urgent appeal sent to your Excellency’s Government on 15 August 2011 by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment; and an urgent appeal sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers on 14 June 2012. We acknowledge receipt of your Excellency’s Government response to the second urgent appeal on 14 September 2012.

Reportedly, on 30 October 2012, both songwriters Vo Minh Tri and Tran Vu Anh Binh were sentenced after a five-hour trial by Ho Chi Minh People’s Court with on the charge of “conducting propaganda against the Socialist Republic of Viet Nam” according to article 88 of the Criminal Code, for posting the songs they authored on the internet. A second charge was also delivered, accusing the two artists of having links with the organization Tuoi Tre Yeu Nuoc (Young Patriots), an advocacy group for, among others, human rights and democratic reforms issues. The court also alleged that some of the two artists’ songs and blog post had been published on the website of the Young Patriots.

Vo Minh Tri and Tran Vu Anh Binh were sentenced to four (4) and six (6) years of imprisonment respectively.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency’s Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which your Excellency’s Government acceded on 24 September 1982.

While we do not wish to prejudge the accuracy of these allegations, we would also like to recall that, according to article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which your Excellency’s Government also acceded on 24 September 1982, everyone has the right to take part in cultural life. In addition, under paragraph 3 of this provision, State parties to the Covenant have undertaken to respect the freedom indispensable for creative activity.

We would also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance

with fundamental principles as set forth in article 19 of the ICCPR. This article provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Similarly, we would like to refer to article 22 of the ICCPR, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In addition, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of

everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

It is our responsibility under the mandates provided by the Human Rights Council to seek to clarify all cases brought to our attention. Since we shall be expected to report on these cases to the Human Rights Council, we would be grateful for the cooperation and observations of your Excellency's Government on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Please provide information concerning the justification for the condemnations of Mr. Vo Minh Tri and Mr. Tran Vu Anh Binh and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR, ICCPR and ICESCR.
3. Please indicate what measures have been taken to ensure that artists can operate in an enabling environment and can carry out their activities without fear of harassment, stigmatization or criminalization of any kind for their cultural and artistic output.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons Mr. Vo Minh Tri and Mr. Tran Vu Anh Binh are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Farida Shaheed
Special Rapporteur in the field of cultural rights

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai
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Margaret Sekaggya
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