

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; 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**

REFERENCE:  
AL VNM 3/2020

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; 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 43/4, 42/22, 37/12, 41/12 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention of four journalists affiliated with the Independent Journalists Association of Viet Nam (IJAVN) and acts of harassment, including cyber attacks, against the Liberal Publishing House (LPH), and surveillance, intimidation, property seizures and alleged arbitrary detention of its members and readers, as well as intimidation of their family members.

The **Independent Journalist Association of Vietnam (IJAVN)** was launched on 4 July 2014 by 70 independent journalists and human rights defenders around the country. IJAVN is a leading independent news and analysis network, which advocates for press freedom and other freedom of opinion and expression rights, protection for journalists, as well as for freedom of association and of peaceful assembly. Its members have also conducted research and advocacy on legal reform in Vietnam, including providing information to UN human rights mechanisms and bodies.

**Liberal Publishing House (LPH)** was founded in February 2019, with the objective "to promote freedom of information and liberal education in Vietnam." Functionally, LPH is an independent publishing house which publishes and disseminates books, including books that have been restricted due to their political content. In its first 18 months of existence, LPH published and distributed 25,000 copies of 18 book titles to readers around Vietnam and outside the country via its website.

**Mr. Pham Chi Dung** is a journalist, human rights defender, writer and independent analyst who works with various international news agencies. Mr. Pham Chi Dung is a member of the Civil Society Forum and the Former Vietnamese Prisoners of Conscience Association (FVPOC). He was also a founder of the Independent Journalists Association of Viet Nam (IJAVN).

**Mr. Nguyen Tuong Thuy** is vice chairman of the Independent Journalist Association of Vietnam (IJAVN) and a human rights defender.

**Mr. Le Huu Minh Tuan**, also known as Le Tuan, is an independent journalist, a human rights defender and a member of IJAVN.

**Mr. Le Anh Hung** is an IJAVN member and human rights defender. He was a prominent contributor to the Voice of America (VOA) Vietnamese service until his arrest on 5 July 2018.

**Ms. Pham Doan Trang** is one of the founders and editors of the Liberal Publishing House, along with other freedom of expression-focused organizations, and is a writer, blogger, and woman human rights defender.

**Mr. Ho Sy Quyet** is a supporter of LPH.

Several Special Procedures previously raised concern regarding your Excellency's Government's measures in relation to the allegedly arbitrary detention of Mr. Pham Chi Dung and the taking down of IJAVN's website and Facebook page in joint communication VNM 5/2019 dated 22 January 2020. Mr. Pham Chi Dung was also the subject of Special Rapporteurs' concerns in 2014 (VNM 5/2014) after he had been prevented from traveling to Geneva to participate in a side-event in connection with the second cycle of the Universal Periodic Review of Viet Nam. His case was included in the 2014 report of the Secretary-General for cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/27/38, para. 40). Special Procedures also previously expressed concern at the forced psychiatric detention of Mr. Le Anh Hung for one month in 2013 (VNM 2/2013), after he had been detained on 4 January 2013 and forcibly committed without judicial process in a psychiatric institution. We thank your Excellency's Government for its responses dated 18 March 2020, 11 July 2014 and 3 April 2013, respectively. We however remain seriously concerned in light of the new information we received.

According to the information received:

*Situation of Mr. Pham Chi Dung*

As highlighted in joint communication VNM 5/2019, Mr. Pham Chi Dung was arrested on 21 November 2019, eleven days after having sent a public appeal addressed to the President and key Members of the European Parliament, in which he explicitly laid out some human rights concerns in the country, and called on the European Parliament to postpone the ratification of the EU-Viet Nam Free Trade Agreement (EUVFTA) until concrete human rights benchmarks had been met by the Government of Viet Nam. Special Rapporteurs expressed their concern that he might have been detained in retaliation for this public appeal and his other human rights work, and further raised their concern that he was allegedly denied access to legal representation and contact with his family following his arrest.

According to the new information received, neither his family nor his lawyer have been allowed to meet or communicate with him to date. According to the information we received, the authorities justified this decision on the basis of Article 74 of the Criminal Procedure Code, which provides that visitation may be prohibited during the investigation phase, which can last up to two years. Vietnamese authorities have since his November 2019 arrest refused to accept the lawyer chosen by Pham Chi Dung's family, despite Vietnamese Criminal Procedure Code (Articles 73-78) requiring that within 24 hours of receiving the lawyers' registration, authorities are to promptly approve or reject it.

#### *Situation of Mr. Nguyen Tuong Thuy*

On 11 and 16 March 2020, police attempted to summon Mr. Nguyen Tuong Thuy, and on 18 March 2020 police arrived at his home at 6:10am where they interrogated him for 30 minutes before leaving. Two months later, on 23 May 2020, Nguyen Tuong Thuy was arrested from his family home in Hanoi on suspicion of "making, storing, and disseminating documents and materials for anti-state purposes," under Article 117 of the Penal Code, after he had written weblog commentaries on democracy and advocated for freedom of expression. The officers confiscated all mobile phones belonging to Nguyen Tuong Thuy and family members, despite his family members not being charged. Police also confiscated Thuy's computer and USB memory sticks. If found guilty, he will face up to 20 years in prison.

On 1 June 2020, Thuy's wife petitioned the authorities to allow her to visit her husband. Neither the lawyer nor Thuy's wife have been allowed to visit him to date. He is alleged to be at risk of prolonged incommunicado detention. He is believed to be held at Chi Hoa temporary detention center in Ho Chi Minh City, but neither his lawyer nor his wife have been allowed to visit him to independently verify his whereabouts. The charge under which Thuy is currently held, Article 117 of the Penal Code, is listed under Offenses Against National Security. As for Mr. Pham Chi Dung, he is subjected to Article 74 of the Criminal Procedure Code, which allows access to legal counsel to be denied until the investigation concludes, which can last up to two years.

Previously, on 7 March 2018, Nguyen Tuong Thuy had allegedly been shortly detained by approximately twenty police officers at his residence in order to prevent him from meeting with a delegation of the OHCHR at the UN Representative Office in Hanoi.

#### *Situation of Mr. Le Huu Minh Tuan*

On 8 June 2020, the investigating agency of the Ho Chi Minh City police recommended to prosecute Mr. Le Huu Minh Tuan on violation of Article 117 of

the Penal Code, relating to “making, storing, and disseminating documents and materials for anti-state purposes.”

On 12 June 2020, Mr. Le Huu Minh Tuan was arrested. Police confiscated his belongings at his home, including books and papers. The officer in charge of the case, Mr Ho Sy Hai, is reportedly the same officer in charge of Pham Chi Dung and Nguyen Tuong Thuy’s cases. Prior to this, he had been summoned at least three times by the police previously to answer questions relating to Pham Chi Dung. Mr. Le Huu Minh Tuan is believed to be held in Chi Hoa detention facility along with other IJAVN members, Thuy and Dung.

*Situation of Mr. Le Anh Hung,*

On 5 July 2018, Mr. Le Anh Hung was arrested on suspicion of “abusing democratic freedoms” under Article 331 of the Penal Code, which carries a possible sentence of 2-7 years in prison. His last article prior to arrest was a contribution to the Voice of America (VOA) Vietnamese service, published on 30 June 2018. Days before his arrest, Hung had also written critically of Vietnam’s Cybersecurity Law.

According to the information we received, Mr. Hung remains in pre-trial detention, forcibly committed at a psychiatric institution. Following his July 2018 arrest, in September 2018 Le Anh Hung was allowed to meet with his mother and later in October 2018 with his lawyer, but he was then denied the right to meet with his family through 2019. On 1 April 2019, Le Anh Hung was forcibly committed at the Central Mental Hospital in Thuong Tin District, and on 4 April 2019 his mother was denied visitation rights. On 24 April 2019 Le Anh Hung was returned to a detention facility but on 10 May 2019 was again forcibly committed at a psychiatric facility allegedly without a judicial process, this time at Central Mental Hospital No. 1 in Hanoi. At this location, Le Anh Hung went on hunger strike to protest his detention and hospitalization. Authorities reportedly subjected him to force-feeding through his mouth and nose until he started to bleed. In June 2019, Le Anh Hung’s mother petitioned the authorities to release him from forced psychiatric incarceration. Le Anh Hung has also allegedly been subjected to forced medication, with reports received indicating that the medication dosage may be so high that it was only making him sick and hallucinate. Le Anh Hung remains forcibly committed at a psychiatric facility, allegedly without judicial process, having been detained for over a year.

*Liberal Publishing House (LPH)*

As a result of LPH’s engagement with freedom of opinion and expression matters, the organization and its members have reportedly been subjected to detention, and many have been driven into hiding. It is estimated that by January 2020 police had questioned nearly 100 people across the country over interest or involvement in

LPH. In February 2019, days after launching, LPH was reportedly the subject of digital attacks seeking to censor their online publications.

In the summer of 2019, three LPH affiliated bank accounts were reportedly frozen. Through 2019, police have reportedly questioned several individuals involved in distributing LPH publications, including volunteers and informal delivery services provided by taxi drivers. Through October 2019 and into January 2020, more than a dozen LPH members were reportedly surveilled, harassed, and intimidated along with volunteers and book readers in various locations across the country. On 3 June 2020, LPH won the International Publishers Association (IPA) 2020 Prix Voltaire prize, which has reportedly led to a further escalation in harassment of LPH members.

#### *Situation of Ms. Pham Doan Trang*

As a result of her writing about about a range of human rights issues, including freedom of expression, police violence, environmental rights, and others, Ms Pham Doan Trang has allegedly been subjected to harassment and intimidation. In 2017, she was allegedly arbitrarily detained for meeting with a delegation of the European Union. As a result of this targeting, Pham Doan Trang has reportedly been forced into hiding for over a year, fearing that she may be arbitrarily arrested, possibly resulting in lengthy incarceration. Threats and intimidation of Pham Doan Trang reportedly escalated following the announcement of the above-mentioned IPA award. On 3 June 2020, investigators and police from the Ministry of Public Security in Hanoi went to the home of Pham Doan Trang's 80-year-old mother, where they have allegedly intimidated and misled her into signing a document alleging "Confirmation that Pham Thi Doan Trang has created, stored, and distributed anti-state materials." (article 117 of the Penal Code). This charge carries a possible 20-year prison sentence. It is alleged that police are using pressure or intimidation against Pham Doan Trang's mother in an effort to drive her out of hiding.

#### *Situation of Mr. Ho Sy Quyet*

On 3 January 2020, approximately 10 police officers searched Ho Sy Quyet's home without permission or presenting a warrant. During the search, police confiscated electronic devices, identity documents, and books.

Following the search, Ho Sy Quyet and his wife were taken to the local police station in separate vehicles and after arriving at the police station were placed in separate rooms. They were not allowed to communicate with one another. They were interrogated about the Liberal Publishing House and broader civil society issues in Vietnam. Police reportedly tried to force them to grant access to their mobile phones. The police reportedly threatened that if they did not confess they would not be allowed to leave to pick up their three-year-old son from school. After close to 12 hours in police custody, at 23:30 on 3 January 2020 Ho Sy

Quyet was released. His wife had been released at 18:00 on the same day. Among the items confiscated during the police search of their home was their three-year-old son's birth certificate, necessary to enroll in school and to obtain healthcare. The confiscated items, which also include Quyet's computer and other high-value electronic items, have reportedly not been returned to date. In June 2020, Quyet's parents also received a visit from the police for information about their son.

We express our grave concern relating to the reported criminalisation, harassment and intimidation of journalists, workers or supporters of the Independent Journalists Association of Viet Nam (IJAVN) and the Liberal Publishing House (LPH), as well as at the intimidation of their family members. These individuals appear to have been targeted solely for having exercised their right to freedom of expression and association, and defense of human rights. We express alarm at the continued use of lengthy pre-trial detention, and often incommunicado detention or forced psychiatric detention, on vaguely worded provisions of the Penal Code, such as article 117 ("propaganda against the State"), which seem to be used against individuals who have simply exercised their right to freely express opinions and impart information.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual basis for the detention of the aforementioned individuals. Please provide full information on the legal basis for the forced psychiatric detention raised in this letter for over a year allegedly without any judicial process. Please also provide detailed information on the individuals' detention conditions and measures which have been taken to ensure their physical and psychological integrity.
3. Please confirm the exact location(s) at which Mr. Pham Chi Dung, Mr. Nguyen Tuong Thuy and Mr. Le Huu Minh Tuan are currently detained, and provide detailed information on their access to a lawyer and to their families.
4. Please provide an explanation as to why the legal representative chosen by Mr. Pham Chi Dung's family in November 2019 has still not been registered.

5. Please provide an explanation as to what measures have been taken to revise and ensure the compatibility of the criminal legislation of Viet Nam, including Article 117 of the Penal Code and Article 74 of the Criminal Procedure Code, with international human rights law, especially Article 19 of the ICCPR. If no such measures have been taken, please explain why.
6. Please indicate what measures have been taken to ensure that human rights defenders and journalists in Vietnam are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such communications in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

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

Sètondji Roland Adjovi  
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## **Annex**

### **Reference to international human rights law**

In this connection, we remind your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights (ICCPR), to which Viet Nam acceded on 24 September 1982, in particular, with respect to the right to liberty and security of persons (Article 9), the right to a fair trial, and the duty to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies under the ICCPR (Article 14), and the right to freedom of opinion and expression (Article 19), as well as under the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Viet Nam acceded in 1982, in particular, the right to take part in cultural life (Article 15).

#### *Right to liberty and right to security*

The right to liberty and security of persons is enshrined in ICCPR Article 9, and ensures freedom from arbitrary arrest or detention. An arrest will be arbitrary if it includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality (CCPR/C/GC/35 para. 12). Arresting or detaining an individual as punishment for the legitimate exercise of the rights as guaranteed by the Covenant constitutes a violation of Art. 9 (CCPR/C/GC/35 para 17).

#### *Right to a fair trial*

The right to a fair trial is guaranteed in Article 14 of the ICCPR. Article 14 Paragraph 3 includes several minimum standards that must be guaranteed anyone facing criminal charges. These include access to a lawyer (14(3)(b) and (d)), the right not to be compelled to confess guilt (14 (3)(g)), and the right to be brought promptly before a judge or other officer authorised by law to exercise judicial power (Art. 9 (3) and CCPR/C/GC/35 para. 32). Lastly, adequate facilities for the preparation of the defence under Art. 14 (3)(b) includes the right to communicate with counsel of his own choosing. As indicated by the Human Rights Committee, access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory CCPR/C/GC/32 para. 33. Article 14 also ensures the right to publicity of judgments. "All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large", CCPR/C/GC/32 para. 28. Any restriction must be compatible with the requirements laid out in Art. 14 (1). In all cases, the judgement rendered in a criminal case or in a suit at law shall be made public, including the essential findings, evidence and legal reasoning, CCPR/C/GC/32 para. 29.

#### *Freedom of opinion and expression*

ICCPR Article 19 grants everyone the right to freedom of expression. It protects, inter alia, political discourse, commentary on one's own and on public affairs, discussion

on human rights and journalism, CCPR/C/GC/34 para 11. As indicated by the Human Rights Committee, “the function of journalists includes not only full-time reporters and analysts, but also bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere”, *Id.*, para. 44. As mentioned by the Human Rights Committee, a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. This entails a corresponding right of the public to receive media output (*Id.* para. 13).

Restrictions on the freedom of expression can only be justified by reference to the rights and freedoms of others, or on national security or *ordre public*, cf. Art. 19 (3). All restrictions must comply with the requirements of necessity and proportionality. However, the penalisation of a journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression, CCPR/C/GC/34 para 42.

Laws justified by national security, whether described by sedition laws or otherwise, can never be invoked to prosecute journalists or human rights defenders for their work, see CCPR/C/GC/34 para 30. Likewise, the arbitrary arrest or torture of individuals because of the exercise of their freedom of expression will under no circumstance be compatible with Article 19, CCPR/C/GC/34 para. 23.

We note the 2019 Concluding Observations by the Human Rights Committee concerning Viet Nam, where the Committee expressed its concerns “at reports that persons, particularly human rights defenders, activists, and religious leaders, may face arbitrary arrests, detention, and incommunicado detention without charges. It is concerned of the excessive use of pre-trial detention in the absence of legal guarantees, such as appearance before a judge; access to a lawyer from the time of arrest; and the right to inform family members. The Committee is concerned that following release from custody, some persons are placed under *de facto* house arrest. It is concerned that under domestic legislation: (a) persons arrested or detained in cases related to national security crimes can be denied access to a lawyer during the whole investigation period; (b) persons arrested or detained on criminal charges may be remanded in custody on the authorization of a prosecutor, who may also decide on any subsequent extensions of custody, which can be indefinite in cases related to national security crimes; (c) a prosecutor, rather than a judge decides, on the lawfulness of detention of persons deprived of their liberty (arts. 2 and 9).” (CCPR/C/VNM/CO/3 para. 25)

We would also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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. Article 6 (b) and c) of the same

Declaration provide that everyone has the right, individually and in association with others to 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 to draw public attention to those matters.

Moreover, we would like to draw your Government's attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which "reminds States of their obligation to respect and fully protect the [right] of all individuals to... associate freely, online as well as offline... including human rights defenders... 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 [right] to freedom of... association are in accordance with their obligations under international human rights law".

#### *The duty to investigate alleged violations of human rights law*

Additionally, we would like to draw to the attention of your Excellency's Government that the ICCPR and CAT include duties to investigate allegations of human rights violations. We first note that the duty to provide effective remedies in ICCPR Article 2 (3) includes a general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies, see CCPR/C/21/Rev.1/Add. 13 para 15. For example, the duty to investigate applies in cases where individuals are attacked, including arbitrarily arrested, because of their freedom of opinion and expression, CCPR/C/GC/34 para. 23. Secondly, the CAT Article 12 places a duty on the State to "ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".

#### *The right to take part in cultural life*

The Committee on Economic, Social and Cultural Life has noted in its General Comment No. 21 on Article 15 of the ICESCR that necessary conditions for the enjoyment of the right to take part in cultural life include "freedom of expression in the language or languages of their choice, and the right to seek, receive and impart information and ideas of all kinds and forms including art forms, regardless of frontiers of any kind," as well as the abolition of censorship (para. 49c).

The former Special Rapporteur in the field of cultural rights noted after her 2013 visit to Viet Nam that "A major challenge for the Government is to replace its top-down approach in the field of culture, too frequently used to steer individual and collective behaviours in directions considered compatible with government policies and objectives. It is essential that sufficient space be provided for divergent viewpoints and debates..." (A/HRC/28/57/Add.1, para. 101). She recommended that to ensure compliance with international standards on freedom of expression, Viet Nam should "Put an end to the system of government control over publishing. Independent private publishing houses

and cinema/visual art studios should be authorized to operate without impediment and fear of harassment.”(para 108(d)). She also recommended that article 88 of the Criminal Code regarding “conducting propaganda against the Socialist Republic of Viet Nam” be repealed and that those detained under this provision be released (para. 108 (e)).