

**Mandates of 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**

REFERENCE:  
AL VNM 4/2021

1 November 2021

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; 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, 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 recent spate of arrests, alleged arbitrary detention and legal prosecution of social media activists and human rights defenders, **Chung Hoang Chuong, Nguyen Van Nghiem, Le Van Dung, Dinh Thi Thu Thuy, Do Nam Trung and Din Van Hai**. We are equally concerned about the arrest and detention of a number of independent candidates and activists who announced their intention or candidacy to run for a seat in the elections for the National Assembly in 2021, namely **Lê Trọng Hùng, Lê Chí Thành and Tran Quoc Khanh**. In this context, we would like to recall our concerns, raised in communication AL VNM 3/2020, regarding vaguely worded provisions of the Penal Code which seem inconsistent with your Excellency's Government's obligations under international human rights law. We thank your Excellency's Government for its response dated 29 December 2020, but we remain seriously concerned in light of the information we continue to receive.

According to the information received:

*Case of Mr. Chung Hoang Chuong*

On 27 April 2020, the Ninh Kieu District People's Court in Can Tho City condemned social media activist Chung Hoang Chuong to one and a half year in prison on charges of "abusing democratic freedoms" under Article 331 of the Penal Code.

Mr. Chuong was arrested on 12 January 2020, seemingly for posts about police's alleged excessive use of force in Dong Tam Commune on 9 January 2020 he had published on social media. Prior his arrest, he had also posted critical opinions on social media on the Government's alleged role in the Formosa environmental disaster. Mr. Chuong was released on 11 June 2021, after having served his sentence.

*Case of Mr. Nguyen Van Nghiem*

On 23 June 2020, the People's Court of Hoa Binh Province sentenced hairdresser and online commentator Nguyen Van Nghiem to six years in prison

on the charge of “making, storing, disseminating, or spreading information, materials, and products” against the State under Article 117 of the Penal Code. He appeared in court without a lawyer although he had previously requested legal representation. Only his wife could attend his trial.

Nguyen Van Nghiem was arrested on 5 November 2019, while live-streaming a discussion on human rights. Prior his arrest, Nguyen Van Nghiem was particularly active on social media, which he used to share his views on national issues, such as alleged corruption, environmental pollution, human rights violations, and Chinese alleged illegal activities in the East Sea. Besides posting messages about the Government’s alleged failure to deal with those issues, Mr. Nghiem also criticized senior state officials. One day before his arrest, he released videos about China’s involvement in Vanguard Bank, a special economic zone of Viet Nam. All videos were deleted from his Facebook and YouTube accounts after his arrest. On the day of his arrest, a group of public security officers searched his house and confiscated two computers, two printers, cameras, and cell phones.

#### *Case of Mr. Le Van Dung*

On 30 June 2021, police arrested Le Van Dung, who also goes by Dung Vova, under suspicion of violating Article 117 of the Penal Code.

Le Van Dung is a freelance journalist who runs a Facebook and YouTube-based channel that covers politics, social issues, and alleged corruption. In late May 2020, an arrest warrant was issued against him. In February 2021, Le Van Dung announced his candidacy in the National Assembly election but his application was rejected a month later. If convicted under Article 117 of the 2015 Penal Code, he could face up to 20 years in prison.

#### *Case of Ms. Dinh Thi Thu Thuy*

On 20 January 2021, Ms Dinh Thi Thu Thuy was sentenced to seven years in prison on the charge of “making, storing, disseminating, or spreading information, materials, and products” against the State under Article 117 of the 2015 Penal Code, during a hearing that lasted under four hours.

Ms Thuy was arrested on 18 April 2020 and placed in pre-trial detention. She was denied access to family visitation, including by her 9-years-old son, from April to November 2020. On 3 December 2020, almost 8 months after her arrest, she was permitted to meet with her lawyer. Ms. Thuy’s health rapidly deteriorated while in pre-trial detention. On 3 February 2021, her relatives were informed that she was transferred to the Hau Giang Province General Hospital for medical reasons. After her hospitalisation, she was sent back to An Phuoc Prison. She was able to receive family visitation in April 2021.

Ms Thuy is a woman human rights and environmental rights defender who, prior to her arrest, spoke out against the adverse environmental implications of foreign investment projects in Viet Nam, especially in the Mekong Delta and

the South China Sea. She was particularly vocal on social media, which resulted in several summons by the local police.

#### *Case of Mr. Do Nam Trung*

On 6 July 2021, Hanoi Police arrested social media activist and human rights defender Do Nam Trung while he was riding his motorbike on his way to work. Later on, the Police searched his house and reportedly confiscated broken sim cards, two memory sticks and some personal documents. On 7 July 2021, the Public Security of Nam Dinh Province confirmed that Do Nam Trung was under investigation for “making, storing, disseminating, or spreading information, materials, and products” against the State under Article 117 of the Penal Code. He was immediately transferred from Hanoi to Bat Di prison camp in Nam Dinh province. At the time of this communication, he had still not met with his lawyer or his family.

Do Nam Trung is a social media activist and human rights defender, whose work focuses on press freedom, human rights, and democracy. Mr. Trung had been arrested twice before, in 2011 and 2014. In 2014, he was convicted of “abusing democratic freedoms” under Article 258 of the former Penal Code. He served 14 months in prison.

#### *Case of Mr. Dinh Van Hai*

Mr. Dinh Van Hai is a human rights defender and social media activist. His posts focused on issues related to human rights, land rights and environment, including on the environmental disaster caused by Formosa in 2016. On 15 July 2017, he was temporarily detained by the Police after he had attended a peaceful protest related to environmental issues in Ho Chi Minh City. Since 2019, he has been summoned several times by the Police in relation to his online activities.

On 7 October 2021, Lam Dong and Ba Ria Police arrested Dinh Van Hai at the Phuoc Buu Pagoda, Ba Ria - Vung Tau province, where he had sheltered for four months. According to the arrest warrant, Dinh Van Hai is accused of “conducting propaganda against the state” under Article 117 of the Penal Code. Dinh Van Hai was reportedly transferred to Lam Dong Provincial Police for the duration of the investigation. His relatives have not been officially notified of his arrest.

#### *Case of Mr. Lê Trọng Hùng*

Lê Trọng Hùng is an independent journalist who founded an independent news channel Chân hưng Việt Nam TV (CHTV). His journalism and activism included disseminating live broadcasts on Facebook and YouTube where he discussed, among other issues, alleged corruption and land rights. He also disseminated information relating to human rights and constitutional rights, and worked on cases regarding alleged wrongful arrest and detention of citizens by the authorities. Lê Trọng Hùng had also been publically critical of the

Government of Viet Nam for preventing independent candidates from running for office in the 2021 election.

On 14 March 2021, Lê Trọng Hùng announced on Facebook that he had applied to be an independent or ‘self-nominated’ candidate for a seat in the National Assembly for Ha Noi city. His candidacy was approved by the election commission of the Hanoi Department of Home Affairs. A few days before his arrest, Mr. Hùng was interviewed by the media where he publically criticised the ruling Communist Party of Vietnam for hampering independent candidates from standing in elections.

On 27 March 2021, Mr. Lê Trọng Hùng was arrested 15 meters from his house, in Hanoi. The police was reportedly waiting for him at his next-door neighbor’s home. The police stopped him and separated him from his two children who were then with him. Before taking Hung away, the police took Hung’s house key. The police then entered the premises and searched it and seized some personal documents.

Lê Trọng Hùng was charged with “Making, storing, distributing or spreading information, documents and articles” against the State pursuant to Article 117 of the Penal Code, carrying a potential prison sentence of between five and twenty years. Lê Trọng Hùng has been detained since 27 March 2021 in pre-trial detention. Lê Trọng Hùng has not been allowed to see either his family or lawyer.

#### *Case of Lê Chí Thành*

On 9 March 2021, Lê Chí Thành uploaded a video to YouTube announcing that he had successfully submitted his application to run as an independent candidate to the National Assembly election. Lê Chí Thành was a former prison police officer, but he was dismissed from his job in 2020 after he denounced alleged corruption and wrongdoing of prison management. He had a large following group on YouTube with over 175,000 subscribers, where he regularly posted videos where he discussed alleged cases of corruption within the public security forces.

On 20 March 2021, Lê Chí Thành’s car was stopped and searched by Traffic Police in Thu Duc City. He was accused of not having car registration papers and driving in the wrong lane. When the police forcefully impounded his car, Lê Chí Thành stayed in front of the car, recorded the process, and questioned their authority over the action. He did not resort to any kind of violence. On 14 April 2021, Lê Chí Thành was arrested and charged with “Resisting a law enforcement officer in the performance of his/her official duties” (Article 330 of the Penal Code). It is noted that Article 330 provides for sanctions against those using violence against public officials in the course of conduct of their duties.

Lê Chí Thành is currently in pre-trial detention. It is reported that the authorities are considering charging him with an additional offence of “Abusing democratic freedoms to infringe upon the interests of the State” (Article 331 of the 2015 Penal Code) for which he could face up to 7 years in prison. It was also

reported that Lê Chí Thành was subjected to torture and ill-treatment while in pre-trial detention, as a result of which he sustained injuries in his hands and feet. He is reportedly also suffering from scabies.

*Case of Mr. Trần Quốc Khánh*

On 10 March 2021, Mr Trần Quốc Khánh was arrested by the Ninh Binh province authorities. He was charged under Article 117 of the Penal Code with “Making, storing, distributing or disseminating information, documents and articles to oppose the State of the Socialist Republic of Vietnam”.

On 6 March 2021, Mr. Trần Quốc Khánh had announced in a livestream on his personal Facebook page that he would run as an independent candidate for the National Assembly. On 10 March 2021, shortly after his declaration of candidacy, he was arrested. It is unknown whether he had been able to formally register his candidacy. In September 2019 he announced on his Facebook page that he submitted an application to establish the ‘Vietnam Democratic Association’ to the Non-Governmental Department of the Ministry of Home Affairs, but the application was rejected.

Prior to his arrest, Mr. Tran Quoc Khanh ran a popular social media account where he frequently commented on current human rights and political issues in Viet Nam. He often livestreamed and discussed issues including the separation of power, the establishment of a multi-party model, and democratization. In a livestream on 6 March 2021 he criticised a number of government ministries and called on the Vietnamese Government to respect the rule of law. He was detained in detention camp Binh Son, Yen Mo district, Ninh Binh province to Ninh Binh and he stood trial on 28 October 2021, when he was sentenced to 6 years and 6 months in prison and 2 years on probation. He did not have a lawyer to represent him in court and has reportedly not had access to family visitation since his arrest.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern relating to the arrest, detention and prosecution of **Chung Hoang Chuong, Nguyen Van Nghiem, Le Van Dung, Dinh Thi Thu Thuy, Do Nam Trung and Dinh Van Hai**, which appear to be related to their critical expressions about the human rights situation in Viet Nam. We are equally concerned about the arrest and detention of a number of independent candidates and activists who announced their intention or candidacy to run for a seat in the elections for the National Assembly in 2021, including **Lê Trọng Hùng, Lê Chí Thành and Tran Quoc Khanh**. We are also concerned by information indicating that in the weeks prior to the National Assembly elections of May 2021, there was further suppression of dissenting voices in the country in an apparent broader curtailment of human rights and fundamental freedoms, protected by the International Covenant on Civil and Political Rights and the Universal Declaration on Human Rights. In particular, there are credible allegations that several other activists, bloggers and members of associations faced increased harassment and intimidation prior to the election, often in connection with social media posts in relation to the election. In addition, we have received credible reports that a number of other individuals who sought to run for public office have been subjected to harassment and intimidation, including temporary detention and questioning by the authorities.

In this context, we are deeply concerned at what appears to be a deliberate and systematic attempt to intimidate and silence human rights defenders, civil society organisations, journalists, and political activists through seemingly unfounded legal prosecution, alleged arbitrary detentions and, in some cases, enforced disappearances. These cases follow a similar pattern of extended detention pending trial, prosecution under vaguely worded criminal offences, lack of fair trial guarantees, the denial of access to legal counsel, a brief closed trial at which due process is not observed, disproportionately harsh sentencing, in violation of numerous human rights norms, in particular Articles 9, 14, 19 and 25 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Viet Nam on 24 September 1982. As it was also noted by the UN Working Group on Arbitrary Detention, that pattern indicates a systemic problem with arbitrary detention for the exercising fundamental freedoms in Viet Nam which, and if it continues, may amount to a serious violation of international law.<sup>1</sup>

We have previously detailed our concerns about how loosely-defined crimes, such as “propaganda against the State” (Article 117 of the Penal Code) or “abusing democratic freedoms” (Article 331 of the Penal Code), were used against individuals who had simply exercised their right to freely express opinions and impart information. Due to the lack of clarity and precision in the manner in which they are formulated, these criminal provisions unnecessarily and disproportionately limit the legitimate activities of human rights defenders, civil society actors and social media activists in the country. In light of these legal shortcomings, we respectfully urge your Excellency’s Government to halt the application of Articles 117 and 331 of the Penal Code, and to immediately and unconditionally release the individuals who have been sentenced for the simple exercise of their right to freedom of expression and of association.

According to the information received, these arrests and criminal prosecutions have sharply increased in the lead up to the National Assembly election held on 23 May 2021. We are very concerned by what appears to be a systematised attempt to limit the free flow of information in this context. We are deeply concerned that these arrests and prosecutions could have the effect of further silencing other human rights defenders, civil society actors, and social media activists seeking to independently document and report on human rights in the country, and of generally deterring others from exercising their right to freedom of expression.

It is further reported that the abovementioned cases are part of a wider pattern of judicial persecution of social media activists and human rights defenders in Viet Nam, which is exacerbated when they engage with the UN in the field of human rights. As highlighted in the 2021 report of the Secretary-General on cooperation with the UN, multiple UN actors have addressed alleged surveillance, cyber-attacks, intimidation, passport confiscation, arbitrary arrest and detention, and heavy sentencing against those who cooperate or attempt to cooperate with the UN. There is concern that this contributes to an environment of fear leading to self-censorship and deterring others from cooperating or sharing information with the UN (A/HRC/48/28, para. 129, and Annex I, para. 123).

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<sup>1</sup> WGAD, opinion A/HRC/WGAD/2020/81

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/comment you may have on the above mentioned allegations.
2. Please provide information on the legal basis for the arrest, detention and legal prosecutions of the five social media activists and human rights defenders mentioned-above, and explain how such measures are in line with your Excellency's Government's obligations under Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR) that guarantee the right to freedoms of opinion and expression and of association.
3. Please explain whether the social media activists and human rights defenders mentioned above have been able to receive visits from their families, and to communicate directly with them. Please also provide information on whether they had regular and confidential access to a lawyer throughout the detention and trial. If not, please explain how this is in line with international human rights standards under articles 9 and 14 of the ICCPR.
4. Please provide an explanation as to what measures have been taken to revise Articles 117 and 331 of the Penal Code and ensure their compatibility with Article 19 of the ICCPR. If no such measures have been taken, please explain why.
5. Please elaborate upon the measures taken by your Excellency's Government to ensure that information concerning human rights, elections and other issues of public interest is freely disseminated in the media. In particular, please explain how the apparent restrictions on the transmission and publication of information detailed above, are in line with your Excellency's Government's obligations under Article 19 of the ICCPR.
6. More generally, please provide a detailed response to the persistent allegations of the systematic harassment, intimidation and retaliation against human rights defenders, civil society organisations, journalists, bloggers we continue to receive. Please indicate what measures have been taken to ensure human rights defenders, civil society organisations, journalists, bloggers and others, can exercise their freedoms of expression and association free from any sort of retaliation.

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.

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

Clément Nyaletsossi Voule

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## **Annex**

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

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights (ICCPR), acceded to by Viet Nam on 24 September 1982.

In particular, we refer your Excellency's Government to articles 9, 14, 19, 22 and 25 of the Covenant which guarantee the rights not to be arbitrarily deprived of liberty, to fair proceedings before an independent and impartial tribunal, to freedom of opinion and expression, to freedom of association and to participate in political and public affairs.

Under article 9.1 of the ICCPR "[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Moreover, article 9.2 stipulates that the person must be informed, at the moment of the arrest, about the reasons for such deprivation of liberty; in addition, the information about the charges against the person should be provided without delay. According to Article 9.3, anyone deprived of his or her liberty "shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." Article 9.4 provides that "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful".

Article 14 of the ICCPR further guarantees the right to be tried without undue delay. The right to have access to a lawyer without delay and in full confidentiality is also enshrined in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), and the Basic Principles on the Role of Lawyers (Principles 7 and 8).

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes "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". Under Article 19 (3) of the ICCPR, any restriction on the right to freedom of expression must be: (i) provided by law; (ii) serve a legitimate purpose; and (iii) be necessary and proportional to meet the ends it seeks to serve. In this context, we would like to underscore that the deprivation of liberty as punishment for the legitimate exercise of the rights to freedom of opinion and expression and freedom of assembly and association is arbitrary.

We recall in this context the 2019 Concluding Observations by the Human Rights Committee concerning Viet Nam, in which 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)

Article 19 of the ICCPR protects, inter alia, political discourse, commentary on one’s own and on public affairs, discussion on human rights, journalism, among others (Human Rights Committee, General Comment no. 34, para. 11). We underline that permissible restrictions on the internet are the same as those offline (A/HRC/17/27). 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” (CCPR/C/GC/34 para. 44). While all restrictions must comply with the requirements of necessity and proportionality, 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). In this connection, we recall that the Human Rights Council, in its Resolution 12/16, called on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Article 22 of the ICCPR guarantees the right to freedom of association. In particular, we wish to remind your Excellency’s Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued. In previous reports, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has recognized that digital technology is integral to the exercise of the rights of peaceful assembly and association (A/HRC/20/27 and A/HRC/38/34). Technology serves both as a means to facilitate the exercise of the rights of assembly and association offline, and as virtual spaces where the rights themselves can be actively exercised (A/HRC/29/25/Add.1, para. 53). The mandate holder further called upon States to ensure that everyone can access and use the Internet to exercise these rights, and that online associations (A/HRC/20/27, para. 52) are facilitated in accordance with international human rights standards.

We would like to remind your Excellency’s Government of its obligations under Article 25 of the ICCPR, which protects the right of every citizen to “take part in the conduct of public affairs, directly or through freely chosen representatives.” The Human Rights Committee has notably observed that “persons entitled to vote must be free to support or oppose their government” and “should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.” (Human Rights Committee, General Comment no. 25 para. 19).

Finally, 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, 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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.
- article 13, which provides for the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.