

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

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(Please use this reference in your reply)

18 February 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 42/22, 46/7, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **sentencing of woman human rights defender Ms. Huynh Thuc Vy and environmental rights defender Mr. Dang Dinh Bach, in connection with the exercise of their freedom of expression and human rights activities, respectively.**

Ms. **Huynh Thuc Vy** is a woman human rights defender and daughter of a former prisoner of conscience. She started advocating for democracy, pluralism and human rights in 2008, and became a prolific blogger and writer on human rights issues. In 2012, Ms. Huynh Thuc Vy was awarded the Hellman/Hammett Prize by Human Rights Watch in recognition of her courage and dedication to human rights issues. In 2013, Ms. Huynh Thuc Vy co-founded Vietnamese Women for Human Rights (VWHR), a non-political, non-profit and independent organisation aiming to work on protecting women from human rights violations, supporting them materially and emotionally, to ensure their legal rights such as freedom of speech or freedom of assembly and of association, and providing human rights education for its members. Founders and members of VWHR have allegedly been harassed by security forces in Viet Nam and have faced judicial prosecution over the years.

Mr. **Dang Dinh Bach** is an environmental rights defender, community lawyer and Director of the Law and Policy of Sustainable Development Research Center (LPSD Center), which conducts legal advocacy on environmental, land grabbing and industrial pollution cases. The LPSD Center aims to protect public interests by creating the concept of "Community Lawyers" in Viet Nam, and ensures equal participation, transparency, and rights and responsibilities among stakeholders in the economic, social and environmental fields. The LPSD Center also implements a mechanism to promote community autonomy and builds sustainable community development models, while seeking to enhance the effectiveness of enforcement and complete the current policy and legal framework, promoting the sustainable development process in Viet Nam. Mr. Dang Dinh Bach is also a member of the World Commission on Environmental Law (IUCN). Moreover, he is Vietnamese member in Mekong Legal

Network. Mr. Dang Dinh Bach has extensive experience in policy advocacy and community lawyering. He is also an executive board member of the VNGO-EVFTA Network, a group of seven development and environmental CSOs established in November 2020 to satisfy the formation of the Domestic Advisory Group (DAG), which is the civil society component of the EU-VN Free Trade Agreement (EVFTA). DAGs allow independent observers such as CSOs to monitor the implementation of the EVFTA, especially in areas such as workers' rights, land rights and the environment.

According to the information received:

The case of Ms. Huynh Thuc Vy:

On 1 September 2017, the day before Viet Nam National Day, Ms. Huynh Thuc Vy peacefully protested against the Government of Viet Nam and splashed white paint on the national red flag of Viet Nam.

On 8 August 2018, at approximately 7:00, the police of Buon Ho Commune in Dak Lak province appeared at Ms. Huynh Thuc Vy's home and forcefully took her away for questioning. The police reportedly returned to Ms. Huynh Thuc Vy's home one hour later with a search warrant.

During the search, the police allegedly confiscated several items including computers, a phone and a camera. On 9 August 2018, Ms. Huynh Thuc Vy was allowed to return home, but the police notified her that they had initiated a case against her under article 276 of the 1999 Penal Code of Viet Nam, for "disrespecting the national flag". The police also ordered Ms. Huynh Thuc Vy not to leave her residential area pending further investigation of the charge.

On 16 October 2018, the police summoned Ms. Huynh Thuc Vy for a "working session", during which the police returned the items that were confiscated during the house search. Ms. Huynh Thuc Vy was also informed that her case would be sent for prosecution.

In November 2018, Ms. Huynh Thuc Vy reportedly received confirmation that the People's Court of Buon Ho Commune, Dak Lak Province, will proceed with her case and that a trial would be held on 22 November 2018. The trial was eventually postponed to 30 November 2018.

On 30 November 2018, the People's Court of Buon Ho Commune, Dak Lak Province, sentenced Ms. Huynh Thuc Vy to two years and nine months in prison. She was charged under article 276 of the 1999 Penal Code for "disrespecting the national flag", for splashing white paint on a flag in September 2017 as a sign of protest. At the time of the trial, Ms. Huynh Thuc Vy had a 20-month-old toddler and was eight weeks pregnant with her second child. As such, her sentence was deferred until the unborn child turned three years old, i.e. until June 2022, in accordance with article 61 of the 1999 Penal Code on "postponing the serving of imprisonment penalty."

On 1 November 2021, at approximately 16:00, the police arrested Ms. Huynh Thuc Vy as she was travelling to a relative's home. The police allegedly did not

have a warrant at the time of arrest. Ms. Huynh Thuc Vy was reportedly first brought to a police station nearby, where her husband could speak to her for 10 minutes. She was then brought to Dak Lak provincial prison, where she has been detained since. Ms. Huynh Thuc Vy has reportedly been unable to receive visits from her family, and suffers from depression, for which she takes medication that she has not been allowed to receive.

Ms. Huynh Thuc Vy was arrested after the People's Court of Buon Ho Commune, Dak Lak Province, revoked the suspension of her prison sentence until her youngest child turned three years old, for allegedly violating the terms of the suspension. Her lawyer was reportedly not officially notified of the court decision and her family was only officially notified on 30 November 2021, through a court document. The reason given for the revocation of the suspension was that Ms. Huynh Thuc Vy had allegedly violated the terms of the suspension through “actions that violate the law which cause dangers to society.” The Court did not specify what those actions were.

The case of Mr. Dang Dinh Bach:

On 24 June 2021 at approximately 7:00AM, Mr. Dang Dinh Bach was detained by six police officers without a warrant at his home in Hanoi. When questioned on the reason for his detention, the police officers allegedly stated that Mr. Dang Dinh Bach was being summoned to the Security Investigation Agency of Hanoi City Police for questioning on vaguely formulated charges of “tax evasion” of the LPSD Center, which carries a possible seven-year prison sentence under clause 3, article 200 of the 2015 Penal Code.

At approximately 9:30AM on the same day, more than 10 police officers conducted a search, reportedly without a warrant, at Mr. Dang Dinh Bach’s home. The LPSD Center’s office was also searched at the same time. According to the court indictment issued on 29 November 2021, both Mr. Dang Dinh Bach’s house and workplace were searched with the following items confiscated:

- From Mr. Dang Dinh Bach’s house: a used iPhone 6, a used HP laptop and several personal bank cards.
- From Mr. Dang Dinh Bach’s workplace: a used computer CPU, a used Sony Vaio laptop, a used Dell laptop, a LPSD Center’s stamp, and a stamp with Mr. Dang Dinh Bach’s name.

After sending three requests for the return of the seized items, persons associated with Mr. Dang Dinh Bach and LPSD Center staff received some personal devices and documents back, which were considered “not related to the case”.

On 2 July 2021, the Investigation Agency formally announced Mr. Dang Dinh Bach’s arrest and charge of “tax evasion”, which carries a possible seven-year prison sentence under clause 3, article 200 of the 2015 Penal Code.

On 8 July 2021, Mr. Dang Dinh Bach’s wife was reportedly called by a Hanoi Court investigator and given a letter from Mr. Dang Dinh Bach from Detention Center No.1 in Hanoi, where he is currently detained. In this letter, Mr. Dang Dinh Bach insisted that he was innocent and believes he was targeted because he was involved in the Son La Hydroelectric plant. Since 2016, he had reportedly been collecting complaint documents from the Son La victims and submitted them on their behalf to relevant stakeholders. All records of his involvement with the Son La victims were also allegedly seized by the Investigation Security Agency.

On 14 January 2022, Mr. Dang Dinh Bach’s lawyer visited him in prison and reported that he had been on hunger strike since 10 January 2022, to protest his prolonged incommunicado detention, the denial of family visits and denial of his request to be released on bail. Mr. Dang Dinh Bach has reportedly lost a lot of weight since his arrest.

On 18 January 2022, Mr. Dang Dinh Bach’s wife and his lawyer met with the attorney on the case at the Hanoi Court to submit a request to pay a fine of VND 500 million (22,000 USD) before the trial date. However, they were allegedly told that they need to ask for the judge’s signature to be allowed to do so. They have still not received the judge’s approval needed to pay the fine at the time of writing this communication as the Hanoi Court disapproved, although they approved in other economic court proceedings.

On 24 January 2022, Mr. Dang Dinh Bach’s trial took place, when the People’s Court of Hanoi sentenced him to 5 years in prison with no probation, for alleged corporate income tax evasion under clause 3, article 200 of the 2015 Penal Code. According to the investigation, the revenue of the LPSD Centre is “foreign non-governmental aid”, following the decree 80/2020/NĐ on management and use of grant aid not in the form of official development assistance of foreign agencies, organizations, and individuals for Viet Nam. The investigation reportedly claimed that “in the process of receiving grants from abroad, the LPSD Centre does not carry out the approval procedures and is not approved by the competent authorities in accordance with the law.”

However, this law’s violation is not regulated by any article of Tax Law and Criminal Code as a criminal case. Moreover, the total revenue of the LPSD Centre which was deemed “foreign non-governmental aid”, is “exempted tax” not “payable tax” following article 4, clause 7 of the decree No. 218/2013/NĐ-CP and article 8, clause 15 of the circular 78/2014/TT-BTC dated 18 June 2014 on guiding decree 218/2013/NĐ-CP. All the grants that the LPSD Centre received were reportedly used for proper purposes, and were confirmed by the foreign grant sponsors, and it must therefore not pay the corporate income tax.

Mr. Dang Dinh Bach’s lawyers have reportedly not been allowed to see him since the trial on 24 January 2022, and his family has not been allowed to see him since he was detained on 24 June 2021. It is also unknown if Mr. Dang Dinh Bach has been transferred to another prison after the trial, nor are there any updates on Mr. Dang Dinh Bach’s current physical and mental health.

According to the information received, he remained in pre-trial detention at detention centre No. 1, Tu Liem District, Hanoi, although there are reports that he has been moved to another detention centre since his trial. There are reports that Mr. Dang Dinh Bach will appeal the verdict of his trial.

Mr. Dang Dinh Bach's hearing on 24 January 2022 reportedly failed to meet international standards for a fair trial and Vietnam's Criminal Procedure Code: the trial did not have witnesses and assessors, did not give the basis and reason for the amount of 1.3 billion VND (57,265.00 USD) in taxes for LSPD. There is also reason to believe that Mr. Dang Dinh Bach was imprisoned for his activities, given the fact that according to Viet Nam's laws, all non-profit non-government organizations (NGOs) are not subject to tax.

Without prejudging the accuracy of these allegations, we express serious concern regarding the detention and criminal charges against Ms. Huynh Thuc Vy and Mr. Dang Dinh Bach, in connection with the exercise of their freedom of expression and their peaceful and legitimate human rights and environmental rights activities, respectively. We are particularly concerned regarding the revocation of the suspension of Ms. Huynh Thuc Vy's prison sentence until her youngest child turned three years' old, without clarification of the alleged actions on her behalf that violated the terms of the suspension. We are also concerned that that charge of "tax evasion" is being used against a non-profit organization whose work focuses on environmental protection.

Furthermore, we express our deep concern regarding allegations that Mr. Dang Dinh Bach's hearing on 24 January 2022 reportedly failed to meet international standards for a fair trial and Vietnam's Criminal Procedure Code. Subsequently we are concerned regarding the sentencing of Mr. Dang Dinh Bach for alleged corporate income tax evasion, despite all non-profit non-government organizations (NGOs) not being subject to tax, according to Viet Nam's laws.

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.

We are issuing this appeal in order to safeguard the rights of abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

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 any comment you may have on the above-mentioned allegations.
2. Please provide the factual and legal basis for the revocation of the suspension of Ms. Huynh Thuc Vy's prison sentence, before June 2022.
3. Please provide information concerning the legal grounds for the arrest and detention of Ms. Huynh Thuc Vy and Mr. Dang Dinh Bach, and how

these measures are compatible with international norms and standards as stated, *inter alia*, in the ICCPR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel.

4. Please indicate what steps have been taken and measures put in place by your Excellency's Government to ensure that non-governmental organisations, civil society organisations and all human rights defenders can carry out their peaceful work free from fear of threat, violence, harassment or retaliation of any sort. If no specific measures in this regard have been put in place, please indicate a means by which we may engage with your Excellency's Government on the development of such measures.

We would appreciate receiving a response within 60 days. Past 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.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudgets any opinion the Working Group may render. The Government is required to respond separately to the urgent appeal and the regular procedure.

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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

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

Clément Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation above.

We would like to draw your attention to the articles 8 and 9 of the Universal Declaration of Human Rights providing for the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law and freedom from arbitrary arrest, detention or exile. Furthermore, we would like to recall article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Viet Nam on 24 September 1982, which provides for the right to liberty and security of person and, in particular, its article 9(4) on the right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention. In addition, article 14 of the Covenant provides for the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, and; article 19.1 and 19.2 which provide for the universal right to freedom of opinion and expression, including the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any form of media of one's choice. In this context, we further refer to the Human Rights Council resolution 12/16, which called on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. This right applies online as well as offline (Human Rights Council resolution 20/8).

Moreover, we would like to recall that article 21 of the ICCPR states that "the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others." As the Human Rights Committee noted in its general comment No. 34, the requirement of necessity entails an assessment of the proportionality of restrictions; the restrictions must target a specific objective and may not unduly intrude upon the rights of targeted persons. Additionally, the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests is enshrined in article 22(1) of the ICCPR.

Furthermore, we bring to your attention 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 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 9, paragraph 1, which provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those 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, and;
- article 13, point b) and c), which provides for the right to solicit, receive, and utilize resources for the purpose of peacefully promoting and protecting human rights and fundamental freedom.

We would also like to refer to Human Rights Council resolution 22/6, which calls upon States to ensure “(a) that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy”; and (b) “that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration (...), other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto”. (OPs 8 and 9).

We recall in this context that the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolution 48/13 on 8 October 2021. The Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 provides, specifically, that “States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.”

Finally, we bring to your attention 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).