

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

Ref.: AL VNM 1/2023
(Please use this reference in your reply)

31 March 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 44/8, 43/4 and 43/16.

We would like to bring to the attention of your Excellency's Government information we have received concerning criminal investigation launched by the Long An Police and Long An Prosecutor's Office, Long An Province (Viet Nam), against a prominent human rights lawyer and human rights defender, **Mr. Dang Dinh Manh**.

Mr. Dang Dinh Manh is a prominent human rights lawyer and a human rights defender recognized for his work. As defence lawyer of the Ho Chi Minh City Bar Association for over 15 years, Mr. Manh has been involved in the defence of at least 37 criminal cases, representing around 50 individuals, including several human rights defenders, independent journalists, and pro-democracy activists.

Many of the high-profile cases defended by Mr. Manh have been addressed by Special Procedures in either Joint Allegation Letters (JALs), such as VNM 7.2011, VNM 4.2014, VNM 5.2020, VNM 4.2021, VNM 6.2021, and VNM 6.2022 to the Government of Viet Nam, or Opinions of the Working Group on Arbitrary Detention (WGAD), such as A/HRC/WGAD/2018/35, A/HRC/WGAD/2018/46; A/HRC/WGAD/2019/45; A/HRC/WGAD/2017/79; A/HRC/WGAD/2021/36; A/HRC/WGAD/2021/40; A/HRC/WGAD/2022/13.

According to the information received:

Mr. Manh is being investigated under article 331 of the 2015 Criminal Code of Viet Nam, "Abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens", a crime that carries a sentence up to 7 years in prison. The investigation was initiated following a report by the Department of Cybersecurity and High-Tech Crime Prevention, under the Ministry of Public Security (MPS). According to the official notice, Mr. Manh is being investigated for "spreading images, words, and articles online and video clips, thus abusing of their democratic freedoms".

On 3 February 2023 Mr. Manh received a written notification from the Long An Police Investigative Agency. The notification stated that on 1 February 2023 the Investigation Police Department of Long An Province received information from the Department of Cybersecurity and High-Tech Crime Prevention of the Ministry of Public Security (MPS) that "Mr. Manh, along

with a number of other individuals, had spread online, through video clips, images, words and articles infringing on the interest of the State, the legitimate rights and interest of organizations and individuals”, therefore abusing democratic freedoms, under article 331 of the 2015 Criminal Code of Viet Nam (“Abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens”). The notification also mentioned that the Long An Police was handling the investigation into the crime.

Mr. Manh was part of the team of five defence lawyers, who in 2022 worked on a criminal case brought against six practitioners of an unregistered Buddhist Temple, called the “Tinh That Bong Lai Temple”, but more frequently referred to as “Thien Am Ben Bo Vu Tru Temple”.

The information suggests that the investigation could be an act of reprisals from the authorities, as the legal team had lodged a formal complaint against the Police and the Prosecutor of Long An for alleged due process violations committed during the investigation of the case against the Buddhist Temple. The lawyers had also written and spoken on their social media accounts about their complaint and reported on alleged wrongdoings of the Police and Prosecutor. The complaint was never investigated; instead, the five lawyers received summons by the Long An Police, informing they were under investigation for violating article 331.

On 4 February 2023, while crossing the land border between Viet Nam and Cambodia for personal travel, the Border Police informed Mr. Manh that he had been placed on a travel ban list at the request of the MPS since 18 August 2021 and therefore could not leave the country. Mr. Manh was not aware he had been under a travel ban for almost two years, as the decision was never communicated to him by MPS. Because of this travel ban, Mr. Manh is not allowed to travel outside of Viet Nam.

On 21 February 2023, Mr. Manh received a summons from Long An Police Investigative Agency, inviting him to report to the Police on 2 March 2023 for an interrogation in relation to the aforementioned violations of article 331.

In the week between 21 and 28 February 2023, Mr. Manh received information that he could be arrested on 2 March 2023, the day he was supposed to report to Long An Police for interrogation.

On 7 March 2023, Ho Chi Minh City police visited Manh’s home and enquired on his whereabouts. Reportedly, plainclothes Police have been surveilling the neighborhood for some days, presumably looking for him.

On 8 March 2023, he received a second summon from the Long An Police. He was asked to present himself to the Police for an interrogation. According to the summons, Mr. Manh’s interrogation was scheduled for 21 March 2023.

While we do not want to prejudge the accuracy of these allegations, we express our serious concerns at the launch of a criminal investigation against Mr. Manh, which seems to be in direct correlation with the legal services he provides in Vietnam. If confirmed, the events described above would amount to a serious breach of a number of international and regional standards relating to the free and

independent exercise of the legal profession.

According to these standards, States must put in place all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. In particular, States must ensure that lawyers are not subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics. International and regional standards also expressly prohibit the identification of lawyers with their clients or their clients' causes in the discharge of their professional duties.

We are also concerned at the information received that Mr. Manh is under a travel ban, and unable to access meaningful and fair appeals to these bans, or to have information about the ban.

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 facts that led to launch of the criminal investigation against Mr. Manh and explain how it may be regarded as compatible with Vietnam's obligations under article 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights.
3. Please provide detailed information on the legislative and other measures adopted by Vietnam to ensure that lawyers able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (principle 16 (a) of the Basic Principles on the Role of Lawyers) and to prevent that they are subject to, or be threatened with, prosecution or administrative, economic or other sanctions as a result of their identification with their clients or their clients' causes as a result of discharging their functions (principle 18).

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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 may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the International Covenant on Civil and Political Rights (ICCPR), acceded to by Vietnam on 24 September 1982.

Article 14 (1) of the ICCPR, which sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

We further draw your attention to articles 19, 21 and 22 of the ICCPR which protect the right to freedom of expression, association and of peaceful assembly. In its General Comments No. 34 (2011), the Human Rights Committee made clear that “[the right to freedom of expression] includes political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights” (CCPR/C/GC/34, paragraph 11).

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. She should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

The Human Rights Committee notes that whenever rights and obligations in a suit at law are determined, this must be done at least at one stage of the proceedings by a tribunal. The failure of a State party to establish a competent tribunal to determine such rights and obligations or to allow access to such a tribunal in specific cases would amount to a violation of article 14.

We would also like to refer your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990).

Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyer be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 18 provides that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. This principle must be read in conjunction with principle 16 (c), referred to above, which requires national authorities to adopt all appropriate measures to ensure that lawyers are not subject to, or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities.

Furthermore, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, resolution 67/187 adopted in 2012, note in principle 2, that "States should consider the provision of legal aid their duty and responsibility".