



**Submission to the Working Group on Business and Human Rights:
Extractive sector, just transition and human rights**

29 May 2023

International Rivers

International Rivers is an environmental and human rights organization working to protect rivers and defend the rights of communities that depend on them. We seek a world in which healthy rivers and the rights of local communities are valued, water and energy needs are met without degrading nature or increasing poverty, and people can exercise their right to participate in decisions that affect their lives.

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Introduction

1. The need for a meaningful response to the climate crisis and urgent decarbonization has led to a growing trend of energy transition financing frameworks involving multiple international actors, including transnational blocs, individual countries and development finance institutions. One such framework is the 'Just Energy Transition Partnership' (JETP), an emerging financing arrangement between largely G7 countries and those in the Global South. Three JETPs have been announced so far, with South Africa, Indonesia and Vietnam.¹ Negotiations are underway for additional JETPs, including with India and Senegal.
2. For the Vietnam JETP, announced in December 2022, financial pledges from the International Partners Group (IPG)² together with the Asian Development Bank (ADB) and International Finance Corporation (IFC) are complemented by a commitment to mobilize matching private investment from commercial banks under the coordination of the Glasgow Financial Alliance for Net Zero. The IFC, the World Bank's private sector lending arm, will support and finance private sector climate-related investment. Currently, a Resource Mobilization Plan (RMP) is under development, scheduled for completion by November 2023. With the array of actors and stakeholders involved in JETP partnerships, the significant and varied role of private finance and business actors, and the growing number of countries adopting this framework, there is a strong need for clear policies and guidelines to govern the human rights duties of various actors and stakeholders involved.

Just Transitions

3. The "just" aspect of the just energy transition is intended to integrate human rights standards and concerns around equity and job retraining into the energy transition and decarbonization process. International Labor Organization (ILO) Guidelines provide guidance for grounding energy transitions in a rights-based framework.³ The just transition principle was reiterated in the *Paris Agreement*⁴, making it a normative principle within a binding international legal treaty. Any energy transition framework must respect, protect and fulfill the requirements of International Human Rights Law (IHRL). Along with the Universal Declaration of Human Rights (UDHR), the International Covenant on

¹ The first USD 8.5 billion JETP - with South Africa - was announced at the UN Climate Change Conference (COP 26) in 2021. A second \$20 billion JETP was announced with Indonesia in November 2022 at the G20 Summit in Bali. Most recently, a [\\$15.5 billion partnership](#) was announced with Vietnam on December 14, 2022 [by the UK Government](#) along with other G7 countries plus Denmark and Norway. Each of the JETPs build on the UK-launched G7 Partnership for Global Infrastructure and Investment (PGII), which aims to narrow the infrastructure investment gap in developing countries.

² The IPG for the Vietnam JETP includes the United Kingdom, the United States, the European Union, Japan, Germany, France, Italy, Canada, Denmark and Norway.

³ ILO. "Guidelines for a just transition towards environmentally sustainable economies and societies for all." (2015). Available at https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf (last accessed 28.04.2023). *Hereinafter*, ILO Guidelines.

⁴ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR); the UN Guiding Principles on Business and Human Rights, the Declaration on Human Rights Defenders, the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, and the environment and social safeguard policies of various multilateral development finance institutions are important guiding tools that can facilitate the design process for a truly “just” transition. Just energy transitions require strong social consensus, which has to be achieved through inclusive social dialogue⁵, and meaningful and informed participation.⁶ Mitigation and adaptation strategies should conform with IHRL norms, including public participation in decision-making and access to justice.⁷ Incorporating human rights obligations and commitments into plans and programs for climate action, such as the JETP, is critical for coherent, legitimate and sustainable outcomes.⁸

4. Despite this, to date, the technical and financing aspects of the energy transition remain the primary focus of discussion and negotiation in the design and implementation of these frameworks. Human rights contingencies remain muted or neglected. Rights-related analysis is largely restricted to project level assessments. As a result, there are wide sectoral level gaps and challenges in energy transitions that remain unaddressed and enable human rights harms.
5. The following case study of the Vietnam JETP will highlight these challenges and the urgent need to improve the “just” aspects of the transition process, including incorporating a human rights framework into the strategic planning and implementation processes for the energy transition. Critically, this includes application of the Business and Human Rights framework and fundamental human rights principles to state actors, development finance institutions, business entities and other stakeholders involved in the JETP.

⁵ ILO Guidelines, *supra* note 2.

⁶ UN Office of the High Commissioner for Human Rights, Key Messages on Human Rights and Climate Change, No. 10. Available at https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf (last accessed May 01, 2023).

⁷ UN Office of the High Commissioner for Human Rights, Discussion Paper: Taking Action on Human Rights and Climate Change, p. 1, September 30, 2016. Available at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/EM2016/TakingAction.pdf> (last accessed May 1, 2023). (*Hereinafter*, OHCHR Discussion Paper)

⁸ Mary Robinson Foundation, Incorporating Human Rights into Climate Action, May 2016, p. 4. Available at <https://www.mrfcj.org/wp-content/uploads/2016/05/Incorporating-Human-Rights-into-Climate-Action-Version-2-May-2016.pdf> (last accessed May 01, 2023). *See also*, UN Office of the High Commissioner for Human Rights, Info Note: Summary of the activities of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Mr. John Knox, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/InfoNoteClimateChange.pdf> (last accessed May 1, 2023).

Vietnam JETP: Unjust Shrinking of Civic Space for Climate and Environmental Concerns

6. Over the past few years, the Government of Vietnam has violated the human rights and fundamental freedoms of environmental defenders and their organizations through the arbitrary application of vague and unclear tax laws⁹ and unreasonably burdensome registration and approval requirements for operating non-governmental organizations. These laws unduly and unlawfully restrict the ability of civil society organizations to organize and exercise activities that constitute expressions of speech, political opinion, and forms of association and assembly. Vietnam has ratified both the ICCPR and ICESCR and is therefore legally bound to uphold the rights of its citizens to freedom of expression and opinion as well as association. Likewise, it has a duty to “create and maintain a safe and enabling environment in which civil society organizations can operate freely without hindrance or threats.”¹⁰

7. The exceptions to fundamental rights and freedoms enshrined in the Vietnam Constitution include overly broad and vague categories such as “social morality and community well-being” that allow for criminalization of otherwise permissible exercise of freedom of speech and association.¹¹ Decrees 93/2009, 80/2020, 56/2020, which place unreasonable and disproportionate restrictions on freedom of association through burdensome conditions, are in violation of article 21 and 22 of the ICCPR and article 8 of the ICESCR.¹² Article 200 of Vietnam’s Criminal Code, along with Decree 80/2020/ND-CP, have been deployed by the Vietnamese Government to prosecute environmental defenders for exercising their right to freedom of speech and association. Decrees 88, 45 and 33, are a hindrance to the establishment of civil society organizations and make several forms of democratic expression criminal.¹³ The restrictions are not compatible with legitimate restrictions to freedom of association recognized under para 2 of article 22 of the ICCPR.¹⁴ Multiple UN Special mandate-holders have expressed concern over the “chilling effect” on civil society organizations in Vietnam.¹⁵ The ambiguous nature of tax-exempt status for civil society organizations in Vietnam and criminal liability for violations create opportunities for “abuse of power”¹⁶ and arbitrary enforcement of the law, as discussed below with respect to the “Vietnam 4”, a group of climate

⁹ HƯỚNG Thiện, Vietnam’s environmental NGOs face uncertain status, shrinking civic space, Mongabay, February 13th, 2023. Available at <https://news.mongabay.com/2023/02/vietnams-environmental-ngos-face-uncertain-status-shrinking-civic-space/> (last accessed 28.04.2023).

¹⁰ A/HRC/RES/24/5, para 7 (2013) *as mentioned in* Communication from Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (*hereinafter*, UNSR communication), 10 December, 2021, p. 6, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26885> (last access on 24 May, 2023). ANNEXURE I.

¹¹ Article 14, Constitution of the Socialist Republic of Vietnam.

¹² UNSR communication, *supra* note 9, p.6.

¹³ HRC/RES/27/31 (2014) *as cited in* UNSR communication, *supra* note 28, p.7.

¹⁴ UNSR communication, *supra* note 9, p.8.

¹⁵ UNSR communication, *supra* note 9, p.1.

¹⁶ Castillo Petruzzi et al v. Peru, IACHR Series C No 59, IHRL 1442 (IACHR 1999), 17th November 1999, Inter-American Court of Human Rights [IACtHR]; A/HRC/31/66, para. 30.

advocates who were imprisoned after pushing the government to commit to a policy of net zero carbon emissions.

The “Vietnam Four” (VN4)

8. The Vietnam Sustainable Energy Alliance (VSEA), a civil society network of climate justice organizations, played a significant role through its advocacy in securing the Government of Vietnam’s commitment to [net zero emissions by 2050](#). The Government’s public commitment paved the way for the JETP, in December 2022. Despite the important work of the VSEA, it was forced to suspend its operations and four of its leading members were wrongfully convicted and jailed by the Vietnamese government on trumped-up tax evasion charges. These members, known as the Vietnam Four (VN4) include Goldman Environmental Prize winner [Ms. Nguy Thi Khanh](#), environmental justice lawyer [Mr. Dang Dinh Bach](#), journalist Mai Phan Loi and lawyer Bach Hung Duong. Khanh was released in May 2023, after serving 16 months in prison. The other three members remain in prison. The organizations of the VN4 were forced to close down or restructure. All four of the VN4 publicly opposed Power Development Plan 8 (PDP8), issued by the Ministry of Industry and Trade (MoIT), due to its continued emphasis on coal use in the country, despite Vietnam’s stated commitment to net-zero emissions.¹⁷ The VN4 advocated publicly and through direct engagement with government, highlighting contradictions between PDP8 and the country’s national and international commitments.¹⁸
9. States have a duty to respect, protect and fulfill everybody’s right to participate in environment protection and decision-making.¹⁹ The criminal conviction and incarceration of VN4 reveals a pattern of arbitrary application of law²⁰, several violations of due process and fair trial rights²¹ and unfair punishments²². All four were tried in closed trials that lasted for a day.²³ Their ongoing incarceration is in violation of their rights to freedom of expression, peaceful assembly and association.²⁴ The UN Working Group on Arbitrary Detention recently found that Bach’s arrest and detention is arbitrary and violates norms of international law,²⁵ including his right to expression, association, numerous procedural and fair trial rights, and his right to be free from discrimination.²⁶

¹⁷Swanton, B., Project 88, Weaponising the Law to Prosecute the Vietnam Four, April 2023, pp. 44-49. Available at <https://the88project.org/wp-content/uploads/2023/04/Weaponizing-the-law-report-Project-88-ENG.pdf> (last accessed on May 11, 2023). ANNEXURE II.

¹⁸*Id.*, p. 49.

¹⁹ UNEP, News Release, April 22, 2022 available at <https://bangkok.ohchr.org/viet-nam-rights-defenders/> (last accessed on May 11, 2023)

²⁰ Swanton, *supra* note 17, p. 5, 19-20,36, 38.

²¹ *Id.* at pp. 18,22.

²² *Id.* at pp. 5, 34, 38.

²³*Id.*, pp.20, 29.

²⁴ *Id.*

²⁵ The Working Group found that Bach’s arrest and detention is in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11 and 19 of the UDHR and articles 2, 9, 14, 15, 16, 19 and 26 of the ICCPR.

²⁶ Working Group on Arbitrary Detention, Opinion No. 22/2023 concerning Đặng Đình Bách (Viet Nam), A/HRC/WGAD/2023/22, May 11, 2023. Annexure III.

The Working Group's findings note that there is a pattern of use of arbitrary detention for political purposes to chill certain non-governmental activities and may constitute a serious violation of international law.

Duties of different stakeholders under International Human Rights Law

10. There is a growing trend of States shrinking and curtailing civic space through unnecessary restrictions on foreign funding to civil society organizations and regulation of their activities. The conviction and incarceration of VN4 through arbitrary interpretation and enforcement of tax laws is one of the various ways in which governments are isolating civil society. In India too, which will be the next JETP country, environmental lawyer Ritwick Dutta is now subjected to harassment through a criminal investigation by the Indian government for alleged misuse of foreign funds to “stall coal projects”.²⁷ The result of such a repressive environment is that civil society is effectively excluded from negotiating spaces and deliberations around JETP design, programs and projects, even as these JETPs proclaim to be “just”.
11. There is a substantive obligation on duty bearers, including States and multilateral institutions,²⁸ to protect freedom of expression and association in order to facilitate public participation in climate action.²⁹ Civil society, including environmental defenders, are important actors in a rights-based climate action strategy, such as just transitions.³⁰ States and multilateral institutions have a duty to ensure that there is no isolation of civil society actors, whether through wrongful incarceration, intimidation or other forms of unjust persecution. The Guiding Principles on Business and Human Rights (UN-BHR) clarify that States and multilateral institutions have a substantive obligation to respect and protect the rights of individuals, including freedom of expression and association.
12. The International Partners Group (IPG) has committed to financing the JETP and have a responsibility to uphold human rights harms under the UN-BHR. The IPG has committed to a just, equitable and inclusive transition, and regular consultations with stakeholders to “ensure a broad social consensus.”³¹ However, it is not clear how these commitments will be implemented or

²⁷ The Wire Staff, CBI Books Environmental Lawyer Ritwick Dutta for Alleged FCRA Violations, 'Stalling' Coal Projects, April 22, 2023, available at <https://thewire.in/government/cbi-books-environmental-lawyer-ritwick-dutta-for-stalling-coal-projects-using-foreign-funds> (last accessed on May 11, 2023).

²⁸ Guiding Principles on Business and Human Rights : Implementing the United Nations "Protect, Respect and Remedy" Framework (2011), A/HRC/17/31, March 2011, para. 10.

²⁹ John H. Knox, Human Rights and Safeguards in the New Climate Mechanism established in Article 6, paragraph 4 of the Paris Agreement, May 3, 2016, p. 3. Available at https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/Letter_to_SBSTA_UNFCCC_May2016.pdf (last accessed May 1, 2023).

³⁰ OHCHR Discussion Paper, *supra* note 6, p. 5.

³¹ Political declaration on establishing the Just Energy Transition Partnership with Vietnam, December 14, 2022, para 15. Available at <https://www.gov.uk/government/publications/vietnams-just-energy-transition-partnership-political-declaration/political-declaration-on-establishing-the-just-energy-transition-partnership-with-vietnam> (last accessed May 01, 2023).

ensured in practice, including in the Resource Mobilization Plan, which is currently under development and will serve as a guide for implementation of the JETP.

13. Multilateral development banks are a key financing partner for the JETP, including the International Finance Corporation (IFC) and the Asian Development Bank (ADB). The IFC's performance standards are broadly aligned to the UN-BHR standards, as per their own analysis.³² The IFC's sustainability policy and Performance Standards require regular engagement with various stakeholders, commensurate with the nature and scale of the project, to minimize risks attached to the project.³³ A large-scale, multi-stakeholder project like the JETP requires a comprehensive stakeholder engagement framework that provides for regular consultations with environmental experts, and defenders in Vietnam, from the beginning of the JETP design process.³⁴ Consultations should be free of external manipulation, interference, coercion, or intimidation.³⁵ Further, IFC has a duty to take remedial measures when concerns about retaliation are brought to its attention.³⁶ The ADB is also developing the Energy Transition Mechanism (ETM) to help accelerate the transition process. The ADB is required to include a civil society participation plan in all its projects.³⁷ Meaningful consultation and effective participation should start at the stage of project design and preparation,³⁸ and should be "undertaken in an atmosphere free of intimidation or coercion".³⁹
14. The United Nations Development Programme (UNDP) is providing technical assistance for the JETP. The UNDP has a duty to create enabling environments, and support for civil society under its Social

³²UN Guiding Principles on Business and Human Rights and IFC Sustainability Framework, January 2012, available at https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/un_guidingprinciplesbusinesshumanrights (last accessed May 01, 2023).

³³ International Finance Corporation (IFC) , Policy on Environmental and Social Sustainability, January 1, 2012, para 9. Available at https://www.ifc.org/wps/wcm/connect/7141585d-c6fa-490b-a812-2ba87245115b/SP_English_2012.pdf?MOD=AJPERES&CVID=kilrw0g (last accessed May 01, 2023); IFC , Performance Standards on Environmental and Social Sustainability, January 1, 2012, Performance Standard (PS) 1, para 1. Available at https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS_English_2012_Full-Documents.pdf?MOD=AJPERES&CVID=jkV-X6h (last accessed May 01, 2023).

³⁴ *Id.* at para 28; IFC, Guidance Notes: Performance Standards on Environmental and Social Sustainability, January 1, 2012, GN 97, available at https://www.ifc.org/wps/wcm/connect/9fc3aaef-14c3-4489-acf1-a1c43d7f86ec/GN_English_2012_Full-Documents_updated_June-14-2021.pdf?MOD=AJPERES&CVID=nXqnsJp (last accessed May 1, 2023).

³⁵ *Id.* at para 30.

³⁶ IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders, October 2018, available at https://www.ifc.org/wps/wcm/connect/ade6a8c3-12a7-43c7-b34e-f73e5ad6a5c8/EN_IFC_Reprisals_Statement_201810.pdf?MOD=AJPERES#:~:text=IFC%20does%20not%20tolerate%20any,of%20IFC%20or%20our%20client (last access May 01, 2023).

³⁷ Asian Development Bank (ADB), Strengthening Participation for Development Results, pp. 3-4, 7. Available at https://www.adb.org/sites/default/files/institutional-document/33349/strengthening-participation-development-results_0.pdf (last accessed May 01, 2023).

³⁸ ADB, Operations Manual - Bank Policies, para 19. Available at <https://www.adb.org/sites/default/files/institutional-document/31483/om-f1-20131001.pdf> (last accessed May 01, 2023).

³⁹ ADB, Safeguard Policy Statement, June 2009, Glossary, para 32, 54, Safeguard 1- para 19. Available at <https://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf> (last accessed May 01, 2023).

and Environmental Standards.⁴⁰ These Standards include a duty to “refrain from providing support for activities that may contribute to violations of a State’s human rights obligations and the core international human rights treaties, and seeks to support the protection and fulfillment of human rights.”⁴¹ The UNDP must also ensure meaningful, effective and informed participation of stakeholders in the formulation and implementation of UNDP programs and projects.⁴² Further, UNDP projects that may undermine the realization of human rights “require appropriately-scaled forms of assessment and management measures/plans to avoid and minimize adverse impacts and to improve social and environmental performance.”⁴³ Relatedly, UNDP must take steps to identify, reduce and address the risk of retaliation and reprisals against environmental defenders.⁴⁴

15. Fifty percent of proposed JETP financing in Vietnam will be mobilized and implemented through private sector actors, which have a duty to respect the obligations of IHRL and remedy violations under the UN-BHR framework. Currently, there is little guidance or clarity in the JETP process and design on how businesses can uphold human rights standards or ensure adherence to human rights given the operating context in Vietnam. As a result, States and multilateral institutions and organizations risk enabling human rights violations by omitting to take steps for a rights-based governance framework for the proposed energy transition partnership that can also guide business actors.

Conclusion

16. The Office of High Commissioner for Human Rights has noted that, “[c]lear communication is needed on the distinctive meaning and requirements of a human rights-based approach in all situations, within the framework of a genuine development partnership. The United Nations and all those involved in implementing a human rights-based approach must themselves walk the talk in order to have credibility in policy dialogues on these issues.”⁴⁵ This includes the UNDP, IFC, ADB and other multilateral development institutions who are involved in the negotiation, financing and implementation of JETPs. There is a need for a sector-wide human rights framework and approach to ensure a just and humane approach in energy transitions under the JETPs. An explicit human rights policy and approach in the JETPs will provide a basis for embedding the responsibility to respect international human rights law through all projects and will clarify relevant stakeholder expectations. It can also help various stakeholders identify the human rights policy gaps and risks that exist in the implementing countries. Such a policy can reinforce and elaborate on the commitment to a “just transition”. JETPs should outline a policy built on the Guiding Principles and the UN Declaration on Human Rights Defenders to ensure that environmental defenders can meaningfully participate in and monitor JETP activities. Environmental defenders can help set the

⁴⁰ UNDP Social and Environment Standards, Programming Principles, No. 10.

⁴¹ UNDP Social and Environment Standards, Programming Principles, No. 13.

⁴² UNDP Social and Environment Standards, Programming Principles, No. 14.

⁴³ UNDP Social and Environment Standards, Social and Environmental Management System Requirements, No. 13.

⁴⁴ UNDP Social and Environment Standards, Social and Environmental Management System Requirements, No. 27.

⁴⁵ Office of the UN High Commissioner for Human Rights, Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation, 2006, HR/PUB/06/8, p. 21. Available at <https://www.ohchr.org/sites/default/files/Documents/Publications/FAQen.pdf> (last access on May 11, 2023).

foundation for long-term effectiveness and sustainability of the JETPs.

17. JETP frameworks should explicitly adopt and define a human rights-based approach that incorporates the respect, protect and fulfill framework. States “have the duty to protect and promote the rule of law, including by taking measures to ensure equality before the law, fairness in its application, and by providing for adequate accountability, legal certainty, and procedural and legal transparency.”⁴⁶ States should engage in meaningful consultations with “potentially affected groups and other relevant stakeholders” to identify the human rights impacts of their work.⁴⁷ The large number of private actors involved further calls for a human rights approach within the JETP frameworks, guided by the UNGPs. A broad approach to manage the business and human rights agenda in a way that ensures vertical and horizontal domestic policy coherence in implementing countries is essential for the success of JETPs.⁴⁸ Vertical policy coherence requires repeal of repressive laws that target civil society actors. States have a duty to ensure that the legitimate and peaceful activities of human rights defenders are not obstructed⁴⁹ and retain their international human rights law obligations when they participate in multilateral institutions and agreements.⁵⁰ State members of the IPG and multilateral institutions like the IFC and ADB, can draw on the Guiding Principles to ensure that the JETPs promote a shared understanding and advance international cooperation in the management of business and human rights challenges⁵¹ for a truly “just” energy transition.

APPENDICES

1. Communication from Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, dated 10 December, 2021.
2. Project 88, Weaponising the Law to Prosecute the Vietnam Four, April 2023.
3. Working Group on Arbitrary Detention, Opinion No. 22/2023 concerning Đặng Đình Bách (Viet Nam), A/HRC/WGAD/2023/22, May 11, 2023.

⁴⁶ UN-BHR, *Commentary* to Guiding Principle 1.

⁴⁷ UN-BHR, Guiding Principle 5.

⁴⁸ UN-BHR, *Commentary* to Guiding Principle 8.

⁴⁹ UN-BHR, *Commentary* to Guiding Principle 26.

⁵⁰ UN-BHR, *Commentary* to Guiding Principle 10.

⁵¹ UN-BHR, Guiding Principle 10(3).

Annexure I

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: OL VNM 7/2021
(Please use this reference in your reply)

10 December 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 41/12 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a number of **amended Decrees and a Decision from the Prime Minister, which entered into force in 2020 and raise serious concerns regarding the rights to freedom of peaceful assembly and of association, as well as to freedom of opinion and expression.** According to the information at our disposal, **Decree 80/2020/ND-CP**, dated 8 July 2020 and replacing Decree 93/2009/ND-CP dated 22 October 2009, and **Decree 56/2020/ND-CP**, dated 25 May 2020, regulate the activities and funding of national and international NGOs, establishing further unreasonably burdensome requirements for their reporting, registration of funding and projects, meetings and other public activities, especially for issues related to human rights. Additionally, the Prime Minister's **Decision 06/2020/QD-Ttg**, dated 21 February 2020 and replacing Decision 76/2010/QD-TTg dated 30 November 2010, regulates the organization of international conferences and seminars, and stipulates that in order to organize such in-person or virtual events when they relate to national sovereignty, security, human rights, ethnicity and religions, a number of relevant government agencies must be consulted and ultimately the organizers of the event must apply for and receive approval from the Prime Minister 30 days prior to the event.

Background on National Regulatory Framework

The Vietnamese Constitution (2013) is the main national framework regulating civil society activities and operations. Despite ensuring the respect and protection of fundamental freedoms and rights, it also provides for the restriction of such rights by the Government on grounds of "national defence, national security, social order and security, social morality and community well-being" (Article 14), and this throughout all national legislation. The scope of interpretation of such exceptions provides for neither conceptual nor legal limits in the national Criminal Code (2015) that entered into force on 1 January 2018, or in the Criminal Procedure Code that entered into force on 26 November 2003. The Government has issued a number of decrees placing further restrictions on the activities and operations of civil society organizations and actors in Viet Nam. This restrictive legislative framework may have resulted in a chilling effect on the exercise of the fundamental freedoms of opinion and expression, as well as of those of peaceful assembly and of association, among civil society actors that are being labelled as threats to national security under such provisions.

Firstly, Decree 72/2013-ND-CP on Management, Provision, and Use of Internet Services and Information Content Online became effective on 1 September 2013. Under said Decree, the use of the Internet can be subject to various restrictions depending on the purpose or effect of its use. The Decree further prohibits the use of Internet services and online information to oppose the Socialist Republic of Vietnam; threaten the national security, social order, and safety; sabotage the “national fraternity”; arouse animosity among races and religions; or contradict national traditions, among other acts (Article 5).

Decree 15/2020/ND-CP replaced the former decree on penalties in the technology and telecom sectors - Decree No. 174/2013/ND-CP - and took effect on 15 April 2020. This Decree sets out and increases various penalties for administrative violations in the fields of telecommunications, information technology, and electronic transactions, *inter alia*. One of the most notable additions provided for in this Decree is the introduction of specific administrative penalties for users who post or share “fake news” on social networks, which are imposed in addition to other eventual civil or criminal liabilities related to distortion, slander, defamation, *inter alia*. Article 101 of the Decree specifically sets out penalties for violations of regulations on the use of social networks, which include administrative fines between 10-20 million VND for social network users who commit any such violations. The Decree further provides for higher administrative fines of 20-30 million VND for the disclosure of information classified as state or personal secrets, but which are not serious enough to face criminal punishment. Additionally, violators are required by the Decree to remove the fake news or violating content that was posted or shared. Decree 15 also imposes several penalties on social network providers who fail to prevent fake news from being posted on their social networks or who intentionally provide, store, or transmit violating content that isn’t in the country’s interest (Article 100 (3)). These social network providers are also required to remove the fake news or otherwise violating content can be subject to the suspension of their social network license and/or the revocation of their social network’s domain name.

In Decree 93/2009/ND-CP, the Government promulgated the regulation on the management and use of foreign non-governmental aid, which took effect on 1 January 2010. This decree establishes that foreign non-governmental aid other than emergency relief can only be received by Viet Nam-based institutions, which are lawfully established and operating in domains eligible for aid (Article 1), after receiving approval from the competent governmental agency (Article 17 (1)), or, in certain cases, from the Prime Minister (Article 17 (2)).

In 2020, two decrees were amended, namely Decrees 80/2020/ND-CP and 56/2020/ND-CP, on managing Official Development Assistance (“ODA”) and non-ODA funding. These amended decrees, seem to have effectively rendered more complex all procedures to receive foreign funding, for INGOs and national organizations alike.

Decree No. 80/2020/ND-CP dated 8 July 2020 relates to the management and use of non-refundable aid not belonging to ODA provided by foreign agencies, organizations and individuals for Viet Nam. The Decree classifies the majority of such funding as State budget revenue (Article 3 (8)). It further provides for a 20-day time limit for the mandatory grant aid evaluation after receiving a complete and valid dossier (Article 10 (6)). At least five ministries, along with specific provincial local governments, are involved in the mandatory appraisal process of a project, from the

assessment and approval of a work plan, to the narrative and financial reports (Articles 28 to 33). The Decree tasks the Ministry of Public Security with guiding national agencies and organisations in receiving and using aid amounts in accordance with the law on protection of national security and maintenance of social order and safety, as well as with contributing to appraisals (Article 31). This Decree took effect on 17 September 2020.

Secondly, the Government promulgated Decree No. 56/2020/ND-CP on 25 May 2020, concerning the management and use of ODA and concessional loans of foreign donors. More specifically, the Decree states that ODA and concessional loans may only be used for development investment but not regular spending, such as taxes, fees and charges, loan interests, and supplies, *inter alia* (Article 6 (2)). Additionally, the Decree sets the timeframe for the appraisal of a report on proposing the investment policy or the pre-feasibility study report of a program or project, to a maximum of 60 days for national targeted programs, and 45 days for a public investment program (Article 15 (6)).

Finally, the Prime Minister promulgated Decision No. 06/2020/QD-TTg on 21 February 2020 that took effect on 15 April 2020, which amended the previous Decision No. 76/2010/QD-TTg on the organisation and management of international conferences and seminars in Viet Nam. The Decision concerns both conferences and seminars organized by national agencies or organisation and attended or sponsored by foreign parties, as well as those organised by foreign organizations (Article 1). Furthermore, it requires that the hosting organization or agency of an international conference or seminar held directly in the territory of Viet Nam or online with at least one side taking place in the territory (Article 2), must apply for permission within at least 30 days before the event, and 40 days for events falling under the jurisdiction of the Prime Minister (Article 4 (1) a.). The latter include, *inter alia*, international conferences and seminar with contents related to national sovereignty, security, national defence, ethnic groups, religion, human rights or classified as state secrets, as well as those attended by heads or ministerial officials or the equivalent or higher of other countries or international organizations (Article 3 (1)). In contrast with the previous Decision No. 76/2010/QD-TTg, the amended Decision does not provide for a timeframe for the Prime Minister to reply to the application for an event. The amended Decision also sets out administrative sanctions on conferences and seminars which do not follow the established protocol.

As such, the national legislative framework may have resulted in undue restrictions on civil society actors in the exercise of their rights and limits the actions of civil society organizations, particularly with regards to their access to legal foreign funding.

Overview of Applicable International and Human Rights Law Standards

The rights to freedom of expression and opinion, as well as of peaceful assembly and of association are guaranteed by Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (“ICCPR”), which was ratified by Viet Nam on 24 September 1982. These fundamental rights must be guaranteed and enjoyed by individuals in any democratic and peaceful society. Civil society is defined as embodying “forms” (diverse associational relationships), embracing “norms” (values that shape a “good society”, such as freedom, democracy, tolerance, and cooperation), and engaging in “spaces” (the public sphere where discussions and

disputes can freely take place with a view to achieving consensus on what is good for society) (A/HRC/35/28, para. 10 (2017)).

The rights to freedom of peaceful assembly and of association are further enshrined 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.¹ The Declaration provides that everyone has the right, individually or in community with others, to assemble peacefully, to form governmental or non-governmental organizations (Article 5). It also states that everyone has the right to engage in peaceful activities to counter violations of human rights and fundamental freedoms (Article 12).

In its 2019 Concluding Observations on Viet Nam, the Human Rights Committee reiterated its concern about undue restrictions on the establishment, management and operation of public associations. The Committee was particularly concerned by a number of restrictive regulations on foreign funding, which can be used to tighten control over associations and limit their ability to receive such funds. It urged the Government to respect individuals' right to form or join an association of their choice, including in the field of human rights.² The Committee further reiterated its concerns regarding the excessive restrictions imposed on the freedom of peaceful assembly and public meetings, including on human rights issues, as well as on the disproportionate use of force and arbitrary arrests by law enforcement officials against peaceful demonstrations, including those related to labour rights.³

Restrictions of civil society actors' activities in the national regulatory framework

Limitation to press freedom and access to information

We are concerned that Article 5 of Decree 72, through its list of prohibited acts, imposes undue restrictions on the type of information that civil society actors can share and access online. The vagueness of the terms used in the article, such as “false information” or “information for opposing the Socialist Republic of Viet Nam”, encompasses a wide range of information that State officials have an interest in concealing, regardless of any public interests in sharing such information. Such limitations contravene the free flow of ideas, a fundamental principle under international human rights law, as guaranteed by Articles 18 and 19 of the ICCPR.

With regard to the use of the term “false information”, we also wish to express serious concern. In her report to the Human Rights Council on the subject of disinformation, the Special Rapporteur on the promotion and protection of freedom of opinion and expression whilst recognising the difficulty in finding appropriate responses to disinformation, due to the fact that the concept is undefined and therefore open to abuse, expressed concern with regard to State responses to the issue, which have often been problematic, heavy handed and had a detrimental impact on human rights (para.3).⁴ The Special Rapporteur also emphasised in the report that the right to freedom of expression applies to all kinds of information and ideas, including those that may shock, offend or disturb, and irrespective of the truth or falsehood of the

¹ A/RES/53/144 (1999).

² CCPR/CO/75/VNM, para. 20

³ CCPR/C/VNM/CO/3, para 47

⁴ A/HRC/47/25

content, and that under international human rights law, individuals have the right to express ill-founded opinions or statements (para. 38).⁵ Responses by States to the spread of disinformation and misinformation must be grounded in international human rights law, including the principles of lawfulness, legitimacy, necessity and proportionality (para. 30).⁶ Concern is expressed by the Special Rapporteur in response to the flurry of laws in recent years prohibiting “false news” of various forms on the internet, and that many of these laws, including Decree 72, fail to meet the three-pronged test of legality, necessity and legitimate aims set out in article 19(3) of the ICCPR. Such laws often do not define with sufficient precision what constitutes false information or what harm they seek to prevent, nor do they require the establishment of a concrete and strong nexus between the act committed and the harm caused (paras. 53-54).⁷ The vague and overly broad nature of such laws allows Governments to use them arbitrarily against journalists, political opponents, human rights defenders and civil society actors.

We would like to raise further concern that Decree 15 is likely to prevent the sharing information that may go against official Government positions or policies. Article 101 of said Decree provides for new and increased penalties against individuals, including civil society actors, who disseminate content such as diverging political views, or reactionary ideologies on social media platforms. As such, these provisions could seriously infringe on the freedoms of expression and opinion online, in addition to violating international human rights norms.

Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with article 19 (3) of the ICCPR. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.⁸

We would also like to express our concerns regarding Articles 6 (2) and 11 (2) of the Law on Access to Information that seem to gravely limit the exercise of the freedom to access information. These articles make inaccessible the information which “if published, can cause harm to State interests” or which is “against the Social Republic of Viet Nam”. Such vague formulations provide a wide scope of action for authorities to limit the freedom to seek, receive and impart information, which is in serious violation of the right to hold opinions without interference, as enshrined in Article 19 of the ICCPR.

We would like to further emphasise that Article 19 para. 3 of the ICCPR lays down specific conditions which must be fulfilled for the restriction of such rights, and which must further conform to the strict tests of necessity and proportionality.⁹

⁵ *Ibidem*, See also: Human Rights Committee, general comment No. 34 (2011), paras. 47 and 49; and European Court of Human Rights, *Salov v. Ukraine*, application No. 65518/01, judgment, 6 September 2005, para. 113: “Article 10 of the [European] Convention [on Human Rights, on freedom of expression] does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful.”

⁶ A/HRC/47/25

⁷ *Ibidem*.

⁸ CCPR/C/GC/34, para. 43.

CCPR/C/GC/34 para. 22.

Provisions relating or similar to national security are not compatible with Article 19 para. 3 when they are used to prosecute journalists, researchers, environmental activists, or human rights defenders, *inter alia*, for having disseminated or accessed information of legitimate public interest.¹⁰ In this sense, the protection of the interests of the State is not considered a permissible restriction on the rights to freedom of expression and of opinion, as well as of association. In addition to a lack of a legitimate objective, the Decree is also unclear as to how the “harm to State interests” is to be measured and applied in practice. Such provisions violate the principle of legality as established in Article 15(1) of the ICCPR. The ambiguity of the such dispositions renders it difficult for an individual to foresee which information in particular is prohibited.

We would like to emphasize that, according to international law, any restriction on fundamental rights must be formulated with sufficient precision, be accessible to the population and be subject to a restricted system of exceptions. In a report, the Human Rights Council highlighted that the law should be unambiguous, and “sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and also foresee the likely consequences of any such breach” (para. 30).¹¹ Broadly worded restrictions are not only incompatible with the requirement of legality, but also risk making the scope of the restrictions wider than those required to achieve the legal objective.¹² The practical implementation of these provisions seems to have consequently resulted in increased prosecutions against those who are exercising their legitimate right to the freedom of expression and of association.

Restrictions of Civil Society Organizations' Activities

We would like to express further concern that the recently amended Decrees 80/2020/ND-CP and 56/2020/ND-CP, and Decision No. 06/2020/QD-TTg, have imposed additional burdensome requirements for the creation and operation of human rights organizations, in violation of Articles 21 and 22 of the ICCPR and Article 8 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). The Human Rights Council recalled the essential role of civil society at the local, national, regional, and international levels - underlining that civil society facilitates the achievement of the fundamental purposes and principles of the United Nations.¹³ The Council further reaffirmed that States should create and maintain a safe and enabling environment, in which civil society organizations can operate freely, without hindrance or threats.¹⁴ In this sense, the amended Decrees on associations refers to a system of classification, that effectively renders some sectors more difficult to operate in. In general, with regards to meetings and conferences, as per Decision No. 76/2010/QD-TTg (now Decision 06/2020/QD-TTg), special approval is required for meetings involving foreign participants or foreign funding. More precisely, the recent Decision No. 06/2020/QD-TTg – on the organisation and management of international conferences and seminars in Viet Nam – provided for additional conditions provisions and precautions, which make it more burdensome to set up international conferences or seminars (Articles 6, 7 and 8). The processes for the assessment, authorization, along with the liability regime have translated into a more cumbersome procedure in general. The Prime Minister is given sole authority on

¹⁰ CCPR/C/GC/34 para. 30.

¹¹ A/HRC/31/66.

¹² OL DNK 3/2021.

¹³ A/HRC/RES/27/31, para. 12 and 13 (2014).

¹⁴ A/HRC/RES/24/5, para. 7 (2013).

approving such conferences, while competent bodies are obliged to report on their organization and management, with the risk of cancellation of any conference that is contrary to the Decision's prerequisites.

Regarding the creation of organizations and associations, Decree 88 stipulates that the competent authority – namely the Prime Minister – is responsible for the overseeing of the establishment of civil society organisations. Decree 45 further affirms that the organization must have operational purposes that are not contrary to the law. Moreover, the Criminal Code provides for criminal liability for anyone “who establishes or joins an organization that acts against the people’s government” (Article 109), with sentences that include the death penalty. Furthermore, Decree 33 is in violation of international human rights law, as well as the international standard laid out by the Human Rights Council, by hindering the establishment of civil society organizations.¹⁵ The Council has stated that civil society must operate within the framework of legislation that is consistent with the UN Charter and the international human rights law, in a “safe and enabling environment in which civil society can operate free from hindrance and insecurity”.¹⁶

In this connection, we reiterate our grave concerns regarding the restrictions imposed on the freedoms of peaceful assembly and of association in Viet Nam, that had been denounced by the Human Rights Committee in its 2019 Concluding Observations on Viet Nam.¹⁷ These undue restrictions by the Government on civil society in the exercise of their fundamental freedoms seem to be in violation of the principles and standards of international human rights law.

Legal Restrictions on Foreign Funding

Finally, we would like to express our serious concerns regarding the legal restrictions on the access to foreign funding. In a report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association called upon States “[t]o ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities.”¹⁸ He also called upon States to “recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association and of other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights”¹⁹, and to “recognize that regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding.”²⁰

Therefore, Article 2 of Decree 93, which prohibits foreign non-governmental aid (FNA) that affects “political security, social order and safety or infringing upon interests of the State” is a particular cause for concern. The absence of a clear definition constitutes a source of concern, due to its imprecise nature that leaves it open to a wide range of interpretations. Thus, this Article impedes on the ability of

¹⁵ HRC/RES/27/31 (2014).

¹⁶ A/HRC/20/27 and A/HRC/38/34.

¹⁷ CCPR/C/VNM/CO/3, para. 47 (2019).

¹⁸ A/HRC/23/39, para. 82 (b).

¹⁹ A/HRC/23/39, para. 82 (c).

A/HRC/23/39, para. 82 (d).

associations to pursue their statutory activities and violates Article 22 of the ICCPR, under which Viet Nam has the obligation to protect all activities of an organization, including fundraising activities which are recognised as part of the right to freedom of association.²¹

Likewise, we are strongly concerned about the legal justifications put forward by the Government in Article 5 of Decree 80 to restrict access to foreign aid. Most of them do not comply with Article 22 para. 2 of the ICCPR, which stipulates that any limitation must pursue a legitimate interest and be necessary for a democratic society. Thus, the protection against terrorism and prevention of money laundering that are invoked by authorities as grounds to limit access to funding would not constitute a legitimate aim for restricting the freedom of association.²² There is also a need for States to comply with international human rights law while countering terrorism. In this connection, we wish to also remind your Excellency's Government that restrictive measures must be the least intrusive means to achieve the desired objective and be limited to the associations falling within the identified aspects characterizing terrorism only.²³ They cannot be misused to hinder the work and endanger the safety of civil society organizations.²⁴

We are also concerned about the process of project approval of Official Development Assistance (ODA). Although Decree 56 introduces significant changes, the project approval process lacks a shared understanding of effective practices that allow for ODA benefits such as tax exemptions. Therefore, even those international development agencies that have been operating in Viet Nam for many years and have implemented a large portfolio of activities, still may continue to face challenges in obtaining project approval and value-added tax refunds. We would thence like to recall that, as affirmed by the Human Rights Council,²⁵ States should create and maintain a safe and enabling environment in which civil society organizations can operate free from hindrance and insecurity, as an essential component for the promotion of human rights, democracy, and the rule of law.

While we do not wish to prejudge the accuracy of the information made available to us, we express our grave concern that the three amended decrees could have already seriously restricted the space for civil society to exercise their fundamental freedoms. As such, the decrees would appear to constitute a breach of Viet Nam's obligations under international human rights law, as described above.

As it is our responsibility under the mandate 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 an additional information and/or comment(s) you may have on the above-mentioned concerns.
2. Considering your Excellency's Government's obligations under articles 2, 19, 20, 21, 22 of the ICCPR and articles 11, 12, 14, 19 and 20 of the UDHR, and in view of the aforementioned inconsistencies of the amended decrees with such obligations, please provide information on

²¹ A/HRC/23/39, para. 8 (2013).

²² A/61/267, para. 20 (2006).

²³ A/HRC/RES/23/39, para. 23 (2013).

²⁴ A/HRC/RES/27/31 (2014).

²⁵ A/HRC/RES/24/5 (2013).

the steps it may take to remediate such inconsistencies to bring the decrees in line with international human rights standards.

3. Please provide further information on the steps your Excellency's Government may take to remediate the aforementioned incompatibility of the definitions of national defence and security in the amendments with international human rights standards, so they respect the principle of legal certainty established under the ICCPR.
4. Please provide further information on the positive measures and oversight provided by your Excellency's Government to enable the free enjoyment of uncensored media to end restrictions on online sources of information and use of the Internet, and to provide a safe space and enabling environment for civil society actors and organizations that express themselves online.
5. Please provide information on the steps your Excellency's Government may take to bring the amended Decrees and Decisions in line with your obligation to ensure that all persons are guaranteed their internationally recognized human rights, such as the freedoms of opinion and expression, as well as of peaceful assembly and of association.

This communication, as a comment on recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will be also subsequently made available in the usual report to be presented to the Human Rights Council.

While awaiting for a reply, we encourage your Excellency's Government to ensure that the legislation on civil society's work is in accordance with its obligations under international law regarding the rights to freedom of expression and opinion, as well as of peaceful assembly and of association under Articles 19, 21 and 22 ICCPR. To achieve this, the legislation should be reviewed, and all broad provisions should be precise, in order to ensure this legislation does not undermine the protection of human rights and democracy in Viet Nam.

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

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

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

Annexure II



**WEAPONIZING
THE LAW
TO
PROSECUTE
THE
VIETNAM
FOUR**

Dr. Ben Swanton
APRIL 2023

Project 88, April 2023 (CC BY-NC 4.0)

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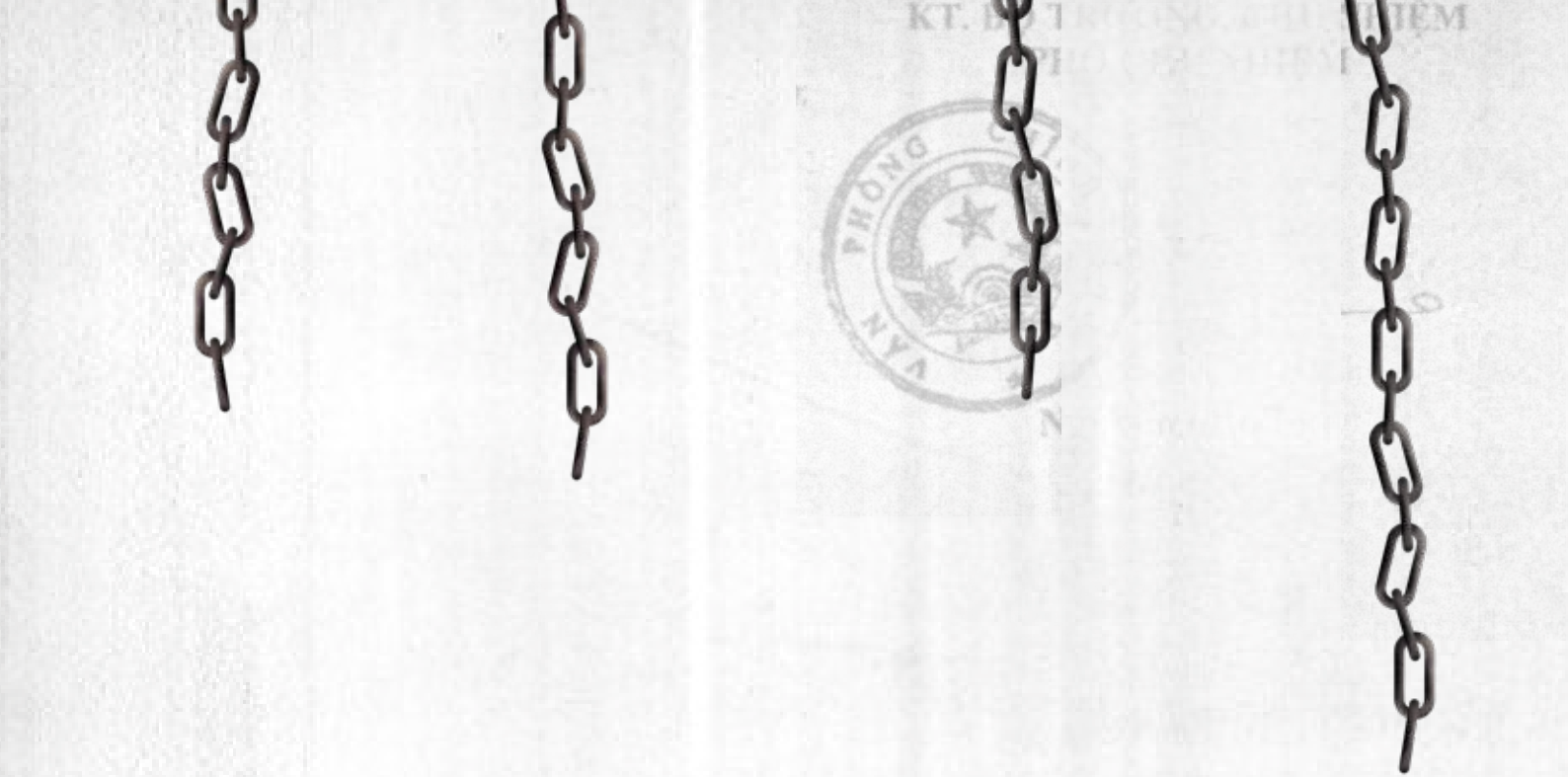
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With regards to procedure, the Vietnam Four were denied the right to a fair trial. Bach, Khanh, Loi, and Duong were kept in pre-trial detention until their trials, even though they posed no danger to society and such detention is extremely uncommon in cases of tax evasion. Bach was detained incommunicado for seven months before being allowed to meet with his lawyer, violating his right to prompt legal assistance and the right to adequate time and facilities to prepare a defense. Moreover, the trials of the Vietnam Four were shrouded in secrecy. All four individuals were tried in closed hearings that lasted less than a day, indicating that the outcomes of these trials had been decided in advance.

Serious irregularities were also present in relation to sentencing. Bach, Khanh, Loi, and Duong all received prison sentences even though most people convicted of tax evasion do not. Further, in each of these cases, the courts applied punishments that were disproportionate when compared to sentences handed down to people convicted of tax evasion in the general population. These irregularities indicate abuse of process and deliberate arbitrary application of the law.

The Vietnamese government had an ulterior motive for prosecuting the Vietnam Four. All four individuals were close associates who, at the time of their arrests, were actively cooperating on a campaign to reduce the country's reliance on coal, while working to build an autonomous civil society movement. These individuals had successfully organized non-governmental organizations (NGOs) into powerful advocacy coalitions that were able to shape state policy in ways that are at odds with the Communist Party of Vietnam's (CPV) increasingly hostile stance toward civil society. This activism took place against the backdrop of a one-party state that, through a series of legal and extralegal measures, was restricting and criminalizing policy activism and civil society movements. In light of this context this report concludes that there is strong evidence to suggest that the prosecution of the Vietnam Four was not, as the government maintains, about tax evasion, but rather criminal law being arbitrarily applied for the purpose of political persecution.

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GLOSSARY

Name in English	Name in Vietnamese	Abbreviation
Action for Justice, Health, and Environment	Liên minh Công lý Sức khỏe và Môi trường	JHE
Center for Media in Educating Community	Trung tâm Truyền thông Giáo dục Cộng đồng	MEC
Climate Action Network	Mạng lưới Hành động vì Khí hậu	CAN
26th Conference of the Parties	Hội nghị các bên lần thứ 26	COP26
EU - VN Free Trade Agreement	Hiệp định Thương mại Tự do Liên minh Châu Âu - Việt Nam	EVFTA
Green Innovation and Development Centre	Trung tâm Phát triển Sáng tạo Xanh	GreenID
GTV	GTV - Góc nhìn độc lập về xã hội!	GTV
Law & Policy of Sustainable Development	Trung tâm Nghiên cứu Pháp luật và Chính sách Phát triển Bền vững	LPSPD
Ministry of Foreign Affairs	Bộ Ngoại Giao	MoFA
Ministry of Industry and Trade	Bộ Công Thương	MoIT
Ministry of Home Affairs	Bộ Nội Vụ	MoHA
Ministry of Public Security	Bộ Công an	MPS
Non-Governmental Organization	tổ chức phi chính phủ	NGO
Power Development Plan 8	Quy hoạch điện 8	PDP 8
People's Participation Working Group	Nhóm làm việc vì sự tham gia của người dân	PPWG
Social Enterprise Green IN Vietnam	Doanh nghiệp Xã hội Green IN Việt Nam	Green IN
Vietnam Association for Promoting Education	Hội Khuyến học Việt Nam	VAPE
Vietnam Coalition for Climate Action	Liên minh Hành động vì Khí hậu Việt Nam	VCCA
Vietnam Sustainable Energy Alliance	Liên minh Năng lượng Bền vững Việt Nam	VSEA
Vietnam Union of Science and Technology Associations	Liên hiệp các Hội khoa học và Kỹ thuật Việt Nam	VUSTA

WHO ARE THE VIETNAM FOUR ?



The Vietnam Four are four civil society leaders who between 2021 and 2022 were arrested and imprisoned after engaging in intense activism to reduce Vietnam's reliance on coal. Their organizations collaborated as members of the Vietnam Sustainable Energy Alliance (VSEA), an advocacy coalition that was particularly active on energy and environmental policy. GreenID, founded by Khanh, was the coordinator of the alliance and, according to a source with inside information, Bach, Khanh, Loi, and Duong were the most active individuals in the alliance.

In his own words, Dang Dinh Bach is a community lawyer dedicated to using his “knowledge of policies and laws for sustainable development and human rights.”¹ Bach began his career working for the state audit office of the Ministry of Home Affairs (MoHA), before going on to work for the Vietnam Economic News under the Ministry of Industry and Trade (MoIT), and then the Hanoi Bar Association. At the time of his arrest, Bach was the director of the Law and Policy of Sustainable Development Research Center (LPSD).



DANG DINH BACH



LPSD started out as an organization “focused on assisting the Vietnamese government with drafting, revising, and implementing various laws.”² However, it was reformed when Bach took over as director in 2013. Frustrated with the government’s slow progress on policy implementation, Bach adopted a public interest approach to LPSD’s work that involved “provid[ing] legal assistance to communities affected by development projects, poor industrial practices, and environmental degradation,” while empowering people to demand their rights. LPSD worked with communities affected by the dumping of industrial waste, rubber plantations, and coal-fired power plants, as well as those displaced by hydroelectric dams and land grabs. Internal documents reveal that LPSD believed it had “pioneered a safe and sustainable approach to work independently of government and the party by becoming representatives of the community under Vietnamese law.”³ LPSD was the coordinator of the Action for Justice, Health, and Environment (JHE) advocacy coalition and a member of VSEA.

Bach served as the Vietnam country coordinator of the Mekong Legal Network, a network of legal professionals that works to protect the rights of communities affected by the negative impact of international corporations on the environment.⁴ Bach, as with Loi, was also a member of the Open Government Project, an informal network dedicated to civil society, democratization, and transparency, and a board member of the VNGO-EVFTA Network, a network of NGOs established in November 2020 with the aim of forming a Domestic Advisory Group (DAG) that could hold the government accountable to labor and sustainability standards contained in its trade agreement with the European Union (EU).



NGUY THI KHANH



Nguy Thi Khanh is a civil society leader and pioneering climate activist.⁵ In 2011, she founded the Green Innovation and Development Centre (GreenID), an NGO that initiated and coordinated VSEA.⁶



GREEN INNOVATION AND DEVELOPMENT CENTRE (GREENID)
Dedicate for sustainable energy in Vietnam and Mekong region

Source: GreenID⁷

GreenID was also a co-founder of the Vietnam Coalition for Climate Action (VCAA) and a member of the Climate Action Network (CAN), a coalition of local businesses, banks, government departments, and civil society organizations committed to taking action to realize the goals of the Paris Agreement on climate change.⁸ Khanh is widely credited for doing more than any other individual to reduce carbon emissions in Vietnam.⁹ In recognition of her contribution to the climate movement, Khanh was awarded the prestigious Goldman Environmental Prize in 2018.¹⁰

MAI PHAN LOI

Mai Phan Loi (also known as “Bút Lông”) is a journalist dedicated to freedom of expression and access to information. He worked as the assistant secretary general of the Báo Pháp Luật Thành phố Hồ Chí Minh newspaper, in Hanoi. In 2016, Loi met then U.S. President Barack Obama, who recognized Loi’s efforts to promote press freedom. The following month he was banned from working in journalism when his press card was revoked by the Ministry of Information and Communication.¹¹ Undeterred, Loi went on to found the Center for Media in Educating Community (MEC) where he served as chairman of the board, while amassing 120,000 followers in a Facebook group on news and current affairs, Góc Nhìn Báo Chí – Công Dân, that he administered. MEC was a member of VSEA and JHE, advocacy coalitions established by Khanh and Bach respectively.



Mai Phan Loi.
Artwork: Anonymous.

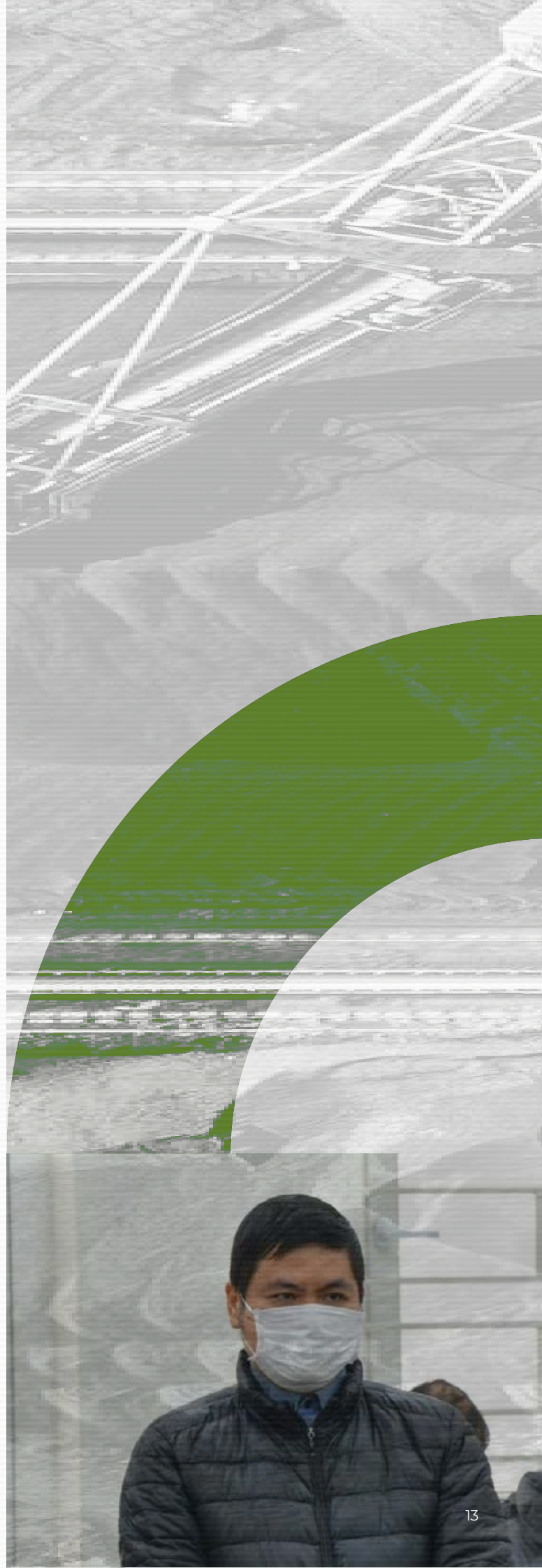


Loi (left) and Khanh (right) at the launch of the Vietnam Coalition for Climate Action.¹²

One of MEC's most notable initiatives was GTV, an online TV channel which launched in 2017 and produced a range of television programs on different social issues, such as climate change and the environment, human rights, gender justice, and public finance.¹³ GTV's live talk shows provided a forum in which researchers, civil society leaders, and government officials could debate policy issues outside of the state censorship system. From 2019 up until Loi's arrest in 2021, GTV produced a series of talk shows about the negative environmental, health, and economic consequences of coal-fired power. Highlighting Loi's close collaboration with Khanh, a regular program of the TV channel was Green Innovation News, an environmental news program that was co-produced by VSEA, VCCA, GreenID and Green IN, organizations and networks set up by Khanh.¹⁴ At the time of his arrest, Loi was planning a new project to evaluate the 2016 Law on Access to Information.¹⁵

BACH HUNG DUONG

Bach Hung Duong is a lawyer with a specialization in economics. He was hired by Mai Phan Loi to act as the director and legal representative of MEC, where he worked from 2014 until 2021.¹⁶ Duong is not well known among activists or NGO professionals in Vietnam.





A picture of Loi (left), Bach (middle), and Khanh (right) participating in a debate on energy policy that was broadcast on GTV.¹⁷

UNDERSTANDING LOCAL NGOs



While local NGOs in Vietnam self-identify as “non-profits” or “non-governmental organizations,” their legal status depends on affiliation with a state umbrella organization and many engage in a combination of non-profit and commercial-like activities.¹⁸ NGOs are, as such, not entirely non-governmental or non-profit, even though many do operate with a high degree of autonomy from the state. As one scholar describes the situation: “there are no organizations in Vietnam that can be automatically considered part of civil society and no civil society sector that can be clearly distinguished from the state, market and family” (pp.76-7).¹⁹

Many local NGOs exist legally as “science and technology” associations. To start a science and technology organization, one must first register and affiliate with the Vietnam Union of Science and Technology Associations (VUSTA) and obtain a license from the Ministry of Science and Technology (MoST). Further permits must be obtained if the organization wants to implement projects using money from foreign donors. For this permit, a proposal must first be submitted to VUSTA, which, in turn, will send the proposal to at least five ministries for comments. An objection from a ministry may spell delays or even cancellation of a planned project for which funding has already been secured. If the project addresses sensitive issues – defined as religion, security, defense, or policymaking— then an opinion must also be sought from the prime minister. Further complicating matters, the whole appraisal process must be completed within 20 days.²⁰

One NGO administrator I spoke to told me that many local NGOs struggle to receive approval for their projects. In some cases this is because the administrators lack good relationships with their umbrella organization, while in other cases their umbrella organization simply fails to respond within the required timeframe. Until the introduction of Decree 80/2020/NĐ-CP in 2020, it was common practice for local NGOs to start implementing projects before obtaining an official permit, so long as tacit approval was granted by their umbrella organization.



FROM INVESTIGATION TO TRIAL

TM. HỘI ĐỒNG XÉT XỬ PHỨC THẠM
THAM PHÁN - CHỦ TỌA PHIÊN TÒA



DETENTION AND ARRESTS

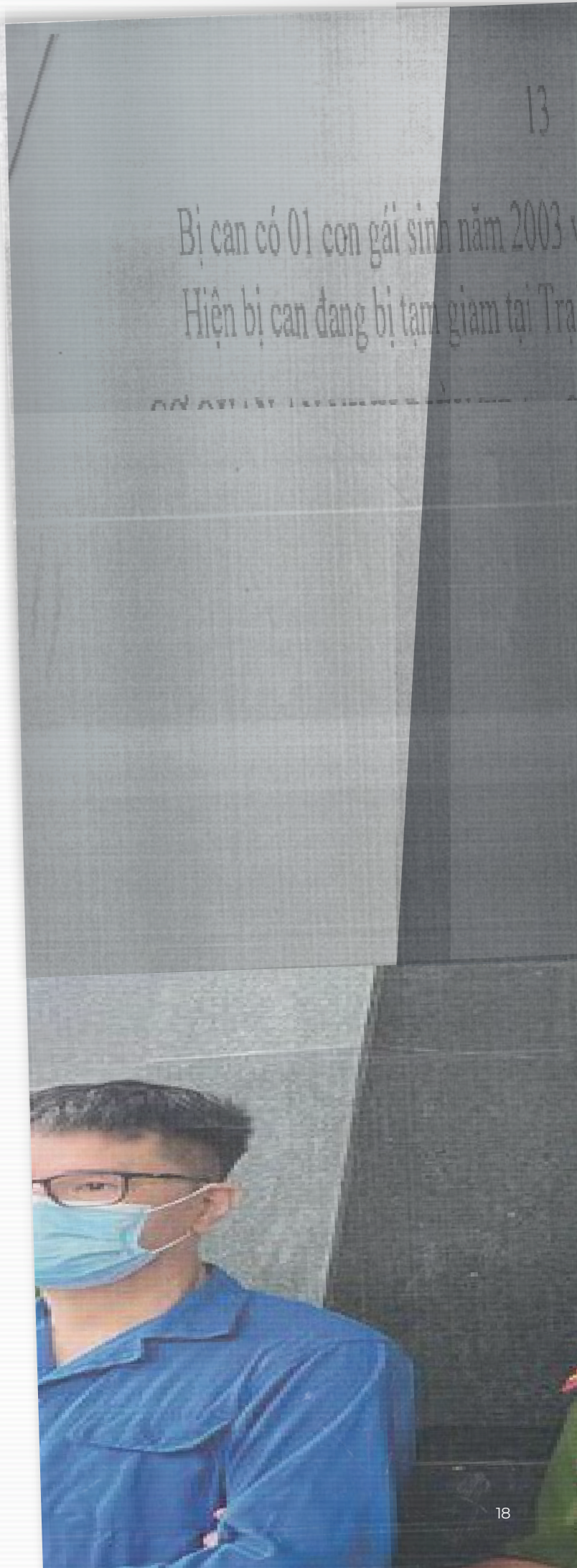
Bach, Loi, and Duong were all detained without charge on June 24, 2021.²¹ Six months later, on Jan. 11, 2022, Khanh was also detained without charge.²²

Bach was detained on June 24, 2021 by the Hanoi branch of the Security Investigation Agency for questioning along with LSPD's accountant, who was later released. Bach's wife, Tran Phuong Thao, maintains that at approximately 7:00 a.m. police forced their way into her home without presenting a search warrant and then detained Bach, verbally informing her that he had violated Article 200 (tax evasion) of the 2015 Criminal Code.²³ At approximately 9:30 a.m. on the same day, more than 10 police officers conducted a search of Bach and Thao's home. At the same time, police also searched the LPSD office, confiscating official stamps, permits, documents, and electronic devices, forcing the organization to cease operations.²⁴ On July 2 state media reported that Bach had been charged with tax evasion, nine days after he was detained without charge.²⁵



After Bach was detained, his lawyers were invited to witness three interrogation sessions on July 21, 2021, Sept. 7, 2021, and Nov. 3, 2021.²⁶ In all three sessions, however, the lawyers were not permitted to talk with Bach or the investigators, and could only passively observe the interrogations. On Nov. 11, 2021 Bach was formally indicted and on Jan. 11, 2022, the Hanoi People's Court sent Thao a letter notifying her that Bach would face trial in an open court on Jan. 24.²⁷ Bach was only allowed to meet his lawyers one time before his trial, on Jan. 14, 2022, 10 days before the trial was due to begin. Similarly, after Bach appealed his sentence, he was only allowed to meet with his lawyers once (on July 21, 2022) before his appeal hearing on Aug. 11, 2022.

Loi and Duong were detained on the same day as Bach, June 24, 2021, by the Hanoi police and held without charge until July 2, when they were formally charged with tax evasion.²⁸ A report from state media almost six months later states that on May 27, 2021, the Hanoi Tax Department sent an official dispatch to the Hanoi Police Investigation Agency reporting that there were reasons to suggest that MEC was violating tax law and requesting the agency to investigate possible tax evasion by the organization.²⁹ On Dec. 6, 2021 Loi and Duong were formally indicted.³⁰



và 01 con trai sinh năm 2021.
tạm giam số 1 - Công an TP Hà Nội.

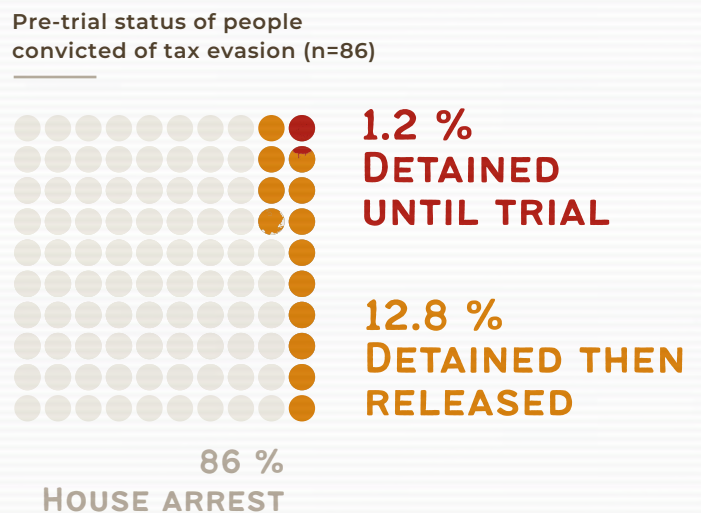
Khanh was detained on Jan. 11, 2022 for questioning by the Hanoi branch of the Security Investigation Agency.³¹ For reasons that remain unclear, GreenID staff, and even Khanh's husband, were also detained. Police searched the GreenID office and Khanh's house, confiscating documents and devices on the same day. While her staff and husband were released after being interrogated, Khanh was kept in custody. On Feb. 9, 2022, she was formally charged with tax evasion although details of the charge were not made public.³² Reports from state media on Khanh's trial revealed that she was indicted for evading taxes on \$200,000 in personal income that she received from the Goldman Environmental Prize. Thus, unlike Bach, Loi, and Duong, who were prosecuted for evading taxes on corporate income, Khanh was prosecuted for evading taxes on personal income.³³ This fact is important as it is extremely rare for people who do not pay tax on personal income to face criminal prosecution.



The following graph, which is based on an analysis described in the section [Disparities in criminal procedures and sentences](#), highlights how only 1% of convictions for tax evasion concern personal income tax, while 99% relate to corporate income tax:³⁴



Another notable irregularity is that Bach, Khanh, Loi, and Duong were all held in pre-trial detention until their trials, even though this practice is extremely uncommon for individuals charged with tax evasion. The following graph highlights how only 1% of people convicted of tax evasion are detained until trial:³⁵



The decision to indict and criminally prosecute Khanh for not paying tax on personal income is a highly irregular practice in the Vietnamese criminal justice system.

Thus, even though people indicted for tax evasion are almost always placed under house arrest or released on bail, the Vietnam Four were all held in pre-trial detention until their trials.

CRIMINAL INVESTIGATIONS AND INDICTMENTS

The criminal investigations of Bach and Khanh were led by a division of the MPS, the Hanoi Security Investigation Agency. The Law on the Organization of Criminal Investigation Bodies, however, clearly stipulates that the Security Investigation Agency only has the authority to investigate “national security crimes,” “war crimes,” and “serious crimes,” categories of crimes that do not include tax evasion.³⁶ According to the law, this agency can only investigate other crimes if the minister of public security authorizes an exception.

Since the crime of tax evasion does not fall under the Security Investigation Agency’s mandate, and there is no reason to suggest that this agency acted outside of its legal authority, it is reasonable to infer that the agency was instructed to investigate Bach and Khanh by Minister of Public Security To Lam.³⁷ This conclusion is supported by empirical evidence which demonstrates that it is extremely uncommon for the Security Investigation Agency to investigate cases of alleged tax evasion. The following graph depicts how the Security Investigation Agency is only involved in investigating 2% of individuals convicted of tax evasion, with the Police Investigation Agency investigating 98% of suspects:³⁸



The criminal investigations of Bach and Khanh were not simply a routine matter of investigating suspected tax evasion, but rather were conducted by a specialized investigation agency, apparently at the request of a leader at the top of Vietnam's political establishment.

The Vietnamese government has not made public the reports of the criminal investigations relating to Bach, Khanh, Loi, and Duong. This lack of transparency is common in cases of political prisoners in Vietnam, a practice that makes it difficult to evaluate the procedural fairness of criminal proceedings and the necessity and proportionality of sentences imposed by courts. The systematic denial of access to information is, in itself, a violation of the right to freedom of expression, which includes the right to access information, as recognized under Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR).

I was able to obtain a copy of the criminal investigation report, indictment, and court decision relating to Dang Dinh Bach.³⁹

The criminal investigation report, signed by Colonel Dam Van Khanh, states that while serving as LPSD's director between 2013-2020, Bach received funding for 10 projects from foreign donors. After listing the names of the projects, sources of funds, and monetary amounts, the report alleges that in the process of receiving this funding, LPSD did not seek approval for these projects as required by decrees 93/2009/NĐ-CP and 80/2020/NĐ-CP.⁴⁰ The report goes on to allege that even though LPSD's accountant warned Bach in 2015 about the organization's failure to record foreign funds in its accounting books, and the need to apply for permits to implement projects funded by foreign aid (as stipulated in Decree 93/2009/NĐ-CP), Bach ignored this advice and proceeded to implement the projects.



The criminal investigation report references Article 30 of the 2006 Law on Taxation, which states that taxpayers must accurately, truthfully, and fully declare all information using forms prescribed by the Ministry of Finance.⁴¹ Invoking Article 3 of Decree 218/2013/NĐ-CP, which provides guidance on the Law on Corporate Income Tax, the report states that “grants in cash or in kind received” are considered taxable income. The report’s authors then claim that foreign aid received by LPSD constitutes taxable revenue, even though no further interpretation of the law is provided. Significantly, no mention is made of Article 4.7 (“Tax-exempt incomes”) of the 2008 Law on Enterprise Income Tax. Similarly, no interpretation is offered of Article 4.7 of Decree 218, which stipulates that only organizations that improperly use foreign aid are subject to corporate income tax.⁴² Even so, it was concluded that LPSD, “instead of strictly complying with provisions of the law, left [taxable revenue] out of its books.”

The report goes on to note that on June 29, 2021, the Hanoi branch of the Security Investigation Agency issued Decision 47 requesting the Hanoi office of the General Department of Taxation to inspect LPSD’s compliance with tax obligations, in particular \$416,480 of income missing from their accounting books.⁴³ The tax office is said to have responded on July 2 with an assessment, concluding that LPSD had, in fact, engaged in an act of corporate tax evasion amounting to \$58,237 by wrongly declaring their taxable income as \$12,930. No evidence is provided of this assessment or details of how it was conducted. Despite this omission, the criminal investigation report concluded that LPSD evaded corporate income tax for a total of \$58,237 and recommended that Dang Dinh Bach be indicted.





TAX EVASION: POLICY AND PRACTICE IN VIETNAM

Vietnamese tax policy is more favorable for international NGOs than local NGOs. While international NGOs are exempted from paying taxes on goods and services and expenditures of funds from foreign donors, local NGOs are not formally recognized as NGOs and, as such, operate in a legal gray area.

Vietnamese law is ambiguous about the tax status of local NGOs. Article 143.2 of the 2019 Law on Tax Administration and Article 200.1.b of the 2015 Criminal Code create administrative and criminal sanctions respectively for omitting taxable income from accounting books.⁴⁴ The Law on Accounting, which Dang Dinh Bach is alleged to have violated, however, is silent on local NGOs and science and technology organizations.⁴⁵ At the same time, Vietnamese law provides for tax exemption in specific cases. Article 4.7 of the 2008 Law on Enterprise Income Tax describes “tax-exempt income” as “financial support used for educational, scientific research, cultural, artistic, charitable, humanitarian and other social activities in Vietnam.” Decree 218, which provides guidance on implementation of the 2008 Law on Enterprise Income Tax, stipulates that only organizations that improperly use financial aid are subject to corporate income tax. Local NGOs operate in a legal gray area.

One local NGO administrator I spoke to told me that the government has never been transparent about the tax status of local NGOs and, in recent years, has used this ambiguity against them. Wanting to start an NGO, the administrator applied to VUSTA for a permit in the early 2010s. VUSTA did not provide any guidance on taxation and the organization operated for years paying only excises and personal income tax for its employees. As the organization professionalized and employed a dedicated accountant, a decision was made to seek official guidance from the tax department. The tax department never responded. Later that year, however, officials from the Ministry of Finance conducted an inspection of the organization's office. After a casual conversation and a friendly lunch, the auditors returned to the ministry and did not contact the organization again.

This arrangement changed in 2021. The criminal prosecution of Bach, Loi, and Duong for tax evasion signaled to local NGOs that they could no longer operate under the presumption of tax-exemption. As noted above, the criminal



investigation report into LPSD, argued that under Bach's direction, the organization implemented 10 foreign-funded projects without government approval, thereby violating Decree 93/2009/NĐ-CP (since replaced by Decree 80/2020/NĐ-CP). The report goes on to conclude that the funds LPSD received for these projects were subject to corporate income tax, tax that LPSD evaded. The implication for local NGOs was clear: funds from foreign donors for development projects that have not received official approval are considered taxable income and organizations that fail to pay tax on this income may be criminally prosecuted.

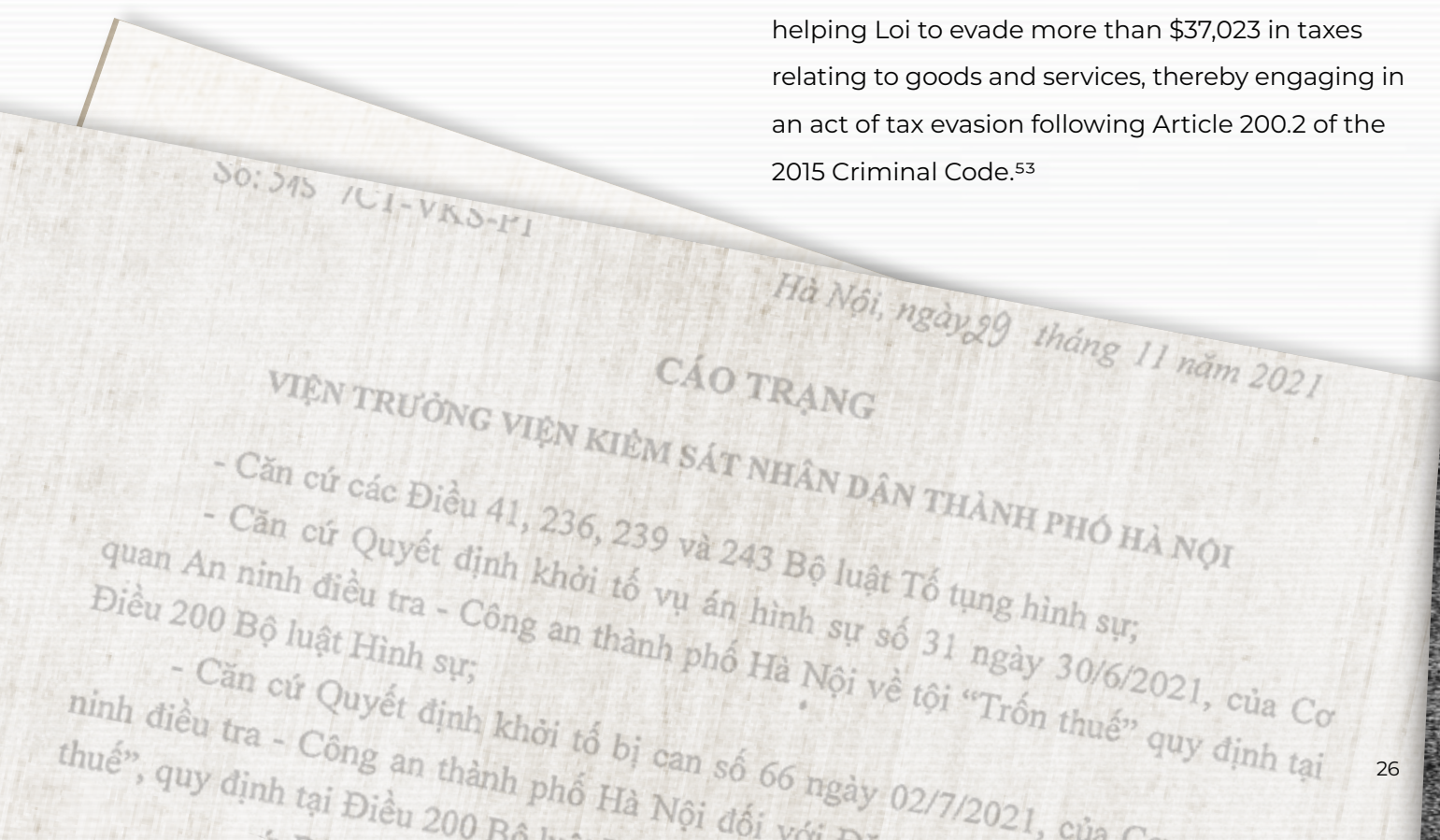
The administrator that I spoke to told me how, following these arrests, they once again sought clarification from the tax department. This time the tax department responded with a letter that provided an interpretation of tax law insofar as it relates to the administrator's organization. Invoking the section on "tax exemptions" in Guidance Note 78/2014/TT-BTC, the department concluded that the organization had received funds for use in educational, research, scientific, cultural, artistic, charitable, humanitarian and

other social activities, and such incomes were exempt from taxation.⁴⁶ However, the interpretation also noted that in cases where the organization received funding for "incorrect purposes" then this income would be subject to corporate income tax. No definition was provided of what constitutes incorrect purposes.

It should be noted that the Vietnamese government has a history of using tax evasion charges to prosecute dissidents who cannot be persuasively charged under national security provisions of the criminal code, provisions that tend to be reserved for anti-state activists. Dissident blogger Nguyen Van Hai, for instance, was imprisoned in 2008 for "tax evasion" after he used his blog, *Điếu Cày* (or *The Peasant's Pipe*), as a platform to share critical posts about government policy.⁴⁷ More recently, human rights lawyer Tran Vu Hai and his wife were sentenced to one year of house arrest for tax evasion after Hai attempted to provide legal counsel to Truong Duy Nhat, a well-known dissident who, after being kidnapped from Bangkok by Vietnamese agents in January 2019, was forcibly returned to Vietnam and sentenced to 10 years in prison.⁴⁸

The indictment, which was filed on Nov. 29, 2021, five months after Bach was arrested and before he was allowed to meet his lawyer, repeats verbatim much of the content contained in the criminal investigation report. The indictment does, however, differ from the report in several important respects. First, the indictment states that LPSD operated as a business and classifies LPSD's funds from foreign donors as "corporate income." Second, under the heading "mitigating factors relating to criminal responsibility," the indictment invokes Article 52.2.g of the 2015 Criminal Code to argue that Bach "is guilty of two or more crimes".⁴⁹ Article 38, which places limits on the prison sentences that can be imposed on people convicted of a "less serious crime for the first time," is then cited to imply that Bach is not eligible for such consideration. Nowhere in the indictment, however, is it specified what Bach's second crime was.

While the indictment of Loi and Duong is not in the public domain, reporting by state media provides details of its contents.⁵⁰ The prosecutorial authority formally indicted Loi and Duong on Nov. 6, 2021.⁵¹ Loi was indicted for having "evaded corporate income tax and value-added tax" to a value of approximately \$84,335. Between 2012 and March 2021, MEC, is alleged to have had a revenue of more than \$830,698.⁵² Every time MEC received money from domestic and foreign donors, Loi instructed Duong to withdraw the money, while directing MEC staff to not issue tax invoices. Loi is also accused of not complying with the accounting and invoice regime prescribed by the law, not declaring costs and income related to business activities, not issuing financial reports, and not declaring taxable corporate income or taxable income from value-added goods and services. The prosecutorial authority determined that Loi was the mastermind of this scheme, while Duong simply followed Loi's orders. Duong, however, is accused of acting as an accomplice to Loi's crime and for this reason, his actions were concluded to constitute unlawful conduct for the purpose of criminal liability. Specifically, Duong is accused of helping Loi to evade more than \$37,023 in taxes relating to goods and services, thereby engaging in an act of tax evasion following Article 200.2 of the 2015 Criminal Code.⁵³



IMPLICATIONS

The charge of tax evasion appears to have been arbitrarily applied to the Vietnam Four. To start, there is evidence to suggest that the criminal investigations that resulted in charges against Bach and Khanh were politically directed. Once detained, Bach, Loi, and Duong were charged with evading taxes on corporate income. Vietnamese law, however, is ambiguous about whether local NGOs have to pay corporate income tax and, at the time of the arrests, it was common practice for NGOs to not pay tax on funds received from foreign donors for international development projects, even if these projects had not received formal government approval. In the case of Nguy Thi Khanh, details of the charge were not made public when her arrest was announced. Only after Khanh's trial took place did it emerge that Khanh had been indicted for evading taxes on personal income. The criminal prosecution of people for infractions relating to personal income tax is, however, a highly irregular practice in Vietnam. Finally, following the indictment, it appears that Dang Dinh Bach was arbitrarily subjected to more criminal responsibility than is allowed under Vietnamese law.

The pre-trial phase of the prosecution of the Vietnam Four was plagued with irregularities. Other irregularities in criminal procedures are discussed in more depth in the section [Disparities in criminal procedures and sentences](#) below.

Bach, Khanh, Loi and Duong's rights were violated in multiple ways during the pre-trial phase of their prosecutions. All four were held in pre-trial detention for extended periods of time despite posing no danger to society, thereby violating their right to be free from arbitrary detention. Dang Dinh Bach, the only one of the four who did not plead guilty to the charge of tax evasion, was detained incommunicado and prevented from meeting with his lawyer for seven months, a violation of international human rights law which protects the right to prompt legal assistance and the right to adequate time and facilities to prepare a defense. All four also experienced long delays before their cases were brought to trial, delays that were not justified by the complexity of the charges, thereby violating their right to be tried without undue delay. The Vietnamese government's failure to adhere to norms of due process recognized by international law violated Bach, Khanh, Loi, and Duong's right to a fair hearing before a court of law.

“THE VIETNAM FOUR’S RIGHTS WERE VIOLATED IN MULTIPLE WAYS DURING THE PRE-TRIAL PHASE OF THEIR PROSECUTION.”

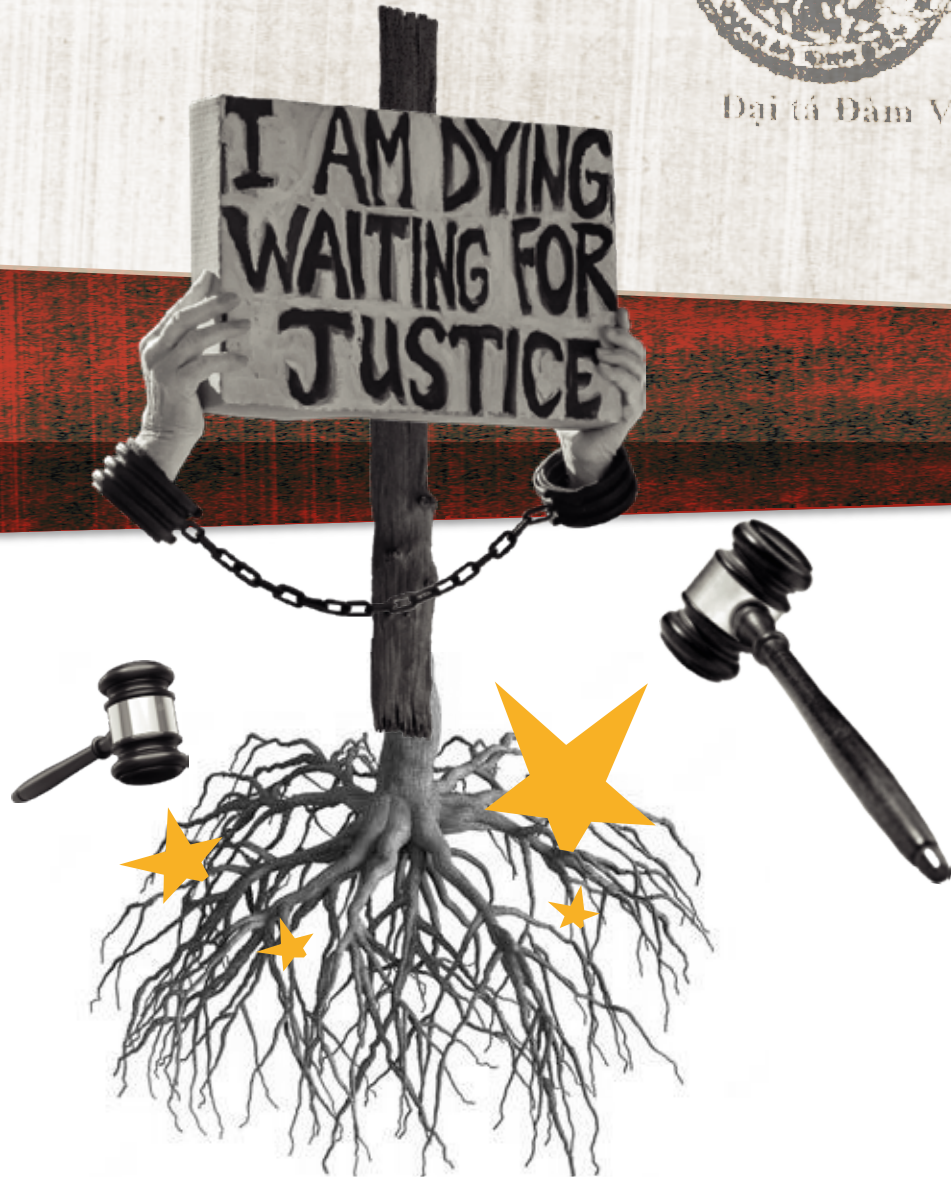
Cơ quan An ninh điều tra – Công an TP Hà Nội thông báo đề UBND phường Yên Sở, quận Hoàng Mai, TP Hà Nội; UBND phường Thanh Xuân Bắc, Thanh Xuân, TP Hà Nội và bà Trần Phương Thảo biết:

Nơi nhận:
- Nhà riêng;
- Địa số 02/ham.

PHÓ THỦ TRƯỞNG THƯỜNG
CƠ QUAN AN NINH ĐIỀU TRA



Đại tá Đàm Văn Khanh



FROM TRIAL TO FINAL JUDGMENT

TRIALS AND APPEALS

The Vietnam Four were each prosecuted in closed trials that lasted less than a day.⁵⁴ While Khanh, Loi and Duong pleaded guilty, Bach did not. On Jan. 11, 2022, the Hanoi People's Court sentenced Mai Phan Loi to 48 months in prison for tax evasion and banned him from undertaking any managerial positions for a period of five years after his release.⁵⁵ In the same trial, Bach Hung Duong was sentenced to 30 months in prison and banned from undertaking any managerial positions for a period of five years after his release. While the court decision relating to Loi and Duong has not been made public, Công An Nhân Dân Online, a newspaper run by the police, reported on the trial as follows: From 2012 to March 2021, Loi directed MEC staff to receive nearly \$843,384 for projects from local and foreign organizations.⁵⁶

“Each time MEC received funds, Loi directed Duong and his subordinates to not use the accounting system, not make financial statements, not submit corporate income tax declarations, not submit value added tax declarations, [and] not use accounting books as prescribed by the law.” The article reports that the prosecutor concluded that Loi had evaded \$84,335 worth of tax, while noting that he had already paid back \$33,734 to make amends. Following a recommendation from the prosecutor during Loi’s trial, VUSTA ordered MEC to be dissolved and the Ministry of Science and Technology revoked the organization’s license.⁵⁷





UNDERSTANDING THE JUDICIAL SYSTEM IN VIETNAM

Despite lofty guarantees of judicial independence in the country's constitution, courts and judges in Vietnam are supervised by the state and direct political interference in trials is common.⁵⁸ Starting at the top, the chief justice of the Supreme People's Court and the chief procurator of the Supreme People's Procuracy (the prosecutorial authority) are ostensibly elected and supervised by the National Assembly.⁵⁹ Candidates for both positions are, however, preselected from members of the Central Party Committee (the most powerful organ in the Communist Party) and party policy dictates that these positions are also under "direct management" of the Political Bureau.⁶⁰ As such, both the chief justice of the Supreme People's Court, who oversees the selection of judges, and the chief procurator of the Supreme People's Procuracy, who oversees the selection of prosecutors, are political appointees who must answer to the party's top brass. Supreme court judges and prosecutors are also subordinated to the party, with both groups supervised by the Secretariat of the Central Party Committee led by General Secretary Nguyen Phu Trong.

Similar dynamics are at play throughout the judicial system. For example, although the National Assembly is tasked with overseeing the prosecutorial authority and the courts, so too is the Fatherland Front, a sprawling CPV umbrella organization.⁶¹ Judicial independence is also limited by the system of tenure used for judges. Secure tenure, a key means by which the independence of judges is guaranteed in other legal systems, is not available to judges in Vietnam who are appointed for short terms (of five years) and may be stripped of their positions if found to be lacking in "moral quality."⁶²

Highlighting the nexus between the judicial system, the government, and the party, the current chief justice of the Supreme People's Court, Nguyen Hoa Binh, is a current member of the Political Bureau and the Central Party Committee, and formerly served as the chief procurator and a major general in the Ministry of Public Security.⁶³ Chief procurator Le Minh Tri also started his career in the police and rose up through the party ranks before becoming a procurator. As such, both the chief justice and the chief prosecutor are current high-ranking members of the communist party and former police officers.

Question time



Right: Le Minh Tri, chief procurator of the Supreme People's Procuracy, answering questions about wrongful convictions during a National Assembly session.

Left: Minister of Public Security To Lam.

Source: VietnamNet.

It is worth noting that the chief procurator, Le Minh Tri, has previously expressed his disdain for procedural fairness. In a National Assembly session in 2022, Tri stated that “while it is important to protect human rights...that is completely different from absolutely protecting the rights of criminal suspects or people who show signs of being connected to crimes.”⁶⁴ He is also reported to have said that an appropriate threshold for detaining and charging criminal suspects is two testimonies obtained from a suspect or three testimonies obtained from witnesses, a view that violates the principle of presumption of innocence and ignores the central role of evidence in criminal proceedings.⁶⁵

On Aug. 11, 2022, Loi and Duong's appeal hearing took place. Loi's sentence was reduced from 48 months to 45 months while Duong's was reduced from 30 months to 27 months.⁶⁶ State media reported that the court acknowledged Loi's “honest declarations and acts of penance” and his repayment of \$50,601 in taxes that he is alleged to have evaded, as reasons for reducing his sentence to 45 months. Duong was portrayed as Loi's accomplice, and his sentence was reduced “to demonstrate the humanity of the law.”



Loi (left) and Duong (right) at their appeal hearing. Source: Báo điện tử VTC News.⁶⁷

Bach's trial took place on Jan. 24, 2022. The trial was closed to the public and even members of his own family were not permitted to attend, purportedly due to COVID-related public health concerns and because they lacked court invitations.⁶⁸ In a proceeding that lasted several hours, Bach was sentenced to five years in prison for tax evasion with no probation and ordered to pay back the amount of tax the court determined he had evaded, \$58,237.⁶⁹

Bach chose to appeal his sentence and on Aug. 11, 2022, the court of appeal upheld his five-year sentence. Bach's wife was not allowed to observe the appeal hearing but saw her husband being taken into the court and commented that it looked as if he had lost 10 kilograms. She told Project 88 that Bach had informed his lawyers that he had been on a 24-day hunger strike to protest his incommunicado detention.⁷⁰ A video of the appeal hearing released by the Vietnam News Agency shows Bach in a gaunt and emaciated state.⁷¹



Bach at his appeal hearing. Source: ANTV.⁷²



Khanh's case went to trial on June 17, 2022. Despite Khanh's family taking the initiative before the trial to pay back the amount of money that she was alleged to have evaded in tax, Khanh was sentenced to 24 months in prison for tax evasion.⁷³ She chose to appeal her sentence and was granted an appeal hearing on Nov. 21 which was closed to outside observers. State media reported that the court acknowledged Khanh's "honest declarations and acts of penance" and, for this reason, had decided to reduce her sentence from 24 months to 21 months.⁷⁴

Secret hearings



Khanh at her appeal hearing on Nov. 21, 2022.
Source: Thanh Nien.⁷⁵

Khanh's appeal hearing, closed to outside observers.



DISPARITIES IN CRIMINAL PROCEDURES AND SENTENCES

Irregularities were present in both criminal procedures and sentences applied to the Vietnam Four. While almost nobody convicted of tax evasion in Vietnam is held in pre-trial detention while awaiting trial, Bach, Khanh, Loi, and Duong were. Further, although under 20% of convicted tax evaders are required to spend time in prison, the Vietnam Four were all given prison sentences. Finally, Bach, Khanh, Loi, and Duong received disproportionate sentences when compared to the punishments imposed on people convicted of tax evasion in the general population.

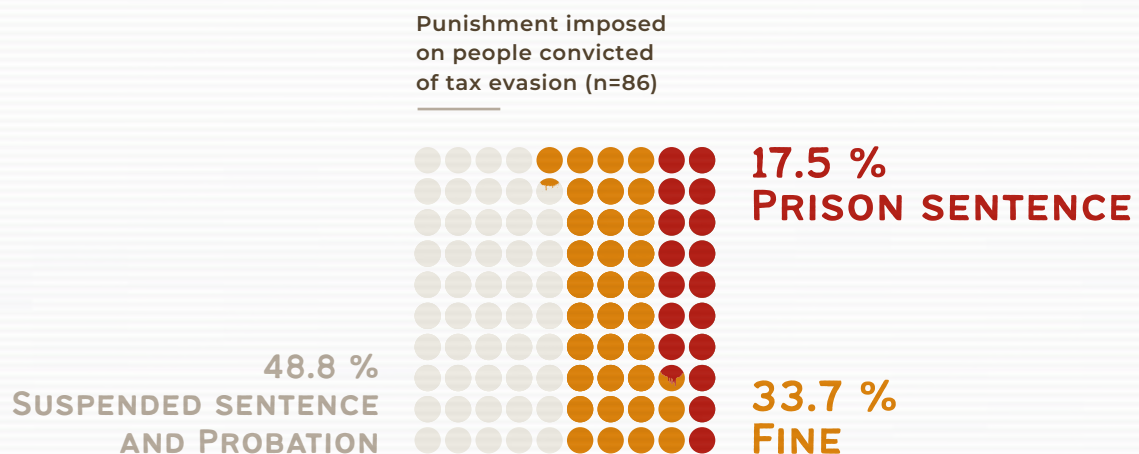
These conclusions are based on an analysis that I conducted of criminal procedures and sentencing outcomes for people convicted of the same crime (tax evasion) as Bach, Khanh, Loi, and Duong. I started by identifying two databases: the Supreme People's Court (Toà Án Nhân Dân Tối Cao) and the Law Library (Thư Viện Pháp Luật) that contain sentencing outcomes of criminal trials in Vietnam.⁷⁶ I used the advance search functionality of the Supreme People's Court database and selected the following categories to narrow the results: "Verdict/ Decision" (Bản án/ Quyết định), "Criminal" (Hình sự) under "Type of case/ incident" (Loại vụ/việc), and "Article 200. Tax evasion" (200. Tội trốn thuế) under "Charge/legal relations/ administrative procedures" (Tội danh/quan hệ pháp luật/biện pháp xử lý hành chính).

This search strategy returned a total of 56 cases in which the accused was convicted of tax evasion under Article 200 of the 2015 Criminal Code. The Law Library database did not have the same categories, so I searched for "tax evasion" (trốn thuế) which returned 191 cases. Cases identified from both databases (n=247) were compiled in a list and reviewed for duplicates. Duplicates (n=27) were identified and removed from the list, resulting in a total of 220 cases between 2017-2022.

For a case to be included in the sample, it must involve a sentence based on Article 200 of the 2015 Criminal Code. A total of 59 cases pertaining to 86 individuals met the inclusion criteria and were included in the sample. I then made a list of individuals and extracted the following data on each one: name, verdict code, charge/s, criminal investigation agency, nature of offending behavior, personal/corporate tax evasion, total amount of income alleged to have evaded tax on, amount of tax alleged to have been evaded, pre-trial status, length of sentence, outcome of appeal hearing, amount of money ordered to repay, and amount of money repaid. I then sorted individuals in descending order by severity of sentence imposed, with the longest prison sentence defined as the most severe and the smallest fine as the least severe.

From this data, I drew several observations about sentencing outcomes for people convicted of tax evasion in the general population:

- Only two individuals out of a total of 86 (2.3%) were investigated by the Security Investigation Agency, while the rest (97.7%) were investigated by the Police Investigation Agency.
- Only one individual (1.2%) was criminally prosecuted for evading taxes on personal income. The rest (98.8%) were prosecuted for corporate tax evasion.
- Of people who were convicted of tax evasion:
 - The average (mean) amount of tax alleged to have been evaded was: \$97,763.
 - Only one (1.2%) person was held in pre-trial detention until their trial, a case in which the person was already serving another prison sentence. Seventy-four individuals (86%) were placed under house arrest and 11 people (12.8%) were initially detained but then released on bail or placed under house arrest.
 - Only 15 individuals (17.5%) received prison sentences, with sentences ranging from six-60 months. Forty-two individuals (48.8%) received suspended sentences (ranging from 5-36 months) and probation time (from 12-60 months of probation) and 29 individuals (33.7%) received fines. The following graph illustrates the different punishments imposed on people convicted of tax evasion.

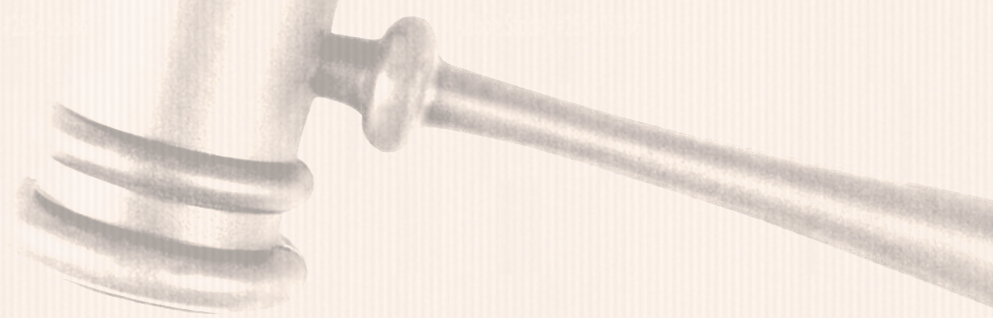


- Of people sentenced to prison, the average prison sentence was 26.6 months.

I have just described patterns in criminal procedure and sentencing for people convicted of tax evasion in the general population. In the following section I will explain how the criminal procedures and sentences applied to the Vietnam Four diverge from these patterns. To make this comparison, I added these four individuals (and associated data) to the initial list of 86 individuals. The resulting list (of 90 individuals) is included as a table in Annex 2 of this report, with Bach, Khanh, Loi, and Duong highlighted for easy identification. I analyzed this data and found that:

- Dang Dinh Bach received the longest prison sentence of anyone convicted of tax evasion, despite the fact that the amount of tax he is alleged to have evaded (\$58,237) is much lower than the mean amount (\$97,763) for people convicted of tax evasion. Only one other person was sentenced to the same amount of prison time as Bach and that individual was not held in pre-trial detention. It is also unclear if that person chose to appeal their sentence, and, if so, whether the sentence was reduced or suspended.
- Nguy Thi Khanh is one of only two people convicted of evading tax on personal income and the only one sentenced to prison for this offense. The low number of cases involving personal income tax evasion highlights how such cases are usually dealt with as an administrative rather than a criminal matter.
- With the exception of two individuals, Bach and Khanh were the only two people convicted of tax evasion who were investigated by the Security Investigation Agency.
- With the exception of one individual, who was already serving another prison sentence, Bach, Khanh, Loi, and Duong were the only people convicted of tax evasion who were held in pre-trial detention until their trials.
- Bach, Khanh, Loi, and Duong received disproportionate sentences when compared to people convicted of tax evasion in the general population. The following graph presents data on sentence length for 90 individuals convicted of tax evasion, with sentences categorized in terms of fines, suspended sentence, or prison sentence:

Length of sentence: individuals convicted of tax evasion (n=90)



Fine only



Suspended sentence



Prison sentence



Khanh



Duong



Loi



Bach



0

20 months

40 months

60 months

average prison sentence (26.6 months)



CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc

BIÊN BẢN GIAO VĂN BẢN, TÀI LIỆU

... tại nhân trại

“THESE IRREGULARITIES ARE STRONG EVIDENCE TO SUGGEST ABUSE OF PROCESS AND ARBITRARY APPLICATION OF THE LAW. THEY ALSO INDICATE THAT THE CHARGES, DETENTION, AND PUNISHMENT OF THE VIETNAM FOUR WERE NEITHER NECESSARY NOR PROPORTIONATE.”

Ngày: 24/01/2022

KHÁNG CÁO

NHÂN DANH
NƯỚC CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM

TOÀ ÁN NHÂN DÂN THÀNH PHỐ HÀ NỘI

Với thành phần Hội đồng xét xử sơ thẩm gồm có:

Thẩm phán - Chủ tọa phiên tòa: Ông Nguyễn Xuân Văn

Các Hội thẩm nhân dân:

Ông Phí Văn Nghi

Bà Nguyễn Vũ Thị Tuyết Mai

Thư ký phiên tòa: Ông Nguyễn Mạnh Hà - Thư ký Toà án nhân dân
Thành phố Hà Nội.

Đại diện Viện kiểm sát nhân dân Thành phố Hà Nội tham gia phiên tòa:
Ông Đỗ Minh Tuấn và bà Hoàng Thị Huyền - Kiểm sát viên.

Ngày 24 tháng 01 năm 2022, tại Trụ sở Tòa án nhân dân Thành phố Hà
Nội xét xử sơ thẩm vụ án hình sự thụ lý số: 559/TLST-HS ngày 30/11/2021,
theo quyết định đưa vụ án ra xét xử số 14/2022/QĐXXST-HS ngày 11 tháng
01 năm 2022, đối với bị cáo:

KHÁNG CÁO

Đặng Đình Bách, sinh năm 1978; Quốc tịch: Việt Nam; Dân tộc: Kinh;
Tôn giáo: không; trình độ học vấn: 12/12; nghề nghiệp:

PERSPECTIVES AND CONTEXT



THE GOVERNMENT'S NARRATIVE

The government's position is that the Vietnam Four are criminals who are in prison for evading taxes. Responding to questions from reporters about allegations that the prosecution of Nguy Thi Khanh was politically motivated, on June 17, 2022, Le Thi Thu Hang, spokesperson of the Ministry of Foreign Affairs, claimed that "Nguy Thi Khanh was investigated and charged for an economic crime, specifically violating the law on taxation and she has confessed to this crime."⁷⁷ Hang maintained that the "process of investigation and sentencing were performed following the law" and that "the trial was made public and all of the accused's rights were protected," while claiming that "allegations that Khanh was criminally prosecuted for her actions and beliefs about climate change are baseless." These claims are, however, contradicted by the extensive evidence of deliberate and arbitrary application of the law against Nguy Thi Khanh that has been documented above.

It is also worth noting that the Central Propaganda Committee, an organ of the CPV that is mandated with shaping public discourse to serve the party's interests, issued instructions to the media about how to respond to allegations made by the United Nations (UN) about the government's treatment of the Vietnam Four. On April 22, 2022, the UN released a joint statement expressing "grave concern over the arrest, detention and sentencing of environmental human rights defenders in Viet Nam on charges of tax evasion."⁷⁸ In response, the Central Propaganda Committee issued Communication 1008-CV/BTGTU, dated May 31 2022, which instructed city- and provincial-level propaganda departments around the country to: "proactively grasp the situation of conspiracies, methods and tricks of activities to promote democracy and human rights," while intensifying "efforts to shape public discourse by fighting against the publication of reports and documents that distort the human rights situation in Vietnam."

Under this heading it is stated that “UN the human rights and environment programs have expressed serious concern about the detention of environmental activists charged with tax evasion such as Nguy Thi Khanh, Mai Phan Loi, Dang Dinh Bach, and Bach Thuy Duong, calling for Vietnam to immediately stop this persecution”.⁷⁹ Departments are then instructed to intensify their propaganda activities aimed at officers, party members, workers, and state officials, especially through online channels and newspapers.

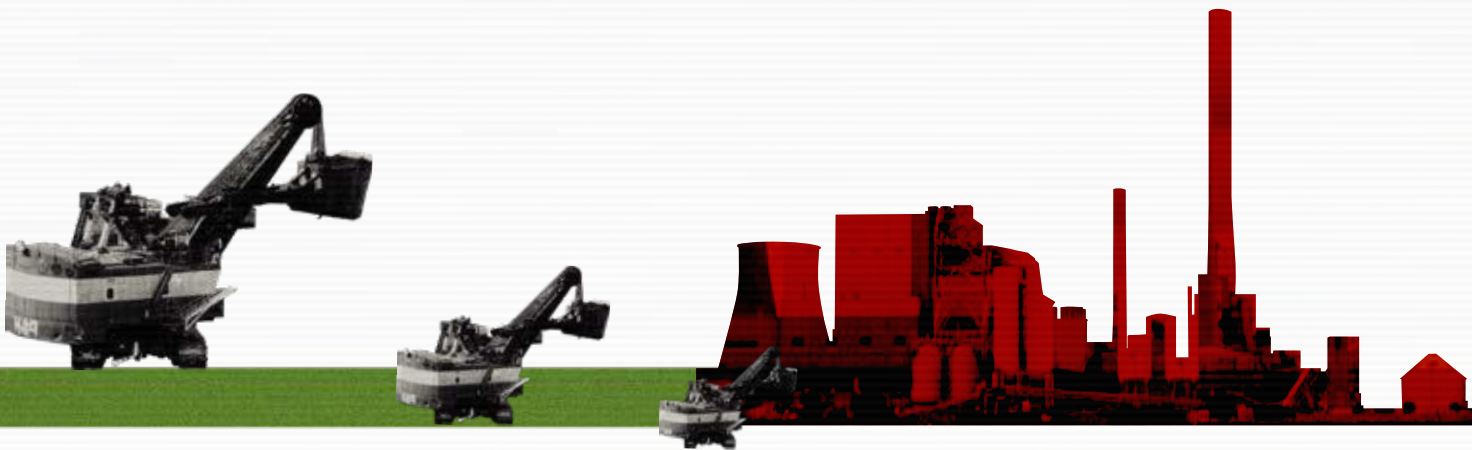
In summary, the Vietnamese government’s response to allegations of rights violations against the Vietnam Four by the UN was to deny these allegations and instruct its propaganda apparatus to discredit them. The fact that the government chose this course of action suggests that it was more interested in discrediting allegations of political persecution than investigating the factual basis of these allegations.



ULTERIOR MOTIVES FOR PROSECUTING THE VIETNAM FOUR

There is extensive evidence to suggest that the government had an ulterior motive for prosecuting the Vietnam Four. At the time of their arrests, Bach, Khanh, Loi, and Duong were cooperating on a campaign to shape the future of the country's energy policy in ways that threatened entrenched interests. To varying degrees, all four were also engaged in efforts to build an autonomous civil society movement.

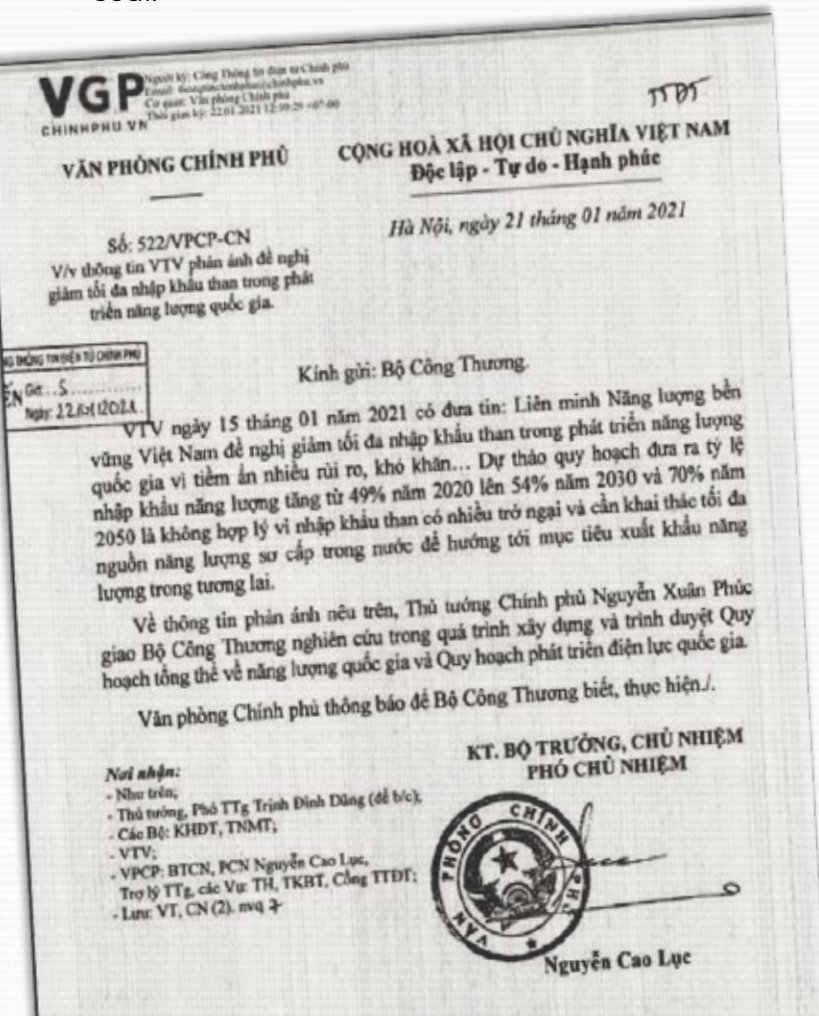
Bach and Loi, for instance, were attempting to establish an independent organization that could hold the government accountable to sustainability and labor commitments in its trade agreement with the EU. All of this took place against the context of a party-state that had recently cemented hostility to the very notion of civil society in state policy, while intensifying efforts to limit the autonomy and impact of civil society organizations.



The Vietnam Four were all involved in policy activism to reduce Vietnam’s reliance on coal. On one side of this struggle was LPSD, GreenID, MEC, and the advocacy coalitions they coordinated, and on the other was the energy sector –three large state-owned corporations represented by allies in the MoIT.⁸⁰ While MoIT has traditionally set Vietnam’s energy policy, in February 2020 the CPV’s top leaders issued Resolution 55.⁸¹ Resolution 55 sets the agenda for energy policy, expressing an intention to eliminate subsidies, monopolies, and unfair competition, while accelerating the development of renewable energy and pursuing energy goals along with environmental protection. Given that the party had expressed a commitment to renewable energy, it came as a surprise to many when in 2021 MoIT published a draft of Power Development Plan 8 (PDP 8), a plan on how the country would meet its energy needs over the next decade, which doubled down on coal.⁸²

As MoIT organized consultation workshops on the plan, Bach, Khanh, and Loi started planning a response. Their first intervention was to publish an open letter on Sept. 28, 2020 in which they criticized key elements of the plan.⁸³ Two days later Loi, with Bach and Khanh as his guests, hosted a talk show about the response of civil society organizations to the proposed policy.⁸⁴ Then on Jan. 11, 2021, VSEA sent an open letter to the minister of industry and trade, criticizing the plan’s over-reliance on coal-fired power and imports of coal.⁸⁵

This letter was signed by Khanh, with Bach and Loi listed as members of the advisory group that produced the analysis on which the letter was based. An indication of the group’s collective power is evident in an official communication sent by the Office of the Government (led by the prime minister) to MoIT on Jan. 21, 2021. The communication expressed concern about plans to increase Vietnam’s reliance on coal to meet its energy needs, noting the negative impact of coal. Notably, it references a recommendation by VSEA to reduce the share of coal in the energy mix that was featured on a program of the national broadcaster, Vietnam Television.



Official communication sent from the Office of Government to MoIT regarding plans to increase the country's reliance on coal. Source: Anonymous.⁸⁶

In an email to members of VSEA, a GreenID staff member referred to this communication as “evidence that the alliance’s voice has been heard and motivation to keep fighting”.⁸⁷

Identifying “an opportunity to advocate for environmental protection,” Bach, Khanh, and Loi developed a “Campaign for 17 days of advocacy on PDP 8.”⁸⁸ The campaign was executed between February and March 2021 to coincide with MoIT’s request for comments on the draft plan, and aimed to “mobilize local authorities to [...] give written feedback to the Ministry of Industry and Trade on Draft Power Master Plan VIII.”

Several working groups were assembled (communications, community outreach, science, policy, and external relations) to oversee various aspects of the campaign. The campaign kicked off with the policy group sending close to 60 letters to leaders at different levels in seven regions where coal-fired plants were due to be constructed.⁸⁹ The letters urged these leaders to study PDP 8 carefully, especially its potential environmental and economic impact, and to commence a process of public consultation.

Then on March 3, VSEA sent an open letter addressed to top leaders of MoIT urging the ministry “to not develop any new coal power projects [...] and instead prioritize development of renewable energy.”⁹⁰ A few days later, the policy group sent 28 letters to leaders of seven cities and provinces, this time explaining the negative impact that coal would have on their communities, while urging the leaders to “send timely responses to the Ministry of Industry and Trade [...] rejecting plans to construct new coal-fired power plants.” To top it off, members of the policy group visited national-level ministries, again explaining the negative impact of coal and urging the ministries to reject MoIT’s plan.

While the policy group was busy advocating with government officials, the communications group organized a series of activities to support this effort. One of these was a seminar hosted by the official newspaper of the National Assembly in which decision makers, academics, and journalists discussed challenges associated with energy policy in the context of PDP 8.⁹¹





The “Power Development Plan VIII: Removing bottlenecks in energy development” seminar

Bach (third from right) poses for a photo with participants of the seminar.

Source: Báo Đại biểu Nhân Dân.⁹²

At the same time, Loi and his team at GTV organized a series of talk shows on the draft plan. These shows, in which Bach and Khanh appeared as guests, explored the disastrous effects (environmental, health, and financial) that the plan would have on the country if passed.⁹³ Meanwhile, the external relations group ensured that the campaign’s message was communicated to the top leadership of the party-state apparatus: the general secretary of the CPV, the president, the secretary of the National Assembly, and the prime minister.

In addition to their work on energy policy, Bach and Loi were both executive board members of the VNGO-EVFTA Network, a group of seven NGOs that sought to create a monitoring group known as a DAG to oversee the government’s compliance with environmental and labor conditions contained in its trade agreement with the EU. In the lead up to signing the agreement, EU negotiators stressed the need to include independent organizations in the DAG. However, MoIT, which negotiated on behalf of the Vietnamese government, resisted.⁹⁴



Bach (fourth from left) was at the VNGO-EVFTA Network kick-off meeting. Source: SRD.⁹⁵

In November 2020, the VNGO-EVFTA Network organized its initial meeting and elected seven organizations as members. Following the election, Sustainable Rural Development, a local NGO that acted as the coordinator of the network, published a list of organizations on their website. These organizations then made formal applications to MoIT, which had to approve the formation of each member of the DAG, even though it was supposed to be an independent civil society group.⁹⁶ However, by June, when the first meeting between the Vietnamese DAG and its European counterpart was supposed to be convened, MoIT had still not responded to the applications, resulting in the meeting being canceled.

Concerned about the delay, the EU DAG wrote to the Vietnamese government stating that “civil society engagement and scrutiny of the EVFTA is not an optional element of the agreement, but should be ensured and applied as a matter of urgency.”⁹⁷ On June 24, Bach and Loi were detained. In response, SRD promptly scrubbed their names and photos from its website and posted a revised list of five organizations that planned to form a DAG. Six weeks later, with Bach and Loi behind bars, MoIT approved the formation of a DAG.⁹⁸ Only one organization of the original VNGO-EVFTA network, SRD, had been included. Over the next six months, MoIT would invite state associations and government-friendly organizations into the DAG, bringing the total number of members up to seven.⁹⁹



SRD website pre-censorship¹⁰⁰



SRD website post-censorship

The revised list of VNGO-EVFTA Network members with Bach and Loi's names and organizations removed. Source: SRD.¹⁰¹

Thus, one effect of Bach and Loi being arrested for tax evasion was that their organizations — which were the most independent and activist in the network— were prevented from overseeing the government’s implementation of the trade agreement.

policy of carbon neutrality by 2050.¹⁰⁴ Despite this professed commitment, to this day the Vietnamese government has yet to approve a revised version of PDP 8 that outlines a time-bound transition away from fossil fuels for electricity generation.

When Bach, Loi, and Duong were detained on the same day in June, Khanh continued with her effort undeterred. On Oct. 8, 2021, MoIT officially submitted PDP 8 to Prime Minister Pham Minh Chinh.¹⁰² Alarmed that the blueprint contained plans to double the capacity of coal-fired power plants, Khanh, on behalf of VSEA and several other advocacy coalitions, wrote to Chinh highlighting how the plan contradicted public statements that he had made, while warning that implementation of PDP 8 would result in international isolation for Vietnam.¹⁰³ Two weeks later, Chinh announced at COP26 in Glasgow that Vietnam had committed to a

Climate activist without a pause



Nguy Thi Khanh participating in a workshop on energy transition in the transportation sector less than a month before her arrest. Source: Bao Giao Thong.¹⁰⁵

After returning to Vietnam from Glasgow, on Dec. 7, Khanh posted on her Facebook page that she had just spent the afternoon participating in a conference on the results of COP26 that was organized by the Ministry of Natural Resources and Environment.¹⁰⁶ She then quoted Minister of Natural Resources and Environment Tran Hong Ha as saying that “we cannot cut emissions if we still have coal power.” After proposing five projects that GreenID would like to contribute in order to implement the minister’s directives, Khanh said that “we are still waiting for action from the ministries, in particular the Ministry of Public Security,” an apparent reference to the police blocking the approval of GreenID’s projects. One month later on Jan. 11, 2022 Khanh was detained.

The Vietnam Four pushed the government to commit to a policy of carbon neutrality by 2050. In addition to their activism on energy policy, Bach, Khanh, Loi, and Duong were also engaged in efforts to build an autonomous civil society movement. As highlighted above, Bach, Khanh and Loi had organized NGOs into powerful advocacy coalitions that were able to shape state policy. Loi and his team at MEC were dedicated advocates of press freedom and had established an independent television channel with regular programs and talk shows in which people debated policy issues outside of the censorship system. As part of this channel, Loi and Khanh were cooperating to produce a regular environmental news program. At the same time, Loi and Bach were members of an informal network dedicated to democratization and transparency, while attempting to provide independent oversight of the government’s sustainability and labor commitments in Vietnam’s trade agreement with the EU. In sum, Bach, Khanh, Loi, and Duong’s activities extended beyond activism on energy policy to include broader goals such as establishing an autonomous civil society movement. To understand how these activities provided a motive for the government to arbitrarily prosecute the Vietnam Four, it is first necessary to consider the broader political context against which these prosecutions took place, an issue that I will turn to now.



POLITICAL CONTEXT: THE CRIMINALIZATION OF POLICY ACTIVISM AND CIVIL SOCIETY MOVEMENTS

Vietnam is a one-party state and the CPV is the only political party recognized in the country. Citizens are unable to peacefully change their government through elections. Individuals not associated with the party that have attempted to nominate themselves as candidates to run in parliamentary elections have faced harassment, persecution, detention, and imprisonment.¹⁰⁷ Despite the rapid growth of the NGO sector, civil society remains weak, lacking autonomy and impact. In the years following reunification, civil society was not recognized as a sector independent of the party and state, and social mobilization was directed top-down through “mass-society” organizations.¹⁰⁸ Following the *đổi mới* (renovation) reforms in the 1980s and 1990s, semi-autonomous civil society organizations started to emerge, with the number and forms of these organizations mushrooming in the following decades.¹⁰⁹ A period of relative openness prevailed in the 2010s during which criticism of the government was met with a combination of tolerance,

responsiveness, and repression, and attempts were made to establish an autonomous civil society movement.¹¹⁰ When hardliners took control of the party in 2016, however, persecution of human rights activists intensified and hostility to civil society was cemented in state policy.

The prosecution of the Vietnam Four took place amid tightening restrictions on civil society that have intensified since General Secretary of the CPV Nguyen Phu Trong took office in 2016. In an important essay on political doctrine published in the party’s magazine in May of that year, Trong signaled his disdain for political pluralism, decrying “democratic institutions in the mold of ‘freedom and democracy’ and ‘free and fair’ elections that may change governments but not the ruling capitalist class.”¹¹¹ In Trong’s view, an elite vanguard party (not civil society) will lead the masses on the path to socialism. The public, 95% of which are not party members, are relegated to the role of spectators.¹¹²

By the end of 2016, the top leaders of the communist party passed Resolution 04-NQ/TW cementing hostility to the very concept of civil society in official party policy.¹¹³ The resolution, which aims to address perceived weaknesses in party-building activities, identifies a problematic situation of “deterioration of political ideology, morality, and lifestyle resulting in ‘self-evolution’ [and] ‘self-transformation,’” which, it is argued, is only a step away from actively “collud[ing] with evil and hostile forces” and “betraying the ideals and revolutionary cause of the party.” One sign of self-evolution and self-transformation, according to the resolution, is party members who demand the development of “civil society” and implementation of “separation of powers” in a way that “undermines the leadership role of the party.”¹¹⁴

A guidance note on the implementation of Resolution 4 provides further clarification. The note warns that the “enemy and reactionary forces have stepped up activities against us,” singling out “the US and other Western countries [that] are using aid to shape [Vietnam’s] law and policy,” while “providing aid to domestic ‘non-governmental’ organizations to promote a Western model of ‘civil society.’”¹¹⁵ Provincial legislatures, which were quick to heed the warning, developed plans to deal with “non-governmental organizations [...that are] demanding pluralism and multi-party democracy,”

“expanding ‘grassroots democracy,’” “developing civil society,” and “studying the situation of [...] labor strikes, illicit drugs, social evils, and crime.”¹¹⁶

Dispelling any ambiguity on the matter, official guidelines published in 2018 set new norms of conduct for communist party members.¹¹⁷ Attached to the guidelines is a list of 81 items against which party members’ performance should be assessed. The list, which is grouped into categories of “manifestations of degradation in political ideology,” “manifestations of a decline in morals and lifestyle,” and “manifestations of internal ‘self evolution’” and “‘transformation,’” includes items such as the “calling for separation of powers and the development of civil society,” “speaking, writing or acting contrary to the views of the party or state policy,” and “denying the absolute leadership role of the party in all aspects of the armed forces or calling for the ‘depoliticization’ of the army and police.” These norms were later enshrined in a formal code of conduct for party members.¹¹⁸ Members who transgress these norms risk being expelled from the party, stripped of official positions, and criminally prosecuted.¹¹⁹ While these measures appear to be part of a campaign to purge the party of reformers, they may also be interpreted as designed to sever and prevent further alliances between sympathetic party members (many of which are also government officials) and civil society groups.

VÀ KỸ THUẬT VIỆT NAM

Số: 107 /LHHVN-KHCNMT

V/v một số liên minh của một số
tổ chức khoa học và công nghệ

Độc lập - Tự do - Hạnh phúc

Hà Nội, ngày 01 tháng 3 năm 2022

Kính gửi: Các tổ chức Khoa học và Công nghệ trực thuộc

Trải qua gần 40 năm xây dựng và phát triển, Liên hiệp các Hội Khoa học và Kỹ thuật Việt Nam (LHHVN-KHCNMT)

In the 2010s, a rare attempt was made to establish an autonomous civil society movement. The People's Participation Working Group (PPWG), a network of local NGOs dedicated to the “expansion of civic space,” had successfully organized two popular conferences on civil society in 2016 and 2017 without seeking government permission.¹²⁰



Mai Phan Loi speaking at The 3rd Annual Civil Society Conference in 2018. Source: GTV¹²⁴

A nascent civil society movement



The 2nd Annual Civil Society Conference, 2017. Source: PPWG.¹²¹

By 2018, however, their luck had run out.¹²² During a lively plenary discussion following Dr. Dang Hoang Giang’s presentation on the role of civil society in ensuring quality public services, the conference organizers interrupted the session to announce that local authorities had declared the conference to be in violation of the law invoking an obscure decree from 1957 that requires organizers of public meetings to notify authorities in advance of a meeting.¹²³

The organizers noted that while they had a different interpretation of “public meeting” than the authorities, they would adhere to the request and stop the conference proceedings. This arbitrary use of state power to shut down the premier civil society forum in the country was recorded and broadcast live on social media by GTV, the online television channel that Mai Phan Loi established.



In 2019, a purge of NGOs registered under the Vietnam Association for Promoting Education (VAPE) was underway. More activist NGOs that depended on the state umbrella organization for their legal status soon found themselves without operating licenses.¹²⁶ This purge was initiated after the former deputy president of Vietnam, Nguyen Thi Doan, was appointed president of VAPE. Doan had previously served as deputy president of the Central Inspection Commission of the CPV, the organization responsible for investigating party members and maintaining discipline. After Doan was appointed president of VAPE the same year that Nguyen Phu Trong became general secretary of the CPV, she recruited former colleagues from the commission, such as Pham Thi Hoe, to help her reform the institution.

In 2020, even tighter restrictions on civil society organizations were enacted into state policy. Decree 80/2020/NĐ-CP, which regulates the management and use of development aid from non-governmental sources, immediately created problems for organizations that rely on foreign funding. Perhaps most consequentially, the decree expanded the role of the police in the regulation of foreign financing of NGOs.¹²⁷ Whereas previously (following Decree 93) the MPS did not have to be consulted in order for government approval to be granted for foreign-funded projects, now it does. This requirement effectively allows the police to delay or prevent the approval of foreign-funded projects of NGOs.¹²⁸ Since Decree 80 came into effect, many local NGOs have reported unprecedented difficulties getting projects approved, especially projects that have advocacy or institutional reform components.



Announcement about the 3rd Annual Civil Society Conference being shut down.
Source: PPWG¹²⁵

The same year that Decree 80 was issued, then Deputy Prime Minister Pham Binh Minh issued Decision 06/2020/QĐ-TTg regulating the organization of international conferences.¹²⁹ Decision 6, as with Decision 76/2010/QĐ-TTg which it replaced, mandates that permission be provided by the prime minister to organize conferences in Vietnam. The new decision is different, however, in several important respects. Decision 6 expands the definition of “international conference” to include conferences and workshops organized online, organized by Vietnamese organizations with foreign funding, or organized by foreign organizations licensed to work in Vietnam. Further, whereas permission to organize an international conference previously needed to be sought 20 days in advance, the new rules require that permission be sought 40 days in advance. Finally, applications to organize conferences previously only required soliciting the opinion of MoFA. Under Decision 6, the MPS must also be consulted. New policies that are based on Decision 6 go further, mandating the police collect the personal details (including passport numbers) of all conference participants, review all conference materials, and send officers to observe conferences as needed.¹³⁰

Increased controls on international NGOs were soon to follow. Decree 58/2022/NĐ-CP, which came into effect at the end of 2022, tightened restrictions on international NGOs operating in Vietnam by narrowing the definition of “international non-governmental organization,” while retaining expansive prohibitions against a whole range of activities.¹³¹ Decree 58 also required international NGOs to use designated bank accounts that can be monitored and frozen, while creating new sanctions on organizations that work on issues not covered by official operating permits. As with Decree 80 and Decision 6, the MPS’s role in regulating NGOs was expanded under Decree 58.¹³²

These new regulations have been described by UN human rights experts as introducing “unreasonably burdensome requirements for [...] registration of funding and projects, meetings and other public activities,” effectively “render[ing] more complex all procedures to receive foreign funding, for INGOs [international NGOs] and national organizations alike.”¹³³ The experts conclude that the requirements stand “in violation of Articles 21 and 22 of the ICCPR and Article 8 of the International Covenant on Economic, Social and Cultural Rights.”



Before 2021 was over, state hostility to civil society was taking the form of judicial and extrajudicial attacks on individuals and their organizations. Bach, Loi, and Duong were arrested in June of that year. Once prosecuted, LPSD and MEC were forcibly dissolved which, in turn, led to the closure of Loi's GTV channel and Bach's JEH advocacy coalition. Six months after Bach and Loi were detained, Khanh was also arrested. While organizations she ran have been allowed to continue operating, the coalition that she set up to conduct policy advocacy, VSEA, was forced to disband.¹³⁴

The NGOs coordinated by the Vietnam Four are not the only organizations that have been forced to shut down. Towards Transparency, the only non-governmental, anti-corruption organization operating in the country, announced that it was suspending operations on Dec. 21, 2021.¹³⁵ This organization convened the Open Government Initiative in Vietnam that both Bach and Loi participated in. It had also previously partnered with Loi's MEC on an anti-corruption initiative.¹³⁶ One astute commentator writing for the BBC Vietnamese Service noted that the organization had been thrown into Nguyen Phu Trong's "blazing furnace," a phrase Trong has used to refer to his anti-corruption campaign.¹³⁷

Then in July 2022, Nguyen Son Lo, director of the local NGO Institute of Technology Research and Development (SENA), was placed under house arrest before being formally charged with "abusing democratic freedoms" in February 2023.¹³⁸ SENNA was forcibly dissolved by VUSTA on July 4.¹³⁹ The same day that Lo was placed under house arrest, VUSTA announced that NGO-IC, a local NGO that had previously co-organized workshops on policy advocacy with VUSTA, had also been dissolved.¹⁴⁰ Then in October, CHANGE announced that it too was closing.¹⁴¹ CHANGE was a member of VSEA and had a history of advocating against the construction of coal-fired power plants. Soon after, the LIN Center for Community Development, an umbrella organization that helped to build the capacity of smaller civil society groups, followed suit, announcing on Nov. 22 2022 that it would cease operations.¹⁴² As the year came to an end, Hoang Ngoc Giao, director of the local NGO Institute for Research on Policy, Law and Development was arrested for tax evasion.¹⁴³ Other NGO professionals have escaped arrest by leaving the country and, in some cases, remaining in exile.



These attacks coincided with state efforts to limit the ability of local NGOs to form advocacy coalitions. Two months after Nguy Thi Khanh was arrested, VUSTA issued Communication 107 to its member organizations, which stated that VUSTA would not be responsible for alliances and networks that it had not established, even if those networks include VUSTA members.

The directive goes on to stress that official policy positions of the union can only be expressed by the leadership of the union, adding that VUSTA will increase its “management of science and technology organizations that participate in alliances and networks,” even though networks of NGOs are already denied formal legal status in Vietnam.

VUSTA Communication 107

LIÊN HIỆP CÁC HỘI KHOA HỌC
VÀ KỸ THUẬT VIỆT NAM
Số: 107 /LHHVN-KHCNMT
V/v một số liên minh của một số
tổ chức khoa học và công nghệ

CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc

Hà Nội, ngày 21 tháng 3 năm 2022

Kính gửi: *Các tổ chức Khoa học và Công nghệ trực thuộc*

Trải qua gần 40 năm xây dựng và phát triển, Liên hiệp các Hội Khoa học và Kỹ thuật Việt Nam (LHHVN) đã trở thành tổ chức chính trị-xã hội của đội ngũ trí thức khoa học và công nghệ (KH&CN) Việt Nam; tập hợp 154 hội thành viên ở Trung ương, địa phương và thành lập nhiều tổ chức KH&CN trực thuộc.

Đội ngũ trí thức KH&CN trong hệ thống LHHVN đã tích cực tham gia các hoạt động KH&CN, giáo dục và đào tạo, chăm sóc sức khỏe nhân dân, phát triển cộng đồng, xóa đói giảm nghèo...có những đóng góp vào phát triển đất nước và bảo vệ Tổ quốc được Đảng và Nhà nước ghi nhận, đánh giá cao.

Tuy nhiên, thời gian qua, có một số văn bản dưới hình thức thư ngỏ, kiến nghị, đề xuất...gửi tới các đồng chí lãnh đạo cao cấp của Đảng, Nhà nước, các Ban, Bộ, ngành về các chủ trương, đường lối, chính sách, pháp luật của Đảng, Nhà nước dưới danh nghĩa là các tổ chức liên minh, mạng lưới tổ chức KH&CN trực thuộc LHHVN.

Về vấn đề này, LHHVN xin báo cáo như sau:

1) Liên hiệp Hội Việt Nam không chịu trách nhiệm đối với những liên minh, mạng lưới mà LHHVN không thành lập hoặc bảo trợ, kể cả các liên minh, mạng lưới có sự tham gia của một số tổ chức KH&CN trực thuộc LHHVN.

2) Ý kiến chính thức của LHHVN phải do các đồng chí Chủ tịch, Phó Chủ tịch, Tổng Thư ký LHHVN ký theo thể thức “**Thay mặt Đoàn Chủ tịch Hội đồng Trung ương**”, đóng dấu của LHHVN.

3) LHHVN sẽ tăng cường quản lý các tổ chức KH&CN tham gia các liên minh, mạng lưới theo chức năng nhiệm vụ được phê duyệt.

Liên hiệp Hội Việt Nam kính báo cáo với các Đồng chí lãnh đạo Đảng, Nhà nước và trân trọng thông báo tới các Ban, Bộ, ngành, cơ quan liên quan được biết và quan tâm chỉ đạo, phối hợp trong quá trình công tác.

Trân trọng./

Nơi nhận:

- Như kính gửi;
- Thường trực ĐCT LHHVN;
- Đảng ủy LHHVN;
- Ủy viên Đoàn Chủ tịch LHHVN;
- Các Hội ngành toàn quốc, LHHP;
- Ủy viên Ủy ban Kiểm tra LHHVN;
- Các tổ chức KH&CN;
- Văn phòng và các Ban LHHVN;
- Lưu: VT, KHCNMT.

TM. ĐOÀN CHỦ TỊCH HỘI ĐỒNG TRUNG ƯƠNG



Phan Xuân Dũng

Official communication from VUSTA to science and technology organizations.
Source: Anonymous.¹⁴⁴

VUSTA has been formerly allowed to submit policy recommendations to the party and the government since 2002. Following this change in policy, NGO advocacy coalitions have regularly invoked VUSTA's name when advocating with state institutions.¹⁴⁵ By the late 2010s, activist NGOs had formed alliances with reformist-minded VUSTA officials. During this time it was common for VUSTA to co-organize workshops with NGOs, even supporting them to organize workshops on policy advocacy.

Communication 107 seeks to put an end to this, denying local NGOs the ability to speak as members of VUSTA, while clarifying that VUSTA is not legally responsible for the actions of alliances and networks that it has not formally established. For NGOs that received the communication the message was clear, stick to technical matters and service delivery if you want to stay out of trouble.

Several months after issuing Communication 107, VUSTA itself was being investigated. Following a decision from the minister of planning and investment on Aug. 25, 2022, ministry auditors initiated a probe into VUSTA's "management and use of foreign aid."¹⁴⁶



PERMANENT MISSION OF THE
SOCIALIST REPUBLIC OF VIET NAM
TO THE UNITED NATIONS OFFICE,
WORLD TRADE ORGANIZATION AND
OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA

No. 47/VNM.23

Geneva, 17 March 2023

The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office, the World Trade Organization and Other International Organizations in Geneva presents its compliments to the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights. Further to its Note Verbale No. 43/VNM.22 dated 18 April 2022 which requests an extension of the deadline for providing a response to the Joint Communication from Special Procedures dated 18 February 2022 Ref, AL VNM 2/2022 regarding Huynh Thuc Vy and Dang Dinh Bach, the Permanent Mission of Viet Nam has the honour to hereby transmit the response of Viet Nam to the above-mentioned Joint Communication.

The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office, the World Trade Organization, and Other International

Between Jan. 1, 2018 – June 30, 2022, VUSTA and its associations received 305 projects totaling a value of \$85.5 million. Ministry auditors focused on a subset of 92 projects and found that VUSTA and its affiliated associations “made many mistakes and violated laws” pertaining to the appraisal and approval, implementation, financial management, and procurement of aid projects (p.8). The auditors noted that these mistakes and violations were made across most of the projects they reviewed, highlighting how common it is for NGOs to not comply with government regulations. The causes of these problems are identified as a lack of clear guidance on how relevant regulations should be implemented, a lack of administrative sanctions for organizations that violate the rules, a lack of reporting by VUSTA on its management and use of foreign aid, and a lack of audits and inspections of VUSTA. The report recommends that VUSTA officials and heads of science and technology associations responsible for violations be held accountable and disciplined.

By the middle of 2022, the state’s efforts to limit the autonomy and impact of civil society were targeting civic life. Following the *đổi mới* reforms, newly-formed NGOs in the 1990s had been pressing for a law on associations that would guarantee them more rights. Decree 88, which was passed in 2003, was intended to be used as a trial run for a new law on associations (to replace the 1957 law) and attempted to define the legal status of local associations and the role of the state in managing these organizations.¹⁴⁷ In the years following the passage of Decree 88, however, the legislative progress on this project was blocked by leaders that wanted to prevent the development of civil society.¹⁴⁸ Since the 1990s many drafts of the law have been proposed, with the latest rejected in 2016. The 2016 draft was rejected when several National Assembly delegates objected to new restrictions that had been introduced at the last minute, following pressure from local NGOs organized under PPWC, the same group that organized the civil society conference that was shut down in 2018.¹⁴⁹

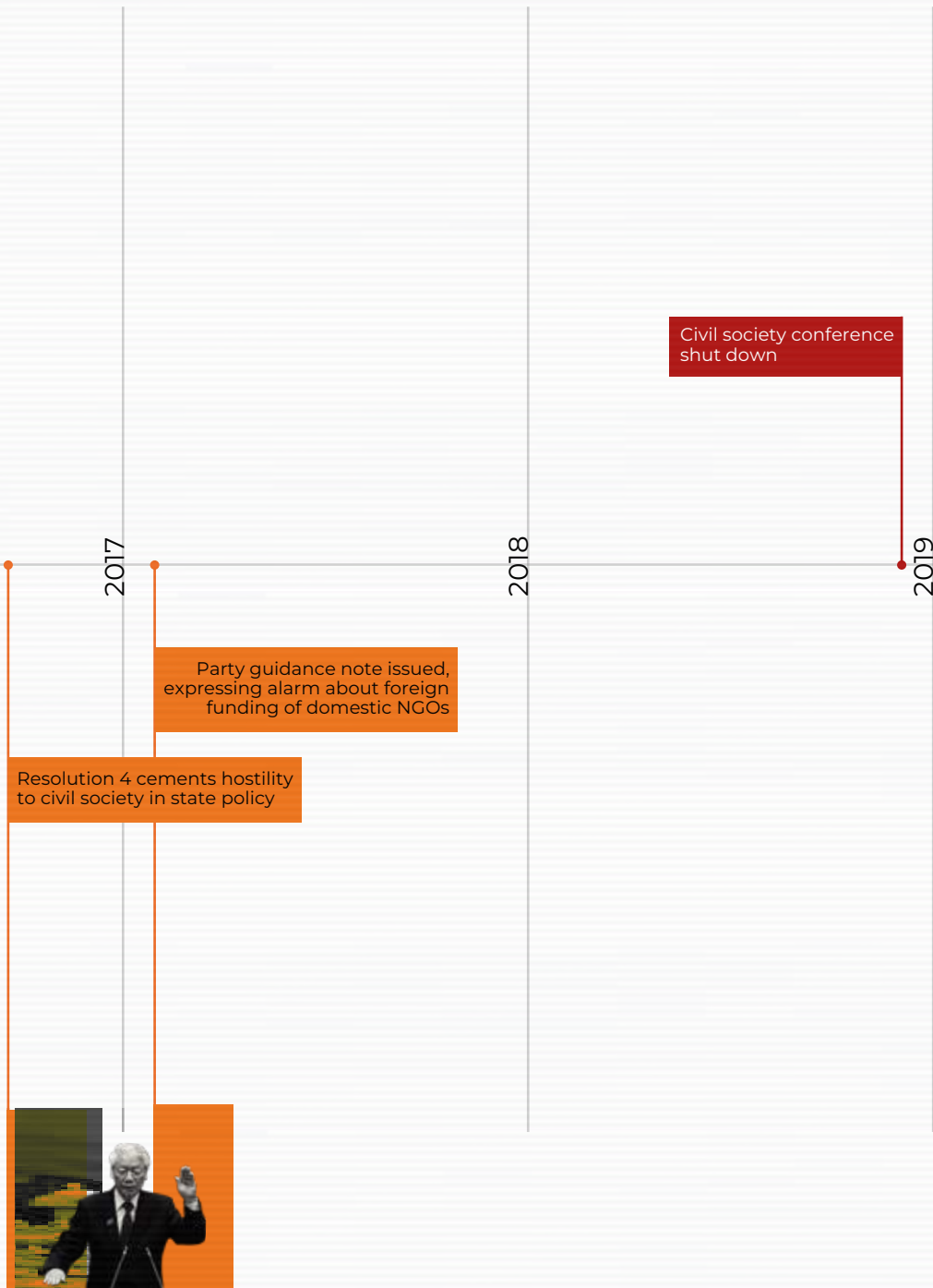


Six years after the failed legislative push, in August of 2022 the government announced that it was seeking comments on a draft decree on associations to replace Decree 45/2010/NĐ-CP.¹⁵⁰ As with the 2016 version of the proposed Law on Associations, the decree appears to be designed by leaders that wanted to restrict rather than enhance the rights of civil society. Under the decree, membership of associations would be restricted to Vietnamese citizens and organizations (Article 19), whereas the previous decree permitted foreign business participation and was silent on the question of foreign citizens. Once established, associations would be prohibited from engaging in activities that “negatively affect the government” (Article 11), while required to perform functions assigned by the state (Article 40 and Article 42). The decree would also give the government new powers to suspend leaders of associations (Article 27) and dissolve associations that work on issues not covered by their operating licenses, disturb public order, or organize events without obtaining government permission (Article 37). Notably, the decree would establish a database on associations to be overseen by the MoHA and MPS (Articles 45.1.h and 46.1.i). While the deadline for submitting opinions on the draft decree was set for the end of August 2022, the proposed policy remains under consideration.

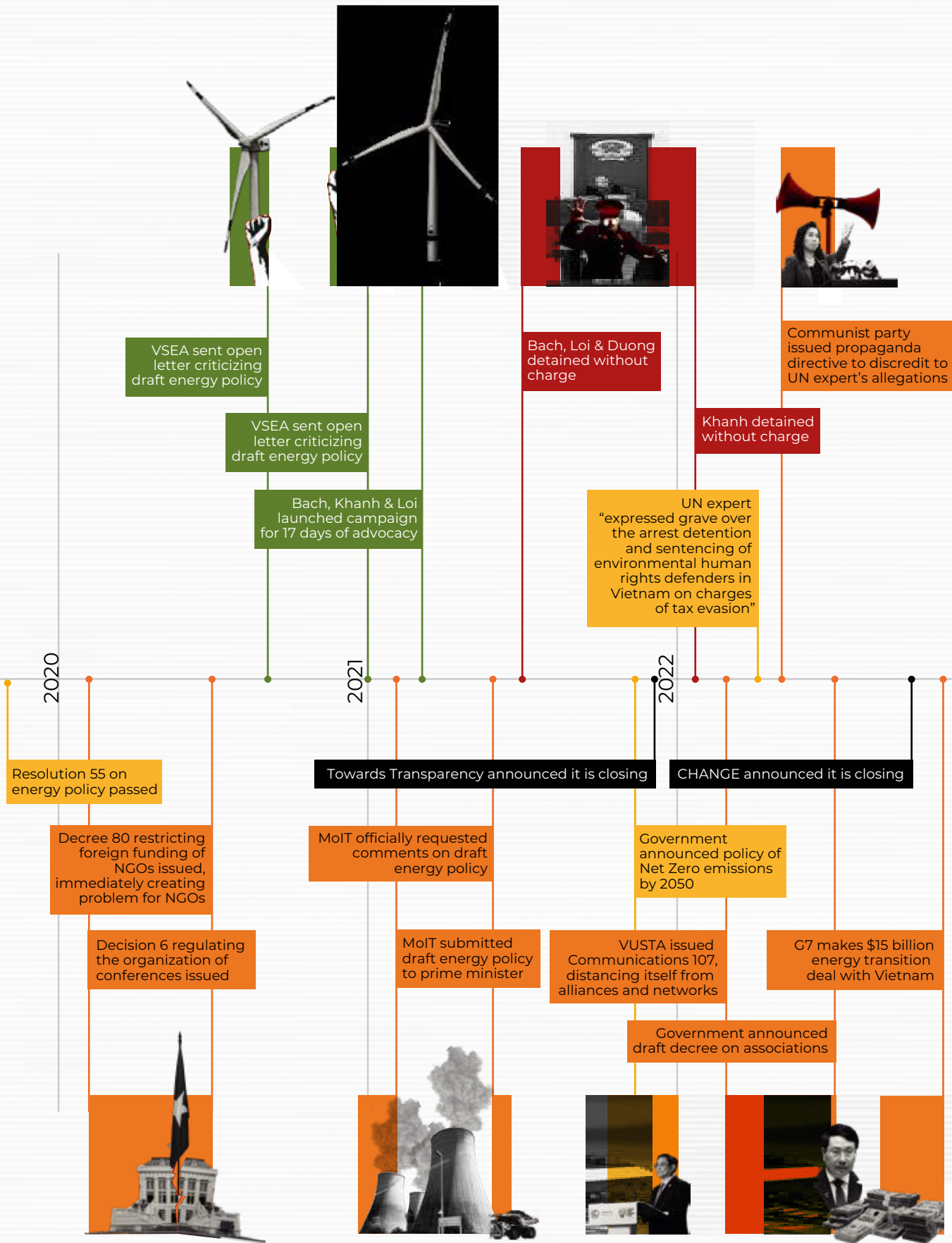
To put all of this into perspective, the Vietnam Four had just implemented a successful advocacy campaign that threatened the energy industry’s investment in coal and challenged the party-state’s monopoly on policy making. Each of these individuals were also engaged in various actions to build an autonomous civil society movement. Bach and Khanh had organized NGOs into powerful advocacy coalitions that could shape state policy. Loi ran a television channel that operated outside of the censorship system, while administering a popular Facebook group with over 100,000 members. Immediately before Bach and Loi were detained, they were attempting to hold the government accountable to labor and sustainability standards contained in its trade agreement with the EU. All of this took place against the context of a one-party state that had cemented hostility to civil society in official policy and was using legal and extra legal measures to limit the autonomy and impact of NGOs. These measures, as discussed above, included a code of conduct that prohibits party members from promoting the development of civil society and policies that tighten restrictions on foreign funding of NGOs, while discouraging these organizations from forming alliances and networks. The arrests of the Vietnam Four, which effectively criminalized policy activism and civil society movements, are the latest chapter in a broader campaign of repression.



Highlighting the connection between these events, the following timeline places the activities and arrests of the Vietnam Four against this context:



In summary, there is extensive circumstantial evidence indicating that the government had an ulterior motive for criminally prosecuting and imprisoning the Vietnam Four. This motive seems to be the only plausible explanation for the serious irregularities in criminal procedures and sentences that have been documented in this report.



CONCLUSION: THE VIETNAM FOUR ARE POLITICAL PRISONERS

This report began by introducing Dang Dinh Bach, Nguy Thi Khanh, Mai Phan Loi, and Bach Hung Duong, detailing their detention, arrests, and indictments. The multiple ways in which their rights were violated during the pre-trial phase of their prosecutions have been documented. The report then reviewed their trials and appeal hearings, documenting how their human rights were again violated during the trial phase. Contextual information about the judicial system in Vietnam was then provided which, drawing on official state policy, demonstrated that the country lacks an independent judiciary. The focus then shifted to examining disparities in the criminal procedures and sentences applied to the Vietnam Four. Based on an analysis of almost 90 cases of tax evasion in the general population, serious disparities were uncovered.

The government's narrative about the criminal prosecution of the Vietnam Four was then considered before reconstructing the activities of these individuals in the months preceding their arrests. It was established that not only were the Vietnam Four close associates, they

were also cooperating on a policy activism campaign that threatened entrenched interests and the party-state's monopoly on policymaking. At the same time, all four were involved in various efforts to build an autonomous civil society movement. These activities were then placed against the wider political context of a party-state which, since 2016, has promoted legal and extralegal measures to limit the autonomy and impact of civil society. Extensive evidence of these measures was documented and an ulterior motive for the government prosecuting the Vietnam Four was established. It was concluded that this motive is the only plausible explanation for the serious disparities in the criminal procedures and sentences applied to the Vietnam Four.

In this report I have argued that the Vietnam Four were not prosecuted for tax evasion, but for the purpose of political persecution. This conclusion is based on a number of considerations. First, the prosecution of the Vietnam Four was characterized by serious irregularities in criminal procedures and sentencing outcomes. Second, the government had an ulterior motive for



prosecuting the Vietnam Four. All four individuals are close associates who were cooperating on policy activism and civil society initiatives at a time when the government was seeking to limit the autonomy and impact of civil society. Third, the criminal investigations of Bach and Khanh were led by the Security Investigation Agency which, according to Vietnamese law, cannot investigate cases of tax evasion unless ordered to do so by Minister of Public Security To Lam. Given that there is no reason to believe that this agency acted outside of its legal authority, it is reasonable to conclude that the criminal investigations were politically directed by the minister. Finally, the trials of the Vietnam Four were shrouded in secrecy. All four were sentenced in closed trials that lasted less than a day, indicating that the sentences were decided in advance. While the Vietnamese government maintains that Bach, Khanh, Loi and Duong are criminals, this report concludes that they are political prisoners.

The prosecutions of Bach, Khanh, Loi, and Duong are emblematic of a new wave of repression in Vietnam. Unlike anti-state activists who are routinely prosecuted for “national security” crimes, the Vietnam Four are members of a community of NGO professionals that adhered to state policy priorities and did not question the legitimacy of one-party rule.¹⁵¹ Based on the information documented in this report, it appears that their real “crime” was daring to hold the government accountable, promoting an autonomous civil society sector, and challenging the party-state’s monopoly on policymaking. Recent arrests of other activist NGO directors indicate that, in the absence of significant domestic organizing and diplomatic pressure, this repression is likely to continue.

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: OL VNM 7/2021

(Please use this reference in your reply)

AFTERWORD

While it has been reported that Nguy Thi Khanh is being treated relatively well in prison, the persecution of Dang Dinh Bach (who did not plead guilty) has not ended with his imprisonment. On Jan. 18, 2023, an officer who identified herself as Nguyen Thi Thuy from the General Department of Civil Judgment Enforcement of Hanoi, called Bach's wife, Thao, informing her that if the money that Bach is alleged to have evaded in tax was not repaid, then the department would confiscate property belonging to the family. Distressed about this threat, Thao contacted Bach's brother-in-law to ask him to help her sell the family car so that she could

repay the money. But on March 7, Thuy called Thao again and instructed her not to sell any property as the department was planning to confiscate the family's car and house to settle Bach's unpaid debt.¹⁵² Thuy added that she knew Thao had asked someone to help sell her car. At this moment, Thao realized that the government must be listening in on her phone calls as she had not told anyone about her plan to sell the car. When Thao visited Bach in prison on March 17, Bach told her that an officer from the same department had visited him in prison and informed him that his personal bank account had been seized.

recognition...
expression, as well as of peaceful...
This communication, as a comment on recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours. They will be also subsequently made available in the usual report to be presented to the Human Rights Council.

While awaiting for a reply, we encourage your Excellency's Government to ensure that the legislation on civil society's work is in accordance with its obligations under international law regarding the rights to freedom of expression and opinion, as well as of peaceful assembly and of association under Articles 19, 21 and 22 ICCPR. To achieve this, the legislation should be reviewed, and all broad provisions should be precise, in order to ensure this legislation does not undermine the protection of human rights and democracy in Viet Nam.

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

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

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

Another incident occurred on Feb. 8 when the Dong Da District Tax Department sent a letter to the LPSD Group Joint Stock Co., of which Thao is the director, stating that Bach had incorrectly declared his personal income tax for the year of 2020. The letter instructed the company to pay a fine of \$1,054 and summoned Thao to report to the tax office. Over the next two weeks, an officer who identified herself as Nguyen Thi Hang from the district tax department, called Thao many times, threatening to refer the matter to the police if the fine was not paid. After receiving another letter on March 10 which again summoned her to report

to the tax department, Thao went to the department on March 13. Upon arriving at the department, she submitted a written response in person which explained that Bach was unable to pay the fine as he is in prison. She concluded the letter by recommending the department contact Bach directly if they want to pursue the matter. These instances of judicial harassment appear designed to pressure Thao to persuade Bach to confess to his alleged crime and punish Thao for her advocacy on behalf of Bach. Persecution and reprisals of this nature constitute further instances of human rights abuses for which the Vietnamese government must be held accountable.

RECOMMENDATIONS

To the Vietnamese government:

- Immediately and unconditionally release Dang Dinh Bach and other civil society leaders who have been imprisoned on politically-motivated charges.¹⁵³
- Conduct an independent investigation into credible allegations that the law was deliberately and arbitrarily applied to prosecute Dang Dinh Bach, Nguy Thi Khanh, Mai Phan Loi, and Bach Hung Duong. Hold individuals and institutions responsible for this abuse of process accountable.
- Investigate the role of Minister of Public Security To Lam in ordering the criminal investigations of Dang Dinh Bach and Nguy Thi Khanh.
- Stop the administrative harassment of Dang Dinh Bach's wife, Tran Phuong Thao, demanding that she repay money that Bach is alleged to have evaded in taxes. And stop the reprisals against Thao for advocating for Bach's release.

To Vietnamese civil society organizations and NGOs:

- Continue to document legal and extralegal restrictions on NGOs, including laws and policies restricting access to foreign funding, as well as direct threats and harassment. Share this documentation with Project 88.

To the United Nations:

- The UN Working Group on Arbitrary Detention should issue an opinion on the cases of arbitrary detention detailed in this report.
- The United Nations in Vietnam has a history of failing to advocate on behalf of human rights defenders and failing to include civil society in important decision-making processes. To rectify this situation, the UN should take immediate measures to prioritize the protection of human rights defenders and institute mechanisms by which the UN can be held accountable to civil society in all aspects of its work.



To foreign governments, aid donors, and international financial institutions:




- Human rights defenders should not be subordinated to climate change diplomacy. Despite the Vietnamese government's professed commitment to a policy of carbon neutrality and the recent announcement of an agreement under which G7 countries will provide Vietnam with \$15.5 billion in aid to support its "just energy transition," the government has yet to commit to protecting civil society leaders or approve energy policy with a time-bound transition away from fossil fuels for electricity generation.¹⁵⁴ Donors of the Just Energy Transition Partnership (JET-P) – the European Union, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Japan, the Federal Republic of Germany, the Republic of France, the Italian Republic, Canada, the Kingdom of Denmark and the Kingdom of Norway— must demand that the Vietnamese government commit to not arresting any more civil society leaders as a condition for receipt of \$15.5 billion in funding promised under JET-P. Future transfers of funds to Vietnam should be linked to concrete improvements on this indicator.
- The Vietnamese government is violating its obligations outlined in its trade agreement with the EU. The Vietnamese DAG established by MoIT lacks independence and, as such, does not satisfy the requirements stipulated in Chapter 13 of the agreement. Trade Commissioner of the European Commission Valdis Dombrovskis should take immediate measures to sanction Vietnam for violating the terms of the trade agreement and demand Dang Dinh Bach be released from prison.
- Governments with a diplomatic presence in Vietnam should intensify their diplomacy by pursuing coordinated actions to preserve and expand civic space.
- International aid donors should provide more funding for research to deepen understanding of the new restrictions on civil society in Vietnam. These donors should extend this funding to organizations that, due to these restrictions, cannot legally operate in the country.










Annex 1 - Members of the Vietnam Sustainable Energy Alliance¹⁵⁵










No.	Name of organization in English	Name of organization in Vietnamese	Abbreviation
1	Green Innovation and Development Center	Trung tâm Phát triển Sáng tạo Xanh	GREENID
2	Center for Media in Educating Community	Trung tâm Truyền thông Giáo dục Cộng đồng	MEC
3	WWF Vietnam	Tổ chức Quốc tế về Bảo tồn Thiên Nhiên	WWF
4	Center For Health Environment Research and Development	Trung tâm Nghiên cứu & Phát triển Môi trường Sức khỏe	CHERAD
5	Research Center for Human Rights in Ethnic and Mountainous Areas	Trung tâm Nghiên cứu Quyền con người vùng Dân tộc, Miền núi	HRC
6	The Law and Policy of Sustainable Development Research Center	Trung tâm Nghiên cứu Pháp luật và Chính sách Phát triển Bền vững	LPSD
7	Live & Learn for Environment and Community	Trung tâm Sống và Học tập vì Môi trường và Cộng đồng	Live & Learn
8	Center for Social Research and Development	Trung tâm Nghiên cứu Phát triển Xã hội	CSRSD
9	Research and Training for Community Development	Trung tâm Nghiên cứu và Đào tạo Phát triển cộng đồng	RTCCD
10	Associate Professor Le Anh Tuan	Phó Giáo sư Lê Anh Tuấn	
11	Center for Development of Community Initiative and Environment	Trung tâm Phát triển Sáng kiến cộng đồng và Môi trường	C&E
12	Clean Energy and Sustainable Development Lab	Unknown	CleanED
13	SNV Netherlands Development Organisation	Tổ chức Phát triển Hà Lan	SNV
14	Health and Communication Development Center	Trung tâm Phát triển truyền thông và Sức khỏe	HCDC
15	Institute for Resources, Environment and Community Development	Viện Tài nguyên, môi trường và Phát triển cộng đồng	IRECO
16	Unknown	Trung tâm Tư vấn Truyền thông và Phát triển	CCDC
17	Unknown	Trung tâm Vị Nông (TT khuyến viên và nghề vườn)	
18	Center for Sustainable Environment and Economic Development Studies	Trung tâm Nghiên cứu Phát triển kinh tế và Môi trường Bền vững	SEEDS
19	Unknown	Trung tâm Tư vấn Pháp luật Thanh Hóa	
20	Dr. Tran Ba Quoc	Tiến sĩ Trần Bá Quốc	
21	Unknown	Trung tâm Phát triển cộng đồng Hà Tĩnh	HCCD
22	Hatinh Union of Science and Technology Associations	Liên Hiệp Các hội Khoa học và Kỹ thuật Hà Tĩnh	HUSTA
23	Centre for Sustainable Development of Water Resources and Adaptation to Climate Change	Trung tâm Phát triển bền vững tài nguyên nước và Thích nghi biến đổi khí hậu	CEWAREC
24	The Center for Water Resources Conservation and Development	Trung tâm Phát triển và Bảo tồn tài nguyên nước	WARECOD
25	Centre for Community Health Research and Support	Trung tâm Nghiên cứu và Hỗ trợ sức khỏe cộng đồng	CCHS
26	Center of Hands-on Actions and Networking for Growth and Environment	Trung tâm Hành động và Liên kết vì Môi trường và Phát triển	CHANGE










Annex 2 - Sentencing outcomes of tax evasion cases, by severity of sentence in descending order










Key:  Security Investigation Agency
 Police Investigation Agency










No.	Name (as listed in verdict)	Sentence Code	Charge	Criminal investigation agency	Nature of alleged offending behavior	Taxes alleged to have evaded	Amount of income alleged to have evaded tax on (comparison to average)	Amount of tax alleged to have evaded (comparison to average)	Pre-trial status	Length of prison sentence	Sentence appealed?	Outcome of appeal hearing	Amount ordered to repay	Amount repaid
1	Dang Dinh Bach	46/2022/HS-ST	Art. 200		Tax evasion	Corporate	\$425,102 (-84%)	\$58,237 (-40%)	Detained	60 months	Yes	Unchanged	\$58,237	\$0
2	Nguyen Thi Thanh Th	914/2017/HS-PT	Art. 200, Art.161 (1999 code)		Tax evasion and illegal purchasing of receipts	Corporate	\$19,162,600	\$229,455	House arrest	60 months	Unknown	Unknown	\$229,455	\$5,296
3	Mai Phan Loi	Unknown	Art. 200		Tax evasion	Corporate	~\$843,348 (-68%)	~\$84,335 (-14%)	Detained	48 months, 60 months probation (upon release)	Yes	45 months, 60 months probation (upon release)	\$84,335	\$33,734
4	Pham Duc N	10/2019/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$144,084	House arrest	42 months, 60 months probation (upon release)	Unknown	Unknown	\$144,084	\$78,010
5	Tran Van SI	93/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$259,335	House arrest	42 months	Unknown	Unknown	\$259,335	\$0
6	Nguyen Tan L	308/2020/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$206,143	Prison (for a different offense)	36 months, fine \$2,952	Unknown	Unknown	\$206,143	\$206,143
7	Nguyen Thi S	196/2020/HS-PT	Art. 200		Tax evasion	Corporate	\$1,332,063	\$133,206	House arrest	24 months	Yes	36 months	\$133,206	\$6,325
8	Vu Thi P	87/2019/HS-PT (51/2019/HS-ST)	Art. 200		Tax evasion	Corporate	\$3,646,607	\$364,661	House arrest	36 months	Yes	Unchanged	364,661	\$8,433










No.	Name (as listed in verdict)	Sentence Code	Charge	Criminal investigation agency	Nature of alleged offending behavior	Taxes alleged to have evaded	Amount of income alleged to have evaded tax on	Amount of tax alleged to have evaded	Pre-trial status	Length of prison sentence	Sentence appealed?	Outcome of appeal hearing	Amount ordered to repay	Amount repaid
9	Nguyen Van L	95/2020/HS-ST	Art. 200, Art. 164, Art. 146 (1999 code)		Tax evasion and illegal purchasing of receipts	Corporate	Unknown	\$277,717	House arrest	30 months	Unknown	Unknown	\$277,717	\$0
10	Bach Hung Duong	Unknown	Art. 200		Tax evasion	Corporate	~\$843,348 (-68%)	~\$84,335 (-14%)	Detained	30 months, 60 months probation (upon release)	Yes	27 months, 60 months probation (upon release)	\$0	\$0
11	Luu Thi Vi A	72/2017/HS-ST	Art. 200, Art. 164, Art. 146 (1999 code)		Tax evasion and illegal purchasing of receipts	Corporate	Unknown	\$30,626	House arrest	24 months	Unknown	Unknown	\$30,626	\$1,265
12	Vu Thi Hg	914/2017/HS-PT	Art. 200, Art.161 (1999 code),		Tax evasion and illegal purchasing of receipts	Corporate	\$19,162,600	\$229,455	House arrest	24 months	Unknown	Unknown	\$229,455	\$5,296
13	Pham Thi L	914/2017/HS-PT	Art. 200, Art.161 (1999 code)		Tax evasion and illegal purchasing of receipts	Corporate	\$19,162,600	\$229,455	House arrest	24 months	Unknown	Unknown	\$229,455	\$5,296
14	Nguy Thi Khanh	Unknown	Art. 200		Tax evasion	Personal tax evasion	\$192,283 (-93%)	\$19,228 (-80%)	Detained	24 months	Yes	21 months	\$19,228	\$19,228
15	Ngo Van X	16/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$114,672	House arrest	15 months	Unknown	Unknown	\$114,672	\$2,108
16	Thach Kim M	18/2021/HS-ST	Art. 200		Tax evasion	Corporate	\$90,497	\$20,017	House arrest	12 months	Unknown	Unknown	\$20,017	\$20,017
17	Nguyen Thi Mong Th	51/2019/HS-PT	Art. 200		Tax evasion	Corporate	Unknown	\$118,857	House arrest	24 months	Yes	12 months	\$118,857	\$43,222










No.	Name (as listed in verdict)	Sentence Code	Charge	Criminal investigation agency	Nature of alleged offending behavior	Taxes alleged to have evaded	Amount of income alleged to have evaded tax on	Amount of tax alleged to have evaded	Pre-trial status	Length of prison sentence	Sentence appealed?	Outcome of appeal hearing	Amount ordered to repay	Amount repaid
18	Le Thi Thanh H	05/2018/HS-ST	Art. 200, Art. 203, Art. 51, Art. 54 (1999 code)		Tax evasion and illegal purchasing of receipts	Corporate	Unknown	\$884,426	House arrest	12 months, fine \$21,084	Unknown	Unknown	27884,426	\$210,837
19	Truong Van Th	27/2020/HS-ST	Art. 200		Tax evasion	Corporate	\$408,833	\$4,788	House arrest	6 months, fine \$843	Unknown	Unknown	\$4,788	\$87,200
20	Dang Tien D	07/2018/HS-ST	Art. 200		Tax evasion	Corporate	\$471,114	\$87,200	House arrest	30 months suspended sentence, 60 months probation, fine \$2,108	Unknown	Unknown	\$87,200	\$87,200
21	Nguyen Minh K	17/2020/HS-ST	Art. 200		Tax evasion	Corporate	\$575,708	\$56,797	Detained then placed under house arrest	30 months suspended sentence, 60 months probation, fine \$1,265	Unknown	Unknown	\$56,797	\$45,905
22	Doan Xuan Tr	42/2019/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$57,492	House arrest	30 months suspended sentence, 60 months probation, fine \$2,108	Unknown	Unknown	\$59,034	\$59,034
23	Nguyen Quoc H	32/2020/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$68,658	Detained then released on bail	30 months suspended sentence, 60 months probation	Unknown	Unknown	\$59,034	\$59,034
24	Le Thi Thao T	28/2019/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$116,768	Detained then placed under house arrest, then released on bail	30 months suspended sentence, 60 months probation	Unknown	Unknown	\$116,768	\$59,034
25	Tran Cong D	437/2020/HS-PT	Art. 200		Tax evasion	Corporate	\$774,668	\$231,490	House arrest following detention	30 months	Yes	30 months suspended sentence, 60 months probation	\$231,490	\$63,251
26	Ho Phuc Ng	42/2019/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$58,237	House arrest	24 months suspended sentence, 48 months probation, fine \$2,108	Unknown	Unknown	\$57,492	\$56,155










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27	Nguyen Ngoc T	36/2020/HS-ST	Art.200		Tax evasion	Corporate	\$427,743	\$42,774	House arrest following detention	24 months suspended sentence, 48 months probation, fine \$1,265	Unknown	Unknown	\$42,774	\$42,774
28	Nguyen Van D	35/2021/HS-ST	Art. 200		Tax evasion	Corporate	\$440,037	\$44,004	House arrest following detention	24 months suspended sentence, 48 months probation, fine \$1,265	Unknown	Unknown	\$44,004	\$44,004
29	Le Thi H	17/2020/HS-ST	Art. 200		Tax evasion	Corporate	\$575,708	\$56,797	House arrest	24 months suspended sentence, 48 months probation	Unknown	Unknown	\$56,797	\$45,905
30	Nguyen Thi T	17/2020/HS-ST	Art. 200		Tax evasion	Corporate	\$575,708	\$56,797	House arrest	24 months suspended sentence, 48 months probation	Unknown	Unknown	\$56,797	\$45,905
31	Vo Thi T	51/2019/HS-PT	Art. 200		Tax evasion	Corporate	Unknown	\$118,857	House arrest	24 months suspended sentence, 48 months probation	Yes	14 months suspended sentence, 24 months probation	\$118,857	\$43,222
32	Nguyen Van L	34/2018/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$27,657	House arrest	24 months suspended sentence, 48 months probation	Unknown	Unknown	\$27,657	\$422
33	Nguyen Van L	41/2018/HS-ST	Art. 200		Tax evasion	Corporate	\$1,257,855	\$41,160	House arrest	24 months suspended sentence, 48 months probation	Unknown	Unknown	\$41,160	\$13,915
34	Nguyen Thi Quy Th	80/2018/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$135,958	House arrest	24 months suspended sentence, 48 months probation	Unknown	Unknown	\$135,958	\$51,623
35	Bui Van Th	86/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$157,127	House arrest	24 months suspended sentence, 48 months probation	Unknown	Unknown	\$157,127	\$88,552











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36	Man Van L	97/2019/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$38,880	House arrest	20 months suspended sentence, 40 months probation, fine \$1,054	Unknown	Unknown	\$38,880	\$38,880
37	Dinh Duc T	398A/2022/HS-ST	Art. 200		Tax evasion	Corporate	\$338,888	\$30,808	House arrest	18 months	Yes	18 months suspended sentence, 36 months probation	\$30,808	\$2,108
38	Nguyen Xuan T	41/2018/HS-ST	Art. 200		Tax evasion	Corporate	\$1,257,855	\$41,160	House arrest	18 months suspended sentence, 36 months probation	Unknown	Unknown	\$41,160	\$13,915
39	Nguyen Minh DI	12/2022/HS-ST	Art. 200		Tax evasion	Corporate	\$404,993	\$114,356	House arrest	18 months suspended sentence, 36 months probation	Unknown	Unknown	\$114,356	\$114,356
40	Tran Le H	10/2020/HS-ST	Art. 200		Tax evasion	Corporate	\$267,503	\$24,318	House arrest	15 months suspended sentence, 30 months probation	Unknown	Unknown	\$24,318	\$8,433
41	Pham Hong V	71/2019/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$28,389	House arrest	15 months suspended sentence, 30 months probation	Unknown	Unknown	\$28,389	\$14,759
42	Nguyen Van N	12/2022/HS-ST	Art. 200		Tax evasion	Corporate	\$404,993	\$114,356	House arrest	15 months suspended sentence, 30 months probation	Unknown	Unknown	\$114,356	\$114,356
43	Dinh Ba T	77/2019/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$30,867	House arrest	14 months suspended sentence, 28 months probation, fine \$843	Unknown	Unknown	\$30,867	\$16,951
44	Nguyen Thi T	48/2021/HS-ST	Art. 200		Tax evasion	Personal tax / VAT	\$186,762	\$17,835	House arrest	12 months suspended sentence, 24 months probation	Unknown	Unknown	\$17,835	\$12,650

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45	Le Thi A	119/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$21,464	House arrest	12 months suspended sentence, 24 months probation	Unknown	Unknown	\$21,464	\$4,217
46	Nguyen Huu V	437/2020/HS-PT	Art. 200		Tax evasion	Corporate	\$774,668	\$231,490	House arrest following detention	12 months suspended sentence, 24 months probation	None	None	\$231,490	\$63,251
47	Tran Duy C	35/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$4,845	House arrest	9 months suspended sentence, 18 months probation	Unknown	Unknown	\$4,845	\$2,108
48	Tran Thi Nhu H	18/2021/HS-ST	Art. 200		Tax evasion	Corporate	\$90,497	\$20,017	House arrest	9 months suspended sentence, 18 months probation	Unknown	Unknown	\$20,017	\$20,017
49	Hoang Thi Th	73/2018/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$33,182	House arrest	8 months suspended sentence, 36 months probation, fine \$843	Unknown	Unknown	\$33,182	\$33,182
50	Nguyen Van H	32/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$10,520	House arrest following detention	7 months suspended sentence, 14 months probation, fine \$1,054	Unknown	Unknown	\$10,520	\$10,542
51	Nguyen Nhu Minh T	88/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$11,306	House arrest	6 months suspended sentence, 12 months probation, fine \$2,108	Unknown	Unknown	\$11,306	\$1,265
52	Le Thi S	97/2019/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$5,256	House arrest	6 months suspended sentence, 12 months probation, fine \$843	Unknown	Unknown	\$5,256	\$5,256
53	Man Van T	97/2019/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$6,324	House arrest	6 months suspended sentence, 12 months probation, fine \$843	Unknown	Unknown	\$6,324	\$6,324

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54	Man Van L(1)	97/2019/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$11,143	House arrest	6 months suspended sentence, 12 months probation, fine \$843	Unknown	Unknown	\$11,143	\$11,143
55	Than Thi Thanh Th	35/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$4,845	House arrest	6 months suspended sentence, 12 months probation	Unknown	Unknown	\$4,845	\$2,108
56	Hoang Thi M	27/2022/HS-PT	Art. 200		Tax evasion	Corporate	Unknown	\$5,940	House arrest	6 months, fine \$1,265	Yes	6 months suspended sentence, 12 months probation	\$5,940	Unknown
57	Nguyen Duc T	12/2020/HS-ST	Art. 200		Tax evasion	Corporate	\$115,850	\$10,532	House arrest	6 months suspended sentence, 12 months probation	Unknown	Unknown	\$10,532	\$10,532
58	Huynh Thi Le C	10/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$12,039	House arrest	6 months suspended sentence, 12 months probation	Unknown	Unknown	\$12,039	\$2,952
59	Dang Dinh C	153/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$7,991	House arrest	5 months suspended sentence, 12 months probation	Unknown	Unknown	\$7,991	\$1,054
60	Le Quoc V	05/2018/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$884,426	House arrest	36 months probation, fine \$63,251	Unknown	Unknown	\$884,426	\$20,837
61	Le Thi Mai A	73/2018/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$33,182	House arrest	18 months probation	Unknown	Unknown	\$33,182	\$33,182
62	Nguyen Thi Thanh X	08/2018/HS-STT	Art. 200		Tax evasion	Corporate	Unknown	\$740,580	House arrest	Fine \$168,670	Unknown	Unknown	\$740,580	\$62,198

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63	Huynh Thi N	22/2020/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$55,783	House arrest	Fine \$67,468	Unknown	Unknown	\$55,783	\$53,365
64	NTT	191/2021/HS-ST	Art. 200		Tax evasion	Corporate	\$977,286	\$97,729	Detained then released on bail	Fine \$67,468	Unknown	Unknown	\$97,729	\$63,251
65	Huynh Thi N1	22/2020/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$55,783	House arrest	Fine \$63,251	Unknown	Unknown	\$55,783	\$53,365
66	Vo Thi Xuan Tr	72/2018/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$91,712	House arrest	Fine \$63,251	Unknown	Unknown	\$91,712	\$42,167
67	Nguyen Trung T	113/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$288,705	Detained then released on bail	Fine \$63,251	Unknown	Unknown	\$288,705	\$288,705
68	Pham Duy S	10/2019/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$144,084	House arrest	Fine \$42,167	Unknown	Unknown	\$144,084	\$78,010
69	Nguyen Dinh N	47/2022/HS-ST	Art. 200		Tax evasion	Corporate	\$743,218	\$72,785	Detained then released on bail	Fine \$33,734	Unknown	Unknown	\$72,785	\$72,785
70	Hoang Thi L	47/2022/HS-ST	Art. 200		Tax evasion	Corporate	\$743,218	\$72,785	House arrest following detention	Fine \$29,517	Unknown	Unknown	\$72,785	\$72,785
71	Hoang Khanh H	21/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$18,722	House arrest	Fine \$21,084	Unknown	Unknown	\$9,825	\$9,825

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72	Tran Thi Phuong Th	80/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$177,365	House arrest	Fine \$21,084	Unknown	Unknown	\$177,365	\$177,365
73	Nguyen Thanh B	56/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$9,108	House arrest	Fine \$12,650	Unknown	Unknown	\$9,108	\$9,108
74	Tran Van T	21/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$18,722	House arrest	Fine \$12,650	Unknown	Unknown	\$8,897	\$8,897
75	Dang Huu Q	40/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$25,728	House arrest	Fine \$12,650	Unknown	Unknown	\$25,728	\$25,728
76	Nguyen Huu P	29/2021/HS-ST	Art. 200		Tax evasion	Corporate	\$1,629,836	\$32,597	House arrest	Fine \$12,650	Unknown	Unknown	\$32,597	\$32,597
77	Nguyen Thi Quy G	62/2018/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$36,613	House arrest	Fine \$12,650	Unknown	Unknown	\$36,613	\$36,613
78	Huynh Tung Y	176/2020/HS-PT (10/2020/HS-ST)	Art. 200		Tax evasion	Corporate	Unknown	\$7,588	House arrest	6 months	Yes	Fine \$8,433	\$7,588	\$7,588
79	Cao Thi B	411/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$5,693	House arrest	Fine \$6,325	Unknown	Unknown	\$5,693	\$5,693
80	Nguyen Van A	56/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$9,108	House arrest	Fine \$6,325	Unknown	Unknown	\$9,108	\$9,108

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81	Thai Thi T	56/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$9,108	House arrest	Fine \$6,325	Unknown	Unknown	\$9,108	\$9,108
82	Nguyen Van L	141/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$4,874	House arrest	Fine \$5,060	Unknown	Unknown	\$4,874	\$4,891
83	Vo Thanh N	176/2020/HS-PT (10/2020/HS-ST)	Art. 200		Tax evasion	Corporate	Unknown	\$7,588	House arrest	3 months	Yes	Fine \$4,217	\$7,588	\$7,588
84	Doan Van C	19/2020/HS-ST, 250/2021/HS-PT	Art. 200		Tax evasion	Corporate	\$91,842	\$8,349	House arrest	Fine \$4,217	Yes	Unchanged	\$8,349	\$8,349
85	Phan Chi C	117/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$8,905	House arrest	Fine \$4,217	Unknown	Unknown	\$8,905	\$8,905
86	Nguyen Huu V	56/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$9,108	House arrest	Fine \$4,217	Unknown	Unknown	\$9,108	\$9,108
87	Mac Thi C	56/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$9,108	House arrest	Fine \$4,217	Unknown	Unknown	\$9,108	\$9,108
88	Trinh Thi M	32/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$10,520	House arrest	Fine \$4,217	Unknown	Unknown	\$10,520	\$10,542
89	Dang Dieu H	10/2022/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$12,039	House arrest	Fine \$4,217	Unknown	Unknown	\$12,039	\$2,952
90	Ho Viet K	01/2021/HS-ST	Art. 200		Tax evasion	Corporate	Unknown	\$7,436	House arrest	Fine \$4,217	Unknown	Unknown	\$7,436	\$7,436

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**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its ninety-sixth session, 27 March – 5 April 2023****Opinion No. 22/2023 concerning Đặng Đình Bách (Viet Nam)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 30 November 2022 the Working Group transmitted to the Government of Viet Nam a communication concerning Đặng Đình Bách. The Government did not reply to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Mr. **Đặng Đình Bách**, born in September 1978 is a citizen of Socialist Republic of Vietnam. He usually resides in Hanoi.

5. According to the source, Mr. Bách led a non-profit organization in Hanoi, the Law and Policy of Sustainable Development Research Centre (LPSD), from 2011-2021. LPSD conducted legal advocacy on environmental, land use, and industrial pollution cases. Its primary activities relate to facilitating civil society participation and supporting the rights and responsibilities of stakeholders in the social and environmental fields. LPSD also played a role in monitoring the effectiveness and enforcement of the legal and policy framework of sustainable development in Vietnam and its clean energy transition. Mr. Bách is respected for his ability to inspire young people to volunteer for charitable projects such as helping victims of storms and disasters, especially those impacted by climate change and other environmental catastrophes.

6. The source notes that while Mr. Bách is not known for political activism, some of the cases and projects with which he has been involved are politically sensitive due in part to involvement of environmental organizations based in the United States and funding received from the U.S. State Department and the European Union. Reportedly, he may have been targeted for his work documenting complaints on behalf of people affected by the Son La Hydroelectric plant that displaced more than 91,000 people, mostly from ethnic minority groups. Mr. Bách has consistently maintained that he, and by extension LPDS, has worked hand-in-hand with the Government to advance Vietnam's environmental policies. However, his activities related to documentation and compliance may have been perceived as hostile to the State.

a. Arrest and trial proceedings

7. The source submits that on 24 June 2021, at approximately 7:00 a.m., six police officers entered Mr. Bách's home in Hanoi that he shared with his family. He was arrested and his laptop, bank cards, and personal and work phones were confiscated.² No warrant or information regarding the basis for his arrest was presented. Around 9:30 a.m. the same day, approximately ten police officers conducted a search of LPSD's office and confiscated several laptops. On 30 June 2021, the Security Investigation Agency related its decision to initiate a criminal case against Mr. Bách for the crimes related to tax evasion and avoidance.³ The reason for the charge imputed by authorities was failure to properly account for foreign funding. The indictment states that Bách "contacted foreign-based organizations and received their funding" to implement projects at LPSD without obtaining approval from "authorities in charge."⁴ Further, he was accused of evading more than 1.3 billion dong in taxes (U.S. \$57,300) between 2016 and 2020. He was formally charged on 2 July 2021, nine days after his arrest.

8. Mr. Bách was held *incommunicado* for the vast majority of his pre-trial detention between 24 June 2021, and his trial date on 24 January 2022. On 14 January 2022, his lawyer was finally allowed to visit him in prison. At this meeting, Mr. Bách informed his attorney that he had been on a hunger strike since 10 January 2022, in protest of his *incommunicado* detention and appeared to have lost a significant amount of weight. Throughout his detention, Mr. Bách has not been permitted to receive visits, calls, or written communications from his family, despite numerous requests. Authorities even prevented his family from giving him a photograph of their son who was only two weeks old when Mr. Bách was arrested. Other than his meeting on 14 January 2022, and a second visit on 1 July 2022, Mr. Bách was prevented from having contact with his lawyer. His ability to prepare a defence was further

² Decision approving the decision to prosecute the defendant No. 541/QĐ-VKS-P1, dated 2 July 2021. See also, Conclusion of investigation of criminal case proposed for prosecution, dated 19 November 2021.

³ Id. Mr. Bach was charged under clause 3, Article 200 of the 2015 Penal Code, which covers crimes related to tax evasion.

⁴ Id.

hindered by the fact that authorities strongly suggested that his trial date would be postponed, which appears to be an intentional misdirection. His lawyer received confirmation of his trial date with three days' notice.

9. The source submits that in addition to multiple fair trial violations leading up to Mr. Bách's trial, numerous violations occurred during the hearing itself. Despite requests, the prosecution did not share evidence with his lawyer, nor provide the lawyer an opportunity to question any witnesses for the prosecution. The trial was closed to observers, including Mr. Bách's family and representatives of the U.S. Embassy, who both made applications to attend. Moreover, the court refused to hear Mr. Bách's defence. This suggests that the court predetermined his guilt. His presumption of innocence was also undermined by the fact that he was surrounded by security agents entering and leaving the courtroom, which prevented his family from approaching him and conveyed the appearance that he was a threat. After short deliberation, the court sentenced Mr. Bách to five years – exceeding the prosecution's recommendation of three years – on the basis that he was being recalcitrant by refusing to plead guilty. Nonetheless, after his sentencing, State-run media misrepresented the proceedings and reported that Mr. Bách had confessed during the trial, when in fact he has steadfastly maintained his innocence.

10. On Friday 5 August 2022, Mr. Bách's lawyer received notice that his appeal hearing would take place on 11 August 2022, but was again not provided an opportunity to consult with him beforehand. After being notified by the lawyer of this development, Mr. Bách's family member requested permission to attend the appeal, as did representatives of the U.S. and German Embassies. While initially told that it will not be possible to attend, Mr. Bách's family member received a call from the court the night before the hearing informing that it will be possible to attend. Accordingly, the family went to the courthouse with Mr. Bách's child to attend the hearing but upon arrival, was denied entry by security personnel and told that there was no room inside. Similarly, the U.S. and German Embassies were told that there was not space for their representatives to attend. Mr. Bách's attorney was allowed entry but with a nominal presence; the attorney's laptop and phone were confiscated by security before entering the courtroom and in images of the hearing shared by State-run media, Mr. Bách is standing alone without counsel before the judge in a nearly empty courtroom. Accordingly, the Government's argument that there was not space for his family or other interested parties to attend appears disingenuous and is unsupported by the images and video circulated on national news.

11. Mr. Bách's hearing concluded with his appeal being denied, and his sentence of five years upheld. Before leaving the courtroom, he informed his attorney that he had begun a second hunger strike in protest of his ongoing *incommunicado* detention. He appeared seriously diminished and gaunt; footage of his appearance shared on national news and State-run media was a shock to his family.

b. Further context

12. The source further explains that Mr. Bách is one of several civil society members detained under the tax code in the last year, which seems by design and practice to be a tool for the Government to deprive people of their liberty that are perceived as working against State interests. Mr. Bách was deeply involved with the development of the EU-Vietnam Free Trade Agreement (EVFTA), which required Vietnam to establish a Domestic Advisory Group (DAG) composed of independent civil society representatives. The DAG's purpose is to monitor implementation of the Agreement and make concrete recommendations on worker rights, land rights, and the environment. Mr. Bách was also an Executive Board member of the VNGO-EVFTA Network, a group of seven development and environmental CSOs established to raise awareness about the EVFTA. It is suspected that his arrest and detention are directly related to his attempt to establish the DAG, which the State may have perceived as a threat based on the DAG's mandate to independently monitor Government compliance with EVFTA. Independent civil society oversight is a key condition of the agreement. The EU cancelled a scheduled Joint Forum between European and Vietnamese civil society members and the fate of the Agreement remains unclear.

13. At least three other environmental leaders have been arrested in Vietnam in the course of seven months on charges related to tax evasion. All have received heavy prison sentences.

Their arrest and investigation did not follow the normal process for tax evasion. Rather, State Security was responsible for the investigations and there was no notification or request for repayment preceding arrest. Three of the four environmental defenders were charged with corporate tax evasion even though Vietnamese legal professionals advise that tax law is silent on whether non-profit organizations are required to pay corporate tax.⁵

14. The incompatibility of Vietnam's tax laws with its obligations under the International Covenant on Civil and Political Rights (Covenant) has been articulated in the Human Rights Committee Concluding Observations, Vietnam's 2019 Universal Periodic Review and communications by the UN Special Procedures.⁶ Each has found that Vietnam's tax laws and rules related to foreign funding pose "undue restrictions by the Government on civil society in the exercise of their fundamental freedoms"⁷ and "impede the ability of associations to pursue their statutory activities."⁸

c. Analysis of violations

15. The source submits that Mr. Bách's deprivation of liberty is arbitrary under categories I, II, III, and V.

i. Category I

16. The source recalls that according to article 9(2) of the Covenant, the persons who are deprived of liberty must be informed at the time of their arrest of the reason for the arrest; and be promptly informed of any charges against them.⁹ The basis for the arrest and deprivation of liberty must be invoked and applied throughout the judicial process.¹⁰

17. Mr. Bách was arrested on the night of 24 June 2021, at his home that he shared with his family. Arresting officers provided no warrant, nor did they articulate the charges against him or basis for the removal of his belongings, which included personal papers, computers, and cellular phones. Not until 2 July 2021, did the Security Investigation Agency issue a decision to prosecute Mr. Bách for the crime of tax evasion. No charges were presented until that date.

18. While international law recognizes the exception of *in flagrante delicto* to the warrant requirement, there is no evidence and no allegation that Mr. Bách's warrantless arrest was based on this exception. Rather, he was charged on 2 July 2021, for crimes following the decision of State Security to prosecute. As such, for the nine days that Mr. Bách was held without a warrant and not informed of the charges against him, he was unable to challenge the basis for his detention and there was no legal basis for his deprivation of liberty.

19. Mr. Bách's arrest is also arbitrary because he was arrested without competent judicial authorization; was held *incommunicado*; was prosecuted under vague laws that violate the principle of legality; and prosecuted under laws used to target and silence Government critics. Domestic laws that violate norms of international law cannot form an adequate legal basis for arrest.¹¹ Any national law allowing deprivation of liberty must be made and implemented in compliance with the relevant international provisions set forth in the Universal Declaration of Human Rights (UDHR), the Covenant and other relevant international legal instruments.

20. From July 2021 to August 2022, Mr. Bách was held almost entirely *incommunicado*. Article 9(3) of the Covenant provides that pre-trial detention should be the exception rather than the norm. By holding Mr. Bách *incommunicado*, the Government failed to consider alternatives to pre-trial detention, such as home arrest, and violated his right to contest the

⁵ See AL VNM 2/2022, page 5 (noting that "There is also reason to believe that Mr. 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").

⁶ See, e.g., CCPR/C/VNM/CO/3, para. 47; A/HRC/23/39, para. 8; OL VNM 7/2021; Opinion No. 81/2020.

⁷ CCPR/C/VNM/CO/3, para. 47.

⁸ A/HRC/23/39, para. 8.

⁹ Human Rights Committee's general comment No. 35 (2014), para. 24.

¹⁰ Opinion No. 75/2017, para. 35.

¹¹ Opinion No. 51/2017, para. 27.

legality of his detention. Consequently, Mr. Bách was placed outside the protection of the law (article 6 of the UDHR and article 16 of the Covenant) and his right to an effective remedy was violated (article 8 of the UDHR and article 2(3) of the Covenant).

21. The source further recalls that the Working Group has established that the Procurate of Vietnam does not satisfy the criteria of article 9 of the Covenant because it is not an independent judicial authority and is in fact controlled by the executive branch.¹² Detention ordered by a body other than a competent, independent, and impartial authority lacks legal basis. The investigation and decision to prosecute Mr. Bách was led by the State Security Agency, which is part of the executive branch, and he was prosecuted by the Procurate, which is also considered under the control of the executive.¹³ Accordingly, his deprivation of liberty is arbitrary under category I because his arrest and detention were not authorized by a competent judicial authority.

22. Furthermore, international law requires that laws which restrict fundamental rights must be “sufficiently precise” so as not to unnecessarily limit the right or be overly broad.¹⁴ The principle of legality requires that laws must be framed with sufficient precision to allow persons to understand the scope and requirements of the law and regulate their conduct accordingly.¹⁵ The Decrees¹⁶ forming the basis of Mr. Bách’s deprivation of liberty are insufficiently clear and imprecise, which violates the principle of legality. Accordingly, they cannot form a lawful basis for his deprivation of liberty.

ii. Category II

23. The source notes that right to freedom of expression includes the right to hold an opinion and the freedom to seek, impart, and receive information and ideas of all kinds in any form. Article 19(3) of the Covenant provides that any restriction to this right be proportional, necessary, and the least restrictive means possible to achieve a legitimate State interest. For a restriction to qualify as the least intrusive option available, it must be both narrowly tailored in terms of the conduct punished and able to distinguish between those acting illegally and those acting peacefully. Accordingly, overbroad restrictions cannot be the least intrusive option and, therefore, cannot be considered proportional. If a criminal penalty is imposed on individuals in cases where a civil penalty would suffice, the restriction is not the least intrusive option available. The Working Group has found that laws, which

¹² E.g., Opinion No. 50/2018.

¹³ Opinion No. 81/2020, fn 3 (noting that “while prolonged pre-trial detention may be permitted under the Vietnamese Criminal Procedure Code 2003 and other legislative provisions such as Procurate allowing approval of arrest warrants, these do not substitute the right to judicial review of a detention and are consequently inconsistent with international human rights law.”).

¹⁴ A/HRC/31/66, para. 30.

¹⁵ Human Rights Committee, general comment No. 35, para. 22; Opinions No. 41/2017, paras. 98–101 and 62/2018, paras. 57–59;

¹⁶ Decree 93/2009/ND-CP dated 22 October 2009, of the Government promulgating the Regulation on management and use of foreign nongovernmental aid, which expired on 17 September 2020, and was replaced by Decree 80/2020/ND - CP dated 8 July 2020. See also Decree 218/2013/ND-CP detailing and guiding the implementation of the Law on corporate income tax and Circular 78/2014/TT-BTC dated 18/06/2014 on guiding Decree 218/2013/ND-CP. This Decree provides that “[t]he grants received are used for educational activities, scientific research, culture, art, charity, humanity and other social activities in Vietnam” (art. 4.7) are exempt income. However, there is no further guidance on conditions, criteria, or procedures to warrant the exemption of corporate income tax for these grants. The Circular 78/2014/TTBTC guiding this decree repeats the same text, which has left its application open to the discretion of the Government. According to the State Security Investigation, the revenue of LPSD is “foreign nongovernmental aid” under Decree 80/2020/ND and 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 law.” However, Vietnam’s Tax Law and Criminal Code does not regulate this law’s violation as a criminal matter. Further, per article 4, clause 7 of the decree No. 218/2013/ND-CP and article 8, clause 15 of the Circular 78/2014/TT-BTC dated 18 June 2014 on guiding decree 2018/2013/ND-CP, LPSD’s total tax revenue deemed “foreign non-governmental aid” is “exempted tax” and “not payable.” Mr. Bách maintains that all the grants received by LPSD were used for proper purposes, as confirmed by its foreign grant sponsors, and therefore properly categorized as exempt from corporate tax income.

criminalize critical speech encourage self-censorship and suppress important debates on matters of public interest, putting in jeopardy the right to freedom of opinion and expression.¹⁷

24. The source also recalls that the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression have found that Vietnam's tax laws do not comport with article 19(3) of the Covenant.¹⁸ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has warned that the threat of a long prison sentence and vagueness about what kinds of expression constitute a violation encourage self-censorship and stifle important debates on matters of public interest.¹⁹

25. The Rapporteurs have also noted that Vietnam's amended regulations have "imposed additional burdensome requirements" for the creation and operation of human rights organizations, in violation of articles 21 and 22 of the Covenant, which relate to freedom of assembly and association. The Rapporteurs expressed "particular cause for concern" regarding article 2 of Decree 93, under which Mr. Bách was charged, which prohibits foreign non-governmental aid that affects "political security, social order and safety or infringing upon interests of the State." The imprecise nature of the Decree and absence of a clear definition that leaves it "open to a wide range of interpretations... impedes the ability of associations to pursue their statutory activities and violates article 22 of the ICCPR."²⁰

26. The source also submits that Mr. Bách was also charged under Decree 80, which restricts access to foreign aid. The Rapporteurs likewise noted that most of the legal justifications for this Decree "do not comply with Article 22 para. 2 of the ICCPR," which stipulates that any limitation on a fundamental right "must pursue a legitimate interest and be necessary for a democratic society."²¹ Accordingly, the Rapporteurs have advised the Government to revise this Decree, warning that it "cannot be misused to hinder the work and endanger the safety of civil society organizations."²²

27. While Mr. Bách's detention is ostensibly on the basis of tax violations, the laws forming the basis of his arrest and detention are directly related to his exercise of freedom of expression and association. His organization took part in monitoring the Government's compliance with environmental agreements, which constitute forms of speech. While these rights may be restricted in limited circumstances, the Government has not articulated a legitimate State interest in restricting them, and its application of criminal penalties for their exercise is not proportional or the least restrictive means. Decree 93 and Decree 80 vaguely criminalize an overly broad swath of speech and information-sharing acts and hinder the ability of nongovernmental entities to operate freely. Moreover, Mr. Bách was deprived of his liberty specifically because of his public interest work, meaning his right to freedom of expression was violated both *de jure* and *de facto*. Further, Mr. Bách was deprived of his liberty under laws that are being used as a pretext to silence independent voices, which is incompatible with the right to freedom of expression. Accordingly, his detention is arbitrary under category II.

iii. Category III

28. The source argues that Mr. Bách's right to a fair and impartial trial has been violated on several fronts. These include his right to challenge the basis of his arrest (article 9 of the Covenant, article 9 of the UDHR); his right to prepare an adequate defence (article 14 (1) and (3) (b) of the Covenant; art. 10 of UDHR); his right to meaningfully consult counsel (art. 14 (3) (b) and (d) of the Covenant; art. 10 and 11 of the UDHR);²³ his right to the presumption

¹⁷ Opinion No. 44/2016, paras. 24 and 25.

¹⁸ OL VNM 7/2021, page 4.

¹⁹ A/HRC/20/17, para. 20.

²⁰ OL VNM 7/2021, pages 5-7.

²¹ *Id.*, page 7.

²² A/HRC/RES/27/31.

²³ See principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

of innocence (article 14(2) of the Covenant; article 11 of the UDHR);²⁴ and his right to be free from ill treatment, which has undermined his ability to prepare a defence.

29. Mr. Bách was subjected to a warrantless arrest and not presented with the basis for his detention for nine days. Without knowing the reason for his arrest or the charges against him, neither Mr. Bách nor his attorney were able to challenge the basis for his detention. This delay also violated his right to be brought promptly before a judicial authority.²⁵

30. Even after he learned of the charges against him, Mr. Bách was held incommunicado for nearly eight months before his trial date, which placed him outside the protection of the law and violated his right to regular review of the necessity of his pre-trial detention.

31. By holding Mr. Bách incommunicado, the Government also violated his right to prepare an adequate defence. He was not able to meet with his lawyer consistently, despite multiple requests. His lawyer only saw Mr. Bách twice before his trial on 24 January 2022, and these meetings were not confidential. The Government also hindered Mr. Bách's ability to prepare a defence by not sharing evidence with his lawyer and denying her the right to question witnesses for the prosecution. In fact, the court refused to hear his defence entirely, which indicates it had already pre-judged his guilt. This is further supported by the court's nearly automatic determination that he was guilty during his initial hearing, and decision to uphold his sentence at his appeal hearing on 11 August 2022.

32. Mr. Bách's closed trial and appeal hearing also violate essential principles of the right to a fair trial. Neither his family or interested parties, including representatives of the U.S. and German embassies, were allowed to enter the courtroom. The Government's explanation for denying their requests was that there was no room, which is unsupported by the images taken from inside the courtroom. Article 14(1) of the Covenant provides that "everyone shall be entitled to a fair and public hearing." States may limit press and the public for reasons of public order or national security, but the Government has never articulated any argument as to why Mr. Bách's case would fit an exception to the right of a public trial.

33. Prosecuting Mr. Bách in a closed trial also undermined his presumption of innocence. The Government effectively prevented public scrutiny of his trial and appeal hearing and was able to control the narrative of what occurred via State-run media. Articles following his trial reported that he had confessed to the charges against him and suggested that further charges may be pending, which effectively tried him in the court of public opinion. In both his initial trial and appeal hearing, Mr. Bách was escorted by security, which conveyed the appearance of guilt. His prolonged incommunicado detention both before and after his trial likewise undermines the presumption by suggesting that he is dangerous or a security threat.

34. Mr. Bách's right to be tried by a competent tribunal was not upheld. The source recalls that the Working Group has concluded that the Procurate is not an independent judicial authority because it is not protected from political influence, and is therefore incompatible with the right to be tried by a fair and impartial tribunal.²⁶ The source further submits that: nearly all the judges are members of the Communist Party of Vietnam (CPV) and are screened by the CPV to determine their suitability for the bench; the CPV's oversight and control over the judiciary is further reinforced by their reappointment process, which happens every five years following review of their conduct by party officials; a lack of legislative and other safeguards protecting judicial independence has led to judges, as well as prosecutors, to be seen as tools of repression and injustice. The Human Rights Committee has interpreted the obligation to ensure a fair and impartial trial before an independent and impartial court as requiring States to "take specific measures guaranteeing the independence of the judiciary" and to protect judges "from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them."²⁷

²⁴ See also principle 36.

²⁵ Human Rights Committee, general comment No. 35, para. 32.

²⁶ E.g., Opinion Nos. 50/2018, 37/2018, 20/2018, 1/2018, 79/2017.

²⁷ General comment No. 32, para. 19.

35. The impact of Mr. Bách's incommunicado detention is also relevant to his right to be free from torture and other ill treatment, and the extent to which these violations adversely affect his ability to prepare a defence. The source recalls that credible allegations of torture and ill treatment "significantly decrease the probability" that a detainee has received a fair trial.²⁸ Similarly, "any instance of torture during pretrial detention constitutes a visceral risk for the trial that follows, making it impossible for such a trial to be fair."²⁹

36. Vietnam is bound by the obligations under the UN Convention against Torture. Denying family visitation and correspondence is considered punitive and can increase suffering.

37. Authorities held Mr. Bách incommunicado throughout his pretrial detention and after his sentencing. They have repeatedly denied his family member's requests to visit him, blocked written communications, and even prevented the family from sharing a photograph of Mr. Bách infant child. The State has made clear that it considers Mr. Bach "recalcitrant" and "stubborn" for maintaining his innocence, and its denial of family visits appears punitive and designed to compel a confession of guilt by subjecting him to an ongoing environment of distress that constitutes ill treatment and may rise to the level of torture. Mr. Bách has undergone a hunger strike on two occasions to protest his ongoing incommunicado detention. He appeared gaunt and unwell at his appeal hearing, and his family and friends believe his inability to see or communicate with loved ones is severely impacting his well-being. This, in turn, has impaired his ability to prepare a defence and his equality of arms before the law, in violation of his right to a fair trial.

38. The Government thus has failed to observe the international norms related to a fair trial and has indicated on numerous fronts that it has predetermined Mr. Bách's guilt as a means of depriving him of liberty. Accordingly, his detention is arbitrary under category III.

iv. Category V

39. The source submits that deprivation of liberty is arbitrary under category V if the individual has been deprived of his or her liberty for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status which aims towards or can result in ignoring the equality of human rights.

40. Where authorities have made statements to, or conducted themselves toward, the detained person in a manner that indicates a discriminatory attitude – for instance where a detainee is held in worse conditions or for a longer period than other detainees in similar circumstances – there is strong evidence of discrimination on the basis of a protected status.³⁰ Likewise, if the facts of the case indicate the individual was detained to prevent him or her from exercising his or her fundamental rights, the detention is likely discriminatory.³¹

41. The Government's treatment and attitude towards Mr. Bách can only be characterized as discriminatory and has negatively impacted his right to equality before the law. It appears that Mr. Bách was targeted based on his activities related to environmental activism and monitoring of the State's compliance with international and domestic regulations related to environmental law. While he does not consider himself a human rights defender, his professional activities are directly related to advocating for the rights of others, including the right to a clean environment and to land. For instance, it is believed that he was targeted because of his work documenting complaints on behalf of people affected by the Son La Hydroelectric plant. All records of his involvement with the Son La victims were taken by the Investigation Security Agency and have not been returned. Accordingly, his differential treatment may constitute discrimination on his perceived status as a human rights defender.

42. The Government has not afforded Mr. Bách the same level of process or fairness as other environmental advocates detained under the same charges. Those who plead guilty have been able to receive family visits, whereas his right to visitation has consistently been denied.

²⁸ Opinion No. 53/2018, para. 77.

²⁹ Opinion No. 85/2017, para. 50.

³⁰ A/HRC/33/50, para. 48.

³¹ Id.

It also appears that the Government is punishing Mr. Bách for steadfastly maintaining his innocence; the court implemented a sentence that exceeded the recommendation of the prosecutor, noting that it found him stubborn and recalcitrant for not pleading guilty. This differential treatment speaks to the Government's discriminatory attitude towards his case and failure to ensure his equality of arms before the law. His deprivation of liberty is arbitrary under category V.

Government response

43. On 30 November 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure, requesting a reply by 30 January 2023. The Working Group also called upon the Government to ensure Mr. Mr. Bách physical and mental integrity.

44. On 26 January 2023, the Government requested an extension in accordance with paragraph 16 of the methods of work, which was granted with a new deadline of 28 February 2023.

45. While the Government requested an extension of the time limit for its reply, as provided for in the Working Group's methods of work, the Working Group regrets that it did not receive a response from the Government to this communication.

Discussion

46. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 16 of its methods of work.

47. In determining whether the detention of Mr. Bách is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case of breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.³² In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

i. Category I

48. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without legal basis.

49. The source submits that on 24 June 2021, six police officers entered Mr. Bach's family home. He was arrested without a warrant and not provided with information regarding the basis of his arrest. The police officers also did not provide any basis for confiscating his personal belongings such as documents, computers, and cellular phones. Mr. Bach's was not brought before a judge to determine the legality of his arrest and pretrial detention. The source further submits that Mr. Bách was not presented with the basis for his detention for nine days. Without knowing the reason for his arrest or the charges against him, neither Mr. Bách nor his attorney were able to challenge the basis for his detention. This delay also violated his right to be brought promptly before a judicial authority.³³

50. According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. Article 9 (2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest and shall be promptly informed of any charges.³⁴ Noting the source's submissions, and absent the Government's response, the Working Group finds that Mr. Bách was not shown an arrest warrant (or equivalent) nor was he informed immediately of the reasons for his arrest nor promptly informed of the charges against him, in violation of articles 9(1) and (2) of the Covenant. While it is unclear if any material seized during the illegal search was used against Mr. Bách in the course of the legal proceedings, such conduct further demonstrates the authorities' failure to follow proper procedures to ensure that Mr. Bách's

³² A/HRC/19/57, para. 68.

³³ Human Rights Committee, general comment No. 35, para. 32.

³⁴ *Ibid.*, para. 24.

detention had a legal basis and compounds the arbitrary nature of his detention. The Working Group recalls the right to be brought promptly before a judicial authority to challenge detention, within 48 hours of the arrest barring absolutely exceptional circumstances, in accordance with the international standard set out in the Working Group's jurisprudence.³⁵ The right to bring proceedings before a court so that the court may decide without delay on the lawfulness of the detention is protected by article 9 of the UDHR, article 9 (3) of the Covenant and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group finds that this right was violated as Mr. Bách was not brought promptly before a judicial authority.

51. Article 9 (3) of the Covenant provides that "it shall not be the general rule that persons awaiting trial shall be detained in custody". The Working Group recalls the Human Rights Committee's view that pretrial detention should be an exception and be as short as possible and must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Courts must examine whether alternatives to pretrial detention, such as bail or other conditions, would render detention unnecessary in the particular case.³⁶ In the present case, without any response from the Government, the Working Group concludes that an individualized determination of Mr. Bách's circumstances was absent, and as a result, his detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant and principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

52. Moreover, the source submits that from July 2021 to August 2022, Mr. Bách was held almost entirely incommunicado. The Working Group recalls that holding persons incommunicado prevents prompt presentation before a judge as provided in article 9 (3) of the Covenant³⁷ and violates the right under article 9 (4) to challenge the lawfulness of the detention before a court.³⁸ Judicial oversight of detention is a fundamental safeguard of personal liberty³⁹ and is essential in ensuring that detention has a legal basis. Given that Mr. Bách was unable to challenge his detention before a court, his right to an effective remedy under article 8 of the UDHR and article 2 (3) of the Covenant was violated. He was also placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the UDHR and article 16 of the Covenant.

53. The source also submits that Mr. Bách right to family visits and contact with the outside world was violated. Throughout his detention, Mr. Bách has not been permitted to receive visits, calls, or written communications from his family, despite numerous requests. A detainee must also be allowed to communicate with and receive visits from family members. Restrictions and conditions in regard to such contact must be reasonable. As the Human Rights Committee has observed, giving prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention and infringement of personal security.⁴⁰ The Working Group finds that the right of Mr. Bách to communicate with the outside world was denied, contrary to rule 58 of the Nelson Mandela Rules⁴¹ and principles 15 and 16 (1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

54. For these reasons, the Working Group finds that the Government failed to establish a legal basis for Mr. Bách's arrest and detention. His detention is arbitrary under category I.

³⁵ Opinions Nos. 57/2016, paras. 110–111; 2/2018, para. 49; 83/2018, para. 47; 11/2019, para. 63 and 30/2019, para. 30.

³⁶ Human Rights Committee, general comment No. 35, para. 38.

³⁷ *Ibid.*, para. 35.

³⁸ Opinions Nos. 25/2021, 45/2019, 44/2019, 9/2019 and 35/2018.

³⁹ A/HRC/30/37, para. 3; CAT/C/VNM/CO/1, para. 24.

⁴⁰ See the Committee's general comment No. 35, para. 58; opinion No. 84/2020, para. 69.

⁴¹ Opinions Nos. 35/2018, para. 39; 44/2019, paras. 74–75 and 45/2019, para. 76.

ii. Category II

55. The source submits that while Mr. Bách's detention is ostensibly on the basis of tax violations, the laws forming the basis of his arrest and detention are directly related to his exercise of freedom of expression and association. According to the source, his organization took part in monitoring the Government's compliance with environmental agreements, which constitute forms of speech. Mr. Bách was deprived of his liberty under laws that are being used as a pretext to silence independent voices, which is incompatible with the right to freedom of expression.

56. Article 19 (2) of the Covenant protects the holding and expression of opinions, including those which are not in line with government policy.⁴² The Human Rights Committee has specifically recognized that article 19 (2) of the Covenant protects the work of journalists and includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.⁴³ It has emphasized that the form of expression is highly relevant in assessing whether a restriction is proportionate. As stipulated by the Human Rights Council, certain types of expression should never be subject to restrictions – such as discussion of government policies, and political activities, including for peace or democracy.⁴⁴ The Council has called upon States to refrain from imposing restrictions under article 19 (3) that are not consistent with international human rights law.⁴⁵

57. While these rights may be restricted in limited circumstances, the Government has not articulated a legitimate State interest in restricting them, and its application of criminal penalties for their exercise is not proportional or the least restrictive means. The permitted restrictions to this right may relate either to respect for the rights or reputations of others or to the protection of national security, public order (ordre public) or public health or morals. As the Human Rights Committee has stipulated: "Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated."⁴⁶ The Government did not present any argument to invoke any of these limitations, nor has it demonstrated why bringing charges against Mr. Bách was a legitimate, necessary, and proportionate response to his online activities. The Working Group is not convinced that prosecuting Mr. Bách is necessary to protect a legitimate interest under this article of the Covenant, nor that Mr. Bách's arrest and detention is a necessary or proportionate response to his activities. Importantly, there is no indication that his activities were intended or had the potential to incite violent behaviour.

58. The source submits that Decree 93 and Decree 80 vaguely criminalize an overly broad swath of speech and information-sharing acts thus hindering the ability of nongovernmental entities to operate freely. The Working Group recalls that the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression have stated that Vietnam's tax laws do not comport with article 19(3) of the Covenant.⁴⁷ Similarly, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has warned that the threat of a long prison sentence and vagueness about what kinds of expression constitute a violation encourage self-censorship and stifle important debates on matters of public interest.⁴⁸

59. The Rapporteurs have also noted that Vietnam's amended regulations have "imposed additional burdensome requirements" for the creation and operation of human rights organizations, in violation of articles 21 and 22 of the Covenant, which relate to freedom of assembly and association. Notably, they expressed "particular cause for concern" regarding article 2 of Decree 93, under which Mr. Bách was charged, which prohibits foreign non-

⁴² Opinions Nos. 8/2019, para. 55 and 79/2017, para. 55.

⁴³ *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

⁴⁴ A/HRC/14/23, para. 81 (i).

⁴⁵ Human Rights Council resolution, para. 5 (p).

⁴⁶ Committee's general comment No. 34, para. 22.

⁴⁷ OL VNM 7/2021, page 4.

⁴⁸ A/HRC/20/17, para. 20.

governmental aid that affects “political security, social order and safety or infringing upon interests of the State.” The imprecise nature of the Decree and absence of a clear definition that leaves it “open to a wide range of interpretations... impedes the ability of associations to pursue their statutory activities and violates article 22 of the ICCPR.”⁴⁹

60. The source also submits that Mr. Bách was also charged under Decree 80, which restricts access to foreign aid. The Rapporteurs likewise found that most of the legal justifications for this Decree “do not comply with Article 22 para. 2 of the ICCPR,” which stipulates that any limitation on a fundamental right “must pursue a legitimate interest and be necessary for a democratic society.”⁵⁰ Accordingly, the Rapporteurs have advised the Government to revise this Decree, warning that it “cannot be misused to hinder the work and endanger the safety of civil society organizations.”⁵¹

61. The Working Group recalls that the principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law and regulate their conduct accordingly.⁵² In the Working Group’s view, Decree 93 and Decree 80 do not meet this standard. These decrees are thus incompatible with article 11 (2) of the UDHR and article 15 (1) of the Covenant and cannot be considered “prescribed by law” and as “defined with sufficient precision” due to its vague and overly broad language.⁵³ Prosecutions under these decrees are likely to have a chilling effect upon the peaceful exercise of these rights and freedoms. For these reasons, the Working Group concludes that Mr. Bách’s detention resulted from his exercise of his right to freedom of opinion, and expression contrary to articles 19 of the UDHR and article 19 of the Covenant.

62. The Working Group thus finds that his arrest and detention is arbitrary under category II.

63. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

iii. Category III

64. Given its finding that the deprivation of liberty of Mr. Bách is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, Mr. Bách has been tried and convicted. In the light of the above, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give Mr. Bách’s deprivation of liberty an arbitrary character, such that it falls within category III.

65. The source argues that by holding Mr. Bách incommunicado, the Government also violated his right to prepare an adequate defence. He was not able to meet with his lawyer consistently, despite multiple requests. His lawyer only saw Mr. Bách twice before his trial on 24 January 2022, and these meetings were not confidential. The Government also hindered Mr. Bách’s ability to prepare a defence by not sharing evidence with his lawyer.

66. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access is to be provided without delay.⁵⁴ The Working Group finds that the extremely limited access to legal assistance granted to Mr. Bách violate his right to equality of arms and to a fair hearing by an independent and impartial tribunal under article 14 (1) of the Covenant.⁵⁵ Moreover, Mr. Bách was not afforded his rights to adequate time and facilities for the preparation of his defence and to communicate

⁴⁹ OL VNM 7/2021, pages 5-7.

⁵⁰ *Id.*, page 7.

⁵¹ A/HRC/RES/27/31.

⁵² Opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59; and Human Rights Committee, general comment No. 35, para. 22.

⁵³ Human Rights Committee, general comment No. 34, para. 25.

⁵⁴ A/HRC/30/37, annex, principle 9 and guideline 8; Human Rights Committee, general comment No. 35, para. 35; A/HRC/48/55, para. 56; and A/HRC/45/16, paras. 50–55. See also A/HRC/27/47, para. 13.

⁵⁵ Opinions Nos. 43/2020, para. 105, 18/2018, para. 53 and 78/2018, paras. 78–79.

with counsel, as guaranteed under article 14 (3) (b) of the Covenant. This includes the failure to provide Mr. Bách with prompt and confidential access to a lawyer. The source further submits that his lawyer received confirmation of his trial date with three days' notice despite the authorities' strong indication that his trial date would be postponed. The Working Group notes that this case is another example of the denial or limitation of legal representation, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in Viet Nam.⁵⁶

67. The source also submits that Mr. Bách's counsel was denied the right to question witnesses for the prosecution and the court refused to hear his defence entirely. On the principle of equality of arms, there is a strict obligation to respect the right to have witnesses admitted that are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.⁵⁷ In the present case, that right was denied to Mr. Bách and such a refusal to allow any defence bears the hallmarks of serious denial of equality of arms in the proceedings. The Working Group thus finds a violation of articles 14(1) and 14(3) (e) of the Covenant.

68. In addition, the source submits that Mr. Bách's trial and appeal hearing were closed to the public. As the Human Rights Committee has stated, criminal trials are to be conducted in public unless one of the exceptional circumstances outlined in article 14 (1) justifies the closure of a trial, that is for reasons of morals, public order or national security, to warrant the exceptional step of holding a closed trial. In the present case, the Government has not provided any information to justify the exceptional step of holding a closed trial. Accordingly, the Working Group finds that Mr. Bách did not have a public hearing, in violation of article 10 of the UDHR and article 14 (1) of the Covenant, which provides that "everyone shall be entitled to a fair and public hearing."

69. The source also submits that prosecuting Mr. Bách in a closed trial also undermined his presumption of innocence. The Government effectively prevented public scrutiny of his trial and appeal hearing and was able to control the narrative of what occurred via State-run media. Article 14(2) of the Covenant guarantees that everyone charged with a criminal offence shall have the right to be presumed innocent according to law. The Human Rights Committee has stated that it is a duty for all public authorities to refrain from prejudging the outcome of a trial. Defendants should normally not be presented to the court in a manner indicating that they may be dangerous criminals.⁵⁸ In this regard, the Working Group notes the source's submission that, Mr. Bách was surrounded by security agents entering and leaving the courtroom, which prevented his family from approaching him and conveyed the appearance that he was a threat and guilty.

70. Noting the lack of submissions from the Government, the Working Group concurs with the source that such a presence of security agents could give the impression that he may be a dangerous criminal warranting heavy security thus undermining the presumption of innocence.⁵⁹ In addition, the source submits that after his sentencing, State-run media misrepresented the proceedings and reported that Mr. Bách had confessed during the trial, when in fact he has steadfastly maintained his innocence. General Comment No. 32 specifies that the media should avoid news coverage undermining the presumption of innocence.⁶⁰ In these circumstances, the Working Group considers that such news coverage undermined his presumption of innocence during the appeal proceedings discussed below. As such, the Working Group finds that Mr. Bách's right to the presumption of innocence guaranteed under article 14(2) of the Covenant and article 11 of the UDHR has been undermined.

71. Furthermore, the source submits that Mr. Bách's right to be tried by a competent tribunal was not upheld. The source further submits that: nearly all the judges are members of the Communist Party of Vietnam (CPV) and are screened by the CPV to determine their

⁵⁶ Opinions Nos. 43/2022, 45/2019, 44/2019, 9/2019, 46/2018, 35/2018; CAT/C/VNM/CO/1, paras. 16-17.

⁵⁷ Human Rights Committee, general comment No. 32, para. 39.

⁵⁸ *Ibid.*, para.30.

⁵⁹ Opinions Nos. para. 68; 36/2020, 83/2019, para. 73; 36/2018, para. 55; 9/2017, para. 62 and 40/2016, para. 41.

⁶⁰ General Comment No. 32, para.30.

suitability for the bench; the CPV's oversight and control over the judiciary is further reinforced by their reappointment process, which happens every five years following review of their conduct by party officials; a lack of legislative and other safeguards protecting judicial independence has led to judges, as well as prosecutors, to be seen as tools of repression and injustice. In its concluding observations on Vietnam, the Human Rights Committee has expressed concern on this matter, stating that the procedures for the selection of judges as well as their lack of security of tenure, combined with the possibility of taking far-reaching disciplinary measures against judges, exposes them to political pressure and jeopardises their independence and impartiality.⁶¹ Moreover, according to the source, other environmental advocates detained under the same charges who pleaded guilty have been able to receive family visits, whereas Mr Bach's visitation rights have consistently been denied, with the court implementing a sentence that exceeded the Prosecutor's recommendation, noting that it found him stubborn and recalcitrant for maintaining his innocence. Based on these factors, and absent a Government response, the Working Group concludes that his right to be tried by a competent, independent and impartial tribunal under article 14(1) of the Covenant was violated. This is supported by the court's nearly automatic determination that he was guilty during his initial hearing, without allowing him an opportunity to present his defence.

72. Finally, the Working Group notes the source's submission that Mr. Bach's lawyer received notice on 4 August 2022 that his appeal hearing would take place on 11 August. The lawyer was not allowed to meet with him before the hearing and her presence at the hearing was nominal; her laptop and phone were confiscated before entering the courtroom and in images of the hearing shared by State-run media, Mr. Bách is standing alone without counsel before the judge in a nearly empty courtroom. The state-run media had also allegedly misrepresented the trial proceedings, reporting that Mr. Bách had confessed while he had maintained his innocence. Based on the foregoing, the Working Group thus finds a violation of article 14 (5) of the Covenant which imposes on States a duty substantially to review conviction and sentence both as to sufficiency of the evidence and of the law."⁶²

73. The Working Group thus concludes that these numerous violations of Mr. Bách's right to a fair trial and due process are of such gravity as to render his deprivation of liberty arbitrary under category III.

iv. Category V

74. According to the source, it appears that Mr. Bách was targeted based on his activities related to environmental activism and monitoring of the State's compliance with international and domestic regulations related to environmental law. While he does not consider himself a human rights defender, his professional activities are directly related to advocating for the rights of others, including the right to a clean environment and to land.

75. The source notes that at least three other environmental leaders have been arrested in Vietnam in the course of seven months on charges related to tax evasion who have all received heavy prison sentences. The arrest and investigation of these respected civil society members did not follow the normal process for tax evasion.

76. In the absence of a Government reply, the Working Group find to be prima facie credible the source's allegations that Mr. Bách was targeted based on his activities related to environmental activism. The Working Group recalls that it has issued several opinions pertaining to Vietnamese activists who have been involved in environmental activism.⁶³ In this context, the Working Group finds that Mr. Bách arrest, conviction and sentence and denial of family visits seek to punish him for activities that are expressly protected by international law. As such, in the discussion above concerning category II, the Working Group established that Mr. Bách's detention had resulted from the peaceful exercise of his fundamental freedoms. When detention has resulted from the active exercise of civil and

⁶¹ CCPR/CO/75/VNM.

⁶² Communication 1100/02 *Bandejesky v Belarus*, para 10.13.

⁶³ Opinion Nos. 44/2019, 45/2019, 81/2020, 81/2021, 43/2022, 86/2022. See also A/71/281, paras, 35 and 39.

political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.⁶⁴

77. The Working Group thus finds that Mr. Bách's deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on political or other opinion, related to his environmental work. His detention violates articles 2 and 7 of the UDHR and articles 2 (1) and 26 of the Covenant, and is arbitrary under category V.

78. The Working Group refers the case to the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

v. Concluding remarks

79. According to the source, throughout his detention, Mr. Bách has not been permitted to receive visits, calls, or written communications from his family, despite numerous requests. The Working Group is alarmed by the allegations that authorities prevented his family from giving him a photograph of his son who was only two weeks old when Mr. Bách was arrested. Mr. Bách has informed his attorney that he had been on a hunger strike since 10 January 2022, in protest of his incommunicado detention and appears to have lost a significant amount of weight. Recalling Rule 58 of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles,⁶⁵ the Working Group strongly urges the Government to ensure that Mr. Bách's right to contact with the outside world, in particular his family, is respected. The Working Group is compelled to remind the Government that according to article 10 (1) of the Covenant and rule 1 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and dignity.

80. The present case is one of a number of cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty of persons, particularly human rights defenders, in Viet Nam.⁶⁶ Many of these cases follow a familiar pattern of arrest that does not comply with international norms, lengthy detention pending trial with no access to judicial review, denial of access to legal counsel, incommunicado detention, prosecution under vaguely worded criminal offences for the peaceful exercise of human rights, a brief closed trial at which due process is not observed, disproportionate sentencing, and denial of access to the outside world. The Working Group is concerned that this pattern indicates a systemic problem with arbitrary detention in Viet Nam which, if it continues, may amount to a serious violation of international law.⁶⁷

81. The Working Group would welcome the opportunity to work constructively with the Government of Viet Nam to address arbitrary detention. A significant period has passed since its last visit to Viet Nam in October 1994, and the Working Group considers that it is now an appropriate time to conduct another visit. On 11 June 2018, the Working Group reiterated earlier requests to the Government to undertake a country visit and will continue to seek a positive response.

Disposition

82. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of **Đặng Đình Bách**, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 15, 16, 19 and 26 of the International Covenant on Civil and Political Rights is arbitrary and falls within categories I, II, III and V.

83. The Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation of Mr. Bách without delay and bring it into conformity with the

⁶⁴ Opinions Nos. 59/2019, para. 79; 13/2018, para. 34; 40/2021, para. 90; 11/2021, para. 87 and 82/2021, para. 84.

⁶⁵ Opinions Nos. 35/2018, para. 39; 44/2019, paras. 74–75 and 45/2019, para. 76.

⁶⁶ For example, opinions Nos. 81/2020, 36/2021, 82/2021, 43/2022 and 86/2022.

⁶⁷ Opinion No. 47/2012, para. 22.

relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

84. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Bách immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate and unconditional release of Mr. Bách.

85. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Bách and to take appropriate measures against those responsible for the violation of his rights.

86. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteurs on the right to freedom of opinion and expression; and on sustainable environment, for appropriate action.

87. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

88. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Bách has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Bách;
- (c) Whether an investigation has been conducted into the violation of Mr. Bách's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Viet Nam with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

89. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

90. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

91. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁶⁸

[Adopted on 31 March 2023]

⁶⁸ Human Rights Council resolution 51/8, paras. 6 and 9.