

Dr. Surya Deva  
United Nations Special Rapporteur on Development

Subject: Challenges to a Just Energy Transition and the Right to Development in Vietnam

Dear Prof. Deva,

We are writing to bring to your attention a disturbing pattern of wrongful arrests of several environmental human rights defenders, climate activists and energy policy experts working on the transition from coal to renewable sources of energy and other important environmental and development issues in Vietnam. The arrests and imprisonment of these individuals threatens the work towards a just energy transition that is imperative for the realisation of a Right to Development for the people of Vietnam.

These arrests have taken place within a wider context of repression of civil society in Vietnam, and exclusion from development decisions and processes. This includes restrictions on access to information and public participation and infringements on the rights to freedom of opinion and expression and freedom of assembly and association.<sup>1</sup> They also occur in the context of Vietnam's energy transition and the negotiation of the Just Energy Transition Partnership (JETP), a 15.5 billion USD financing agreement announced in December 2022 between G7 governments plus Denmark and Norway, and Vietnam, aimed at accelerating a just energy transition in Vietnam. Key financing partners include the World Bank Group, the Asian Development Bank, the European Investment Bank (EIB), and a group of commercial banks coordinated by the Glasgow Alliance for Net Zero (GFANZ), with technical support from the United Nations Development Programme (UNDP).

In light of your upcoming visit to Vietnam and the questionnaire circulated for input, this submission focuses on information regarding the following questions:

- What are the key issues and challenges (including any pressing legal and policy gaps) faced in the implementation of the right to development in Vietnam?
- How is the Government dealing with impacts of digital divide and climate change on the right to development?
- How does the Government promote and guarantee active, free and meaningful participation of people in development policies and programs? Specific attention will be given to access to information and effective participation of marginalised or vulnerable

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<sup>1</sup> 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, December 10th, 2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26885> (last accessed on October 30th, 2023).

groups in the design, implementation and monitoring of development programs, as well as access to mechanisms of accountability.

- How are human rights and environmental considerations included while adopting development policies and programs? Are human rights impact assessments conducted? Are civil society organisations and/or workers organisations included in such assessment and in what ways?
- Could you provide any suggestions or recommendations that the Special Rapporteur could address to the Government and other stakeholders whose work has an impact on realising the Sustainable Development Goals and the right to development in Vietnam?
- Could you provide any suggestions for and contacts of stakeholders that the Special Rapporteur could meet including government institutions, civil society organisations, community representatives and academia?
- Any other pertinent information that you consider relevant for the visit of the Special Rapporteur?

As you may be aware from our previous submission,<sup>2</sup> six environmental and climate leaders who helped pave the way for the JETP agreement by advocating for Vietnam's transition away from coal have been arrested and imprisoned over the last two years on trumped up charges.

These leaders include Mr. [Dang Dinh Bach](#) (Bach), co-founder and former director of the Law and Policy for Sustainable Development Research Center (LPSD), Ms. [Hoang Thi Minh Hong](#) (Hong), former Executive Director of CHANGE, an environment non-profit in Vietnam that addresses some of the country's most critical environmental challenges, internationally renowned climate expert and Goldman Environmental Prize winner, Ms. [Nguy Thi Khanh](#) (Khanh), journalist Mr. Mai Phan Loi (Loi), lawyer Mr. Bach Hung Duong (Duong) of the Centre for Media in Educating Community (MEC). Each of these five individuals was convicted and sentenced to an onerous prison term on "tax evasion" charges. While Khanh and Loi were released early this year after serving 16 months and 27 months respectively in prison, the others remain incarcerated.

The sixth individual, Ms. [Ngo Thi To Nhien](#) (Nhien) was detained on 15 September 2023. Nhien is Executive Director of [Vietnam Initiative for Energy Transition](#) (VIETSE), an independent energy think tank which aims to "accelerate the energy transition of Vietnam towards a carbon-neutral society." Nhien has worked for over a decade as a consultant on energy projects for the World Bank, the European Union, the Asian Development Bank, USAID, and a number of UN agencies,<sup>3</sup> as well as Vietnam's Ministry of Industry and Trade. At the time of her arrest,

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<sup>2</sup>International Rivers, Urgent request for your direct involvement in the issue of unjust arrest of environment defenders in Vietnam, July 18, 2023, to the United Nations Working Group on Business and Human Rights, United Nations Special Rapporteur on the Right to Development, United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change, United Nations Special Rapporteur on human rights and the environment. Attached along with this submission as Annexure I.

<sup>3</sup> The Guardian, Vietnam detains energy thinktank chief in latest arrest of environmental expert, October 1st, 2023,

Nhien was working closely with national and international partners on the development of Vietnam's JETP. Nhien also worked with the Viet Nam Energy Partnership Group (VEPG), which was established by the government to engage stakeholders in implementing Vietnam's sustainable energy transition, as well as the Southeast Asia Energy Transition Partnership (ETP), a partnership formed to help Indonesia, Vietnam, and the Philippines in their transitions away from fossil fuels. Khanh, another of the six arrested activists, also served as an adviser for the ETP.

On 30 September a spokesperson from Vietnam's Ministry of Public Security announced that Nhien was detained for "appropriation of documents" from a state-owned agency under Article 342 of the Penal Code, concerning documents related to Vietnam's energy transition.<sup>4</sup> She is currently being held in pretrial detention.

The Office of the High Commissioner for Human Rights (OHCHR),<sup>5</sup> UN Special Procedures,<sup>6</sup> governments including the United States,<sup>7</sup> United Kingdom,<sup>8</sup> the European Union<sup>9</sup> and human rights organisations have expressed concerns regarding the arbitrariness of the arrests and imprisonment of these individuals and the laws that are weaponised to enable such persecution.<sup>10</sup> These prosecutions are politically driven and designed to criminalise policy

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<https://www.theguardian.com/world/2023/oct/01/vietnam-detains-energy-thinktank-chief-in-latest-arrest-of-environmental-expert>

<sup>4</sup> Thanh Chung, Trung tướng Tô Ân Xô: Bắt Ngô Thị Tố Nhiên và 2 người vì chiếm đoạt tài liệu mật của EVN, September 30th, 2023, available

at <https://tuoitre.vn/trung-tuong-to-an-xo-bat-ngo-thi-to-nhien-va-2-nguoi-vi-chiem-doat-tai-lieu-mat-cua-evn-20230930172008674.htm?fbclid=IwAR253CK3tvMmcNma65opLEdFUDBRtYOoyxym6ON7suVn209ylVV7B0IcUjU> (last accessed on October 30th, 2023).

<sup>5</sup> See, for example: Spokesperson for the UN High Commissioner for Human Rights: Jeremy Laurence, Sentencing of environmental human rights defenders in Viet Nam, September 29th, 2023 available at <https://www.ohchr.org/en/press-briefing-notes/2023/09/sentencing-environmental-human-rights-defenders-viet-nam> (last accessed on October 30th, 2023).

<sup>6</sup> Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April, 2023, May 26th, 2023, available at: <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGA-D-2023-22-VietNam-Advance-Edited-Version.pdf> (last accessed on October 30th, 2023).

<sup>7</sup> Press Statement from US Department of State, On the Conviction and Sentencing of Vietnamese NGO Leader Hoang Thi Minh Hong, September 28th, 2023, available at <https://www.state.gov/on-the-conviction-and-sentencing-of-vietnamese-ngo-leader-hoang-thi-minh-hong/> (last accessed on October 30th, 2023).

<sup>8</sup> Foreign, Commonwealth and Development Office, Sentencing of Vietnamese climate advocate: FCDO statement, October 2nd, 2023, available at: <https://www.gov.uk/government/news/sentencing-of-vietnamese-climate-advocate-fcdo-statement> (last accessed on October 30th, 2023).

<sup>9</sup> European Union External Action Press Team, Vietnam: Statement by the Spokesperson on the conviction of environmental activist Hoang Thi Minh Hong, available at [https://www.eeas.europa.eu/eeas/vietnam-statement-spokesperson-conviction-environmental-activist-hoang-thi-minh-hong\\_en#:~:text=The%20EU%20is%20deeply%20concerned,for%20all%20persons%20in%20Vietnam](https://www.eeas.europa.eu/eeas/vietnam-statement-spokesperson-conviction-environmental-activist-hoang-thi-minh-hong_en#:~:text=The%20EU%20is%20deeply%20concerned,for%20all%20persons%20in%20Vietnam) (last accessed on October 30th, 2023).

<sup>10</sup> See for example, Swanton, B., Project 88, Weaponising the Law to Prosecute the Vietnam Four, April 2023. Available at <https://the88project.org/wp-content/uploads/2023/04/Weaponizing-the-law-report-Project-88-ENG.pdf> (last accessed on October 26,, 2023). Statements and Opinions from different UN human rights experts

activism.<sup>11</sup> Activists' efforts to organise non-profits into powerful advocacy coalitions and promote a civil society movement, brought them into conflict with the Communist Party of Vietnam. The common thread in these cases is that all of the individuals involved ran organisations that conducted advocacy on energy policy and all received foreign funding to carry out this work.

As a former member of the UN Working Group on Business and Human Rights, you have championed the cause of civil society and public participation. You continue to be deeply engaged on questions of environmental defenders, climate justice and corporate accountability and human rights in your different engagements, including as United Nations Special Rapporteur on the Right to Development.

The energy transition in Vietnam has brought to fore urgent business and human rights challenges, including on the protection of environmental defenders, civil society participation and access to information within development and energy transition financing frameworks. A successful just energy transition in Vietnam is imperative for achieving the Right to Development, the right to a healthy environment and the achievement of SDG 13 (b) and 17. Vice versa, failure of “just” transition processes due to absence of mechanisms for accountability, transparency and inclusive participation, will not only be contrary to the targets of SDG 16 but it will also impede progress towards a Right to Development.

Both development and just transitions require the “active, free and meaningful participation in development” of all peoples and individuals, effective rule of law and accountability at all levels and a national environment that is conducive to just, equitable and participatory development that is people and human rights centred.<sup>12</sup> Information transparency, together with meaningful engagement with civil society is critical for building a conducive environment.

The wrongful and arbitrary incarceration of environmental defenders, climate activists and energy expert in Vietnam violate the general principles of a right to development by<sup>13</sup>:

- a) impeding active participation of people in the JETP process.
- b) foreclosing the space for participation, inclusion and accountability in the JETP process and violating principles of equity, equality and non-discrimination. Jailing community organisers like Hong and Bach impedes an just energy transition process that can otherwise enable intersectionality, empowerment, accessibility and subsidiarity. To separate these wrongful arrests from the process of energy transition or development will be a failure to recognize the universality, inalienability, indivisibility, interdependence and interrelatedness of all human rights from a process of development.

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[https://static1.squarespace.com/static/63a1054de4b8030902eec458/t/6531c2b305d9dd4da44ca786/1697759923335/UN+Statements+Ops+About+Vietnam+5\\_10.23.pdf](https://static1.squarespace.com/static/63a1054de4b8030902eec458/t/6531c2b305d9dd4da44ca786/1697759923335/UN+Statements+Ops+About+Vietnam+5_10.23.pdf) (last accessed on October 26th, 2023).

<sup>11</sup> Swanton, *Id.*

<sup>12</sup> Preamble, Draft international covenant on the right to development, A/HRC/54/50.

<sup>13</sup> Article 3, Draft international covenant on the right to development, A/HRC/54/50.

- c) erasing and obscuring stakeholder obligations and enabling a legal black hole within international climate change action. Policies and practices of JETP in Vietnam, including in its financing, design, and implementation are marked by a normative gap regarding questions of rights and the meaning of “just” in a Just Energy Transition.<sup>14</sup> The responsibility for compliance with safeguard policies, including on consultation and due diligence, is being passed around amongst different JETP stakeholders, such as the ADB, UNDP, IFC, GFANZ and IPG. Stakeholders are refusing to engage in a sectoral, collective and early stage compliance, instead pushing their institutional responsibility to the project level, at a later stage in the JETP cycle.<sup>15</sup> Project selection, feasibility studies, nature of projects whether mitigation or adaptation happen at the beginning of a JETP cycle and require transparency and accountability at this stage for it to be a just and participatory energy transition. Early stage, sectoral due diligence and consultation is critical to a just energy transition and it is the time when environmental defenders face grievous risks given the financial stakes involved for existing coal plants.
- d) excluding environmental defenders and climate activists from the energy transition process separates it from the notion of human rights.
- e) hampering international cooperation. The JETP is an example of an energy transition framework involving multiple states and international financial institutions and organisations. It requires accountability and transparency for its implementation. The latest arrest of Nhien indicates a potential criminalisation of access to information regarding energy transition<sup>16</sup> and it furthers the insecurity and reprisal risks for those in Vietnam who are working on transition away from coal with international stakeholders. The threat of criminal sanctions for accessing information connected to the energy transition process will inhibit both civil society and other kinds of energy transition enterprises from making informed decisions and are likely to fundamentally hamper the energy transition process. Cooperation on JETP must be based on principles of international law, including accountability, participation and transparency.

Vietnam has a duty to ensure development that is in compliance with its other human rights commitments. It has a duty ensure popular participation, through appropriate means, in the formulation, adoption and implementation of plans and partnership supporting the energy transition.<sup>17</sup>

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<sup>14</sup> International Rivers, Submission to the Working Group on Business and Human Rights: Extractive sector, just transition and human rights, May 29th, 2023, paras 3-5, 10-15, available at <https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/wg-business-cfis/2023/extractive-sector/subm-extractive-sector-csos-international-rivers-11.pdf> (last accessed on October 30th, 2023).

<sup>15</sup> See for example, responses from ADB and IFC to civil society letter on JETP concerns attached in Annexure II.

<sup>16</sup> The Guardian, Vietnam detains energy thinktank chief in latest arrest of environmental expert, October 1st, 2023, <https://www.theguardian.com/world/2023/oct/01/vietnam-detains-energy-thinktank-chief-in-latest-arrest-of-environmental-expert> (last accessed on October 30th, 2023).

<sup>17</sup> Article 8(4), Draft international covenant on the right to development, A/HRC/54/50.

The wrongful and arbitrary arrests of environmental defenders, climate activists and energy experts, effectively hinders their ability to participate in, contribute to and enjoy civil, cultural, economic, environmental, political and social development that is linked to the energy transition process. Their wrongful and arbitrary arrests violate their right to active, free and meaningful participation in development. The arrest of defenders has also led to a broader chilling effect on civil society in Vietnam. The European Court of Human Rights and the Inter-American Court of Human Rights have established well-known precedents for the chilling effect, which occurs when a sanction imposed upon an individual has society-wide implications that curtail freedom of expression. The State must exercise caution when implementing such measures to avoid encroaching on public space, as doing so amounts to a violation of society's right to free expression.

There is a substantive obligation on duty bearers, including the various multilateral institutions<sup>18</sup> involved in the JETP, such as the ADB, EIB, and IFC, to protect freedom of expression and association in order to facilitate public participation in climate action.<sup>19</sup> Civil society, including environmental defenders, are important actors in a rights-based climate action and sustainable development strategy, such as just transitions.<sup>20</sup> 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 persecution.

In light of these concerning circumstances, the Vietnam Climate Defenders Coalition requests you:

- Meet with the wrongfully incarcerated defenders during the upcoming country visit to Vietnam.
- Seek the urgent release of Mr. Dang Dinh Bach, Ms. Hoang Thi Minh Hong, Ms. Nhien Ngo, and other unjustly imprisoned civil society leaders in Vietnam.
- Urge all stakeholders, including the UNDP to conduct rigorous due diligence on threats to environmental and human rights defenders and restrictions on environmental activism and civic engagement in Vietnam, in accordance with the environmental and social safeguard standards of various JETP stakeholders, as they relate to the financing and implementation of the JETP. Urge all JETP stakeholders to ensure strict adherence to their own reprisal policies and public participation commitments.
- Urge the Vietnam government and other stakeholders to incorporate explicit protections against retaliation and reprisals for environmental and human rights defenders, together

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<sup>18</sup> 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.

<sup>19</sup> 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](https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/Letter_to_SBSTA_UNFCCC_May2016.pdf) (last accessed October 26, 2023).

<sup>20</sup> UN Office of the High Commissioner for Human Rights, Discussion Paper: Taking Action on Human Rights and Climate Change, p. 5, September 30, 2016. Available at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/EM2016/TakingAction.pdf> (last accessed October 26, 2023). (Hereinafter, OHCHR Discussion Paper)

with policy frameworks for free and safe participation of civil society in JETP design, decision-making, monitoring and implementation.

- Call upon the ADB, IFC, UNDP, IPG, Glasgow Financial Alliance for Net Zero, and other stakeholders in the Vietnam JETP to design a human rights regulatory framework for JETP governance in line with the UN Guiding Principles on Business and Human Rights and General Principles of International Law regarding Right to Development, including accountability, transparency and public participation.
- Urge the Vietnam government to promote enabling conditions by taking back unjust laws, including for civil society provided for by international standards and treaties aimed at creating and maintaining, in law and in practice, a safe enabling environment for civil society to freely operate, including reform of laws and policies related to registration, tax requirements for civil society associations as well as criminal law pertaining to appropriation of information, that are overly burdensome and incompatible with fundamental rights, for freedom of assembly, association, and expression.

We hope that you raise these concerns with the representatives of the Vietnam Government Office, including the agencies responsible for leading Vietnam's energy transition and JETP, including the Ministries of Natural Resources and Environment, Industry and Trade, Public Security, Planning and Investment, Finance, Foreign Affairs, Justice, Transport, Agriculture - Rural Development, Labor - Invalids - Society, Science - Technology.

Further, we urge you to engage with the country missions of other important stakeholders in the Just Energy Transition Partnership (JETP) and other energy transitions processes, including the UNDP, which is providing technical assistance for the Vietnam JETP, and impress upon them the need for a substantive compliance with their own Social and Environment Standards. For your reference, we are also attaching the joint letters submitted by a coalition of civil society organisations to ADB, IFC and the UNDP, bringing their attention to the ongoing concerns regarding public participation, access to information and transparency in the JETP process.<sup>21</sup>

Thank you for your consideration and we look forward to your response. Please direct communications to Ms. Guneet Kaur: [gkaur@internationalrivers.org](mailto:gkaur@internationalrivers.org) and Ms. Maureen Harris: [mharris@internationalrivers.org](mailto:mharris@internationalrivers.org). We would be happy to participate in a meeting to discuss these issues further.

Sincerely,  
Guneet Kaur  
International Rivers, USA

Main Submitting Organization: Vietnam Climate Defenders Coalition

Contact email: [v4climateleaders@gmail.com](mailto:v4climateleaders@gmail.com)  
Webpage: [www.standwithbach.org](http://www.standwithbach.org)

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<sup>21</sup> Attached along with this submission as Annexure II.

The Vietnam Climate Defenders Coalition (VCDC) is a network and collective of several international and regional human rights and environmental organisations that are engaged in documentation and advocacy regarding the wrongful and arbitrary incarceration of environmental defenders and climate activists in Vietnam. The Coalition was established in 2023.

Submitting organizations that contributed to this submission include:

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# Annexure I



**Urgent request for your direct involvement in the issue of unjust arrest of environment defenders in Vietnam**

**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.

[www.internationalrivers.org](http://www.internationalrivers.org)

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## **United Nations Working Group on Business and Human Rights**

Chairperson: Ms. Pichamon Yeophantong (Thailand)

Vice-Chairperson: Mr. Damilola Olawuyi

Ms. Elżbieta Karska (Poland)

Ms. Fernanda Hopenhaym (Mexico/Uruguay)

Mr. Robert McCorquodale

## **United Nations Special Rapporteur on the Right to Development**

Mr. Surya Deva

## **United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change**

Mr. Ian Fry

## **United Nations Special Rapporteur on human rights and the environment**

Mr. David R. Boyd

18 July, 2023

*Re: Urgent request for your direct involvement in the issue of unjust arrest of environment defenders in Vietnam*

We are writing this letter to request your excellencies' attention to an urgent and ongoing situation in Vietnam. Since June 2021, the Government of Vietnam has targeted and arrested several environmental defenders and climate justice leaders under trumped-up tax evasion charges, alongside increased restrictions for the operation of civil society organizations in the country. The unjust targeting of environmental defenders is particularly concerning, at this time, when different donor states, multilateral institutions, and a private green financing consortium are finalizing the financing and technical design for the USD 15.5 billion Just Energy Transition Partnership (JETP) in Vietnam.

Announced in December 2022, the Vietnam JETP involves financial pledges from the International Partners Group (IPG)<sup>1</sup> the Asian Development Bank (ADB) and International Finance Corporation (IFC), along with a commitment to mobilize matching private investment from commercial banks under the coordination of the Glasgow Financial Alliance for Net Zero. The United Nations Development Program (UNDP) will provide technical assistance for the Vietnam JETP. Currently, a Resource Mobilization Plan (RMP) is under development, proposed for completion by November 2023. Feasibility studies and assessments for development of an energy transition mechanism are also underway.

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<sup>1</sup> The IPG for the Vietnam JETP includes the United Kingdom, the United States, the European Union, Japan, Germany, France, Italy, Canada, Denmark, and Norway.

Despite high level commitments to civil society and public participation in the JETP, technical and financing aspects of the energy transition are the primary focus of discussion and negotiation in the design and implementation of the JETP framework in Vietnam. Deliberations on human rights contingencies remain muted or neglected. Given the significant and varied role of public and private finance and business actors investing in Vietnam under the framework of the JETP, it is critical to ensure a governance framework that is consistent with international human rights commitments, including the UN Guiding Principles on Business and Human Rights, in order to redress violations and prevent future environmental and human rights harms.

#### Silencing of climate action and environmental defenders in Vietnam

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 in 2021 paved the way for the JETP, announced through a high-level political declaration in December 2022. However, despite the important work of the VSEA, it was forced to suspend its operations and from June 2021, 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 following their arrests.

Bách was the director of a nonprofit organization in Hanoi called the Law and Policy of Sustainable Development Research Centre (LPSD), which represented marginalized communities in cases involving land rights, pollution, and other environmental issues in Vietnam. Khanh was the executive director of GreenID, a non-profit organization that promotes public health and sustainable development solutions in Vietnam's energy transformation. Loi was the founder and chair of the Scientific Board of the Centre for Media in Educating Community (MEC), and DƯỠNG is also a director at MEC. MEC conducted livestreams of environmental news and talk show programs. 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.<sup>2</sup> The VN4 advocated publicly and through direct engagement with the government, highlighting contradictions between PDP8 and the country's national and international commitments.<sup>3</sup>

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<sup>2</sup>Swanton, 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). APPENDIX I.

<sup>3</sup>*Id.*, p. 49.

Several of those targeted and imprisoned on tax evasion charges were also closely involved in scrutiny and advocacy with respect to business and investment-related harms. Bach's organization was an environmental public interest law firm using the power of the law to address environmental degradation and harms due to poor industrial practices and provide legal assistance to affected communities to understand and enforce their rights. LPSD aimed to use Vietnam's strong environmental laws and procedures to build public participation and ensure sustainable development outcomes. Cases included those involving health and environmental harms due to industrial pollution from a pesticide manufacturer, phosphate factory, coal-fired power plants and loss of land and livelihoods due to forced relocation for a hydropower project. Bach and Loi were Executive Board members of VNGO-EVFTA Network, a group of development and environmental CSOs established to raise awareness about the EU-Vietnam Free Trade Agreement (EVFTA). Prior to their arrests, Bach and Loi applied for membership of the Vietnam Domestic Advisory Group (DAG), a civil society body with the role of monitoring implementation of the agreement. Vietnam systematically delayed the establishment of the DAG, effectively blocking civil society involvement in the EVFTA.

On May 31st, 2023, another prominent environmental defender and climate activist, Hong Thi Minh Hoang, was arrested by Vietnamese authorities.<sup>4</sup> Formal charges of tax evasion [were announced](#) on 21 June, similar to those applied to the Vietnam 4. Hong was accused of evading 5.2 billion dong (\$227,000) in taxes and forced to plead guilty. Her family made an advance payment of 200 million dong (\$8,600) in compensation. Hong was the former Executive Director of CHANGE, an environment non-profit in Vietnam working to address some of the country's most critical environmental challenges. CHANGE closed in 2022 due to pressure from authorities.

Tax laws for civil society organizations in Vietnam are vaguely worded, arbitrarily enforced, and place unreasonably burdensome registration and approval requirements on non-governmental organizations in Vietnam. As such, these laws impose unjust and disproportionate restrictions on freedom of association, and are in violation of article 21 and 22 of the ICCPR and article 8 of

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<sup>4</sup> Marta Hurtado (Spokesperson for the UN High Commissioner for Human Rights), Viet Nam – Detention of environmental human rights defender Hoang Thi Minh Hong, Press briefing notes from Office of the High Commissioner for Human Rights, June 02, 2023, Geneva. Available at <https://www.ohchr.org/en/press-briefing-notes/2023/06/viet-nam-detention-environmental-human-rights-defender-hoang-thi-minh> (last accessed on June 04, 2023).

the ICESCR.<sup>5</sup> Multiple UN Special mandate-holders have expressed concern over the “chilling effect” on civil society organizations in Vietnam.<sup>6</sup> The ambiguous nature of tax-exempt status for civil society organizations in Vietnam and criminal liability for violations create opportunities for “abuse of power”<sup>7</sup> and arbitrary enforcement of the law, as seen in the case of the arrested environmental defenders. The trials of Bach, Khanh, Loi and Duong violated basic fair trial and due process norms.<sup>8</sup> In May 2023, the UN Working Group on Arbitrary Detention issued an Opinion finding that Bach’s arrest and detention is arbitrary on the basis of four of five grounds, and violates norms of international law,<sup>9</sup> including his right to expression, association, numerous procedural and fair trial rights, and his right to be free from discrimination.<sup>10</sup>

### Lack of sectoral regulatory framework for the Just Energy Transition Partnership

There is a need for informed guidance within the governance framework for the JETP. With the wide array of actors and stakeholders, the significant and varied role of private finance and business actors, the growing number of countries adopting this framework, and the wide range of objectives and impacts to be balanced, clear policies and guidelines are required to embed the just and human rights agenda within the transition processes. Just energy transitions require strong social consensus, which has to be achieved through inclusive social dialogue<sup>11</sup>, and meaningful and informed participation.<sup>12</sup> Mitigation and adaptation strategies should conform with international human rights law norms, including public participation in decision-making and access to justice.<sup>13</sup> Incorporating human rights obligations and

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<sup>5</sup> 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).

<sup>6</sup> UNSR communication, *id.*, p.1.

<sup>7</sup> 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.

<sup>8</sup> Project 88, *supra* note 2, pp. 44-49.

<sup>9</sup> 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.

<sup>10</sup> Working Group on Arbitrary Detention, Opinion No. 22/2023 concerning Đặng Đình Bách (Viet Nam), A/HRC/WGAD/2023/22, May 11, 2023. Appendix II.

<sup>11</sup> 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](https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf) (last accessed 28.04.2023). *Hereinafter*, ILO Guidelines. .

<sup>12</sup> 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](https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf) (last accessed May 01, 2023).

<sup>13</sup> 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)

commitments into plans and programs for climate action, such as the JETP, is critical for coherent, legitimate and sustainable outcomes.<sup>14</sup>

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. Rights-related analysis is largely restricted to project level assessments. However, there are currently no dedicated policy frameworks and tools designed that can provide directions and guidance to financing institutions, governments and private sector on how to secure just transitions. There are wide sectoral level gaps and challenges in energy transitions that remain unaddressed and enable human rights harms. The current approach of financial institutions like ADB and IFC has been to fall back upon existing practices of project level due diligence and safeguard analysis done at the end of the program cycle.<sup>15</sup>

The arbitrary and unjust control of civil society funding and activities, unjust arrests of environmental defenders and the chilling effect these illegal state acts have on the broader climate justice movement, effectively exclude civil society from negotiating spaces and deliberations around JETP design, programs and projects, even as these JETPs proclaim to be “just”. There is a substantive obligation on duty bearers, including States and multilateral institutions,<sup>16</sup> to protect freedom of expression and association in order to facilitate public participation in climate action.<sup>17</sup> Civil society, including environmental defenders, are important actors in a rights-based climate action and sustainable development strategy, such as just transitions.<sup>18</sup> 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

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<sup>14</sup> 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-Versi-on-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).

<sup>15</sup> A coalition of international civil society organizations recently submitted a letter to ADB and IFC managements teams for the JETP, expressing their concerns about the wrongful arrests of environmental defenders in Vietnam and the effective isolation of civil society from JETP deliberations. See Appendix III. The response to the letters indicates an absence of sectoral level, early stage policy and approach.

<sup>16</sup> 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.

<sup>17</sup> 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\\_Ma\\_y2016.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/Letter_to_SBSTA_UNFCCC_Ma_y2016.pdf) (last accessed May 1, 2023).

<sup>18</sup> OHCHR Discussion Paper, *supra* note 13, p. 5.

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.

While the IPG, ADB, UNDP and IFC have specific policies requiring comprehensive and regular consultations from early stages of the program cycle as well as policies against retaliation, it is not clear how these policies are being followed in practice in the Vietnam JETP, which continues to move ahead despite the retaliation against those environmental defenders who were instrumental in securing the commitments that laid the foundation for the Vietnam JETP. The discussions towards the development of the Resource Mobilization Plan and the Energy Transmission Mechanism for the Vietnam JETP have so far not been inclusive of important civil society actors in Vietnam. 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 further 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.

#### Request for Working Group and Special Procedures monitoring and intervention in the Vietnam situation

We request your esteemed offices to closely monitor the ongoing situation of arrest of environmental defenders in Vietnam and the arbitrary use of vague tax laws against environmental defenders. Specifically, we believe your esteemed offices may be of meaningful assistance in releasing a public statement that:

- *Condemns* the latest arrest of Hong Hoang and the continued unjust incarceration of Bach, Loi and Duong.
- *Calls upon* the Government of Vietnam to amend repressive tax laws and release arrested environmental defenders.
- *Meets with* the wrongfully incarcerated defenders during any upcoming country visits to Vietnam.
- *Call attention to* the importance of a strong civic space for just transitions and sustainable development with the Government of Vietnam.
- *Calls upon* the ADB, IFC, UNDP, IPG, Glasgow Financial Alliance for Net Zero, and other stakeholders in the Vietnam JETP to design a human rights regulatory framework for



JETP governance in line with the UN Guiding Principles on Business and Human Rights that specifically includes a policy for protection of environmental and human rights defenders in the JETP process.

- *Reiterates* the importance of human rights to a just transition and sustainable development. 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 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.
- *Calls upon* the ADB, IFC, UNDP, IPG, Glasgow Financial Alliance for Net Zero, and other stakeholders in the Vietnam JETP to conduct rigorous due diligence on the current threats to environmental and human rights defenders, the operation of civil society organizations, and restrictions on meaningful public participation in Vietnam, as they relate to the financing and implementation of the JETP.
- *Calls upon* the ADB, IFC, UNDP, IPG, Glasgow Financial Alliance for Net Zero, and other stakeholders in the Vietnam JETP to make JETP financing contingent upon explicit protections against retaliation and reprisals for environmental and human rights defenders, together with effective measures for civil society participate freely and safely in decision-making on the JETP and monitoring of its implementation.

Thank you for your consideration and we look forward to your response. Please direct communications to Ms. Guneet Kaur: [gkaur@internationalrivers.org](mailto:gkaur@internationalrivers.org) and Ms. Maureen Harris: [mharris@internationalrivers.org](mailto:mharris@internationalrivers.org). We would be happy to participate in a meeting to discuss these issues further.

Sincerely,  
Guneet Kaur  
International Rivers, USA

# **Annexure II**

**Mr. Makhtar Diop**  
Managing Director  
International Finance Corporation  
2121 Pennsylvania Avenue, NW  
Washington, DC 20433 USA  
By email

8 May 2023

Dear Mr. Makhtar Diop,

**Re: Vietnam JETP and threats to environmental defenders and public participation**

We, the undersigned organizations, write to express our serious concerns regarding the implementation of Vietnam’s Just Energy Transition Partnership (JETP), which we understand the International Finance Corporation (IFC) will play a key role in financing.

While we support this important step to address climate change, we are extremely concerned over the recent imprisonment of several prominent civil society leaders in Vietnam and evidence that arrests of environmental defenders and threats to civil society organizations are part of a [broader and ongoing](#) crackdown designed to limit the autonomy and impact of civil society. Civil society leaders played a pivotal role in Vietnam’s ambitious climate commitments and meaningful progress will require strong civil society involvement. There will be no “just” transition unless Vietnam’s restrictive policies and ongoing persecution of the country’s leading environmental defenders are addressed and remedied.

To ensure an energy transition that is just and inclusive and complies with the IFC’s own policies on [public participation](#) and [reprisals](#), Vietnam’s JETP must include safeguards for environmental defenders and measures for independent civil society organizations and representatives to participate freely and safely in decision-making on JETP design, monitoring and implementation. Prior to mobilizing finance, we urge the IFC to take an active role in ensuring these measures are explicitly included in JETP implementation guidelines, including the Resource Mobilization Plan currently under development, which will serve as a detailed guide for JETP implementation.

**Threats to environmental defenders and public participation in Vietnam**

Over the past few years, civil society leaders and nonprofit organizations working on environmental and energy issues in Vietnam have faced threats and imprisonment. Four individuals who paved the way for the JETP agreement by pushing for Vietnam to adopt a net zero policy are currently in jail on trumped up tax evasion charges.

As highlighted in a [recently published report](#) by The 88 Project, the arrests of the “Vietnam four” and anomalies in the way in which their cases were prosecuted [indicates political persecution](#). Their arrests and the forced dissolution of their organizations have created a disabling environment for civil society leaders and environmental organizations in Vietnam who should play a critical role in the monitoring and implementation of the JETP.

Currently serving five years in prison is prominent environmental lawyer, [Mr. Dang Dinh Bach](#), co-founder and director of the Law and Policy for Sustainable Development Research Center (LPSD), a leading public interest law firm, which was forced to shut down following his arrest. Bach was detained on 24 June 2021 and charged with tax evasion on 2 July 2021. He was held incommunicado until his sentencing at a closed trial in January 2022.

Bach has recently [announced his intention to commence a hunger strike](#), “until release or until death”, to protest the Vietnamese government’s unjust treatment of civil society, on 24 June 2023, the two year anniversary of his detention.

Bach has dedicated his life to protecting communities from harmful pollution, phasing out plastic waste, and promoting a transition away from coal to clean energy sources. Bach was an Executive Board member of VNGO-EVFTA Network, a group of development and environmental CSOs established to oversee the government’s compliance with labor and sustainability conditions in its trade agreement with the EU.

Bach and LPSD supported communities who had been forced to relocate for the Son La Hydropower Project to advocate for land rights and improved livelihoods, including land appropriated for the Son La Rubber Company. We note that the IFC [is financially linked](#) to both the Son La Hydropower Project and the Son La Rubber Company through its investments in a financial intermediary, Vietin Bank.

Also in prison serving a 21-month sentence is internationally renowned climate expert and Goldman Environmental Prize winner, [Ms. Nguy Thi Khanh](#). Over the last 10 years, Khanh worked with provincial governments to reduce the central government’s coal expansion plans, raised public awareness of the link between coal plant emissions and Hanoi having some of the worst air pollution in the world, and conducted research and policy engagement to demonstrate the cost-effectiveness of solar solutions in Vietnam.

Khanh, Bach and two others currently in jail were members of the Vietnam Sustainable Energy Alliance, which has since been suspended, despite being instrumental in the Government of Vietnam’s commitment to [net zero emissions by 2050](#) made in November 2021 at COP 26, paving the way for the JETP.

Since their arrests, additional environmental policy experts have been detained in what appears to be an [ongoing and highly concerning trend](#). Civil society organizations have faced threats and targeting, together with increased constraints on their ability to operate. Several environmental organizations have been forced to close down; while others have been unable to obtain approvals for their activities in accordance with recently adopted regulations. Special Procedures of the UN Human Rights Council have [relayed concerns](#) about registration and approvals requirements and vague tax laws being used to restrict civil society activities and detain civil society leaders, stating that NGOs have “unreasonably burdensome requirements for their reporting, registration of funding and projects.”

### **Questions regarding compliance with IFC policies**

The IFC’s [Sustainability Framework](#) states that its investment and advisory activities are carried out with “the intent to ‘do no harm’ to people and the environment, to enhance the sustainability of private sector operations and the markets they work in, and to achieve

positive development outcomes.” It further notes that “regular engagement with stakeholders about matters that directly affect them plays an important role in avoiding or minimizing risks and impacts to people and the environment.”

[Performance Standard 1](#) requires the effective management of environmental and social risks and impacts in IFC projects and investments through public consultations and stakeholder engagement. Critically, this includes civil society organizations along with affected communities. At project level, IFC clients are also required to establish a grievance mechanism for local communities that is accessible and implemented without retribution to the party that originated the issue or concern.

The IFC’s [Position Statement on Retaliation Against Civil Society and Project Stakeholders](#) (2018) states a commitment to human rights in IFC financing, including “the ability of stakeholders to engage freely with IFC and its clients.” The statement notes:

“Civil society organizations (CSOs) and project-impacted stakeholders must be able to provide feedback, voice opposition, and raise concerns with our clients and with IFC when necessary to ensure that environmental and social impacts in IFC-financed projects are avoided, minimized or mitigated and that the project achieves its intended development impact... IFC does not tolerate any action by an IFC client that amounts to retaliation – including threats, intimidation, harassment, or violence – against those who voice their opinion regarding the activities of IFC or our clients...”

Given the current situation in Vietnam, including ongoing threats to environmental defenders and restrictions on civil society organizations and public participation, it is difficult to see how the IFC’s own policies can be adhered to with respect to Vietnam’s JETP, unless restrictive policies are addressed and explicit protections are established in implementation guidelines, including the JETP Resource Mobilization Plan, which is currently under development.

Prior to mobilizing financing for the JETP, we urge the IFC to undertake all efforts to:

- Seek the urgent release of Dang Dinh Bach and other civil society leaders unjustly imprisoned in Vietnam on trumped up tax evasion charges.
- Conduct rigorous due diligence in accordance with IFC policies on the current threats to environmental and human rights defenders, the operation of civil society organizations, and restrictions on meaningful public participation in Vietnam, as they relate to the financing and implementation of the JETP.
- Require that JETP financing is contingent upon the Resource Mobilization Plan including explicit protections against retaliation and reprisals for environmental and human rights defenders, together with effective measures for civil society to participate freely and safely in decision-making on the JETP and monitoring of its implementation.
- Ensure that the IFC’s private sector clients involved in the JETP uphold human rights commitments and adhere to the IFC’s Performance Standards and policies on public participation and reprisals, and develop specific protocols to proactively respond to reprisals should they occur.
- Promote enabling conditions for civil society provided for by international standards and treaties aimed at creating and maintaining, in law and in practice, [a safe enabling environment](#) for civil society to freely operate, including [reform of laws and policies](#)

[related to registration and tax requirements for civil society](#) associations that are overly burdensome and incompatible with fundamental rights, including freedom of assembly, association, and expression.

Thank you for your consideration and we look forward to your response. Please direct communications to Ms. Guneet Kaur at International Rivers: [gkaur@internationalrivers.org](mailto:gkaur@internationalrivers.org). We would be happy to participate in a meeting to discuss these issues further.

Sincerely,

Accountability Counsel, USA  
Bank Information Center, USA  
Center for International Environmental Law, USA  
Colectivo de Abogados y Abogadas José Alvear Restrepo (CAJAR), Colombia  
Community Resource Center, Thailand  
Defenders in Development Campaign, Global  
EarthRights International, USA  
Environmental Defender Law Center, USA  
Forum Umwelt und Entwicklung, Germany  
Friends of the Earth Japan  
Friends of the Earth USA  
Gender Action, USA  
Global Network of Movement Lawyers, Movement Law Lab, USA & Global  
Global Witness, UK  
Grassroots Foundation, Germany  
Green Advocates International, Liberia  
groundWork, Friends of the Earth South Africa  
Inclusive Development International. USA  
International Accountability Project, USA & Global  
International Rivers, USA  
Jamaa Resource Initiatives, Kenya  
KruHA, Indonesia  
Manushya Foundation, Thailand  
Mekong Watch, Japan  
NGO Forum on ADB, Philippines  
Observatori DESC, Spain  
Oil Change International, USA  
Pakistan Fisherfolk Forum  
PowerShift e.V., Germany  
Re-course, The Netherlands  
Socio-Economic Rights Institute of South Africa  
Stand.earth, USA  
The 88 Project, USA  
Urgewald, Germany  
Witness Radio, Uganda  
Zambia Climate Change Network

**CC:**

Mr. Riccardo Puliti, Regional Vice President, Asia and the Pacific

Ms. Kim-See Lim, Regional Director for East Asia and the Pacific

Mr. Vivek Pathak, Director, Global Head, Climate Business

Mr. Tom Jacobs, Country Manager, Mekong Region

Ms. Felicity Kolp, Senior Social Development Specialist

Ms. Julia Saenz Ortigosa, Social Engagement Specialist

Executive Directors and Alternate Executive Directors of the Board of Directors of the World Bank Group for the International Finance Corporation

May 24, 2023

Ms. Maureen Harris,  
Senior Advisor

Ms. Guneet Kaur,  
International Rivers

Dear Ms. Harris and Ms Kaur,

I am writing in response to the letter dated May 8, 2023, to IFC Managing Director Makhtar Diop regarding the implementation of the Vietnam Just Energy Transition Partnership (JETP). We fully note the seriousness of the concerns raised by the coalition of international and regional organizations that are represented in this regard.

Globally, IFC recognizes the importance of space for civil society to speak freely and values the contributions of civil society in bringing about solutions to development challenges. Addressing the climate crisis will require collaboration among all stakeholders, including civil society organizations.

As you have noted in your letter, IFC's position on reprisals in our work is clear: We do not tolerate any action by an IFC client that amounts to retaliation. That includes threats, intimidation, harassment, or violence against anyone who voices an opinion regarding the activities of IFC or our clients.

As you know, the JETP is a partnership between the Government of Vietnam and the International Partners Group, which consists of 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 to support Vietnam's low emission and climate resilient development. As a development financial institution committed to supporting private sector climate-related investment in emerging markets, IFC's role in relation to the JETP is primarily to finance private sector projects that meet IFC's investment criteria, including those related to integrity, environmental and social performance.

On every project, IFC and its clients work to identify, prevent and address human rights impacts through due diligence and effective implementation of IFC's Performance Standards, which consider human rights dimensions that businesses may face in the course of their operations. IFC is committed to ensuring the compliance of its Performance Standards by its clients.



Thank you for sharing your concerns and for your work in support of civic engagement.

Sincerely,



Thomas Jacobs,  
IFC Country Manager  
Vietnam, Cambodia and Lao PDR

Cc: Mr. Riccardo Puliti, IFC Regional Vice President, Asia and the Pacific  
Ms. Kim-See Lim, IFC Regional Director for East Asia and the Pacific  
Mr. Vivek Pathak, IFC Director, Global Head, Climate Business  
Ms. Felicity Kolp, IFC Senior Social Development Specialist  
Ms. Julia Saenz Ortigosa, IFC Social Engagement Specialist

**Mr. Masatsugu Asakawa**  
President, Asian Development Bank  
6 ADB Avenue, Mandaluyong,  
Metro Manila, Philippines  
By email

8 May 2023

Dear President Masatsugu Asakawa,

**Re: Vietnam JETP and threats to environmental defenders and public participation**

We, the undersigned organizations, write to express our serious concerns regarding the implementation of Vietnam’s Just Energy Transition Partnership (JETP) and the associated Energy Transition Mechanism (ETM), which we understand the Asian Development Bank (ADB) will play a key role in financing.

While we support this important step to address climate change, we are extremely concerned over the recent imprisonment of several prominent civil society leaders in Vietnam and evidence that arrests of environmental defenders and threats to civil society organizations are part of a [broader and ongoing](#) crackdown designed to limit the autonomy and impact of civil society. Civil society leaders played a pivotal role in Vietnam’s ambitious climate commitments and meaningful progress will require strong civil society involvement. There will be no “just” transition unless Vietnam’s restrictive policies and ongoing persecution of the country’s leading environmental defenders are addressed and remedied.

To ensure an energy transition that is just and inclusive and complies with the ADB’s own policies on [public participation and reprisals](#), Vietnam’s JETP and any associated ETM must include safeguards for environmental defenders and measures for independent civil society organizations and representatives to participate freely and safely in decision-making on JETP design, monitoring and implementation. Prior to mobilizing finance, we urge the ADB to take an active role in ensuring these measures are explicitly included in JETP implementation guidelines, including the Resource Mobilization Plan currently under development, which will serve as a detailed guide for JETP implementation, and any associated ETM scheme.

**Threats to environmental defenders and public participation in Vietnam**

Over the past few years, civil society leaders and nonprofit organizations working on environmental and energy issues in Vietnam have faced threats and imprisonment. Four individuals who paved the way for the JETP agreement by pushing for Vietnam to adopt a net zero policy are currently in jail on trumped up tax evasion charges.

As highlighted in a [recently published report](#) by The 88 Project, the arrests of the “Vietnam four” and anomalies in the way in which their cases were prosecuted [indicates political persecution](#). Their arrests and the forced dissolution of their organizations have created a disabling environment for civil society leaders and environmental organizations in Vietnam who should play a critical role in the monitoring and implementation of the JETP.

Currently serving five years in prison is prominent environmental lawyer, [Mr. Dang Dinh Bach](#), co-founder and director of the Law and Policy for Sustainable Development Research Center (LPSD), a leading public interest law firm, which was forced to shut down following his arrest. Bach was detained on 24 June 2021 and charged with tax evasion on 2 July 2021. He was held incommunicado until his sentencing at a closed trial in January 2022.

Bach has recently [announced his intention to commence a hunger strike](#), “until release or until death”, to protest the Vietnamese government’s unjust treatment of civil society, on 24 June 2023, the two year anniversary of his detention.

Bach has dedicated his life to protecting communities from harmful pollution, phasing out plastic waste, and promoting a transition away from coal to clean energy sources. Bach was an Executive Board member of VNGO-EVFTA Network, a group of development and environmental CSOs established to oversee the government’s compliance with labor and sustainability conditions in its trade agreement with the EU.

Prior to his arrest, Bach and LPSD supported communities who had been forced to relocate for the Son La Hydropower Project to advocate for land rights and improved livelihoods. We note that the ADB provided technical assistance to the Son La Hydropower Project, as an associated facility of ADB-financed transmission lines, supporting the [implementation of the Environmental Management Plan](#) and [the Livelihood and Resettlement Plan](#).

Also in prison serving a 21-month sentence is internationally renowned climate expert and Goldman Environmental Prize winner, [Ms. Nguy Thi Khanh](#). Over the last 10 years, Khanh worked with provincial governments to reduce the central government’s coal expansion plans, raised public awareness of the link between coal plant emissions and Hanoi having some of the worst air pollution in the world, and conducted research and policy engagement to demonstrate the cost-effectiveness of solar solutions in Vietnam.

Khanh, Bach and two others currently in jail were members of the Vietnam Sustainable Energy Alliance, which has since been suspended, despite being instrumental in the Government of Vietnam’s commitment to [net zero emissions by 2050](#) made in November 2021 at COP 26, paving the way for the JETP.

Since their arrests, additional environmental policy experts have been detained in what appears to be an [ongoing and highly concerning trend](#). Civil society organizations have faced threats and targeting, together with increased constraints on their ability to operate. Several environmental organizations have been forced to close down; while others have been unable to obtain approvals for their activities in accordance with recently adopted regulations. Special Procedures of the UN Human Rights Council have [relayed concerns](#) about registration and approvals requirements and vague tax laws being used to restrict civil society activities and detain civil society leaders, stating that NGOs have “unreasonably burdensome requirements for their reporting, registration of funding and projects.”

### **Questions regarding compliance with ADB policies**

The ADB’s [Statement on Importance of Civil Society Participation](#) acknowledges that participation “fundamentally supports good governance, citizenship, and accountability of the state. It promotes social inclusion of disadvantaged groups and equitable economic growth.”

It continues to say: “The participation of civil society particularly promotes innovation and responsiveness and is directly linked to more positive development effectiveness.”

The [ADB’s Safeguard Policy Statement](#) (2009) notes that each of the safeguard policies includes consultation and participation as central to the achievement of safeguard policy objectives:

“They all imply the need for prior and informed consultation with affected persons and communities in the context of safeguard planning and for continued consultation during project implementation to identify and help address safeguard issues that may arise... In addition, ADB needs to clarify what “meaningful consultation” means. For policy application, it would refer to a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues. ..”

Given the current situation in Vietnam, including ongoing threats to environmental defenders and restrictions on civil society organizations and public participation, it is difficult to see how the ADB’s own policies can be adhered to with respect to Vietnam’s JETP, unless restrictive policies are addressed and explicit protections are established in implementation guidelines, including the JETP Resource Mobilization Plan currently under development.

Prior to mobilizing financing for the JETP and any associated ETM program, we urge the ADB to undertake all efforts to:

- Seek the urgent release of Dang Dinh Bach and other civil society leaders unjustly imprisoned in Vietnam on trumped up tax evasion charges.
- Conduct rigorous due diligence in accordance with ADB policies on the current threats to environmental and human rights defenders and the operation of civil society organizations, and the restrictions on meaningful public participation in Vietnam, as they relate to the financing and implementation of the JETP and ETM.
- Require that JETP and ETM financing is contingent upon the Resource Mobilization Plan and other implementation guidelines including explicit protections against retaliation and reprisals for environmental and human rights defenders, together with effective measures for civil society to participate freely and safely in decision-making on the JETP and monitoring of its implementation.
- Ensure adherence to the ADB’s Safeguard Policies and commitments regarding public participation and reprisals and develop specific protocols to proactively respond to reprisals should they occur.
- Promote enabling conditions for civil society provided for by international standards and treaties aimed at creating and maintaining, in law and in practice, [a safe enabling environment](#) for civil society to freely operate, including [reform of laws and policies related to registration and tax requirements for civil society](#) associations that are overly burdensome and incompatible with fundamental rights, including freedom of assembly, association, and expression.

Thank you for your consideration and we look forward to your response, please direct communications to Ms. Guneet Kaur at International Rivers: [gkaur@internationalrivers.org](mailto:gkaur@internationalrivers.org). We would be happy to participate in a meeting to discuss these issues further.

Sincerely,

Accountability Counsel, USA  
Bank Information Center, USA  
Center for International Environmental Law, USA  
Colectivo de Abogados y Abogadas José Alvear Restrepo (CAJAR), Colombia  
Community Resource Center, Thailand  
Defenders in Development Campaign, Global  
EarthRights International, USA  
Environmental Defender Law Center, USA  
Forum Umwelt und Entwicklung, Germany  
Friends of the Earth Japan  
Friends of the Earth USA  
Gender Action, USA  
Global Network of Movement Lawyers, Movement Law Lab, USA & Global  
Global Witness, UK  
Grassroots Foundation, Germany  
Green Advocates International, Liberia  
groundWork, Friends of the Earth South Africa  
Inclusive Development International. USA  
International Accountability Project, USA & Global  
International Rivers, USA  
Jamaa Resource Initiatives, Kenya  
KruHA, Indonesia  
Manushya Foundation, Thailand  
Mekong Watch, Japan  
NGO Forum on ADB, Philippines  
Observatori DESC, Spain  
Oil Change International, USA  
Pakistan Fisherfolk Forum  
PowerShift e.V., Germany  
Re-course, The Netherlands  
Socio-Economic Rights Institute of South Africa  
Stand.earth, USA  
The 88 Project, USA  
Urgewald, Germany  
Witness Radio, Uganda  
Zambia Climate Change Network

**CC:**

Mr. Ahmed Saeed, Vice President for East Asia, Southeast Asia and the Pacific  
Mr. Ramesh Subramaniam, Director General, Southeast Asia Department  
Mr. Winfried F. Wicklein, Deputy Director General, Southeast Asia Department  
Mr. Bruno Carrasco, Director-General concurrently Chief Compliance Officer, Sustainable Development and Climate Change Department  
Mr. Bruce Dunn, Director, Environment and Safeguards Division  
Ms. Haidy Ear-Dupuy, Unit Head, NGO and Civil Society Center, Sustainable Development and Climate Change Department  
Mr. Andrew Jeffries, Vietnam Country Director  
Mr. Keiju Mitsuhashi, Vietnam Deputy Country Director

Executive Directors and Alternate Executive Directors of the Board of Directors of the Asian Development Bank



Asian Development Bank

Southeast Asia Department

25 May 2023

Dear CSOs Community,

**Subject: Your letter dated 8 May 2023 regarding Viet Nam JETP**

The ADB acknowledges the receipt of your sign-on letter addressed to ADB President Masatsugu Asakawa, dated 8 May 2023 regarding the Viet Nam Just Energy Transition Partnership (JETP).

To date, the ADB does not have a formal role in the Viet Nam JETP process as such roles have not been finalized. We are however committed to help all our developing member countries including Viet Nam, in their energy transitions. As a financing institution, we may in future consider provision of funding support for JETP investments in Viet Nam once the JETP is operational and the resource mobilization plan is finalized; in such case we would, as with all ADB operations, of course carry out comprehensive due diligence, including technical, financial, and safeguards, in line with ADB policies and regulations.

We agree with you that any financial support ADB provides to our developing member countries will be subject to ADB's Safeguard Policy and its conditions. As you have rightly pointed out in your letter, the ADB's Safeguard Policy Statement (2009) notes that each of the safeguard policies includes consultation and participation as central to the achievement of safeguard policy objectives. We stand by this policy and any projects or investments ADB will make in any of our developing member countries will have to abide by the process and procedures as set out by our policy.

We stand ready to respond to any further related questions on the JETP that you may have.

Sincerely,

Andrew Jeffries  
Advisor, Just Energy Transition Partnerships  
Asian Development Bank

**The Rt Hon. Rishi Sunak MP**  
Prime Minister of the United Kingdom  
10 Downing St,  
London SW1A 2AA,  
United Kingdom  
By email

9 May 2023

Dear Prime Minister,

**Re: Vietnam JETP and threats to environment defenders and civic space**

We, the undersigned organizations, write to express our serious concerns regarding the implementation of Vietnam’s Just Energy Transition Partnership (JETP), which the United Kingdom has committed to financing.

While we support this important step to address climate change, we are extremely concerned over the recent imprisonment of several prominent civil society leaders in Vietnam and evidence that arrests of environmental defenders and threats to civil society organizations are part of a [broader and ongoing](#) crackdown designed to limit the autonomy and impact of civil society. Civil society leaders played a pivotal role in Vietnam’s ambitious climate commitments and meaningful progress will require strong civil society involvement. There will be no “just” transition unless Vietnam’s restrictive policies and ongoing persecution of the country’s leading environmental defenders are addressed and remedied.

Human rights and civic space must not be subordinated to climate diplomacy. To ensure an energy transition that is just and inclusive, in accordance with [the stated objectives and commitments](#) of the International Partners Group (IPG), Vietnam’s JETP must include safeguards for environmental and human rights defenders and measures for independent civil society organizations and representatives to participate freely and safely in decision-making on JETP design, monitoring and implementation. Prior to mobilizing finance, we urge you to actively ensure these measures are explicitly included in JETP implementation guidelines, including the Resource Mobilization Plan currently under development, which will serve as a guide for JETP implementation.

**Threats to environmental defenders and civic space in Vietnam**

Over the past few years, civil society leaders and nonprofit organizations working on environmental and energy issues in Vietnam have faced threats and imprisonment. Four individuals who paved the way for the JETP agreement by pushing for Vietnam to adopt a net zero policy are currently in jail on trumped up tax evasion charges.

As highlighted in a [recently published report](#) by The 88 Project, the arrests of the “Vietnam four” and anomalies in the way in which their cases were prosecuted [indicates political persecution](#). Their arrests and the forced dissolution of their organizations have created a disabling environment for civil society leaders and environmental organizations in Vietnam who should play a critical role in the monitoring and implementation of the JETP.



Currently serving five years in prison is prominent environmental lawyer, [Mr. Dang Dinh Bach](#), co-founder and director of the Law and Policy for Sustainable Development Research Center (LPSD), a leading public interest law firm supporting communities affected by environmental harm to advocate for their rights, which was forced to shut down following Bach's arrest. Bach was detained on 24 June 2021 and charged with tax evasion on 2 July 2021. He was held incommunicado until his sentencing at a closed trial in January 2022.

Bach has recently [announced his intention to commence a hunger strike](#), “until release or until death”, to protest the Vietnamese government's unjust treatment of civil society, on 24 June 2023, the two year anniversary of his detention.

Bach has dedicated his life to protecting communities from harmful pollution, phasing out plastic waste, and promoting a transition away from coal to clean energy sources. Bach was an Executive Board member of VNGO-EVFTA Network, a group of development and environmental CSOs established to oversee the government's compliance with labor and sustainability conditions in its trade agreement with the EU. Prior to his arrest, Bach had submitted an application to join the Domestic Advisory Group (DAG) for the EU-Vietnam Free Trade Agreement (EVFTA) as a civil society representative. The DAG provides a mechanism for independent monitoring and oversight of the EVFTA.

Also in prison serving a 21-month sentence is internationally renowned climate expert and Goldman Environmental Prize winner, [Ms. Nguy Thi Khanh](#). The United Kingdom, along with other G7 governments, has called for her release. Over the last 10 years, Khanh worked with provincial governments to reduce the central government's coal expansion plans, raised public awareness of the link between coal plant emissions and Hanoi having some of the worst air pollution in the world, and conducted research and policy engagement to demonstrate the cost-effectiveness of solar solutions in Vietnam.

Khanh, Bach and two others currently in jail were members of the Vietnam Sustainable Energy Alliance, which has since been suspended, despite being instrumental in the Government of Vietnam's commitment to [net zero emissions by 2050](#) made in November 2021 at COP 26, paving the way for the JETP.

Since their arrests, additional environmental experts have been detained in what appears to be an [ongoing and highly concerning trend](#). Civil society organizations have faced threats and targeting, together with increased constraints on their ability to operate. Several environmental organizations have been forced to close down; while others have been unable to obtain approvals for their activities in accordance with recently adopted regulations. Special Procedures of the UN Human Rights Council have [relayed concerns](#) about registration and approvals requirements and vague tax laws being used to restrict civil society activities and detain civil society leaders, stating that NGOs have “unreasonably burdensome requirements for their reporting, registration of funding and projects.”

### **Ensuring a “just” transition through the JETP**

The "just" aspect of the energy transition is intended to integrate human rights standards into energy policy and address long-standing inequality and historic injustice as part of the decarbonization process. It aims to retain jobs, create new climate-friendly jobs, alleviate poverty, and enable communities to thrive. In order for this to be accomplished, workers,

governments, and employers must all have a voice in the transition process, as well as communities - in particular those who have been marginalized by a lack of access to energy or negatively impacted by existing energy or other environmentally-destructive projects.

Accelerating the transition to clean energy in Vietnam requires the participation and involvement of all stakeholders including civil society, which has proven to play a critical role in facilitating information sharing, fostering openness and transparency, and providing evidence-based sustainable solutions. NGOs provide independent monitoring of the impact of the energy transition from a social and environmental perspective, understanding on-the-ground impacts, supporting communities to advocate for their rights, and providing crucial input to government decision-making.

The IPG's [political declaration establishing Vietnam's JETP](#) explicitly states that, "for the transition to be just, equitable and inclusive for consumers, workers and affected communities, efforts will be needed to ensure that all are adequately protected from the direct risks and can benefit from opportunities... so that no one is left behind" and "regular consultation is required, including with media, NGOs and other stakeholders so as to ensure a broad social consensus." The [press release announcing the agreement](#) further declares that the JETP "must implement a just transition that involves and benefits civil society," and that it is "vital that the whole civil society is involved in the green transition at all stages... ."

Given the current situation in Vietnam, including ongoing threats to environmental defenders and restrictions on civil society organizations and public participation, it is difficult to see how these conditions will be met for a just and inclusive transition, unless restrictive policies are addressed and explicit protections are established in implementation guidelines, including the JETP Resource Mobilization Plan, which is currently under development.

Prior to mobilizing financing for the JETP, we urge the United Kingdom and other members of the IPG to undertake all efforts to:

- Seek the urgent release of Dang Dinh Bach and other civil society leaders unjustly imprisoned in Vietnam on trumped up tax evasion charges.
- Require that JETP financing is contingent upon the Resource Mobilization Plan and other implementation guidelines including explicit protections against retaliation and reprisals for environmental and human rights defenders, together with effective measures for civil society to participate freely and safely in decision-making on the JETP and monitoring of its implementation.
- Promote enabling conditions for civil society provided for by international standards and treaties aimed at creating and maintaining, in law and in practice, [a safe enabling environment](#) for civil society to freely operate, including [reform of laws and policies related to registration and tax requirements for civil society](#) that are overly burdensome and incompatible with fundamental rights, including freedom of assembly, association, and expression.

Thank you for your consideration and we look forward to your response, please direct communications to Ms. Guneet Kaur at International Rivers: [gkaur@internationalrivers.org](mailto:gkaur@internationalrivers.org). We would be happy to participate in a meeting to discuss these issues further.

Sincerely,

Accountability Counsel, USA  
Bank Information Center, USA  
Center for International Environmental Law, USA  
Colectivo de Abogados y Abogadas José Alvear Restrepo (CAJAR), Colombia  
Community Resource Center, Thailand  
Defenders in Development Campaign, Global  
EarthRights International, USA  
Environmental Defender Law Center, USA  
Forum Umwelt und Entwicklung, Germany  
Friends of the Earth Japan  
Friends of the Earth USA  
Gender Action, USA  
Global Network of Movement Lawyers, Movement Law Lab, USA & Global  
Global Witness, UK  
Grassroots Foundation, Germany  
Green Advocates International, Liberia  
groundWork, Friends of the Earth South Africa  
Inclusive Development International. USA  
International Accountability Project, USA & Global  
International Rivers, USA  
Jamaa Resource Initiatives, Kenya  
KruHA, Indonesia  
Manushya Foundation, Thailand  
Mekong Watch, Japan  
NGO Forum on ADB, Philippines  
Observatori DESC, Spain  
Oil Change International, USA  
Pakistan Fisherfolk Forum  
PowerShift e.V., Germany  
Re-course, The Netherlands  
Socio-Economic Rights Institute of South Africa  
Stand.earth, USA  
The 88 Project, USA  
Urgewald, Germany  
Witness Radio, Uganda  
Zambia Climate Change Network

**CC:**

Sir Tim Barrow GCMG LVO MBE, National Security Adviser to the Prime Minister and Cabinet; UK Sherpa for the G7 and the G20

Mrs. Heather Wheeler MP, Prime Minister's Trade Envoy to Cambodia, Laos and Vietnam

The Rt Hon. Grant Shapps MP, Secretary of State for the Department for Energy Security and Net Zero

The Rt Hon. Graham Stuart MP, Minister of State (Minister for Energy Security and Net Zero), Department for Energy Security and Net Zero

Ms. Lee McDonough, Director General, Net Zero, Nuclear and International, Department for Energy Security and Net Zero

Mr. Ed Stafford, Head of Strategy, Comms and Negotiations, International Climate Finance, Department for Energy Security and Net Zero

Mr. Jim Dippie, Finance Lead, International Energy Transitions Team  
Department for Energy Security and Net Zero

The Rt Hon. the Lord Goldsmith of Richmond Park, Minister of State for Overseas Territories, Commonwealth, Energy, Climate and Environment, Foreign, Commonwealth & Development Office

The Rt Hon Anne-Marie Trevelyan MP, Minister of State (Indo-Pacific), Foreign, Commonwealth & Development Office

Ms. Jenny Bates, Director General, Indo-Pacific at the Foreign, Commonwealth & Development Office



Foreign, Commonwealth  
& Development Office

**The Rt Hon. Lord Goldsmith**  
Minister of State, Foreign,  
Commonwealth and Development Office

King Charles Street  
London  
SW1A 2AH

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**[www.gov.uk/fcdo](http://www.gov.uk/fcdo)**

12 June 2023

Dear Guneet and all,

Thank you for correspondence of 9 May about the Viet Nam Just Energy Transition Partnership (JETP) and threats to civil society.

Civil society has an important role to play in the JETP, and as you rightly point out the need for regular consultation with civil society is enshrined in the Political Declaration which you quote as saying “for the transition to be just and equitable, regular consultation is required, including with media, NGOs and other stakeholders so as to ensure a broad social consensus”.

As you know, the JETP is led by the Government of Viet Nam, and the next stage is for them, supported by the JETP Secretariat, to develop the Resource Mobilisation Plan which will form the roadmap for what investment is needed in which types of projects. As the JETP moves to this implementation stage, the involvement of civil society will be a necessary part of the Government of Viet Nam’s engagement to select project types and assess needs.

The UK believes that civil society plays a crucial role in ensuring sustainable and equitable development. Consultation and accountability are important to ensuring that the JETP delivers inclusive, transformational change and this is not possible without consulting civil society actors. This was reflected in the Political Declaration that was agreed by all parties.

As the JETP secretariat is set up, we and the International Partners Group (IPG) will work with Viet Nam to shape its engagement with a range of actors and seek to ensure that civil society groups and voices are able to contribute freely and safely.

The UK is following closely the cases of prominent civil society leaders that you highlight with deep concern. While we welcome the recent release of Nguy Thi Khanh, we are concerned by the recent arrest of Hoang Thi Minh Hong. We are making these concerns clear to the Vietnamese Government as well as highlighting the positive and constructive role that civil society played in Viet Nam making its historic net-zero commitment at COP 26. The UK continues to monitor the space for civil society actors to participate in public life and advocate for their right to do so with the Vietnamese Government.

Civil society is critical to ensure that the energy transition is carried out in a just manner, in Viet Nam and elsewhere. The UK supports regular engagement by host governments of JETPs – including Viet Nam – with civil society to ensure that the energy transition is just and equitable for all.

Yours sincerely,

A handwritten signature in blue ink, consisting of a stylized 'G' followed by a long horizontal stroke that curves upwards at the end.

**THE RT HON. LORD GOLDSMITH**  
**Minister of State, Foreign, Commonwealth and Development Office**

**To:**

**Kanni Wignaraja**

Assistant Secretary-General & Director, Regional Bureau for Asia and Pacific  
Regional Bureau for Asia and the Pacific, UNDP, 1 United Nations Plaza  
New York, NY, 10017, U.S.A.

[kanni.wignaraja@undp.org](mailto:kanni.wignaraja@undp.org), [kwignaraja@undp.org](mailto:kwignaraja@undp.org)

**Christophe Bahuet**

Deputy Regional Director for Asia and the Pacific & Director, UNDP Bangkok Regional Hub  
Bangkok Regional Hub, UNDP, 3rd Floor United Nations Service Building  
Rajdamnern Nok Avenue, Bangkok 10200, Thailand

[christophe.bahuet@undp.org](mailto:christophe.bahuet@undp.org)

**Ramla Khalidi**

Resident Representative,  
United Nations Development Programme, Vietnam  
304 Kim Ma, Ba Dinh, Ha Noi

[ramla.khalidi@undp.org](mailto:ramla.khalidi@undp.org)

**16 October 2023**

Dear Ms. Kanni Wignaraja, Mr. Christophe Bahuet and Ms. Ramla Khalidi,

**Re: Wrongful incarceration of environmental defenders and non-compliance with UNDP Social and Environmental Standards in Vietnam JETP**

We, the undersigned organizations, are working with the Vietnam Climate Defenders Coalition, a coalition of international and regional organizations that are very concerned about threats to environmental defenders and [shrinking civic space](#) in Vietnam. We write to share our concerns regarding the Just Energy Transition Partnership (JETP) in this context, as we understand that the United Nations Development Programme (UNDP) in Vietnam is providing technical assistance to the Vietnamese Government for the development and implementation of the JETP.

As you may be aware, six environmental and climate leaders who helped pave the way for the JETP agreement by advocating for Vietnam's transition away from coal and adoption of a net zero policy have been arrested and imprisoned over the last two years on trumped up charges.

These leaders include [Mr. Dang Dinh Bach](#) (Bach), co-founder and former director of the Law and Policy for Sustainable Development Research Center (LPSD), internationally renowned climate expert and Goldman Environmental Prize winner, [Ms. Nguy Thi Khanh](#) (Khanh), journalist Mr. Mai Phan Loi and lawyer Mr. Bach Hung Duong of the Centre for Media in Educating Community (MEC). Each was convicted and sentenced to an onerous prison term on “tax evasion” charges. While Khanh and Loi were released early this year after serving 16 months and 27 months respectively in prison, the others remain incarcerated.

The fifth individual, climate advocate Ms. [Hoang Thi Minh Hong](#) (Hong) was detained by Vietnamese authorities on 31 May 2023<sup>1</sup> and was recently sentenced on 28 September [to three years in prison for “tax evasion”](#). Hong is the former Executive Director of CHANGE, an environment non-profit in Vietnam that addresses some of the country’s most critical environmental challenges. CHANGE closed in 2022 due to pressure from authorities.

Several of those wrongfully incarcerated were members of the Vietnam Sustainable Energy Alliance (VSEA). VSEA has since been suspended, despite being instrumental in the Government of Vietnam’s commitment to [net zero emissions by 2050](#) made in November 2021 at COP 26, paving the way for the JETP.

Prosecutions in these cases have involved the arbitrary application of harsh laws and violations of fair trial standards including transparency requirements and due process rights of the accused.<sup>2</sup> The United Nations [Office of the High Commissioner for Human Rights](#) (OHCHR), the [United States](#), [United Kingdom](#), and the [European Union](#), among others, recently released statements condemning Hong’s conviction and sentencing and calling for her release, together with other imprisoned climate leaders. These statements note with concern the commitment to include and consult with civil society in the implementation of the JETP.

Despite repeated statements from the international community, the arrests have continued. On 15 September [police detained Ms. Ngo Thi To Nhien](#) (Nhien), Executive Director of [Vietnam Initiative for Energy Transition](#) (VIETSE), an independent Vietnamese energy think tank.

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<sup>1</sup> Marta Hurtado (Spokesperson for the UN High Commissioner for Human Rights), Viet Nam – Detention of environmental human rights defender Hoang Thi Minh Hong, Press briefing notes from Office of the High Commissioner for Human Rights, June 02, 2023, Geneva. Available at <https://www.ohchr.org/en/press-briefing-notes/2023/06/viet-nam-detention-environmental-human-rights-defender-hoang-thi-minh>.

<sup>2</sup> Swanton, B., Project 88, Weaponizing the Law to Prosecute the Vietnam Four, April 2023, pp. 17-23, 38-39. Available at <https://the88project.org/wp-content/uploads/2023/04/Weaponizing-the-law-report-Project-88-ENG.pdf>. See also, observations of various UN Special Procedures on this matter, available at [https://static1.squarespace.com/static/63a1054de4b8030902eec458/t/64f2366c500b76262be688bb/1693595244927/UN+Statements+Ops+About+Vietnam+5\\_updated.pdf](https://static1.squarespace.com/static/63a1054de4b8030902eec458/t/64f2366c500b76262be688bb/1693595244927/UN+Statements+Ops+About+Vietnam+5_updated.pdf).



Nhien is not an activist but a researcher and energy policy expert. At the time of her arrest, she was working closely with the Vietnamese government and playing an important role in providing technical and policy advice for the development of the JETP. On 30 September, the Vietnamese Ministry of Public Security announced that Nhien was arrested for “appropriation of information” under Article 342 of the Penal Code. The information in question refers to documents obtained for the purpose of research in support of the country’s energy transition.

Nhien’s detention continues a pattern of arrests and targeting of environmental leaders and silencing of independent civil society in Vietnam, which is critical to the design, implementation, and monitoring of any just energy transition. The arrests of these individuals and the forced dissolution of environmental organizations has created a disabling environment for civil society leaders and environmental organizations in Vietnam who should play a critical role in the monitoring and implementation of the JETP.

These concerns have received the attention of Special Procedures of the UN Human Rights that Council. In May, the UN Working Group on Arbitrary Detention issued an opinion finding that Bach’s arrest and detention is arbitrary and violates norms of international law,<sup>3</sup> including his right to expression, association, numerous procedural and fair trial rights, and his right to be free from discrimination.<sup>4</sup> The Working Group also observed a “systemic problem with arbitrary detention” of environmental defenders in Vietnam.

United Nations Special Procedures and treaty bodies have also [relayed concerns](#) about onerous registration and approvals requirements and vague tax laws being used to restrict civil society activities and detain civil society leaders, stating that NGOs have “unreasonably burdensome requirements for their reporting, registration of funding and projects.” Analysis by human rights organizations shows that various laws, under which human rights and environmental defenders are prosecuted in Vietnam, criminalized the exercise of various human rights beyond the permissible limits of international human rights law.<sup>5</sup> Condemning the arbitrary detention of Hoang Thi Minh Hong, the OHCHR reiterated that, “...human rights defenders and environmental organizations must be able to participate freely and actively in shaping climate and environmental policies and decision-making...”<sup>6</sup>

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<sup>3</sup> 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.

<sup>4</sup> Working Group on Arbitrary Detention, Opinion No. 22/2023 concerning Đặng Đình Bách (Viet Nam), A/HRC/WGAD/2023/22, May 11, 2023.

<sup>5</sup> Human Rights Watch, World Report 2023, pp. 693-700, available at <https://www.hrw.org/world-report/2023>; Project 88, *supra* note 2; Joint Letter to call on the Vietnamese government to release the four environmental human rights defenders, October 20, 2022, available at <https://www.amnesty.org/en/documents/asa41/6153/2022/en/>.

<sup>6</sup> Spokesperson for the UN High Commissioner for Human Rights: Marta Hurtado, Viet Nam – Detention of environmental human rights defender Hoang Thi Minh Hong, June 2nd, 2023, available at

## UNDP support for the JETP Resource Mobilization Plan

On August 11, 2023, UNDP Resident Representative in Vietnam, Ms. Ramla Khalidi, delivered [a speech](#) at the consultation workshop for the zero draft “Resource Mobilization Plan” (RMP) - the implementation plan - for Vietnam’s JETP. Ms. Khalidi highlighted “the importance of not losing focus on the ‘just’ elements of the energy transition,” which she said relates to “the essential support to and protection of workers and other affected vulnerable groups, ensuring affordable energy for all, sustaining and developing the local economy, and generating green and decent jobs from women and men.” She further stated: “Inclusive dialogue and active participation and consultation with affected people and local communities is also essential.”

There was no mention of the climate leaders arrested and detained on trumped-up tax evasion charges, despite the numerous statements from UN agencies and governments raising concerns about the unjust and wrongful nature of the incarceration of these environmental defenders.

We are concerned that the technical and financing aspects of the energy transition are the near exclusive focus of current discussions and negotiations in the design and implementation of the JETP framework. Contingencies regarding risk analysis and meaningful civil society participation remain muted or sidelined. There can be no “just” transition unless Vietnam’s restrictive policies and ongoing persecution of the country’s leading environmental defenders are addressed and remedied.

## Non-compliance with UNDP Social and Environmental Standards

According to UNDP’s Social and Environmental Standards (SES), *UNDP programmes and projects are required to be informed by human rights analysis, including from the UN Special Procedures.*<sup>7</sup> We are concerned that in providing technical support to the JETP, UNDP in Vietnam is disregarding relevant observations made by UN Special Procedures.

*The UNDP has a duty to create enabling environments, capacity development and support for civil society,<sup>8</sup> and must ensure meaningful, effective and informed participation of stakeholders in the formulation and implementation of UNDP programmes and projects.<sup>9</sup>*

With climate activists wrongfully incarcerated and environmental organizations forced into suspension, key stakeholders have been effectively removed from the development and implementation of the JETP. Without key environmental defenders and climate activists, civil society consultation on the Vietnam JETP amounts to little more than window-dressing. UNDP’s

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<https://www.ohchr.org/en/press-briefing-notes/2023/06/viet-nam-detention-environmental-human-rights-defender-hoang-thi-minh>

<sup>7</sup> UNDP Social and Environment Standards, Programming Principles, No. 13.

<sup>8</sup> UNDP Social and Environment Standards, Programming Principles, No. 10.

<sup>9</sup> UNDP Social and Environment Standards, Programming Principles, No. 14.

support for this non-consultative deliberation process for the Vietnam JETP raises questions about its commitment to participatory principles and seriousness in addressing climate change.

***The UNDP must “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 seek to support the protection and fulfillment of human rights.”<sup>10</sup> 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.”<sup>11</sup> UNDP must also identify, reduce and address the risk of retaliation and reprisals against environmental defenders and activists.<sup>12</sup>***

Bach, Khanh and Loi each have a history of public engagement on the Power Development Plan 8 (PDP 8).<sup>13</sup> Each of them submitted and presented rigorous critiques of the draft PDP8 in 2020 and 2021, criticizing the projected use of coal in the draft plan and demanding a shift to renewable sources. Their arbitrary arrests in 2021 appear to be a retaliatory measure in response to their public advocacy against coal. Their effective removal from the JETP deliberations has also restricted monitoring and accountability in Vietnam’s proposed energy transition.

***UNDP has an obligation to ensure access to information to all stakeholders in UNDP’s programmes and projects under its social and environment standards and UNDP’s Informational Disclosure Policy.***<sup>14</sup> With the latest arrest and charges against Nhien, it now appears that the Vietnam government is restricting access to information on matters concerning energy transition and using criminal sanctions to prohibit information access.<sup>15</sup> Potential criminal sanctions for accessing information connected to the energy transition process will inhibit both civil society and various kinds of energy transition enterprises from making informed decisions and may fundamentally hamper the energy transition process itself.

UNDP is failing in its duty to ensure effective stakeholder engagement and access to information in its technical assistance to the JETP. Given the current situation in Vietnam, including ongoing threats to environmental defenders and restrictions on civil society organizations, access to information and public participation, it is difficult to see how technical assistance for Vietnam’s

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<sup>10</sup> UNDP Social and Environment Standards, Programming Principles, No. 13.

<sup>11</sup> UNDP Social and Environment Standards, Social and Environmental Management System Requirements, No. 13.

<sup>12</sup> UNDP Social and Environment Standards, Social and Environmental Management System Requirements, No. 27.

<sup>13</sup> Project 88 report, *supra* note 1, pp. 44-47

<sup>14</sup> UNDP Social and Environment Standards, Social and Environmental Management System Requirements, no. 28.

<sup>15</sup> See Chung Thanh, Trung tướng Tô Ân Xô: Bắt Ngô Thị Tố Nhiên và 2 người vì chiếm đoạt tài liệu mật của EVN, 30/09/2023, Tuổi Trẻ, available at <https://tuoitre.vn/trung-tuong-to-an-xo-bat-ngo-thi-to-nhien-va-2-nguoi-vi-chiem-doat-tai-lieu-mat-cua-evn-20230930172008674.htm?fbclid=IwAR253CK3tvMmcNma65opLEdFUDBRtYOoyxym6ON7suVn209yIVV7B0lcUjU> .

JETP can ensure compliance with UNDP's policies, unless restrictive policies are addressed and explicit protections are established.

### **Ensuring a just transition**

An energy transition with environmental defenders in jail cannot claim to be just. With the restrictions on opportunities for monitoring and accountability, there are serious questions as to whether the Vietnam JETP will achieve its goals, including the necessary shift away from coal. Without providing adequate safeguards for environmental defenders and measures for independent civil society organizations and representatives to participate freely and safely in decision-making on JETP design, monitoring and implementation, the JETP risks undermining human rights and may facilitate additional serious human rights harms.

We urge UNDP to actively ensure that these measures are explicitly included as a necessary and integral part of UNDP's technical assistance for the JETP, including:

- Seek the urgent release of Dang Dinh Bach, Hoang Thi Minh Hong and other civil society leaders unjustly imprisoned in Vietnam on trumped-up tax evasion and other charges and involve them in stakeholder engagement for the JETP.
- Conduct rigorous due diligence in accordance with the UNDP SES on the current threats to environmental and human rights defenders and the operation of civil society organizations, and the restrictions on access to information and meaningful public participation in Vietnam, as they relate to the implementation of the JETP.
- Ensure adherence to the UNDP SES and commitments to upholding human rights and promoting rule of law. Require that technical assistance for the JETP is contingent upon instituting guidelines including explicit protections against retaliation and reprisals for environmental and human rights defenders, together with effective measures to safeguard access to information and ensure that civil society can participate freely and safely in decision-making on the JETP and monitoring of its implementation
- Promote enabling conditions for civil society provided for by international standards and treaties aimed at creating and maintaining, in law and in practice, [a safe environment](#) for civil society to freely operate, including recognition of rights to access information and public participation, and [reform of laws and policies related to registration and tax requirements for civil society](#) associations that are overly burdensome and incompatible with fundamental rights, including freedom of assembly, association, and expression.

Along with this letter, we are attaching our communication to the Asian Development Bank (ADB) and the International Finance Corporation (IFC), which we also understand will play an important role in facilitating the implementation of the JETP.

Thank you for your consideration and we look forward to your response, please direct communications to Maureen Harris, Senior Advisor at International Rivers: [mharris@internationalrivers.org](mailto:mharris@internationalrivers.org). We would be happy to participate in a meeting to discuss these issues further.

Sincerely,

1. 350.org
2. Accountability Counsel
3. Alerte Congolaise pour l'environnement et les droits de l'homme, ACEDH
4. Asian Forum for Human Rights and Development (FORUM-ASIA)
5. Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE)
6. Buliisa Initiative for Rural Development Organisation (BIRUDO)
7. CIVIC ADVISORY HUB
8. Climate Watch Thailand
9. Community Resource Centre
10. Defenders in Development Campaign
11. Defenders Protection Initiative
12. EarthRights International
13. Environmental Defender Law Center
14. ETOs Watch Coalition
15. Friends Against Dictatorship (FAD)
16. Global Network of Movement Lawyers - Movement Law Lab
17. Global Witness
18. Green Advocates International (Liberia)
19. Grassroots Foundation (Germany)
20. Human Rights Mouvement "Bir Duino-Kyrgyzstan"
21. International Rivers
22. Indonesia Legal Aid Foundation (YLBHI)
23. Jamaa Resource Initiatives, Kenya
24. KRuHA
25. Manushya Foundation
26. Mekong Watch
27. Natural Resource Women Platform
28. NGO Forum on ADB
29. Observatoire d'Etudes et d'Appui à la Responsabilité Sociale et Environnementale, (OEARSE)
30. Observatori DESC
31. Oil Change International
32. Oil Workers' Rights Protection Organization Public Union

33. People in Need
34. Project 88
35. Program for the Heritage of Ogiek and Mother Earth (PROHOME)
36. Public Interest Law Center (PILC/Chad)
37. Recourse
38. Robert F. Kennedy Human Rights
39. Socio-economic Rights Institute of South Africa
40. The Green Deal Uganda
41. Urgewald