

Case of *Houayheuang Xayabouly*

In September 2019, **Houayheuang Xayabouly** (also known as 'Mouay') was arrested under article 117 of the Criminal Code following a post she had made on Facebook of a live video in which she had been critical of the Lao government's response to severe floods in the southern provinces of Laos.³¹²

She had reportedly said in the video:

*"In this emergency situation, I am not in need of food and water yet, but yesterday a huge flood came and people here were up on the roofs of their houses trying to escape. Where is the helicopter for rescuing those people? ... I cannot be silent as we have been in the past. The era of the regime keeping the eyes and mouths of the people closed has come to an end".*³¹³

After approximately five days in detention, following police investigation and interrogation and no reported assistance of a lawyer, she "confessed" to committing an illegal activity and for "having connections with 'bad elements' both in the country and abroad".³¹⁴

In November 2019, Mouay was sentenced to five years in prison and fined 20 million Kip (approx. USD 2,280). She had been held in detention in Champasak provincial prison from the time of her arrest in September.³¹⁵

Vietnam

In Vietnam, laws aiming to protect the reputation and security of the State have consistently been invoked to clamp down on freedom of expression and information online – particularly since 2016 when then-President Tran Dai Quang increased repression of expression perceived as

312 RFA Lao service, 'Lao Authorities Arrest Woman for Criticizing Flood Relief Efforts on Facebook', *Radio Free Asia*, 16 September 2019, Available at: <https://www.rfa.org/english/news/laos/laos-houayheuang-xayabouly-09162019172839.html>

313 *Ibid.*

314 RFA Lao service, 'Laos State Media: Woman Arrested for Criticizing Government on Facebook Confesses', *Radio Free Asia*, 17 September 2019, Available at: <https://www.rfa.org/english/news/laos/laos-mouay-confession-bail-09172019164231.html>

315 FIDH, 'Woman jailed for five years for criticizing the government online', 22 November 2019, Available at: <https://www.fidh.org/en/region/asia/laos/woman-jailed-for-five-years-for-criticizing-the-government-online>; As of 26 September 2019, her family and friends had not been allowed to visit Mouay in detention. RFA Lao service, 'Woman Held For 'Defaming' Laos is Refused Family Visits', *Radio Free Asia*, 26 September 2019, Available at: <https://www.rfa.org/english/news/laos/refused-09262019131452.html>

critical of the ruling Communist Party of Vietnam.³¹⁶

There has been an increased crackdown on expression online, particularly by pro-democracy activists. In September 2019, Human Rights Watch noted that in the first nine months of 2019 alone, 11 individuals had been convicted and sentenced to prison for expression unwelcome by the government.³¹⁷ In May 2019, an Amnesty International report documented at least 128 “prisoners of conscience”³¹⁸ were being held in Vietnamese prisons. This number represented a spike from 97 such prisoners in 2018. Nearly 10 percent of detained persons had been prosecuted for comments made on social media platforms.³¹⁹

Amnesty International’s report highlighted that the implementation of amendments to the **Penal Code** in January 2018 had resulted in increased prosecutions of online expression under the law, while the coming into effect of Vietnam’s **Cybersecurity Law** in January 2019 was likely to intensify surveillance and censorship of online expression.³²⁰ Of the 128 documented cases, 45 individuals were imprisoned for “aiming to overthrow the State”, more than 20 for “undermining national unity”, more than 15 for “conducting propaganda against the State” or “making, storing or disseminating” such propaganda, more than 15 for “disturbing public order” or “disrupting national security” and more than 10 for “abusing democratic freedoms to infringe on the interests of the State”.³²¹ An environmental activist was sentenced to life imprisonment for allegedly “aiming to overthrow the state”.³²²

316 Human Rights Watch, ‘World Report 2017: Vietnam – Events of 2016’, Available at: <https://www.hrw.org/world-report/2017/country-chapters/vietnam>; Al Jazeera News, ‘At least 128 prisoners of conscience in Vietnam: Amnesty’, 14 May 2019, Available at: <https://www.aljazeera.com/news/2019/05/128-prisoners-conscience-vietnam-amnesty-190513034714570.html>; Mike Ives, ‘Tran Dai Quang, Hard-Line Vietnamese President, Dies at 61’, *New York Times*, 21 September 2018, Available at: <https://www.nytimes.com/2018/09/21/obituaries/tran-dai-quang-dead.html>

317 Human Rights Watch, ‘Vietnam: New Arrest for Facebook Postings’, 7 October 2019 (‘HRW, 7 October 2019’), Available at: <https://www.hrw.org/news/2019/10/07/vietnam-new-arrest-facebook-postings>; As of September 2019, freedom of expression monitor, The 88 Project, noted that 266 individuals remained in detention for expression of peaceful dissent; ICJ communications with partners.

318 Amnesty International, ‘Detention and Imprisonment’, Available at: <https://www.amnesty.org/en/what-we-do/detention/>. Amnesty International uses the characterization “prisoners of conscience” to refer to persons who have not used or advocated violence but is imprisoned because of who they are (based on sexual orientation, ethnic, national or social origin, language, birth, colour, sex or economic status) or what they believe (religious, political or other conscientiously held beliefs).

319 Amnesty International, ‘Prisoners of Conscience in Viet Nam’, 13 May 2019 (‘Amnesty, ‘Prisoners of Conscience in Vietnam’), Available at: <https://www.amnesty.org/download/Documents/ASA4103032019ENGLISH.pdf>

320 Amnesty International, ‘Viet Nam: Surge in number of prisoners of conscience, new research shows’, 13 May 2019, Available at: <https://www.amnesty.org/en/latest/news/2019/05/viet-nam-surge-number-prisoners-conscience-new-research-shows/>

321 Amnesty, ‘Prisoners of Conscience in Vietnam’, p 6.

322 Amnesty, ‘Prisoners of Conscience in Vietnam’, pp 20, 21.

These crimes are enshrined under Vietnam's **Penal Code of 1999**, and the amended Penal Code of 2015. Articles 79, 87, 88 and 89 of the 1999 Penal Code respectively criminalized the "carrying out (of) activities aimed at overthrowing the people's administration" with up to 20 years' imprisonment, life imprisonment or capital punishment; the "undermining of Vietnam's national unity policy" with up to 15 years' imprisonment; "conducting of propaganda" with up to 12 years' imprisonment; and "disruption of security" with up to 15 years' imprisonment.³²³ Articles 245 and 258 respectively criminalized the "fomenting of public disorder" and "abusing democratic freedoms to infringe upon the interests of the State" with up to seven years' imprisonment.³²⁴

In 2018, the **Penal Code of 2015** came into effect, introducing article 109, which reduced penalties for "carrying out (of) activities aimed at overthrowing the people's administration" to 12 years' imprisonment; but retained under articles 116, 118 and 331, the 1999 Penal Code's hefty penalties for "sabotaging of national solidarity", "disruption of security" and "abusing of democratic freedoms to infringe upon the interests of the State".³²⁵ Significantly, the 2015 Penal Code introduced article 117 criminalizing the "making, storing, distributing or disseminating of materials" that "oppose the State" with up to 20 years' imprisonment – which has been used to target the spread of information critical of the State online, particularly on Facebook.³²⁶

323 English translation of Vietnam Penal Code of 1999 (No. 15/1999/QH10), Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn017en.pdf>

324 *Ibid.*

325 English translation of Vietnam Penal Code of 2015 (No. 100/2015/QH13), Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>; See also UN Recommendations on the 2015 Penal Code and Criminal Procedural Code of Viet Nam, 17 May 2017, Available at: <file:///C:/Users/User/Downloads/UN%20Recommendations%20on%20PC%20and%20CPC%20of%20Vietnam%20-%2017%20May%202017.pdf>

326 See for eg. Amnesty, 'Prisoners of Conscience in Vietnam', cases no. 20, 28, 72, 74, 79.

Case of **Dao Quang Thuc**

In October 2017, **Dao Quang Thuc**, a retired primary school teacher, was arrested in Hòa Bình province under article 79 of the 1999 Penal Code for the alleged offence of “aiming to overthrow the State” after he had made posts and comments on social media platforms, including on Facebook, regarding corruption and environmental issues.³²⁷ He was reportedly severely beaten and left without food following his arrest.³²⁸

In January 2019, Dao was convicted and sentenced to 13 years’ imprisonment and five years of house arrest.³²⁹ In June 2019, it was reported he had gone on hunger strike with four other political prisoners in protest against abusive conditions in their prison camp.³³⁰

Cases of **Le Van Sinh**, **Nguyen Van Cong Em** and **Nguyen Quoc Duc Vuong**

(September 2019)

In September 2019, **Le Van Sinh**, a pro-democracy activist, was sentenced by the People’s Court of Ninh Binh province to five years’ imprisonment under article 331 of the 2015 Penal Code for allegedly “abusing democratic freedoms to infringe upon the interests of the State”, for disseminating via Facebook 13 articles with content “distorting the policy of the state and party”, alleged defamation of provincial officials and criticizing draft laws pertaining to cybersecurity and special economic zones in Vietnam.³³¹

In September 2019, **Nguyen Van Cong Em**, a pro-democracy activist, was sentenced by the People’s Court of Ben Tre province to five years’ imprisonment and five years of probation under article 117 of the 2015 Penal Code for allegedly “making, storing or disseminating information

327 Amnesty, ‘Prisoners of Conscience in Vietnam’, case no. 11.

328 Richard Finney, An Nguyen, ‘Retired Vietnamese Teacher Handed 14-Year Prison Term in Subversion Trial’, *Radio Free Asia*, 19 September 2018, Available at: <https://www.rfa.org/english/news/vietnam/subversion-09192018143141.html>

329 Dao Quang Thuc was sentenced to 14 years’ imprisonment and five years of house arrest at first instance, before the imprisonment term was reduced to 13 years by the judge who heard his appeal. See The 88 Project, ‘Dao Quang Thuc’, Available at: <https://the88project.org/profile/7/dao-quang-thuc/>

330 The 88 Project, ‘Prisoners go on collective hunger strike to protest abusive conditions in prison camp No. 6 Nghe An’, 27 June 2019, Available at: https://the88project.org/prisoners-go-on-collective-hunger-strike-to-protest-abusive-conditions-in-prison-camp-no-6-nghe-an/?fbclid=IwAR2e4T_CNeH1IbuVmlv8IZ1Erc6pi4IVs7QGtF8T77UpI0HFJnm99StL_8

331 The 88 Project, ‘Criticizing Government Corruption on Facebook, Activist Le Van Sinh Sentenced to Five Years for “Abusing Democratic Freedoms”’, 18 September 2019, Available at: <https://the88project.org/criticizing-government-corruption-on-facebook-activist-le-van-sinh-sentenced-to-five-years-for-abusing-democratic-freedoms/>

against the State”, for using multiple Facebook accounts between October 2017 and February 2019 to make posts, share articles, and live-stream videos with content “distorting the policies of State and Party”.³³²

Both Le Van Sinh and Nguyen Van Cong Em had been arrested in February 2019.

In September 2019, **Nguyen Quoc Duc Vuong**, a pro-democracy activist, was arrested and charged under article 117 of the 2015 Penal Code for allegedly “making, storing or disseminating information against the State”, following written posts and live-stream videos he had posted on his Facebook account.³³³

Cases of **Nguyen Van Phuoc** and **Pham Xuan Hao**

(October 2019)

In October 2019, **Nguyen Van Phuoc**, a pro-democracy activist, was sentenced by the People’s Court of An Giang province to five years’ imprisonment under article 117 of the 2015 Penal Code for allegedly “making, storing or disseminating information against the State”, following posts he had made he had on his Facebook account.³³⁴

He was reportedly convicted for his activities on Facebook between 2016 and 2018, including live-streaming videos where he had criticized the Vietnamese government and sharing articles, images and video clips deemed insulting to the government and the Communist Party of Vietnam.³³⁵

In October 2019, **Pham Xuan Hao**, an architect and lecturer at the Faculty of Technology, Can Tho University, was sentenced to one year in prison for allegedly “abusing democratic rights and freedoms to infringe upon state interests” under article 331 of the 2015 Criminal Code.

In its judgment, the People’s Court of Ninh Kieu District, Can Tho City,

332 The 88 Project, ‘Second Activist Convicted in September for Facebook Postings: Nguyen Van Cong Em Sentenced to Five Years in Prison under Article 117’, 20 September 2019, Available at: <https://the88project.org/second-activist-convicted-in-september-for-facebook-postings-nguyen-van-cong-em-sentenced-to-five-years-in-prison-under-article-117/>

333 HRW, 7 October 2019. It was unclear which exact posts he had made on Facebook formed the basis of his charges.

334 Defend the Defenders, ‘Facebooker Nguyen Van Phuoc Convicted of “Conducting Anti-state Propaganda” with 5-year Imprisonment’, 31 October 2019, Available at: <http://www.vietnamhumanrightsdefenders.net/2019/10/31/facebooker-nguyen-van-phuoc-convicted-of-conducting-anti-state-propaganda-with-5-year-imprisonment/>

335 ICJ communications with partners.

expressed its view that “(even) being an expert and having high social awareness”, Pham had “still used Facebook to ‘publish pessimistic information about Vietnam that negatively affects netizens and the public’”.³³⁶

Cases of **Nguyen Nang Tinh** and **Nguyen Ngoc Anh**

(November 2019)

In November 2019, **Nguyen Nang Tinh**, an activist and music teacher, was sentenced to 11 years in prison following a one-day trial by the People’s Court of Nghe An province. He was arrested in May 2019 under article 117 of the 2015 Penal Code for reportedly “posting anti-state content online”.³³⁷

The conviction was based on a series of posts he had made on Facebook. During his trial, Nguyen had stated that the account in question was not his, and that it had belonged to another person named ‘Nguyen Nang Tinh’.³³⁸

In November 2019, **Nguyen Ngoc Anh**, a pro-democracy activist, was sentenced to six years in prison under article 117 of the 2015 Penal Code for allegedly “making, storing or disseminating information against the State”, following posts he had made he had on his Facebook account.³³⁹ While State media had characterized his posts as “reactionary” and intended to “badmouth” the State and incite protests, Nguyen’s work had reportedly often covered issues of public interest and social concern such as reporting on a toxic waste spill, writing about electoral issues and about political prisoners.³⁴⁰

He was arrested in August 2018, before being sentenced in June 2019 to six years’ imprisonment by a court in Ben Tre province following a summary trial. In November 2019, the National High Court at Ho Chi Minh City upheld the six-year sentence.³⁴¹

336 The 88 Project, ‘Can Tho: Former University Lecturer Jailed for Online Posting’, 1 November 2019, Available at: <https://the88project.org/former-university-lecturer-jailed-for-online-posting/>

337 The 88 Project, ‘Nguyen Nang Tinh’, Available at: <https://the88project.org/profile/376/nguyen-nang-tinh/>

338 Bangkok Post, ‘Vietnam jails music teacher for 11 years over ‘anti-state’ Facebook posts’, 15 November 2019, Available at: <https://www.bangkokpost.com/world/1795029/vietnam-jails-music-teacher-for-11-years-over-anti-state-facebook-posts>

339 The 88 Project, ‘Nguyen Ngoc Anh’, 17 November 2019, Available at: <https://the88project.org/profile/191/nguyen-ngoc-anh/>

340 HRW, ‘Vietnam: Free Activist Jailed for Facebook Posts’, 5 November 2019, Available at: <https://www.hrw.org/news/2019/11/05/vietnam-free-activist-jailed-facebook-posts>

341 The term included five years on probation. See The 88 Project, ‘Nguyen Ngoc Anh’, 17 November

In similar cases:

From 26 November 2019, at least eight other individuals have been sentenced to prison for their activities online.³⁴²

Myanmar

In Myanmar, the **Official Secrets Act 1923** ('OSA') – which bans the "collection" or "communication" of information deemed "prejudicial to the safety or interests of the State" – has been used to penalize journalists who were performing their professional duties,³⁴³ and there is a risk it could be used against others, including human rights defenders.

Section 3(1)(c) of the OSA penalizes the "obtaining, collection, recording, publishing or communication to any person of any ...document or information... calculated to be, directly or indirectly, useful to an enemy" with up to 14 years' imprisonment where the information is deemed "in relation to the naval, military or air force affairs of the State or in relation to any secret official code".³⁴⁴ Section 3(2) thereafter states that "it shall not be necessary to show that the accused person was guilty of any particular act" deemed prejudicial to the State and that "notwithstanding that no such act is proved against him, he may be convicted... if it appears his purpose was... prejudicial to the safety or interests of the State".³⁴⁵

Apart from overbroad provisions under the OSA which do not clarify who an "enemy" is and what "directly or indirectly being useful to an enemy" entails, the OSA lifts any burden of proof from the prosecution to substantiate a charge that a defendant has posed real risk of harm against the interests of the State. This fails to comply with international

2019, Available at: <https://the88project.org/profile/191/nguyen-ngoc-anh/>

342 Including Nguyen Chi Vung, Pham Van Diep, Vo Hoang Trung, Doan Viet Hoan, Ngo Xuan Thanh, Nguyen Dinh Khue, Huynh Thi To Nga and Huynh Minh Tam. ICJ communications with partners.

343 The OSA is one of a range of laws which have been misused to target journalists in Myanmar, including the abovenoted Telecommunications Law and Penal Code provisions which deliberately curtail freedom of expression, but also laws which do not pertain to freedom of expression at all, including, for example, the Unlawful Associations Act of 1908, the Aircraft Act of 1934 and the Import-Export Law of 2012. See Human Rights Watch, 'Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar', 31 January 2019, Available at: <https://www.hrw.org/report/2019/01/31/dashed-hopes/criminalization-peaceful-expression-myanmar>; OHCHR, 'The Invisible Boundary – Criminal prosecutions of journalism in Myanmar: Report by the Office of the United Nations High Commissioner for Human Rights (OHCHR)', 11 September 2018, Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23531&LangID=E>

344 English translation of Official Secrets Act 1923, Available at: <http://freexpressionmyanmar.org/wp-content/uploads/2017/07/Official-Secrets-Act-EN.pdf>

345 *Ibid.*