

Document #2077051

IRB – Immigration and Refugee Board of Canada

Viet Nam: Summonses (thư triệu tập) and arrest warrants (lệnh bắt) [order of arrest; order for the arrest], including content, appearance, security features and samples; governing regulations and issuing authorities, including the Ministry of Public Security (MPS) (Bộ Công An), prevalence of fraudulent judiciary documents; whether a person wanted by the authorities can leave the country with their passport (2020 – May 2022) [VNM201067.E]

Research Directorate, Immigration and Refugee Board of Canada

1. Legislation

Viet Nam's Criminal Procedure Code, amended in 2015 to take effect 1 January 2018, provides the following:

Article 113. Apprehension of suspects and defendants for detention

1. The following individuals are entitled to order and decide the apprehension of suspects and defendants for detention:
 1. Heads and vice heads of investigation authorities. In this event, the arrest warrant must be approved by the equivalent Procuracy prior to apprehension;
 2. Head and vice heads of a People's Procuracy, and head and vice heads of a Military procuracy;
 3. Court presidents, Vice court presidents of People's Courts, and Court presidents and Vice court presidents of Courts-martial; trial panel.
2. The arrest warrant and written approval of the arrest warrant must specify full name and address of the arrestee, reasons and other details as per Point 2, Article 132 of this Law.
 Enforcers of an arrest warrant must read out the warrant, explain its content, arrestee's duties and rights, make written record of the arrest, and give the warrant to the arrestee.
 The apprehension of a person at his place of residence must be witnessed by a representative of communal, ward or town authorities and other individuals. The apprehension of a person at his place of work or education must be witnessed by a representative of the place of work or education. The apprehension of a person at other places must be witnessed by a representative of communal, ward or town authorities.
3. Apprehension must not occur at night, except for criminals in flagrante or wanted persons.

...

Article 132. Procedural documents

1. Procedural documents include orders, decisions, requests, investigation findings, charges, judgments and other procedural documents universally formatted for procedural activities.
2. Procedural documents must bear:
 - a) Number, issue date and issuing place of the procedural document;
 - c) [*sic*] Grounds for the issuance of the procedural document;
 - c) Contents of the procedural document;
 - d) Full name, position and signature of the individual issuing the procedural document and official seal. (Vietnam 2015)

In an interview with the Research Directorate, a professor of law at Vietnamese National University who teaches constitutional and human rights law stated that summonses and arrest warrants are only used in criminal law cases (Professor 19 May 2022a).

2. Summons and Arrest Warrant

2.1 Content, Appearance, and Security Features

In correspondence with the Research Directorate, a practising lawyer in Viet Nam, who provides legal consultancy for social and political activists, indicated that circulars issued by the MPS stipulate the templates that all summonses and arrest warrants must follow (Lawyer 25 May 2022). The same source added that MPS circular 119/2021/TT-BCA, issued in 2021, provides the current summons and arrest warrant templates, which replaces the respective templates issued by [MPS circular 61/2017/TT-BCA] in 2017 (Lawyer 25 May 2022). The lawyer, however, noted that because the 2021 summons and arrest warrant templates are "quite new," the 2017 templates remain in circulation and use, but added that the 2021 and 2017 templates "are not categorically distinctive" in their appearance (Lawyer 25 May 2022).

The Professor stated that summonses and arrest warrants are "uniform," as local police stations "always" use the government-issued templates, with the only difference the name of the issuing agency (Professor 19 May 2022a). In contrast, the lawyer indicated that although theoretically all summonses and arrest warrants should adhere to the MPS template, in practice different regions or local police "may modify their own documents" by adding additional content or specificities (Lawyer 25 May 2022). The same source added that the MPS template "provides minimum contents" from which all summonses and arrest warrants "must not deviate" (Lawyer 25 May 2022). The Professor indicated that the empty fields in summonses and arrest warrants are "normally" completed by hand (Professor 19 May 2022a).

According to the lawyer, a summons or arrest warrant should have a "head of the investigation police authority (thủ trưởng cơ quan điều tra)" listed as the "issuer" of the document (Lawyer 25 May 2022).

The lawyer stated that all summonses and arrest warrants must be signed by the issuing party and stamped with the red and "rounded" "police authority stamp" (Lawyer 25 May 2022), and the Professor noted that a stamp is the only security feature on these documents (Professor 19 May 2022a). Without providing further details, the Professor added that "in some cases" an arrest warrant will have an "additional stamp" (Professor 19 May 2022a).

The Professor stated that local police can issue different types of arrest warrants corresponding to five or six different situations, such as for "emergency custody" or "extradition" (Professor 19 May 2022a). The same source added, however, that the content included on different types of arrest warrants is "almost the same," with only slight differences (Professor 19 May 2022a).

2.2 Samples

The 2021 MPS summons template (Attachment 1), available on an MPS website, is attached to this Response. The 2021 MPS templates of the arrest warrant for emergency situations (Attachment 2) and the arrest warrant for temporary detention of the accused (Attachment 3), available on an MPS website, are attached to this Response.

The 2017 MPS summons template provided by the Viet Nam Official Gazette (Công Báo) issue number 1053+1054 published on 26 December 2017 (Attachment 4) is attached to this Response. The 2017 MPS templates of the arrest warrant for emergency situations (Attachment 5) and arrest warrant for detention of the accused (Attachment 6), provided by the Viet Nam Official Gazette (Công Báo) issue number 1045+1046 published on 26 December 2017, are attached to this Response.

2.3 Issuing Authority

In correspondence with the Research Directorate, a research fellow in cyber-criminology at the University of Queensland, whose areas of specialization include cyber-security policing and police training, drug trafficking, migrant smuggling, and human trafficking in Viet Nam, stated that "all three procedure-conducting bodies," the MPS, the Supreme People's Procuracy, and the Supreme People's Court, have the authority to issue summonses and arrest warrants (Research Fellow 21 May 2022). The lawyer indicated that while the MPS governs summonses and arrest warrants, it is "the specific investigation police authorities (cơ quan cảnh sát điều tra) [1]" that "really" issue both documents (Lawyer 25 May 2022). The Professor indicated that the summonses are issued by the Investigation Police Agency of the MPS, which is responsible for "ordinary crimes," and the Investigation Security Agency of the MPS, which is responsible for "crimes related to national security" (Professor 19 May 2022a).

The Professor stated that "only" a head of an investigation agency or a head of a court, at the central, provincial or district levels, can issue summonses or arrest warrants (Professor 19 May 2022a). The Research Fellow noted that specifically it is the "Head, and Vice-head of the investigation bodies, procuracies, courts, and the trial panel" who are authorized to issue arrest warrants, while summonses are issued by "Investigators, Prosecutors, [or] Presiding Judge[s]" (Research Fellow 21 May 2022). The lawyer indicated that while police authorities can issue summonses independently, arrest warrants that they issue must be approved by the People's Procuracy (Lawyer 25 May 2022). The same source added that in rare cases, courts may issue arrest warrants (Lawyer 25 May 2022).

In follow-up correspondence with the Research Directorate, the Professor provided the following information concerning the procedure for authorities to issue an arrest warrant:

(i) The arrest of the accused and defendants for temporary detention shall be decided by deputy heads, and heads of investigation agencies at [any] level. Before making a decision, the arrest warrant must be approved by the procuracies of the same level before conducting temporary detention. (ii) During the prosecution stage, the authority to issue decisions to arrest the accused or defendants shall be decided by the deputy procurator, the chief procurator of the people's procuracies and the military procuracies at [any] level, to decide to arrest the accused and defendants

for temporary detention to settle the case. (iii) The chief justices and deputy chief justices of the people's courts and military courts at [any] level, including judges holding the position of chief judges, deputy judges, and trial panels, shall decide to arrest the accused and defendants for temporary detention during the trial period. (Professor 19 May 2022b)

3. Examples of Issuance

3.1 Summonses

According to the US Department of State's *Country Reports on Human Rights Practices for 2021*, in September a man died at a police office in Ha Lam village in Lam Dong province following his arrival there in response to a summons for allegedly violating COVID-19 restrictions (US 12 Apr. 2022, 2). The same source cites police reports stating that the man was "drunk and aggressive," and cites the man's brother as indicating that the man's body "revealed heavy bruising" during the autopsy; the source also states that the MPS was investigating the case as of the end of 2021 (US 12 Apr. 2022, 2).

The US *Country Reports 2021* indicates that in August 2021 in Ho Chi Minh City, the head of the economic police and two additional police officers "reportedly assaulted" a journalist summoned to the station for a discussion about his role in COVID-19 relief efforts (US 12 Apr. 2022, 3). The same source adds that police "beat" the journalist when he "refused to sign meeting minutes" they had prepared (US 12 Apr. 2022, 3).

The 2021 annual human rights report by the 88 Project, an NGO focused on freedom of expression and the treatment of activists in Vietnam, notes three different activists who were summoned throughout the year, including one person "summoned and questioned for alleged involvement in Liberal Publishing House" and another who was summoned on three different occasions including once "from Ha Noi while living in Ho Chi Minh City" (The 88 Project 9 May 2022, 4, 47).

The 88 Project 2021 annual report indicates that two independent candidates who attempted to run in the 2021 elections for the National Assembly were "summoned for questioning" (The 88 Project 9 May 2022, 38). The same source reports that a woman, who was convicted in 2018 for "desecrating the national flag" and sentenced to over two years in prison but had her sentence postponed because she was pregnant at the time, was "repeatedly summon[ed]" for questioning by police during the period of her postponed sentence (The 88 Project 9 May 2022, 39).

The 88 Project 2021 report states that throughout the year "[o]nline commentators were summoned to police stations and interrogated" following their posting on social media of content critical to the government's response to the COVID-19 pandemic (The 88 Project 9 May 2022, 4, 38). The 88 Project 2020 annual human rights report states that by mid-March of that year nearly 700 people had been summoned by authorities "in relation to COVID-19" Facebook posts (The 88 Project 6 Apr. 2021, 37).

The 88 Project 2020 report indicates that in 2020 "many people" from civil society groups including the Liberal Publishing House (LPH), Independent Journalists Association of Vietnam (IJAVN), and Brotherhood for Democracy were "arrested for their affiliations with these groups and/or summoned for questioning" (The 88 Project 6 Apr. 2021, 5, 38). The same source reports that a land rights activist was "summon[ed] for police questioning" in the period preceding his arrest in June 2020 (The 88 Project 6 Apr. 2021, 39).

3.2 Arrest Warrants

The US *Country Reports 2021* provides the following information regarding the use of arrest warrants in practice:

By law police generally require a warrant issued by a prosecutor to arrest a suspect, although in some cases a decision from a court is required. The criminal code also allows police to "hold an individual" without a warrant in "urgent circumstances," such as when evidence existed a person was preparing to commit a crime or when police caught a person in the act of committing a crime. Human rights lawyers shared the view that detention without warrants was a common practice. There were numerous instances where activists were taken into custody by plainclothes individuals without an arrest warrant. (US 12 Apr. 2022, 7)

The same source adds that "[e]specially in politically motivated cases," investigating agencies – "in most cases the police" – did not "appl[y] consistently or strictly" the regulations governing arresting and temporarily detaining individuals without an arrest warrant (US 12 Apr. 2022, 7). The 88 Project 2021 report indicates that authorities "continue the practice of making no-warrant arres[t]" (The 88 Project 9 May 2022, 41).

Sources report that in May 2021, a warrant (HRW 22 Mar. 2022) or a "special warrant" (RFA 1 July 2021) was issued for the arrest of a journalist who covered topics including corruption and land disputes (HRW 22 Mar. 2022; RFA 1 July 2021), and that police arrested him in June and "charged him with propaganda against the state" (HRW 22 Mar. 2022).

The 88 Project 2020 report indicates that a man who is a lecturer at Ton Duc Thang University, who "is currently pursuing a plagiarism complaint against the party secretary of Dak Lak Province," was arrested for "criticizing a local party official" "with no notice given to his employer and family, and without an arrest warrant" (The 88 Project 6 Apr. 2021, 16, 45, 47). The same source adds that Dak Lak public security officials travelled to Ho Chi Minh City, where the lecturer resides, to arrest him (The 88 Project 6 Apr. 2021, 47).

3.3 Issuance to Religious Groups, Including Falun Gong and Hoa Hao

Information on the issuance of summonses or arrest warrants to members of religious groups was scarce among the sources consulted by the Research Directorate within the time constraints of this Response.

In correspondence with the Research Directorate, the Director of Safeguard Defenders [2], who consulted with their partners and network within the Vietnamese human rights community, indicated that

the way minority religious groups are treated depends pretty much on the relationship with local authorities. They may be more or less targeted depending on the province and specific interests. Safeguard Defenders is aware of reports of members of religious minorities being arrested without warrants, which is true, in fact, for all Vietnamese citizens. (Safeguard Defenders 30 May 2022)

4. Invitation Letters

The Professor provided the following information regarding invitation letters:

An invitation letter is a type of [document] used in cases where police agencies, courts or generally proceeding agencies invite people who are related to or know about the case to come to [their] office to collect information, and clarify the contents related to the case. Currently, there is no legal document specifically stipulating that citizens, when receiving an "invitation" from a state agency in general and a police agency in particular, are required to be present upon request.

Therefore, for invitations, the invitee has the choice between coming and not coming. ... However, local lawyers often advise that if there are conditions and times [specified in the letter], the person receiving the invitation should come to work with the state agencies that sent the invitation [so the individual can] know clearly how [they] are related to the case. (Professor 19 May 2022b)

The *US Country Reports 2021* provides the following information regarding individuals who are invited to a police station:

In addition to actual arrest, lawyers and human rights nongovernmental organizations (NGOs) reported that, in many cases, police officers "invited" individuals to present themselves at police stations without being given a clear reason. These individuals might be held for hours and questioned or requested to write or sign reports. Many such cases had nothing to do with political or sensitive circumstances. (US 12 Apr. 2022, 7)

The 2021 MPS invitation letter template, available on a Viet Nam government website, is attached to this Response (Attachment 7). The 2017 MPS invitation letter template provided by the Viet Nam Official Gazette (Công Báo) issue number 1053+1054 published on 26 December 2017 is attached to this Response (Attachment 8).

5. Prevalence of Fraudulent Judiciary Documents

The Professor indicated that fraudulent judiciary documents are "very rare" (Professor 19 May 2022a). The same source also stated that they had never encountered a case of police authorities issuing a fraudulent judiciary document (Professor 19 May 2022a). According to the lawyer, however, fraudulent judiciary documents are "not uncommon" in Viet Nam since it is "quite easy to replicate a passable" summons or arrest warrant (Lawyer 25 May 2022).

Sources reported that there have been some cases of fraudulent judiciary documents being used by "local people" (Professor 19 May 2022a) or "fraudsters" in attempts to financially defraud others (Lawyer 25 May 2022). The Professor added that the fraudulent judiciary documents are usually sent via email or Facebook, but police authorities do not issue authentic judiciary documents via email or Facebook (Professor 19 May 2022a).

According to a 2019 article in the Da Nang Police Online Newspaper, Da Nang police issued an alert to residents reporting multiple incidents of fraudulent summonses and arrest warrants requesting money transfers (Da Nang Police Online Newspaper 10 Aug. 2019). The same source reports that the head of the Da Nang Police Security Department confirmed that the summonses and arrest warrants in question are [translation] "completely fake" and included a scanned stamp, and that during an investigation security officials are not permitted to communicate with citizens using social networks including Facebook (Da Nang Police Online Newspaper 10 Aug. 2019).

The Professor stated that "corruption is very common in the police force," (Professor 19 May 2022a). The *US Country Reports 2021* indicates that despite occasional actions, police officers and state officials "frequently acted with impunity" (US 12 Apr. 2022, 1). The Professor added that police "rarely" request money "immediately after sending the summons," and instead wait until the person arrives at the police station to "bargain" with them on the "amount of money they must pay to have the case ignored or mitigated" (Professor 19 May 2022a). The same source added that such a practice "happens quite commonly" though "not in all cases" (Professor 19 May 2022a). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

6. Ability of Those Served a Summons or Arrest Warrant to Exit Viet Nam

Article 124 of the Criminal Procedure Code, concerning exit restrictions, provides the following:

1. Exit restriction may apply to the following persons when there are evident grounds that their exit from the country denotes evasion:

1. Persons denounced or facing requisitions for charges are suspected of crimes according to sufficient grounds and must be detained from absconding or destroying evidences.
2. Suspects and defendants.
2. Authorized individuals as defined in Section 1, Article 113 of this Law, and Presiding judges are entitled to make decisions on exit restriction. Decisions on exit restriction made by individuals as defined in Point a, Section 1, Article 113 of this Law shall be ratified by the equivalent Procuracy prior to the enforcement of such decisions.
3. The length of exit restriction time must not exceed the time limit for processing of criminal information, pressing of charges, investigation, prosecution and adjudication as per this Law. Exit restriction time against persons sentenced to imprisonment shall not exceed the time from conviction to enforcement of custodial sentence. (Vietnam 2015)

According to sources, a person who is wanted by the authorities would not be permitted to exit Viet Nam using their passport (Professor 19 May 2022a) or it would be "very unlikely" for them to do so (Lawyer 25 May 2022). The Professor stated that anyone that has been summoned or issued an arrest warrant would be "banned" from exiting the country, but only those issued an arrest warrant could be "detained" (Professor 19 May 2022a). In contrast, the lawyer noted that if a person has only been summoned by authorities but has not been served an arrest warrant or a wanted decision, there is a "significantly greater chance for them to legally" exit the country using their passport (Lawyer 25 May 2022). The lawyer also stated that "[i]n theory" authorities must issue a document indicating that one is legally restricted from leaving the country, but "in practice", even if this document has not been issued, a "wanted person" is "highly unlikely" to be able to "make their way past" border controls, particularly since MPS governs the investigatory bodies as well as the immigration control authorities (Lawyer 25 May 2022).

The Professor indicated that someone issued an arrest warrant who had already left the country would be "arrested at the border" upon their return to Viet Nam (Professor 19 May 2022a).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] The Ministry of Public Security (MPS) is "responsible for internal security and controls the national police, a special national security investigative agency, and other internal security units" (US 12 Apr. 2022, 1). The MPS oversees the People's Police Force, which manages "traditional police work, including criminal investigations, neighbourhood policing, traffic control, household registration and identification cards" (Australia 11 Jan. 2022, para. 5.1).

[2] Safeguard Defenders is a Spain-based human rights NGO that "undertakes and supports local field activities" in Asia (Safeguard Defenders n.d.).

References

The 88 Project. 9 May 2022. [2021 Human Rights Report Vietnam: The Situation of Political Prisoners and Activists at Risk](#). [Accessed 15 June 2022]

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Radio Free Asia (RFA). 1 July 2021. Richard Finney. "[Fugitive Independent Journalist Arrested in Vietnam After Month on the Run](#)." [Accessed 18 May 2022]

Research Fellow, University of Queensland, Australia. 21 May 2022. Correspondence with the Research Directorate.

Professor, Vietnam National University. 19 May 2022a. Interview with the Research Directorate.

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United States (US). 12 April 2022. Department of State. "Vietnam." [Country Reports on Human Rights Practices for 2021](#). [Accessed 18 May 2022]

Viet Nam. 2015. [Criminal Procedure Code](#). [Accessed 18 May 2022]

Additional Sources Consulted

Oral sources: D&N International; Dewan & Associates; Duc Thinh Law Firm; Law Office of Nguyen Chien; Le & Tran Trial Lawyers; professor of law specializing in Asian law at a university in Wisconsin; professor of Vietnamese law at a university in Australia; professor of Vietnamese law at a university in Pennsylvania; professor of law at a university in Viet Nam (4); Russin and Vecchi; Vietnam Human Rights Network.

Internet sites, including: Al Jazeera; Amnesty International; Association of Southeast Asian Nations (ASEAN); Austrian Red Cross – ecoi.net; Bertelsmann Stiftung; Committee to Protect Journalists; *The Diplomat*; EU – European Union Agency for Asylum; Factiva; *Financial Times*; *Foreign Policy*; France – Office français de protection des réfugiés et apatrides; Freedom House; *The Guardian*; Hoatieu.vn; International Crisis Group; The Law on Police Use of Force Worldwide; Reuters; UK – Home Office; UN – Refworld; The Vietnamese.

Attachments

1. Viet Nam. 2021. [Ministry of Public Security \(MPS\). *Summonses*](#). Translated by the Translation Bureau, Public Services and Procurement Canada. [Accessed 27 May 2022]
2. Viet Nam. 2021. Ministry of Public Security (MPS). [Order of Arrest in Emergency Situations](#). Translated by the Translation Bureau, Public Services and Procurement Canada. [Accessed 27 May 2022]
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7. Viet Nam. 2021. [Ministry of Public Security \(MPS\). *Invitation*](#). Translated by the Translation Bureau, Public Services and Procurement Canada. [Accessed 27 May 2022]
8. Viet Nam. 2017. [Ministry of Public Security \(MPS\). *Invitation*](#). Translated by the Translation Bureau, Public Services and Procurement Canada. [Accessed 19 May 2022]

ecoi.net summary:

Query response on Vietnam:
Summonses and arrest warrants;
prevalence of fraudulent judiciary
documents and possibility of a
wanted person to exit the country

Country:

Vietnam

Source:

[IRB – Immigration and Refugee
Board of Canada](#)

Original link:

<https://irb-cisr.gc.ca/en/country-information/rit/Pages/index.aspx?doc=458654&pls=1>

Document type:

Response

Language:
English

Published:
21 June 2022

Document ID:
2077051

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