

PERMANENT MISSION OF THE
SOCIALIST REPUBLIC OF VIET NAM
to the United Nations Office,
the World Trade Organization
and Other International Organizations at Geneva



MISSION PERMANENTE DE LA
REPUBLIQUE SOCIALISTE DU VIET NAM
auprès de l'Office des Nations Unies,
de l'Organisation Mondiale du Commerce
et des autres Organisations Internationales à Genève

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The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office, the World Trade Organization and Other International Organizations in Geneva presents its compliments to the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights and with reference to the Letter UA VNM 10/2016 of 5th December 2016, has honour to hereby transmit the Replies of Viet Nam to the Joint Urgent Appeal from the Special Procedures (01 attachment).

The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office, the World Trade Organization and Other International Organizations in Geneva avails itself of this opportunity to renew to the Special Procedures Branch of the Office of the UN High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 23 February 2017



Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights
GENEVA

REPLY OF VIET NAM TO THE COMMUNICATION UA VNM 10/2016

Regarding the information and allegations that the Working Group on Arbitrary Detention and Special Procedures received and mentioned in the letter UA VNM 10/2016 of the Special Procedure Branch, your kind attention is drawn to the replies from the relevant authorities of Viet Nam as follows:

1. General information related to Mr. Nguyen Hung Linh

Mr. NGUYEN Hung Linh, from Tan Hiep district, Kien Giang Province was born in 1963. Before his arrest, he was Chairman of the Board of Members and Chief Executive Officer of Kien Giang Trade and Tourism Company Ltd (KTC).

In June 2015, the Investigation Division of the Police of Kien Giang Province decided to prosecute and temporarily detain Mr. Nguyen Hung Linh for acts of "Abuse of positions and/or powers while performing official duties" and "Negligence of responsibility, causing serious consequences" as respectively provided in Article 281 and Article 285 of the Penal Code of Viet Nam. On 8 June 2015, Mr. Nguyen Hung Linh was arrested, together with 6 other employees, at KCT.

On 18 November 2016, at the trial of first instance, the People's Court of Kien Giang Province sentenced Mr. Nguyen Hung Linh to 13 years of imprisonment for the two above-mentioned acts.

2. With regards to allegations related to Mr. Nguyen Hung Linh's case

Information that the Working Group on Arbitrary Detention and concerned Special Procedures received are untrue. The process of investigation, trial and sentencing are undertaken in accordance with orders and procedures prescribed by Vietnamese relevant laws including the Criminal Procedure Code and fully in compliance with international norms including principle of *nullum crimen nullum poena sine lege* and those set forth in international human rights instruments to which Viet Nam is party.

2.1. Legal grounds for the arrest, detention and trial of Mr. Nguyen Hung Linh

The arrest, temporary detention and trial of Mr. Nguyen Hung Linh are based on the following legal grounds:

2.1.1. Unlawful acts of Mr. Nguyen Hung Linh

(i) Act of negligence of responsibility, causing serious consequences

KTC is a 100% State-owned enterprise. Being the Chief Executive Officer of the company, Mr. Nguyen Hung Linh neglected obligations and

responsibility, which are prescribed by law, in the management and oversight of the company's activities, causing a loss of 50 billion Vietnamese Dong (over 2,5 million US dollars) for the State of Viet Nam, in which the loss of 34 billion Vietnamese Dong (over 1,5 million US dollars) is directly attributed to him. These actions clearly constitute "act of negligence of responsibility, causing serious consequences" under Article 285 of the Penal Code.

(ii) Act of abusing positions and/or powers while performing official duties

Using his position as CEO of the KTC, Mr. Nguyen Hung Linh, together with Mr. Nguyen Hoang Nam – Head of Planning and Sales Division, created 03 other companies to export a large amount of rice owned by the KTC for personal benefit and so stole 2,8 billion Vietnamese Dong (equivalent to over 100.000 US dollars). These actions constitute criminal offenses under Article 281 of the Criminal Code of Viet Nam (Act of abusing positions and/or powers while performing official duties).

2.1.2. Temporary detention for the purpose of investigation:

On 8 June 2015, the Investigation Division of the Police of Kien Giang Province decided to prosecute and temporarily detain Mr. Nguyen Hung Linh under Article 281 and Article 285 of the Penal Code of Viet Nam. The arrest was carried out in accordance with applicable rules of law: the arrest warrant was duly approved by the People's Procuracy of Kien Giang Province and was notified to the relevant authorities, Mr. Nguyen Hung Linh and his family and KCT. After his arrest, official newspapers of Viet Nam and various webpages such as People's Police Newspaper, VNexpress, VietNamNet ... have publicly reported the case.

2.1.3 Trial process:

On 28-29 March 2016, the People's First-instance Court of Kien Giang Province tried Nguyen Hung Linh and 06 other defendants involved in the case. After two days of hearings, the Court found that the dossier of the case submitted by People's Procuracy of Kien Giang Province was incomplete. For this reason, the Court decided to defer the trial and return the case back to the People's Procuracy for further investigation.

On 17-18 November 2016, the People's First instance Court of Kien Giang Province reopened the trial of Mr. Nguyen Hung Linh and 06 other defendants involved in the case. Based on evidence collected in the investigation process, the Court sentenced Mr. Nguyen Hung Linh to 04 years of imprisonment for unlawful act under Article 285 of the Criminal Code and 09 years of imprisonment for unlawful act under Article 281 of the Criminal Code. These two sentences amount to 13 years of imprisonment.

Thus, Mr. Nguyen Hung Linh was arrested and tried for violations of the law, not for the reason that Mr. Nguyen Hung Linh refused to engage in corrupt activities at the Company KTC since late 2014.

2.2. With regards to allegations that Mr. Nguyen Hung Linh was not allowed to contact with his family or lawyer and denied access to supplies sent by his family and friends

During his temporary detention, access to lawyer of Mr. Nguyen Hung Linh Director was fully guaranteed. Specifically, in 2015 and 2016, Mr. Nguyen Hung Linh met and discuss 11 times with Mr. [REDACTED], Attorney at law of [REDACTED], Bar Association of Quang Ngai Province (copies of records of meetings between Mr. Nguyen Hung Linh and his lawyer certify this fact). During the same period of time, Mr. Nguyen Hung Linh received for 88 times gifts, medicines, living supplies and personal goods sent to the Detention Center by his relatives.

2.3. With regards to the allegations related to the access of Mr. Nguyen Hung Linh to health care

Information that the access by Mr. Nguyen Hung Linh to health care was not guaranteed is totally false. Authorities did not refuse the request of Mr. Nguyen Hung Linh for medical checks.

According to the analysis of the Forensic Center of Kien Giang Province, health conditions of Mr. Nguyen Hung Linh have known a decrease of 35 % due to an ulcerative colitis. Upon Mr. Nguyen Hung Linh's request, competent authorities sent him to Kien Giang Hospital for lung checks including lung X-ray and sputum test. The results of these tests confirmed that his heart and lung are in normal conditions and no lung disease was diagnosed. Copies of test results were signed by the doctor who had examined Mr. Nguyen Hung Linh. In the year of 2016, Mr. Nguyen Hung Linh has been provided with medicines 14 times for treatment.

2.4. Regarding allegations that Mr. Nguyen Hung Linh was tortured in September 2015, and that the lawyer and relatives of Mr. Nguyen Hung Linh were threatened, harassed in the course of his arrest and trial

This information is totally false and fabricated. A thorough verification by competent authorities affirmed that Mr. Nguyen Hung Linh was absolutely not tortured in September 2015. Mr. Nguyen Hung Linh acknowledged himself that he was not tortured by anybody. Authorities did not threaten, harass the lawyer or relatives of Mr. Nguyen Hung Linh during his arrest and trial.

3. Information related to measures to ensure access to lawyers, family visits and access to health care of inmates during temporary custody:

In Viet Nam, all inmates are guaranteed access to lawyer, health care and visits in accordance with current legislation, namely:

- Paragraph 4, Article 20 of 2013 Constitution of Viet Nam clearly stipulates that "Any person who has been arrested, held in custody, prosecuted, brought to trial in violation of the law has the right to self-defend or to seek the assistance of defence from lawyers or other people"

- Article 11 of 2003 Criminal Procedure Code provides that "The detainees, accused and defendants shall have the right to defend by themselves or ask other persons to defend them. Investigating bodies, procuracies and courts shall have the duty to ensure that the detainees, accused and defendants exercise their right to defence under the provisions of this Code".

In accordance with the Decree 89/1998/NĐ-CP of the Government on Regulation on temporary detention (as amended in 2002): detainees have the right to meet with relatives, lawyers or defence counsel appointed by competent authorities dealing with the case (paragraph 2 Article 22), to receive gifts and supplies from their families (paragraph 1 Article 26) and to have health examinations and receive necessary medical treatment (Article 28).

- Over the past few years, Viet Nam has made efforts to improve national legal framework in order to better ensure the human rights and bring it into line with the 2013 Constitution. The amended Criminal Procedure Code (adopted in November 2015, not yet entered into force) reserve its whole Chapter VII on ensuring the right to defence of detained, accused and defendants, which contains following amendments:

(i) To remove the provision "defence counsels have to be granted 'defence counsel's certificate" and replace it with a new provision: "defence counsel must register to defend detainees, accused or defendants" (Article 78);

(ii) To extend the range of persons allowed to act as defence counsels by including legal assistants with the view to defending free of charge persons in difficult situations (paragraph 2 Article 72);

(iii) To extend cases where procedure-conducting bodies are obliged to appoint defence counsel (paragraph 1 Article 76);

(iv) To provide for an earlier stage of the proceedings from which defence counsels shall participate. Specifically, defence counsel shall participate and perform the defence from the moment where the arrested person is present at the office of investigating body (Article 74),

(v) To stipulate that upon their request, accused and defendants can read, take notes of copies or scanned documents related to their charges, discharges or copies of other documents with respect to the defense since the end of the investigation in order to exercise their constitutional right to defence (sub-paragraph 2i Article 60); and

(vi) To set out new provision that detainees, persons held urgently in custody, accused and defendants have the right to present their statements,

opinions and are not forced to give testimony against themselves or to plead guilty (Articles 58, 59, 60 and 61).

- Law on conducting temporary detention (adopted in November 2015, not yet entered into force) clearly stipulates that detainees, persons held in temporary detention are guaranteed meals, accommodation, clothing, personal goods, health care, spiritual activities, rights to send/receive correspondences, gifts and supplies, rights to family visits and consular visits, right to have defence counsel, to be explained, ensured to exercise the right to defence, and the right to seek the assistance of defence or legal assistance.

We hope that the above information would help to further clarify the questions of your concern./.