

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

30, Chemin des Corbillettes, 1218 Grand-Saconnex, Genève
Tel: (41 22) 799 14 00 Fax: (41 22) 798 07 24 E-mail: geneva@mofa.gov.vn

Ref: 215 /HR.VNM.2017

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 and with reference to the letter Ref. UA VNM 5/2017 dated 25 August 2017, has the honour to hereby transmit to the latter the reply of Viet Nam (01 paper document and 01 video).

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 Special Procedures the assurances of its highest consideration.

Geneva, 24 November 2017



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

**REPLY OF VIET NAM TO THE JOINT URGENT APPEAL
FROM SPECIAL PROCEDURES REF. UA VNM 5/2017**

(Dated 25 August 2017)

1. General information in relation to Mr. Nguyen Huu Tan

NGUYEN Huu Tan was born in 1979. His place of residence was in Vinh Long province, Viet Nam. On 02 May 2017, Nguyen Huu Tan was arrested for the charge of “conducting propaganda against the Socialist Republic of Viet Nam” under Article 88 of the Criminal Code. On 03 May 2017, Nguyen Huu Tan committed suicide in the detention center of Vinh Long Public Security Department.

2. On the allegation of arbitrary arrest of Mr. Nguyen Huu Tan

The allegation that Mr. Nguyen Huu Tan was arbitrarily arrested is groundless. The emergency arrest and detention of this person for the purpose of investigation were on legal basis and in accordance with rules and procedures set out in the national legislation.

On 30 April 2017, the police of Vinh Long province noticed two flags of the former Republic of Viet Nam displayed on the National Route 1A, Thuan Tien C hamlet, Thuan An district, Binh Minh town, which was sewn with yellow cloth and painted and measured 30cm x 50cm. On 01 May 2017, the police of Vinh Long province once again found another three similar flags hung at Tan Phu commune, Tam Binh district. The Investigation Security Agency under the Vinh Long Public Security Department later discovered that two Facebook accounts '[REDACTED]' of Mr. Nguyen Quang Vu, and '[REDACTED]' of Mr. [REDACTED] [REDACTED] posted four pictures of these people besides the above-mentioned flags with captions that defamed the State, distorted history, insulted the national symbol on the Reunification Day of 30 April, which hampered the national unity.

In the interrogation with the Investigation Security Agency, these two individuals revealed that they were instructed by Nguyen Huu Tan to come to the locations where the flags were hung by Mr. Tan to take pictures for the purpose of posting on Facebook. They also presented 13-page documents and 04 video clips made by Mr. Tan, the content of which distorted history, insulted the national symbol and incited others to overthrow the people's administration, which was sent to them from the Facebook account "Tam Thanh" of Nguyen Huu Tan. The use of the former Republic of Viet Nam's flag is against the struggle of Vietnamese people for independence, freedom and unification. Based on the statements and evidences collected from these individuals, the Investigation Security Agency identified

Nguyen Huu Tan as being suspected of having committed the offence of “conducting propaganda against the Socialist Republic of Viet Nam” under Article 88 of the Criminal Code.

With a view to preventing Mr. Tan from destroying relevant traces or evidences, on 02 May 2017, in accordance with Articles 34, 79, 80, Article 81 paragraph 1 and Article 86 of the Criminal Procedures Code, the Chief of the Investigation Security Agency of Vinh Long province signed an emergency arrest warrant against Nguyen Huu Tan and an emergency search warrant allowing the search of his residence. The search was carried out by the Investigation Security Agency at 20:40 on 02 May 2017, whereas the arrest took place at 23:00 on the same day. The arrest records were signed at 23:15 on 02 May 2017.

The Emergency Arrest Warrant and the Emergency Search Warrant have been issued in consistence with the competences prescribed in Article 80, paragraph 2 of the Criminal Procedures Code. Before carrying out the arrest and the search, an inspector read them aloud and explained the grounds for the arrest and the search. Those present at the scene and witnessing the search and the arrest included local authority representatives, a neighbor, Nguyen Huu Tan’s family members, namely his [REDACTED]

[REDACTED] and [REDACTED]. During the search, the police seized 06 flags of the former Republic of Viet Nam, 04 video clips sent from the Facebook account of Nguyen Huu Tan to that of Nguyen Quang Vu and 02 cellphones of Mr. Tan. Afterwards, the Investigation Security Agency of Vinh Long Province issued a Decision of 3-day detention of Nguyen Huu Tan under Article 83 of the Criminal Procedures Code, which was effective from 00:00, 03 May 2017. He was then transferred to the detention center of Vinh Long Public Security Department. On 03 May 2017, the Investigation Security Agency of Vinh Long Province duly informed the People’s Committee of Thanh Phuoc ward and Nguyen Huu Tan’s father Nguyen Huu Quang of the detention in accordance with Article 85 of the Criminal Procedures Code.

The Investigation Security Agency later found that Nguyen Huu Tan was involved in another case of “carrying out activities aimed at overthrowing the people’s administration” and “conducting propaganda against the State” by [REDACTED] (resident in Ho Chi Minh City) and some other individuals, which had been under investigation by the police of Binh Dinh province. [REDACTED] a member of the “Provisional National Government of Viet Nam” organisation aiming at overthrowing the State, stated that he received voluntary applications for admission into the said organisation of 04 people from Vinh Long, one of which is from Nguyen Huu Tan. Mr. Tan did send 04 pictures of hanging the former Republic of Viet Nam’s flag to the Facebook account [REDACTED] at 12:12 on 30 April 2017. Besides that, Mr. Tan also uploaded video onto Facebook

and disseminated them among Facebook users to show support for the former Republic of Viet Nam and to propagate the anti-State activities.

The arrest, residence search and detention of Mr. Nguyen Huu Tan have been based only legal grounds and carried out in accordance with Articles 34, 35, 75, 79, 81, 83, 84, 85, 87, 95, 140, 141, 142, 145 and 148 of the Criminal Procedures Code of Viet Nam.

3. On allegations of torture and death in custody of Nguyen Huu Tan and the investigation into his death

Nguyen Huu Tan was not tortured, extorted of depositions or suffered from any form of corporal punishment during the time in custody. He was detained in a single detention cell. He were enabled to realize all the rights and treatment which he was entitled to under Article 89 of the Criminal Procedures Code and the Decree No. 89/1998/ND-CP promulgating the Regulations of Temporary Detention and Custody, in accordance with Articles 2, 4 and 16 of the Convention against Torture.

The moving of Nguyen Huu Tan from the detention cell to the interrogation room was carried out in accordance with Articles 20 and 21 of the said Decree No. 89/1998/ND-CP. At 7:33 on 03 May 2017, the Investigation Security Agency officers started the interrogation of Nguyen Huu Tan at the Detention Center of Vinh Long Public Security Department. The entire interrogation was recorded by a camera installed in the interrogation room, of which the clip is attached to the present written Reply. At the time of the interrogation, an interrogator asked and verified the health condition and mental state of Mr. Nguyen Huu Tan as normal for the conduct of the interrogation. His rights and obligations as a detainee were explained to him in accordance with Article 48 of the Criminal Procedures Code and Article 13 of the Convention against Torture.

Seizing the moment when the interrogators went out to get him some water, at 10:59 on 03 May 2017, Nguyen Huu Tan searched one of the officer's briefcase left besides his seat and took the paper knife used for cutting the seal of evidences to cut his own neck.

After he was found dead, scene and forensic examinations were immediately conducted by a team led by the Office of the ISA and composed of representatives from People's Procuracy of Vinh Long province, Criminal Techniques Section of Vinh Long Public Security Department and the Forensic Section of Vinh Long Province in witness of Tan's [REDACTED]

[REDACTED] The forensic examination concluded that Mr. Nguyen Huu Tan died of hemorrhagic shock caused by a sharp object which severed his larynx and carotid arteries. The result of the forensic examination also showed that there was no other wounds or injuries on his body other than the open wound on his neck which was caused by himself. The corpse of Mr. Tan was handed over to his family for burial.

Based on the statements of relevant persons, the video clip taken by the camera in the interrogation room and the results of the scene and forensic examinations, the Investigation Security Agency came to the conclusion that Mr. Nguyen Huu Tan committed suicide without any assistance or inducement. The Agency informed this conclusion to his family members, [REDACTED] [REDACTED] It was a regrettable incident and all those officers who committed errors which led to this incident were disciplined.

4. On allegations of threat and intimidation against Mr. Nguyen Huu Tan's family

The allegations of threats and intimidation against Mr. Tan's family are untrue and unfounded. After his body returned to his family, the Chief of the Investigation Security Agency of Vinh Long province attended the funeral and expressed the condolence to the family. He also answered the relevant questions that Mr. Tan's family members might have in relation to his death.

The Department of Public Security of Vinh Long province also gave his family access to the video clip recording the whole interrogation time of Nguyen Huu Tan, during which he committed suicide. The Investigation Security Agency had three times invited his family members, including [REDACTED] [REDACTED] [REDACTED] to hear the investigation conclusions of the death of Mr. Nguyen Huu Tan but no one turned up.

During the investigation, the Investigation Security Agency found the applications for admission into the anti-State organization "Provisional National Government of Viet Nam" of [REDACTED] [REDACTED] With a view to clarifying the relevant information, the Investigation Security Agency invited these two persons to the police office in accordance with national laws and regulations. There was completely no such thing as the local police officers came to the residence of Mr. Tan's family to threat and force them to confess their "anti-State activities" as mentioned in the communication.

Concerning the allegation that a police came to Mr. Nguyen Huu Tan's house to ask a family member to sign a document granting consent for searching the person's mobile phone: This allegation is untrue and unfounded. For investigation purposes, the Investigation Security Agency invited [REDACTED] [REDACTED] to witness the opening of the seal of Mr. Nguyen Huu Tan's mobile phone confiscated on 03 May 2017 and to sign the document confirming the opening of the seal. This is in line with Articles 54, 75, 65 and 145 of the Criminal Procedures Code.

5. On guaranteeing the physical and psychological integrity of persons deprived of liberty in accordance with the Convention against Torture:

Rights of persons deprived of liberty in Viet Nam, including their physical and psychological integrity, have always been protected under the national legislation. Acts of torture or other cruel, inhumane, degrading treatment or punishment are criminal offences which will entail criminal liability. Article 6 of the Criminal Procedures Code provides that "all forms of coercion and corporal punishment are strictly forbidden". Article 131, paragraph 4 of the Criminal Procedures Code stipulates that "Investigators or procurators who extort depositions from the accused or apply corporal punishment to the accused must bear criminal liability prescribed in Article 298 or Article 299 of the Criminal Code". According to Article 14 of the Decree No 89/1998/ND-CP promulgating the Regulations on temporary custody and detention, persons detained or in custody will be provided medical examination and treatment by the healthcare professionals based at the detention center; or will be transferred to an external civil healthcare center or hospital for examination or treatment of a condition if needed.

During the past years, Vietnamese criminal legislation against torture has been revised in accordance with the Constitution of 2013 and obligations under the international human rights treaties to which Viet Nam is a party, including the Convention against Torture. The prohibition of torture, extortion of depositions and any forms of corporal punishments are important principles of the Criminal Code of 2015 (Articles 373, 374 and 384), the Criminal Procedures Code of 2015 (Articles 10, 11, 183), Law on Temporary Detention and Custody of 2015 (Article 16), Law on the Organization of Criminal Investigation Bodies of 2015, etc. These Laws will enter into force on 01 January 2018. Article 183, paragraph 5 of the Criminal Procedures Code of 2015 stipulates that investigators, investigation officers, procurators and examiners who extort depositions from or apply corporal punishment to the suspect(s) shall bear criminal liabilities under relevant provisions of the Criminal Code, whereas Articles 373 and 374 of the Criminal Code of 2015 provides that the offences of extortion of depositions and corporal punishment may subject to a punishment of 20 years to life imprisonment.

The Law on Temporary Detention and Custody of 2015 provides for the rights and treatment of the detainees and persons in custody, including diet, accommodation, clothes, daily supplies, health care, spiritual practices, sending and receiving letters, receiving gifts, family visits, meeting advocates, consulting with a consular official,, being explained and ensured of the right to conduct his own defense or seek a defense council and to seek legal assistance. The Law reiterates the prohibition of all acts of torture, extortion of depositions, corporal punishments or any other cruel, inhumane, degrading treatment of punishment, or any other

forms of treatment in violation of the rights or legitimate interests of the detainees and persons in custody.

6. On the recommendation of repealing Article 88 of the Criminal Code

Article 88 of the Criminal Code is in consistence with the international human rights instruments to which Viet Nam is a party, including the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Article 88 does not prohibit the exercise of the right to freedom of speech and expression to point out problems in the management and administration by the Government. Only those activities carried out in the name of exercising the freedom of speech and expression but aimed at provoking anti-State thought, inciting people to overthrow the national administration and harming national security are forbidden. It should be noted that Article 19 of the International Covenant on Civil and Political Rights stipulates that the exercise of this right may be subject to certain restrictions for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. At the same time, Article 20 of the Covenant also provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law./.