

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 communication Ref. UA VNM 5/2018 dated 11 May 2018 from the Special Procedures, has the honour to hereby transmit the reply of Viet Nam (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 United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 05 April 2019



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

REPLY OF VIET NAM TO THE COMMUNICATION

Ref. UA VNM 5/2018

The allegations that Ho Duy Hai was subject to extortion of confession and ill-treatment in detention are untrue and unfounded.

In order to ensure that there is no wrong conviction, the judicial authorities have reviewed the case, on numerous occasions, in accordance with criminal procedures, with the participation of the supervisory authorities of the National Assembly. Though some errors occurring during the proceedings and the taking of evidences were identified, the adjudication authorities have up to the present come to the conclusion that these errors do not alter the nature of the case, of which Ho Duy Hai committed homicide and robbery. It is worth noting that criminal proceedings in Viet Nam follows stringent procedures, involving different levels of trial, from the court of first-instance and court of appeal to court of cassation and supervisory court, to the review procedures by the Council of Justices of the Supreme People's Court. All are to ensure the least possibility of wrong conviction.

1. General information on the case

a. Investigation phase

On 21 March 2008, the Investigation Unit under the Public Security Department of Long An Province arrested Ho Duy Hai to investigate the charges of "Homicide" under Article 93 and 'Robbery' under Article 133 of the Criminal Code. During investigation, Ho Duy Hai confessed that he committed the murder of 02 persons at the Cau Voi post office, Long An province. In the two written records of police interview and eleven written records of police interrogation, Ho Duy Hai confessed to the crime and described his course of action. He affirmed that his statements are true, voluntary and free from extortion, coercion or torture. After each interview or interrogation session, Ho Duy Hai wrote the following statement in the written records: "I have read through this entire written records and I confirm that it is true to my statements", and signed on each page of the records. Hai's lawyer and the prosecutor-assistant who is assigned to supervise the case had been present during all interrogation sessions from 27 June 2008 until 7 July 2008 and signed on the records of interrogation.

During the investigation phase, Ho Duy Hai wrote 08 statements, in which he confessed to and described the course of his action. At the end of each statement, he acknowledges that the information given in the statement is true and accurate.

When receiving the Investigation Conclusions on 29 August 2008, Ho Duy Hai states that he "agrees with the conclusions" therein contained.

b. Prosecution phase

- In the written records of interview by the prosecutor-assistant, Ho Duy Hai confirmed that he had committed the killings of the 2 persons. At the end of each records, he wrote that "I have read this entire written records, I confirm that it is true to my statements and agree to sign it", and signed on each page of the records.

- On 30 September 2008, receiving the indictment, Ho Duy Hai declares that: "I have read the indictment; I confirm that it correctly reflects the acts I have committed. I, Ho Duy Hai, ask the Court to reduce the punishment in consideration of my cooperation with the authorities and acknowledgement of the offence and my difficult situation." In the written records of an interview by a prosecutor¹, Ho Duy Hai declares that "Throughout the investigation and prosecution process, I have made all statements on my own free will and under no duress nor extortion nor corporal punishment".

c. Trial phase

- Ho Duy Hai was sentenced to capital punishment for the offences of "homicide" and "robbery" at the First-instance Criminal Judgment No. 97/2008/HSST dated 01 December 2008 by the People's Court of Long An Province, which was upheld at the Appellate Criminal Judgment No. 281/2009/HSPT dated 28 April 2009 by the Court of Appeal of the Supreme People's Court in Ho Chi Minh City. After being sentenced, Ho Duy Hai filed no claim of innocence but a petition to the President for commutation of the death penalty.

The first-instance and appellate trials were public ones carried out in accordance with Vietnamese legislation. At both trials, Ho Duy Hai stated that he

¹ Under the Law on the Organization of People's Procuracies, a prosecutor is tasked with prosecuting and supervising judicial activities.

was under no duress when acknowledging the commission of the crime. Both first-instance and appellate courts in their judgments held that Hai's offences are of serious nature and there are sufficient evidences to prove that Hai has committed murder and robbery.

After the appellate trial, Hai's mother, [REDACTED] filed a claim of innocence for Hai and his aunt and sister, [REDACTED] and [REDACTED] filed a request to postpone the execution. The Chief Judge of the People's Court of Long An Province decided to postpone the enforcement of the sentence.

On 24 May 2011, after considering the case, both the Chief Justice of the Supreme People's Court and the Prosecutor-General of the Supreme People's Procuracy came to the decisions of not filing a petition on re-examining the case under the cassation procedures². They sent the President a recommendation on rejecting Ho Duy Hai's petition for commuting the death sentence. On 17 May 2012, the President decided to reject Hai's petition.

Upon receiving a number of petitions for postponing the execution of the sentence, on 04 December 2014, the President decided to postpone the execution, ordering the concerned agencies to re-examine the case with a view to clarifying whether there was a wrongful judgment against Hai or not and to report to the President the result thereof.

On 07 December 2014, the Deputy Prosecutor-General, Mr. Le Huu The, had a meeting with the People's Procuracy of Long An Province and other agencies which had taken part in the resolving of the case. These agencies presented their analysis and conclusions, reaffirming that there were sufficient evidences to charge Ho Duy Hai of 'homicide'. After consideration and analysis, the Deputy Prosecutor-General concluded that though there had been some errors during the criminal proceedings concerning the collection of evidences, those errors do not alter the facts of the case and its nature.

On 21 December 2014, the supervision delegation of the National Assembly led by Ms. Le Thi Nga, Deputy Chair of the Judicial Committee of the National

² Under the Criminal Procedures Code, when a court judgment involving a death penalty comes into force, the Chief Justice of the Supreme People's Court and the Prosecutor-General of the Supreme People's Procuracy must decide whether or not to re-examine the case under the cassation procedures within 2 months upon receipt of the case dossier.

Assembly came to the Detention Center of the Public Security Department of Long An Province to meet Ho Duy Hai and the agencies involved in the administration of justice. At the meeting, Hai, his lawyers and other persons lodging complaints for/on behalf of Hai had presented their views and concerns regarding the case to the supervision delegation.

On 23 December 2014, the Prosecutor-General established a cross-agency Working Group led by the Supreme People's Procuracy to examine the case of Ho Duy Hai. The working group considered the concerns raised by lawyers, complainers and the press, working with the agencies involved in criminal proceedings in Long An province, taking information from Hai at the detention center, and observing the crime scene by themselves. After finishing their investigation and verification, the working group comes to the same conclusions with the agencies involved in the criminal proceedings of the case.

On 19 January 2015, the Judicial Committee of the National Assembly sent the findings of the supervision delegation of the National Assembly to the Prosecutor-General of the Supreme People's Procuracy. On the same day, the President's Office also transferred to the Chief Justice of the Supreme People's Court and the Prosecutor-General the suggestions in relation to the case of Ho Duy Hai by Ms. Le Thi Nga in her capacity as deputy of the National Assembly.

At the meetings held on 11 February 2015 and 18 March 2015, a group of high-level representatives from various agencies, including the Supreme People's Procuracy, the Supreme People's Court, the President's Office, the Judicial Committee of the National Assembly and the Ministry of Public Security were reported on the findings of the investigation by the cross-agency Working Group mentioned above. After considering the case, the findings of the Working Group and examining the evidences, the group of high-level representatives hold the view that:

"On the basis of careful, objective and thorough consideration of evidences of guilt, evidences of innocence as well as the mistakes and violations committed during the resolving of the case, the group of high-level representatives comes to the following observation: The murder and robbery case in Long An Province in 2008 is a serious and complicated case which receives public attention. There had been some errors made during the initial investigation process. However, these

errors had been fixed by the investigation agencies in charge who collected more evidences to clarify the truth of the case. Therefore, these errors do not alter the facts of the case and its nature. On the basis of the statements made by Ho Duy Hai during investigation and trial, which match the evidences, the characteristics of the crime scene, the reconstruction of the event at the crime scene, crime scene inspection, results of forensic analysis, eyewitness identification, witness testimonies, time and place of the crime and other evidences, there are legal grounds to conclude that Ho Duy Hai committed the murder of [REDACTED] and [REDACTED] and the robbery of their property and that of Cau Voi Post Office. The group of high-level representatives is in agreement with the first-instance and appellate Courts' conviction of Hai for 'homicide' and 'robbery'."

On 27 March 2015, Mr. Le Huu The, Deputy Prosecutor-General represented the group of high-level representatives to announce its conclusion on the case of Ho Duy Hai, affirming the group's agreement with the Courts' conviction, thus suggested that the case would not be re-examined under the cassation procedures.

The report no. 38/BC-VKSTC by the group of high-level representatives of relevant agencies was sent to the Supervision Delegation of the Standing Committee of the National Assembly on 27 March 2015.

On 12 May 2015, an investigator from the Investigation Agency under the Ministry of Public Security came to the Detention Center of Long An Province to verify information on Hai's mental and physical health and to see whether he had been ill-treated. The investigator reported that there was no clue that Ho Duy Hai had been ill-treated; Hai's mental and physical health was normal with no detected illness; he obeyed the Center's rules and regulations, having no opposing acts and showing no signs of psychological problems.

On 12 February 2018, the Judicial Committee of the National Assembly made a suggestion to the Chief Justice of the Supreme People's Court and the Prosecutor-General of the Supreme People's Procuracy to consider initiating the cassation procedures to review the decision of the court of appellate of the Supreme People's Court in Ho Chi Minh City on the case of Ho Duy Hai. Following the suggestions made by the President and the Judicial Committee and

with a view to ensuring no wrong conviction, the Prosecutor-General instructed the relevant units of Supreme People's Procuracy to study the case and report to him for considering initiating the cassation procedures in accordance with national legislation.

While the family members of Ho Duy Hai continuously and strongly claim his innocence in various petitions to agencies at different levels, the Supervision Delegation of the Standing Committee of the 13th National Assembly took the case into the list of cases under supervision of the Standing Committee. Mr. Uong Chu Luu, Deputy Chairman of the National Assembly, head of the Supervision Delegation asked the Ministry of Public Security, the Supreme People's Procuracy and the Supreme People's Court to report the Delegation on the process of handling the case and relevant claims.

2. On Ho Duy Hai's health and treatment

Ho Duy Hai's health has been in normal condition, with no diseases that require to be treated at the Detention Center's medical station or a general hospital. His psychological state has also been stable. He has obeyed the rules and regulations of the Detention Center since the date of his arrest on 21 March 2008, except for one time he had a fight with his cellmate on 17 September 2008, for which he was disciplined with being shackled for 7 days, not receiving family supplies and visit for one month.

The detention conditions and treatment of Hai are ensured to meet the standards required by national legislation. He is periodically checked up by health professionals and provided medication for treatment of normal illness like flu or headache, etc. He was enabled to meet family members once every month and to receive their supply twice a month. His diet and everyday activities also meet the required standards.

Since the date of his arrest, Ho Duy Hai wrote two petitions, of which the first one of 05 December 2008 to the Supreme People's Court asked for commuting the court's sentence, and the second one of 4 May 2009 to the President for commuting the death penalty. Apart from these petitions, the Detention Center of Long An Province receives no other petitions or claim of innocence from him. On 04 December 2014, the Committee for the enforcement of death sentences in Long An province issued the Decision to postpone the

execution in order for competent agencies to re-examine the case. On 13 January 2015, the relevant agencies of Long An Province, including the Department of Public Security, the People's Procuracy, the People's Court and the Party's Internal Affairs Committee hold a meeting and decided that Ho Duy Hai was allowed to receive family supplies and no family visits due to the fact that his case is being reconsidered by competent agencies. Later, since 13 March 2015, he was allowed to meet family members once a month as usual.

The treatment of Ho Duy Hai during detention has been ensured to meet standards required by national legislation, which has been regularly supervised by the People's Procuracy of Long An Province. The decision of the General Directorate of the Detention Center on not allowing family visits from December 2014 to February 2015 is lawful one based on the fact that his case is being reconsidered by competent agencies. Since 13 March 2015, Ho Duy Hai has met his family members once a month and the competent authorities of Viet Nam have received no claim of ill-treatment or violation of his rights since then.

3. On the issue of death penalty in Viet Nam

Viet Nam does maintain capital punishment; however it is only applicable to the most serious crimes. According to the 2015 Criminal Code, the death penalty is no longer applicable to another 08 offenses and shall not be applied to offenders under 18, pregnant women, women nursing children under 36 months old, and people over 75 at the time of offense or trial. Additionally, non-execution and commutation to life imprisonment shall apply to pregnant women, women nursing children under 36 months old, people over 75; and people sentenced to death for embezzlement and corruption having voluntarily surrendered at least 3/4 of the property acquired and having cooperated with competent authorities in investigation, or having made major atonement.

The execution of death sentences in Viet Nam is in compliance with international law and standards, including the ECOSOC resolution 1989/64 on the implementation of the safeguards guaranteeing protection of the rights of those facing death penalty. The execution of the death penalty follows a stringent process: (i) Right after the death penalty becomes effective, the case dossier must be sent to the Chief Justice of the Supreme People's Court and the Prosecutor-General of the Supreme People's Procuracy; (ii) Within two months upon receipt

of the case dossier, the Chief Justice and the Prosecutor-General must decide whether or not to re-examine the case under the cassation procedures; (iii) Within 07 days since the day the judgment imposing the death penalty becomes effective, the convicted has the right to file a petition for commutation to the President; (iv) the death penalty can be enforced only when the Chief Justice and the Prosecutor-General decide not to initiate the cassation procedures and the petition for commutation of the death sentence is rejected by the President.

