

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 has the honour to hereby transmit the reply of Viet Nam to the Joint Communication *Ref. AL VNM 2/2019 dated 29 May 2019* from the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

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, 27 March 2020



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

Reply of Viet Nam to the Joint Communication from the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref. AL VNM 2/2019 (dated 29 May 2019)

Allegations made in the above-mentioned joint communication are inaccurate, based on unsubstantiated sources and did not reflect the nature of the case. The Vietnamese authority prosecuted and tried Nguyen Van Hoa on solid legal grounds, in accordance with due process of Vietnamese law and consistent with international conventions to which Viet Nam is a party. Legal decisions of criminal proceedings such as custody, temporary detention and the extension of custody and temporary detention were approved by relevant competent Vietnamese authorities (the People's Procuracy of Ha Tinh Province). During investigation, prosecution and trial, Nguyen Van Hoa was ensured of his rights by investigative agencies and detention facilities in accordance with the legal framework of Viet Nam.

1. General information on Nguyen Van Hoa

Nguyen Van Hoa was born in 1995; [REDACTED], was arrested on 11 January 2017. On 27 November 2017, the People's Court of Ha Tinh Province put Nguyen Van Hoa on trial and sentenced him to 07 years in prison and 03 years under mandatory supervision for the offence of "Conducting propaganda against the State of Viet Nam" under Article 88 of the Penal Code. On 05 February 2018, Nguyen Van Hoa was transferred to An Diem Detention Center (Quang Nam Province); his health is in normal conditions.

2. Legal basis of arrest, custody and temporary detention

From 2013 to 2017, Nguyen Van Hoa created and used social network accounts to connect and exchange with Le Dinh Luong, Nguyen Ngoc Nhu Quynh, Hoang Duc Binh and others to share and distribute articles, videos and images that distort policies and laws of the State of Viet Nam; advocate for gatherings aimed at disrupting social order; defame and slander credibility and reputation of individuals, organizations and Government agencies.

In particular, from April 2016 to January 2017, in the wake of the serious

environmental incident along the coastline of central Viet Nam, Nguyen Van Hoa put a misleading spin on State policies and laws; distorted information; video recorded unauthorized public gatherings in Ha Tinh province and then disseminated them on social networks to slander the people's administration and incite hatred, violence, xenophobia and spread fake news to sow popular confusion, skepticism and frustrations with the State.

- On 11 January 2017, after reflecting on his wrongdoings, Nguyen Van Hoa turned himself in with a confession letter to the Investigation Security Agency of Ha Tinh Province Police in exchange for leniency in prosecution. Ha Tinh Province Police prepared the minutes of the confession; recorded his testimonial statements and conducted preliminary verification of these statements (*Enclosed Documents Nos. 1, 2, 22*).

On this basis, Ha Tinh Province Police issued Custody Decision No. 1 against Nguyen Van Hoa, effective from 11 January to 14 January 2017, to prepare for broader investigations into allegations of "Abuse of democratic freedoms to infringe upon the interests of the State and the rights and legitimate interests of organizations and citizens" under Article 258 of the Penal Code of 1999 (*Enclosed Documents Nos. 3, 4, 5*).

- On 14 January 2017, Ha Tinh Province Police issued Extension Decision No. 1, effective from 14 January to 17 January 2017 and approved by the People's Procuracy of Ha Tinh Province, on extending for the first time the period of custody of Nguyen Van Hoa (*Enclosed Documents Nos. 6, 7*).

- On 17 January 2017, Ha Tinh Province Police issued Extension Decision No. 1, effective from 17 January to 20 January 2017 and approved by the People's Procuracy of Ha Tinh Province, on extending for the second time the period of custody of Nguyen Van Hoa (*Enclosed Documents Nos. 8, 9*).

- On 20 January 2017, Ha Tinh Province Police issued Decision No. 01/QD-ANDT on initiating the criminal case and Decision No. 01/ANDT on temporary detention for 03 months against Nguyen Van Hoa for "Abuse of democratic freedoms to infringe upon the interests of the State and the rights and legitimate interests of organizations and citizens" under Article 258 of the Penal Code of 1999. These Decisions were properly approved by the People's Procuracy of Ha Tinh Province (*Enclosed Documents Nos. 10, 11, 12, 13, 14*).

- Since this was a serious criminal case involving the infringement on national security and additional time was needed to gather necessary evidence,

on 04 April 2017, the People's Procuracy of Ha Tinh Province issued the Decision on extending for the first time the time frame of criminal investigations and the Decision on extending for the second time the period of temporary detention of Nguyen Van Hoa (*Enclosed Documents Nos. 15, 16*).

- On 02 June 2017, in light of investigation results, expert examinations by the Ministry of Information and Communications of Viet Nam and justifications that the wrongdoings committed by Nguyen Van Hoa constituted the offence of "Conducting propaganda against the State of Viet Nam" under Article 88 of the Penal Code of 1999, Ha Tinh Province Police decided to revise the previous charges and thus issued the Revised Decision No. 01/QD-ANDT on initiating the criminal case and the Decision on filing criminal charges against Nguyen Van Hoa under Article 88 of the Penal Code of 1999. These two Decisions were properly approved by the People's Procuracy of Ha Tinh Province. On 05 June 2017, the People's Procuracy of Ha Tinh Province issued the Decision on extending the period of temporary detention of Nguyen Van Hoa.

- On 19 July 2018, Ha Tinh Province Police finished investigations of the case, handed over dossiers of the case to the People's Procuracy of Ha Tinh Province and requested that the case be criminally prosecuted.

In accordance with Article 88.3 (stipulating that decisions of Investigation Security Agency on temporary detention must be approved the People's Procuracy of the same administrative level before execution) and Articles 87 and 120 (setting the time frame for custody and temporary detention) of the Criminal Procedure Code of 2003, *the Investigation Security Agency of Ha Tinh Province Police conducted criminal proceedings in accordance with the legal framework of Viet Nam.*

3. The rights of Nguyen Van Hoa during temporary detention in preparations for investigations, prosecution and trial

Contrary to allegations made in the Joint Communication, throughout the period kept under temporary detention in preparations for investigations and awaiting trials, Nguyen Van Hoa was not subjected to forced or coerced confessions. The rights of Nguyen Van Hoa such as health care and family visit... were ensured by Vietnamese authorities in accordance with the Law on Enforcement of custody and temporary detention of 2015. In addition, Nguyen Van Hoa was allowed to communicate with the outside world, stay connected with his family on health matters, receive care packages from family, all with

him signing on the minutes each time. Nguyen Van Hoa also received health care and medical examinations as prescribed by law.

4. Compatibility between the Penal Code of Viet Nam and Article 19 of International Covenant on Civil and Political Rights (ICCPR)

The Vietnamese Constitution of 2013 expressly guaranteed that “*Citizens have the right to freedom of speech and freedom of the press, and have the right of access to information, the right to assembly, the right to association, and the right to demonstrate. The exercise of those rights shall be prescribed by law.* (Article 25)”. The Constitution also provided that “*Human rights and citizens' rights may not be limited unless prescribed by a law solely in case of necessity for reasons of national defense, national security, social order and safety, social morality and community well-being*” (Article 14.2), and “*The exercise of human rights and citizens' rights may not infringe upon national interests and others' rights and legitimate interests.*” (Article 15.4). Article 88 of the Penal Code of Viet Nam does not tighten the right to freedom of expression and expression but rather deals with intentional dissemination of false information in order to oppose the people’s administration.

On the basis of judicial reform consistent with the Vietnamese Constitution of 2013, the National Assembly of Viet Nam adopted the Revised Criminal Code (taking effect from 01 January 2018), which clarifies provisions concerning national security, including the revision of offences of propaganda against the State (Article 88 of the Penal Code of 1999) to offences of producing, stocking, distributing and disseminating information, documents and artifacts to oppose the State (Article 117) as well as the elaborations on conducts constituting these offences.

The Penal Code of Viet Nam are compatible in spirit with Article 19 of ICCPR, including provisions that the exercise of the right to freedom of expression carries with it concrete responsibilities and duties, including the respect for the rights and reputations of others, the protection of national security, public order, public health and morals.

5. On access to legal counsel

- At the meeting on 11 January 2017, Nguyen Van Hoa was provided with explanations of his rights and duties by investigators, including his right to legal counsel. Nguyen Van Hoa refused the service of defense lawyers and expressed his intention in writing to neither seek a defense lawyer nor have his

family or mother hire one, citing the reason that he was “cognizant of his wrongdoings and confident of his capability and legal knowledge to self-defense without the service of defense lawyers”. Then on 21 January 2017, Nguyen Van Hoa wrote a second letter requesting “neither hiring nor seeking the service of defense lawyers”.

- On 03 February 2017, when the Investigation Security Agency of Ha Tinh Province Police informed Nguyen Van Hoa of the written request by the Law Firm Ha Son addressed to the Investigation Security Agency to be granted permissions to take part in defending Nguyen Van Hoa, Nguyen Van Hoa once again expressed in writing his unwillingness “to hire or seek the service of defense lawyers” and his desire to “decline all defense lawyers, including ones hired by his family or relatives and refuse defense counsel in any form”.

- On 13 February 2017, when the Investigation Security Agency of Ha Tinh Province Police announced that the Law Firm Ha Son filed a complaint dated 11 February 2017 to the Investigation Security Agency requesting a meeting between defense lawyers and Nguyen Van Hoa, Nguyen Van Hoa kept expressing in writing his intention “not to hire or seek the help of any lawyer”.

- Until 08 June 2017, Nguyen Van Hoa kept writing letters in which he requested that “During investigations, I shall declare in earnest what I did. So I will not seek or hire defense lawyers, including declining all lawyers hired or arranged for by my family or relatives. I shall take self-defense. I refuse all defense lawyers...” (*Enclosed Document No. 22*)

- Nguyen Van Hoa was of legal age (22 years old), had sufficient legal capacity and legal understanding, had no known mental disorder and could take self-defense. As such the authority concluded that there was no basis for granting legal defense permissions to lawyers or arranging a meeting between defense lawyers and Nguyen Van Hoa¹. At the public trial of first instance, with the witness of his family members (older sister Nguyen Thi Hue, cousin Le Van Dinh), when asked by the judge if he was interested in having defense lawyers, Nguyen Van Hoa replied “I’m aware of my unlawful action and confident of my ability and legal understanding, so I will defend myself and do not need the service of defense lawyers.”

¹ In accordance with Article 49.2(e) (Defendants have the right of self-defense or to seek others to defend on their behalf); Article 57.1 (The choice of defense lawyers is made by people in custody, detainees, defendants or their legal representatives) of the Criminal Procedure Code of 2003, and Article 27.4(a) of the Law on Lawyers of 2012.

6. The trial of Nguyen Van Hoa

On 27 November 2017, the People's Court of Ha Tinh Province held a public trial of Nguyen Van Hoa for the offence of "Conducting propaganda against the State of Viet Nam". Evidences relating to the case were reviewed in an objective and comprehensive manner. The trial was attended by a large number of the public, radio and television reporters ([REDACTED] [REDACTED]). Family members of Nguyen Van Hoa ([REDACTED] [REDACTED]) were invited to the trial. The trial of first instance sentenced Nguyen Van Hoa to 07 years in prison and 03 years under mandatory supervision for the offence of "Conducting propaganda against the State of Viet Nam" under Article 88 of the Penal Code of Viet Nam. Afterwards, the trial of second instance upheld the criminal judgement of the trial of the first instance.

Statements and testimonies of Nguyen Van Hoa at trials were voluntary. After the trials were concluded, Nguyen Van Hoa decided not to appeal.

7. On the physical conditions of detention

- During his time in detention, Nguyen Van Hoa was not subjected to ill treatment; was ensured of allowances for food, drinks and general living standards. Besides, other rights of Nguyen Van Hoa such as health care, family visit and making phone calls to family... were respected.

- During enforcement of criminal judgement, Nguyen Van Hoa did not follow orders of prison guards and broke the rules of the detention center. As such, Nguyen Van Hoa was transferred to a disciplinary cell (together with 04 other inmates) for 06 months from 23 May 2019 (however, after 04 months he was transferred back to his cell in the general ward).

- Since coming to the detention center, Nguyen Van Hoa has received health check-ups. [REDACTED] [REDACTED] On 19 October 2018, Nguyen Van Hoa was sent to a General Hospital in North Quang Nam Province to undergo curative operations [REDACTED] Currently his health is normal.

8. On the allegation that Nguyen Van Hoa went on hunger strike

Nguyen Van Hoa refused to take food provided by the detention center from 22 February to 05 March 2019 (*Enclosed Documents No. 23*) and showed disobedience to requests of prison guards for meeting at an office. This was a violation of Rule 1 of the regulation of the detention center (not following

orders of the guard), thus prompting the guard to issue a written citation under the witness of 02 other inmates of the same ward. Nguyen Van Hoa did not go on hunger strike. He continued to purchase food from the canteen of the detention center and receive care packages sent from his family (*Enclosed Documents Nos. 18, 19, 20*).

9. On requests for compensation to Nguyen Van Hoa

During investigations, prosecution, trial and enforcement, Nguyen Van Hoa is ensured of his rights as a detainee, defendant and inmate. He must fulfill his obligations and serve the criminal verdict imposed in accordance with the law and in line with international human rights commitments of Viet Nam. Consequently, Nguyen Van Hoa is not entitled to compensation resulting from miscarriage of justice./.