

**NATIONS UNIES  
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**PROCEDURES SPECIALES DU  
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS  
OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE  
HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders**

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9)  
VNM 1/2011

7 February 2011

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 7/36, 7/8.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the sentencing of **Mr. Vi Duc Hoi**, member of Bloc 8406, a network of pro-democracy and human rights activists which has published a Manifesto on Freedom and Democracy in Viet Nam, who has written extensively about corruption and injustice in Viet Nam.

According to information received:

On 26 January 2011, Mr. Vi Duc Hoi was sentenced by a court in northern Lang Son province to eight years of imprisonment, followed by five years of house arrest. He was convicted of "spreading anti-government propaganda" in violation of article 88 of the Penal Code for having posted articles on the Internet calling for democracy. No foreign media or diplomats were allegedly permitted to be present at the hearing.

Mr. Vi Duc Hoi was arrested on 27 October 2010 and placed under four-month detention. Prior to his arrest, public security officials raided his home on 7 October 2010, after which he was detained and interrogated for one week. Concern is expressed that Mr. Vi Duc Hoi has been sentenced to imprisonment solely for exercising his legitimate right to freedom of opinion and expression, and that his case is part of an ongoing trend of utilizing the vaguely worded provisions of the Penal Code to imprison peaceful dissidents and Government critics. Further concern is expressed for the physical and psychological integrity

of Mr. Vi Duc Hoi and at least 30 other peaceful dissidents who are currently serving long prison terms or are in detention awaiting trial.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with article 19 of the International Covenant on Civil and Political Rights (ICCPR), which your Excellency's Government ratified on 24 September 1982, and provides that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Additionally, we would like to remind your Excellency's Government that while the right to freedom of expression may be limited for the protection of national security or of public order in accordance with article 19(3) of the ICCPR, such restrictions must be provided for by law, meaning that the law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful. We would like to express our concern that article 88 of the Penal Code, which prohibits "conducting propaganda against the Socialist Republic of Vietnam", does not meet the above-mentioned criterion due to the vagueness of the types of expression or publication which are prohibited. More specifically, it is unclear what types of expression or actions would constitute "propagating against, distorting and/or defaming the people's administration", "propagating psychological warfare and spreading fabricated news in order to foment confusion among people", or "making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Vietnam".

Moreover, we would like to reiterate that any restriction to the right to freedom of expression on the grounds of protecting national security is only legitimate if the Government can demonstrate that the expression is intended to incite imminent violence, it is likely to incite such violence, and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence (see Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in E/CN.4/1996/39 of 1996). In this case, it is unclear how Mr. Vi Duc Hoi's peaceful expression constituted such direct and imminence violence and thus a threat to national security.

Further, Human Rights Council Resolution 12/16 calls upon States to refrain from imposing restrictions to the right to freedom of expression which are not consistent with article 19(3), including on discussion of Government policies and political debate; reporting on human rights, Government activities and corruption in Government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief.

In addition, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Finally, we would like to recall the recommendations that have been accepted by your Excellency's Government following the Universal Periodic Review, including to engage in dialogue with international experts on legal developments on the review of its Penal Code to allow less scope for open interpretation of these provisions by judges and courts; to continue to work to ensure key pieces of national legislation, including the 1999 Penal Code and 2003 Criminal Procedures Code, are consistent with its international human rights treaty commitments; and to strengthen efforts in the areas of civil and political freedoms, including freedom of expression and the press (A/HRC/12/11).

Questions:

1. Please provide details on how the sentencing of Mr. Vi Duc Hoi to eight years of imprisonment and five years of house arrest for peacefully expressing his views via the Internet is in conformity with international human rights norms and principles highlighted above. In particular, please provide information on how his imprisonment is necessary, proportionate and directly linked to the protection of national security.
2. Please provide information on how article 88 of the 1999 Penal Code, which carries penalties of three to 12 years of imprisonment, is compatible with article 19 of the ICCPR and with other relevant provisions included in international treaties. In particular, please provide information on how this article is compatible with:
  - a. the principle that laws restricting the right to freedom of expression must be “accessible, unambiguous, draw narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful”; and
  - b. the principle that any sanctions must be proportionate and the least intrusive means to attain a legitimate aim..

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopts effective measures to prevent the recurrence of these acts.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue  
Special Rapporteur on the promotion and protection of the right to  
freedom of opinion and expression

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders