

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

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

**Mandates of 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 rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers.**

Téléfax: (41-22)-917 90 06  
Télégrammes: UNATIONS, GENEVE  
Téléc: 41 29 62  
Téléphone: (41-22)-917 9359  
Internet [www.ohchr.org](http://www.ohchr.org)  
E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

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

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

Address:  
Palais des Nations  
CH-1211 GENEVE 10

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16)  
VNM 1/2012

14 June 2012

Dear Mr. Quang,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, and 17/2.

In this connection, we would like to draw the attention of your Government to information we have received regarding the forthcoming trial and sentencing of Mr. **Nguyen Van Hai** (also known as “Dieu Cay”), Mr. **Phan Thanh Hai** (also known as “Anhbasg”), and Ms. **Ta Phong Tan**.

Mr. Nguyen Van Hai is an independent journalist and blogger, a founding member of the Vietnamese Club of Free Journalists, and a recipient of the 2009 Hellman Hammet Award. Reportedly, he is known for his critical writings posted online exposing corruption, calling for democratic reforms and human rights in Viet Nam, as well as for his participation in peaceful protests and demonstrations during the Beijing Olympic Games. Mr. Nguyen Van Hai was the subject of a previous communication sent on 15 August 2011 by the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/19/44, page 58). We regret that to date no reply to this communication has been received.

Mr. Phan Thanh Hai is a writer, blogger, a member of the Club of Free Journalists, and a recipient of the 2011 Hellman Hammet Award. Allegedly, he is known for his writings on promoting transparency, freedom of expression and freedom of association.

Ms. Ta Phong Tan is a blogger, a freelance journalist since 2004, and a member of the Club of Free Journalists. Reportedly she is known for her articles about social and human rights-related issues, including human rights violations, corruption, unfair taxation, illegal land confiscations by local officials as well as abuse of power by the police. In 2011, Mr. Ta Phong Tan received the Hellman Hammett award for her writings.

According to the new information received:

On 18 October 2010, upon completion of a previous sentence, Mr. Nguyen Van Hai was allegedly charged with ‘conducting propaganda against the Socialist Republic of Viet Nam’ under article 88 of the Criminal Code. According to the source, the charges were based on his online writings for the Free Journalist Network in Viet Nam, published prior to his arrest in 2008. Reportedly, Mr. Nguyen Van Hai has been held in detention since then, which is in violation of the Criminal Procedures Code of Viet Nam. It is also reported that Mr. Nguyen Van Hai’s family and lawyer have been repeatedly denied prison visits, and that he is in an urgent need of medical attention due to his deteriorating health condition.

According to the source, Mr. Nguyen Van Hai will be tried before the People’s Court of Ho Chi Minh City and is at risk of being sentenced to 14 to 16 years of imprisonment under article 88 of the Criminal Code.

It is reported that the same trial would be convened against Mr. Phan Thanh Hai and Ms. Ta Phong Tan on the same charges as Mr. Nguyen Van Hai. Allegedly, Mr. Phan Thanh Hai and Ms. Ta Phong Tan are at risk of being sentenced to 12 to 14 years and seven to nine years of imprisonment, respectively.

Mr. Phan Thanh Hai has allegedly been subjected to repeated surveillance, detention and interrogation by the police after his participation in a protest in Ho Chi Minh City against the Beijing Olympics in December 2007. Reportedly, he was arrested on 18 October 2010 by the police in Ho Chi Minh City for conducting “propaganda against the state”, and has been held in detention since then. According to the information received, before his arrest, Mr. Phan Thanh Hai published an analysis outlining that article 88 of the Criminal Code violates the right to freedom of expression enshrined in the Constitution and that the article should be abrogated.

Ms. Ta Phong Tan has allegedly been subjected to repeated harassment by the police because of her writings on social and human rights-related issues, including on violations of human rights, corruption, unfair taxation, and abuse of power by the police. Since 2008, she has reportedly been detained and interrogated on numerous occasions about her activities, her associates, and the content of her blog. On 5 September 2011, she was reportedly arrested by the police.

Concerns are expressed that the detention and forthcoming trial of the three aforementioned individuals are directly related to their legitimate exercise of their right to

freedom of expression. In this connection, serious concerns are expressed regarding the political motivation behind the charges, as well as the fairness and transparency of the trial. Concern is also expressed regarding the physical and psychological security and integrity of the subjects of this communication. Further concern is expressed that these cases form part of a pattern of violations of the right to freedom of expression in the Social Republic of Vietnam.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

In this connection, we would like to refer your 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 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;

- article 9 paragraph 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights; and

- article 12 paragraphs 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.

Furthermore, we wish to reiterate the principle enunciated in Human Rights Council resolution 12/16 which calls on States, while noting that article 19, paragraph 3, of the ICCPR provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) 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, including by persons belonging to minorities or vulnerable groups.

We would also like to appeal to your Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which 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.”

Similarly, we would like to appeal to your Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.

Furthermore, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

Finally, regarding the allegation that Mr. Nguyen Van Hai has had no access to his lawyer, we would like to refer y Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in

particular to principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the perpetrators have been identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate the legal justification for the alleged prolonged pre-trial detention and the charges to be imposed on Messrs. Nguyen Van Hai, Phan Thanh Hai, and Ta Phong Tan, and please indicate how these measures comply with the standards developed under international law, including the right to freedom of opinion and expression, the right to freedom of peaceful assembly, and the right to a fair trial.
6. Please provide information concerning any steps that have been taken by your Excellency’s Government to ensure that the alleged victims receive the medical attention and medication that they require while in detention.
7. Please indicate what measures have been taken to ensure independent journalists, civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We undertake to ensure that your Government’s response to each of these questions is accurately included in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Mr. Quang, the assurances of our highest consideration.

El Hadji Malick Sow  
Chair-Rapporteur of the Working Group on Arbitrary Detention

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

Maina Kiai  
Special Rapporteur on the rights to freedom of peaceful assembly and of  
association

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders

-

Gabriela Knäul  
Special Rapporteur on the independence of judges and lawyers