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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; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers.

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (56-23) Health (2002-7) G/SO 214 (107-9) G/SO 214 (3-3-16) VNM 6/2014

17 April 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 25/2, 22/20, 24/6, 25/18, and 17/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the **arrest, detention, and sentencing, as well as treatment and conditions of detention of human rights defenders, particularly pro-democracy bloggers, in Viet Nam.**

The case of Mr. Ngo Hao

Mr. Ngo Hao, whose online alias is *trung hieu dao*, is a blogger who has published online articles promoting human rights, addressed to the United Nations. He is a military veteran who was imprisoned in 1977 on charges of organising the Alliance Party of Viet Nam. In 1997, Mr. Ngo Hao was released for medical treatment and organized the distribution of leaflets in the struggle for freedom of religion.

According to the information received:

On 11 September 2013, Mr. Ngo Hao was reportedly sentenced to 15 years' imprisonment and five years' probation for publishing online articles promoting human rights. Specifically, he reportedly wrote letters of appeal to the United Nations human rights mechanisms and international rights groups addressing the cases of 22 imprisoned members of the Bia Son environmental group and Hoa Hao Buddhist minority.

According to reports, both the trial of Mr. Ngo Hao on 11 September 2013 and the appeals hearing were closed to the public. Reportedly, police surrounded the courthouse and prevented anyone other than the defendant's relatives from entering the area. On the day of the trial, Mr. Ngo Hao's eldest son was allegedly the only relative allowed to enter the courtroom while his wife and younger son were not permitted inside. During the trial, it is reported that Mr. Ngo Hao's health condition was so poor that he was unable to stand when answering questions from the court.

On 23 December 2013, the court of appeal in Phu Yen province upheld Mr. Ngo's sentence, finding him guilty under article 79 of the Criminal Code of "carrying out activities aimed at overthrowing the people's administration". Between 28 February 2013 and 28 February 2014, Mr. Ngo Hao was detained at Cai Ho That prison of Tuy Hoa city, Phu Yen province. Since 28 February 2014, he has reportedly been held at Xuan Phuoc prison in La Hai, Dong Xuan district, Phu Yen province.

According to reports, Mr. Ngo Hao is forced to conduct hard labour clearing areas of the forest and planting trees. His health has deteriorated significantly as a result of this hard labour and due to the lack of adequate healthcare in detention. According to reports received, his leg muscles have weakened; he has sleeping disorder, blurred vision, and suffers from hearing loss. In March 2014, Mr. Ngo Hao's family reportedly filed a request to the prison authorities for his exemption from hard labour, which was recently granted. Yet, it is alleged that Mr. Ngo Hao is still not receiving adequate health care in detention.

The case of Mr. Le Quoc Quan

Mr. Le Quoc Quan is a human rights lawyer and the author of a blog on issues of human rights, democracy and social justice. In 2007, he reportedly spent 100 days in detention on suspicion of engaging in "activities to overthrow the regime", following his publication of a report on democracy in Viet Nam. Mr. Le Quoc Quan was the subject of a communication sent to the Government of the Socialist Republic of Viet Nam on 14 January 2013 (VNM 1/2013) by the Chair-Rapporteur 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; and the Special Rapporteur on the situation of

human rights defenders. We thank your Excellency's Government for the detailed responses provided on 21 March and 27 August 2013.

In August 2013, the Working Group on Arbitrary Detention (WGAD) declared Mr. Le Quoc Quan's detention to be arbitrary and in breach of international norms of fair trial. In its Opinion No. 33/2013 adopted in August 2013, the WGAD found that his detention "could be related to his blog articles on civil and political rights. Although the charge against Mr. Le Quoc Quan is one of tax evasion, given Mr. Le Quoc Quan's history as a human rights defender and blogger, the real purpose of the detention and prosecution might eventually be to punish him for exercising his rights under article 19 of the International Covenant on Civil and Political Rights (ICCPR) and to deter others from doing so".

According to the information received:

On 18 February 2014, the Hanoi Court of Appeals upheld the conviction of Mr. Le Quoc Quan to 30 months' imprisonment on charges of tax evasion under Section 161 of the Vietnamese Criminal Code. Mr. Le Quoc Quan has reportedly been detained since 27 December 2012 in the Hoa Lo Detention Centre No. 1 in Hanoi.

According to the information received, prison authorities have refused to provide Mr. Le Quoc Quan with access to legal counsel, legal and religious books, and access to a priest for spiritual guidance.

Grave concern is expressed regarding the deteriorating health condition and the treatment and conditions of detention of Mr. Ngo Hao. Concern is also expressed at allegations related to the conditions and regime of detention of Mr. Le Quoc Quan, who allegedly has been refused access to legal counsel, books and religious guidance. General concern is expressed at the arrest, detention and sentencing of human rights defenders and bloggers in the Socialist Republic of Viet Nam, as a form of intimidation or criminalization for, and also aimed at deterring others from, exercising their right to freedom of opinion and expression, including activities advocating for freedom of religion or belief. The reported shrinking space for online human rights discussion and debate is an increasingly worrying development in Viet Nam.

Without expressing at this stage an opinion on the facts of the case, we would like to refer to your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights, 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."

We would also like to refer to General Comment No. 34 of the Human Rights Committee, which provides that “States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression”. The Committee also stressed that “under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers”. In this regard, the Special Rapporteur on freedom of opinion and expression in his 2011 report to the General Assembly expressed deep concern about such threats and attacks against, as well as killings and imprisonment, of bloggers, journalists and human rights defenders who rely upon the Internet to carry out their work. (A/66/290)

Regarding allegations received indicating the situation of Mr. Ngo Hao and Mr. Le Quoc Quan may be linked to their work promoting human rights and fundamental freedoms, 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 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

- 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.

In the specific context of the alleged prosecution of Mr. Ngo Hao for publishing online articles and writing letters of appeal to international rights groups addressing the situation of Hoa Hao Buddhist followers, we would also like to recall your Excellency's Government's attention to article 6 (i) of the 1981 General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief (1981 Declaration, A/36/55), which provides that the right to freedom of thought, conscience, religion or belief "includes the freedom to establish and maintain communications with individuals and communities on matters of religion and belief at the national and international levels."

Regarding the allegation that Mr. Ngo Hao's trial was not public, we would like to refer your Excellency's Government to article 14(1) of the International Covenant on Civil and Political Rights, which states: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."

Regarding the allegation that Mr. Le Quoc Quan has not had access to a lawyer, we would like to refer your Excellency's Government to article 14(3) of the International Covenant on Civil and Political Rights, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum

guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;”

The right to be assisted by a lawyer is also set forth in 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, in particular in principle 1, which states: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.”

We would also appreciate information from your Excellency’s Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of the above-mentioned persons. This right is reflected, *inter alia*, in article 12 of the International Covenant on Economic, Social and Cultural Rights (accessed by Viet Nam on 24 September 1982), which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

In that context, we wish to refer your Excellency’s Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which provides that States are under the obligation to respect the right to health by, *inter alia*, refraining from interfering directly or indirectly with the enjoyment of the right to health, from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal migrants, to preventative, curative and palliative health services, and from enforcing discriminatory practices as a State policy (para.34).

We would also like to draw the attention of your Excellency’s Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, “(s)ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, “(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed”

We also wish to refer your Excellency’s Government to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173, which states that: “A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be

provided free of charge” (principle 24). Furthermore, we wish to recall the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which “Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation” (Principle 9).

Concerning the allegation that Mr. Le Quoc Quan has been denied access to religious literature and to a priest for spiritual guidance, we would respectfully refer your Excellency’s Government to article 18 of the ICCPR and of the Universal Declaration of Human Rights (UDHR), as well as paragraph 1 of article 1 of the 1981 Declaration (A/36/55), all of which provide that: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

We would also like to bring to the attention of your Excellency’s Government the Human Rights Committee General Comment No. 22 (1993) on article 18 of the ICCPR, which affirms that: “Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties’ reports should provide information on the full scope and effects of limitations under article 18.3, both as a matter of law and of their application in specific circumstances” (para. 8).

Furthermore, the Human Rights Committee has outlined a set of Standard Minimum Rules for the Treatment of Prisoners, that make specific reference to the need for prison authorities to allow prisoners to observe their religion and to have access to a minister of that religion. According to Rule 41, paragraph 3, “Access to a qualified representative of any religion shall not be refused to any prisoner.” Rule 42 stipulates that, “So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.”

We also deem it appropriate to make reference to the principle of non-discrimination as a fundamental rule of international law, reaffirmed, inter alia, in article 2 of the ICCPR. In the specific context of prison conditions, the Human Rights Committee states in its General Comment No. 21 (1992) concerning the human treatment of persons deprived of liberty, that “Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (para. 4). Article 10, paragraph 1 of ICCPR further provides that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's 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 above summary of the cases accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of the above mentioned persons and measures taken to ensure the sentences and detention of Mr. Ngo Hao and Mr. Le Quoc Quan are compatible with international norms and standards as stated, *inter alia*, in the UDHR and the ICCPR.
3. Please provide information on Mr. Ngo Hao and Mr. Le Quoc Quan's access to legal counsel and medical personnel, and visits from family members, in conformity with international norms and standards.
4. Please provide information on the measures taken to ensure the right to freedom of religion or belief is respected in the case of the above mentioned persons, in particular the freedom to maintain communications with individuals and communities on matters of religion and belief at the national and international levels, as well as the freedom to manifest one's religion or belief while in prison, including the right of access to religious literature and to a qualified religious representative, in conformity with aforementioned international human rights standards.
5. Please provide information concerning any steps that have been taken by your Excellency's Government to ensure that the alleged victims receive prompt and adequate treatment while in detention, including medical care and medication required.
6. Please explain what measures have been taken to ensure that all human rights defenders in Viet Nam, including bloggers advocating for human rights, can carry out their peaceful and legitimate activities without fear of intimidation, judicial harassment, or other restrictions.

We undertake to ensure that your Excellency's Government's response will be available in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's 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 Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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opinion and expression

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