

**Mandate of the Working Group on Arbitrary Detention and the Special Rapporteur on extrajudicial, summary or arbitrary executions**

REFERENCE: UA  
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Excellency,

We have the honour to address you in my capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolution 24/7 and 26/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of Mr. [REDACTED], who has been sentenced to death for illegal drug trafficking by the Ho Chi Minh City People's Socialist Republic of Vietnam Court.

According to the information received:

Mr. [REDACTED] ([REDACTED]) is a [REDACTED] citizen who was born in [REDACTED] on [REDACTED] and had later in life moved to [REDACTED], where he worked as an [REDACTED]. Mr. [REDACTED] allegedly suffers from a mental disability due to a number of serious head injuries he suffered during his lifetime and which have resulted in brain trauma. According to mental health experts, these accidents had a negative impact on his mental and emotional capacities, which also make him susceptible to coercion, manipulation and exploitation.

While working at the [REDACTED] Mr. [REDACTED] met a man named "[REDACTED]" who quickly befriended him and invited him to [REDACTED], where he encouraged him to gamble and drink. During his trip to [REDACTED], Mr. [REDACTED] lost all his money and USD 20,000 that [REDACTED] had lent him. To pay the debt, [REDACTED] offered Mr. [REDACTED] a job in a [REDACTED] in [REDACTED]. Upon arrival in [REDACTED] [REDACTED] forced Mr. [REDACTED] at gunpoint to wear clothes that contained drugs (three plastic packages reportedly containing 1,028.023 grams of heroin) and to take an plane to [REDACTED]. On [REDACTED], while waiting at [REDACTED] Airport, Mr. [REDACTED] anxious behavior attracted the attention of officials, who searched him and found the concealed drugs.

Mr. [REDACTED] was arrested and sent to prison the same day. The case was transferred to the Criminal Investigation Department on Drug-related Crimes under Ho Chi Minh City Police for settlement. Mr. [REDACTED] family and lawyer have had limited access to him since his arrest. In particular, it is alleged that the Vietnamese prison authorities have obstructed efforts by Mr. [REDACTED]'s consular representatives and lawyers to obtain his medical records. As they have not authorized the release of documents signed by Mr. [REDACTED] to his lawyer and/or the US Consulate, this has caused delays in obtaining his medical records and in preparing an Expert Report. Since his detention, Mr. [REDACTED] has not been subjected to a mental health assessment, as it is the obligation of the prisoner to request such an assessment.

Mr. [REDACTED] has been charged with "Illegal drug trafficking" pursuant to article 194, section 4, item b of the Criminal Procedure Code. During a hearing before the Ho Chi Minh City People's Court, Mr. [REDACTED] admitted to carrying the drugs. The representative of the Attorney General requested that Mr. [REDACTED] be sentenced to death given the large amount of drugs that he had transported. The defence requested the jury to grant a less severe punishment based on Mr. [REDACTED]'s absence of a criminal record and the fact that he had been forced to carry the drugs.

On [REDACTED], the Ho Chi Minh City People's Socialist Republic of Vietnam Court sentenced Mr. [REDACTED] to the death penalty. The Court of First Instance allegedly disregarded the mitigating circumstances of the case and stated that the quantity of drugs merited the imposition of the strictest punishment according to the law.

Mr. [REDACTED]'s appeal to the Supreme Court is scheduled to be held on [REDACTED]. According to the existing procedures, Mr. [REDACTED] is required to draft his own appeal, despite his mental disability.

Without prejudging the accuracy of the information made available to us, we would like to express concern that the death penalty may be imposed against Mr. [REDACTED] who currently suffers from a mental disability, the diagnosis of which arose prior to the time of the crime he is alleged to have committed, which is in contravention of international human rights law. Further concern is expressed that Mr. [REDACTED] was not provided with all the necessary guarantees of due process and the right to a fair trial, in particular access to a lawyer, access to his mental health records, as well as notification of and assistance with initiating his right to a mental health assessment for purposes of providing a full defence. Concern is also expressed that the Ho Chi Minh City People's Court has sentenced Mr. [REDACTED] to death penalty for drug trafficking, which may not be considered as a "most serious crime" under international law.

While we do not wish to prejudge the accuracy of these allegations, the above alleged facts may constitute a prima facie violation of the rights to life and not to be arbitrarily deprived of his or her life as set forth in article 3 of the Universal Declaration

of Human Rights (UDHR) and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Government on 24 September 1982.

We would also like to draw your Excellency's Government Attention to the Safeguards Guaranteeing Protection of the rights of Those Facing the Death Penalty, adopted by the Economic and Social Council resolution 1984/50 of 25 May 1984. In particular, Safeguard 3 provides that the death penalty shall not be carried out on persons who have become insane.

Safeguard 5 provides that capital punishment may only be carried out pursuant to a final judgment after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR, including right to adequate legal assistance.

We would like to draw the attention of your Excellency's Government attention to Article 6(2) of the ICCPR which states that the sentence of death may be imposed only for the most serious crimes. The UN Human Rights Committee has interpreted this to mean that the death penalty must be an "exceptional measure and should not be used on non-violent crimes" (Communication No. 838/1998, 20 December 2002, paras. 6,3,7). The Human Rights Committee also noted that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant (CCPR/C/79/Add.25).

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. [REDACTED] is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the UDHR, and article 9 and 14 of the ICCPR.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) /can be provided upon request.

In view of the urgency of the matter and of the irreversibility of the punishment of the death, we call upon your Excellency's Government to take all steps to prevent the execution of Mr. [REDACTED] which if carried out would be inconsistent with acceptable standards of international law. As a State Party of the ICCPR, your Excellency's government has the obligation to protect all individuals' right to life and their right not to be arbitrarily deprived of their life. We also call upon your Excellency's Government to urgently review case of Mr [REDACTED] to ensure that his trial has been held in full conformity with international standards and that extenuating circumstances relating to his mental disability have been fully taken into consideration. I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. [REDACTED] in compliance with the above international instruments and standards.

As 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, we would be grateful for your observations on the following matters, when relevant to the case under consideration:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest and detention of Mr. [REDACTED] and how these measures are compatible with international norms and standards as stated above.
3. Please provide information concerning the legal grounds for the imposition of the death penalty against Mr. [REDACTED], and indicate how they comply with international human rights laws prohibiting arbitrary imposition and implementation of capital punishment.
4. Please provide information on each stage of the judicial and post-conviction proceedings against Mr. [REDACTED], and indicate how they comply with the guarantees of fair trial and due process, as enshrined, inter alia, in article 14 of the ICCPR.
5. Please provide information as to whether the Court had the discretion to give a lesser sentence given the mitigating circumstances of Mr. [REDACTED]'s case and, if so, why it has refrained to do so.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Mads Andenas  
Chair-Rapporteur of the Working Group on Arbitrary Detention

Christof Heyns  
Special Rapporteur on extrajudicial, summary or arbitrary executions