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

**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 independence of judges and lawyers; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16)  
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; 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 8/6, 7/36, and 7/8.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **the sentencing of Mr. Cu Huy Ha Vu**, a prominent human rights activist. Mr. Ha Vu has been a peaceful defender of cultural, environmental and civil and political rights and has consistently used the courts to seek justice for those whose rights have been violated by State and non-State actors.

According to the information received:

On 5 November 2010, Mr. Cu Huy Ha Vu was reportedly arrested by Vietnamese authorities in Ho Chi Minh City and detained at the Ministry of Public Security Detention Centre. Two weeks prior to his arrest, on 2 October 2010, Mr. Cu Huy Ha Vu had reportedly filed a lawsuit against the Prime Minister for signing in 2006, Decree 136, which prohibits class-action petitions. He had initiated another lawsuit against the Prime Minister in July 2009 for signing in November 2007, Decision 167, which allowed controversial bauxite mining operations in Vietnam's Central Highlands.

On 17 December 2010, the Hanoi People's Procuracy issued indictment No. 18/CT-VKS-P2 to prosecute Mr. Cu Huy Ha Vu on charges of "disseminating information against the State of the Socialist Republic of Vietnam" as prescribed under article 88(1)(c) of the Penal Code. According to the indictment, investigators found that between 2009 and October 2010, Mr. Cu Huy Ha Vu

posted a large number of articles and interviews with content against the State of the Socialist Republic of Viet Nam.

On 4 April 2011, Mr. Cu Huy Ha Vu was tried by the People's Court of Ha Noi and was convicted for allegedly violating article 88 of the Penal Code. He was sentenced to seven years of imprisonment and three years of house arrest.

It is further reported that the trial was closed to the public. During the trial, one of Mr. Ha Vu's lawyers was allegedly asked by the judge to leave after making procedural objections. Three of his other lawyers reportedly left the court in protest against the lack of due process in the conduct of the trial.

Additionally, supporters of Mr. Cu Huy Ha Vu, who had gathered peacefully outside the court, were reportedly dispersed by public security officers.

Concern is expressed that Mr. Cu Huy Ha Vu has been sentenced to seven years of imprisonment and three years of house arrest for exercising his legitimate right to freedom of opinion and expression as well as his peaceful activities in defence of human rights. Further concern is expressed that the case of Mr. Cu Huy Ha Vu is part of an ongoing trend of utilizing the vaguely worded provisions of the Penal Code to imprison peaceful dissidents and Government critics.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of Mr. Cu Huy Ha Vu.

In addition, we would also 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 fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (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."

Additionally, we would like to remind your Excellency's Government that while the right to freedom of expression may be limited under certain exceptional cases to pursue one of the aims outlined in 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 "disseminating information against the State of the Socialist Republic of Vietnam", does not meet the above-mentioned criteria. In this regard, 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).

Moreover, we would like to reiterate that any restriction to the right to freedom of expression for the purposes 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. This principle is enunciated *inter alia* in 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. Moreover, 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.

Further, in addition to the requirement that any State that limits the right to freedom of expression on grounds of national security must demonstrate the fact that the expression poses a direct and immediate threat to national security, the restriction imposed, which in this case is imprisonment, must be proportionate and the least restrictive means possible for protecting national security, as stipulated in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.

Additionally, in relation to the allegation that the peaceful gathering of Mr. Cu Huy Ha Vu's supporters were dispersed by public security officers, we would like to appeal to your Excellency's 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."

With regard to the allegation that the trial was closed to the public, we wish to refer your Excellency's Government to article 14(1) of the ICCPR to which Viet Nam is a party, which states that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

While article 14(1) acknowledges that "courts have the power to exclude all or part of the public 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 be prejudicial to the interests of justice", we wish to stress that "even in cases in which the public is excluded from the trial, the judgment, including the essential

findings, evidence and legal reasoning must be made public” (General Comment No. 32, CCPR/C/GC/32, paras. 28-29).

Concerning the allegation that one of Mr. Cu Huy Ha Vu’s lawyers was asked by the judge, during the trial, to leave the court after making procedural objections, we wish to refer your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990.

In particular, we wish to draw the attention of your Excellency’s Government to principles 12 to 15 of the aforementioned instrument, which set out the duties and responsibilities of lawyers. We wish to recall that the lawyers’ duties are to represent the interests of their clients and to assist them before courts in every appropriate way according to articles 13 and 15. This includes the possibility to raise procedural objections when appropriate.

In respect of the above, we wish to stress that lawyers should not be sanctioned for discharging their professional duties and wish to refer your Excellency’s Government to principle 16 of the aforementioned instrument which states that “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; ... (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.” We wish to stress that lawyers should not be sanctioned for discharging their professional duties.

In connection to the allegations received indicating that Mr. Cu Huy Ha Vu has been sentenced for exercising his legitimate right to freedom of opinion and expression as well as his peaceful activities in defence of human rights, 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; 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.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Cu Huy Ha Vu are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible for the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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 Mr. Cu Huy Ha Vu 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. Please provide detailed information on how the sentencing of Mr. Cu Huy Ha Vu to seven years of imprisonment and three years of house arrest is in conformity with international human rights law and the 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 Penal Code, which broadly and vaguely prohibits "disseminating information against the State of the Socialist Republic of Vietnam", 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, drawn 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.

3. Please explain the reasons why the trial of Mr. Cu Huy Ha Vu was closed to the public and how it complies with the relevant international standards, in particular with article 14(1) of the ICCPR and the Basic Principles on the Role of Lawyers, in particular principle 16. Please also indicate the reasons why one of his lawyers was asked to leave the court and how this complies with article 14 of the Basic Principles on the Role of Lawyers.

4. Please provide information on the measures taken to ensure the physical and psychological integrity of Mr. Cu Huy Ha Vu.

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

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

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers

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