

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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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 extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 26/7, 26/12, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **imminent execution of Mr. Le Van Manh, sentenced to death by a Vietnamese court; the torture and death as a result of torture of [REDACTED]; as well as death threats against Mrs. Do Thi Mai.**

According to the information received:

1. Case of Le Van Manh

On 29 July 2005, the people Court of Thanh Province convicted and sentenced Mr. Le Van Manh to death for robbery, the murder and the rape of a 13-year-old girl committed in April 2005 in Yen Thinh Ward, Thanh Hoa Province. It is reported that during his arrest and detention, Le Van Manh was severely beaten by the security forces. According to the authorities, on 23 October, he sent a letter to his father confessing his crime. The police may have confiscated this letter as evidence while other letters claiming his innocence were rejected by the Court.

From 2005 to 2008, Le Van Manh has undergone seven court hearings, including three trials, three appeals hearings and one cassation hearing. In all of his court hearings, Le Van Manh denied all of the charges and retracted his earlier confessions. According to the source these confessions were extracted under

torture. Le Van Manh has consistently maintained that he was brutally beaten by both the police officers investigating his case as well as his cellmates.

Le Van Manh did not receive adequate legal representation of his choice on appeal since he objected to the counsel assigned to him. However, the Court decided to continue with the judicial proceeding. On 16 October 2015, the People Court of Thanh Hoa Province notified to Le Van Manh's family that he would be executed on 26 October 2015. On 25 October, the authorities postponed the execution. Mr. Le Van Manh has not been notified of the course of the proceedings against him.

2. Case of Mr. [REDACTED]

[REDACTED], a 17-year-old boy was arrested on 5 August 2015 for robbery. The police asked his mother to sign a document allowing the authorities to place the boy in a re-education camp. However, the police took [REDACTED] to an adult prison, Prison Camp No. 3, Xa La, Ha Dong district, where he was prevented from receiving visits from his family.

On 4 October 2015, [REDACTED] was admitted to Bach Mai hospital (Hanoi) in very poor physical condition and remained in coma for a while. He was tightly guarded by security forces, no one could visit him, and the doctors were not allowed to talk to the family. After several attempts, [REDACTED] older brother was allowed to visit him. He revealed that the body had multiple injuries, cuts and bruises. It is alleged that his brain may have been damaged and that his vital functions were seriously affected.

On 10 October 2015, the authorities officially announced that [REDACTED] died at Bach Mai Hospital in Hanoi. Despite the request of the family for an autopsy, the authorities refused. However, military doctors eventually accepted to perform an autopsy with the presence of the family's attorney. The latter refused to sign the autopsy report because the doctors refused to take into account all the internal injuries they had observed in the report. After the autopsy, the police forced [REDACTED]'s family to take the body back to their hometown and to bury him immediately. Given his severe internal and external injuries, there are serious reasons to suspect that he was tortured in prison and died as a result of the injuries he sustained. The police claimed that [REDACTED] was beaten by a cellmate.

Following the death of her son, Mrs. Do Thi Mai, the mother of the victim decided to complaint to United Nations human rights mechanisms. On 29 October, the police intimidated her and summoned her to the police office. They attempted to persuade her to withdraw her complaint to the United Nations. As she refused, the police forces are threatened her and her family.

We express grave concern that the death penalty may be carried out against Mr. Le Van Manh following judicial proceedings that do not appear to have fulfilled the most

stringent guarantees of fair trial and due process, particularly in connection to the defendant's right to defense, notably the right to access to legal counsel of his own choosing. We are also seriously concerned that Mr. Manh may have been subjected to torture and/or cruel, inhuman or degrading treatment during his arrest and detention in police custody and that he may have been forced to write a confession, later used as evidence against him.

We also express grave concern about the death in custody of [REDACTED], a juvenile, and that his death may have resulted from the torture and other ill-treatment that he may have been subjected to while in prison. We are further concerned at the allegations that the police uttered death threats against Ms. Do Thi Mai and her family to pressured her to withdraw her complaint to the United Nations about the death of her son possibly resulting from torture.

Without expressing at this stage an opinion on the facts of the case, the above allegations appear to be in contravention of the rights of every individual to life, to physical and mental integrity, not to be arbitrarily deprived of his or her liberty, and to fair proceedings before an independent and impartial tribunal established by law, in accordance with articles 3, 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 6-1, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Viet Nam on 24 September 1982.

Article 6 of the ICCPR states that the sentence of death may be imposed pursuant to a final judgment rendered by a competent court. Furthermore, anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Moreover, as stressed in article 5 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, capital punishment may only be carried out pursuant to legal procedures which give all possible safeguards to ensure a fair trial. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. In this regard, we would like to recall Article 14 of the ICCPR, which provides that in the determination of any criminal charge against him/her, everyone shall be entitled to the minimum guarantees of fair trial and due process, including to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

In addition, we are drawing your Excellency's Government's attention to the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Viet Nam ratified on 5 February 2015. With regard to sentences imposing the death penalty, the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/67/279) calls upon retentionist States to rigorously observe the restrictions and conditions imposed by articles 1 and 16 of the CAT. Article 15 of the CAT provides that, "Each State Party shall ensure that any statement which is established to have been made

as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

The detention of [REDACTED] in adult prison and his subsequent death in custody contravene article 37 of the Convention on the Rights of the Child (CRC), ratified by Viet Nam on 28 February 1990.

According to international standards, when the State detains an individual, it is held to a heightened level of diligence to ensure the protection of that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility (*Dermi Barbatov v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2). Therefore, in order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions (principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions).

We would like to refer your Excellency's Government to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States "to provide effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats".

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, and of the irreversibility of the punishment of the death penalty, **we respectfully call upon your Excellency's Government reconsider and commute the execution of Mr. Le Van Manh, which, on the facts available to us may constitute a violation of applicable international human rights standards, and thus an arbitrary execution. We recommend that Mr. Le Van Manh be re-tried for the offences he is accused of in compliance with international standards for fair trials. We reiterate our appeal to the Government of Viet Nam to extend the moratorium on death penalty, and to consider its complete abolition.**

We also call on Viet Nam to take urgent measures to ensure the security of Mrs. Do Thi Mai; and to order a prompt, thorough, independent and impartial investigation into the cause of the death of her son [REDACTED].

It is our responsibility under the mandate 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

observations or comments, and any additional information on the measures taken in relation to the above mentioned allegations and urgent appeals.

We reserve the right to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

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