

NATIONS UNIES
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 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; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment .

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (53-24)
VNM 6/2011

15 August 2011

Excellency,

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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of Mr. Nguyen Van Hai, an independent journalist and blogger, a founding member of the Club of Free Journalists in 2006, and a recipient of the 2009 Hellman Hammet Award.

According to the information received:

On 10 September 2008, Mr. Nguyen Van Hai was sentenced to two-and-a-half years of imprisonment by Vietnamese People's Court at Ho Chi Minh City for alleged tax fraud. Mr. Nguyen Van Hai was reportedly known for his critical online postings calling for greater democracy and human rights in Viet Nam and his participation in protests against Chinese foreign policy.

It is reported that upon completion of a two-and-a-half year sentence on 18 October 2010, Mr. Nguyen Van Hai was reportedly transferred to a Public Security detention camp in Ho Chi Minh City, on alleged charges of 'Conducting propaganda against the Socialist Republic of Viet Nam' under article 88 of the Criminal Code. The charges are said to be based on his online writings for the Free Journalist Network in Viet Nam, published prior to his arrest in 2008. Since then, he has reportedly been held incommunicado, without access to family visits, medical and food supplies.

It is reported that on 5 July 2011, in an attempt to visit Mr. Nguyen Van Hai in prison, his wife was again denied access and was told by a prison security guard that Mr. Nguyen Van Hai had lost his arm while in prison. No further details were reportedly provided about Mr. Nguyen Van Hai's current condition, and no official account was released on the circumstances of what had happened.

It is alleged that Mr. Nguyen Van Hai has reportedly been subjected to torture, ill-treatment and hard labour while in prison.

Serious concern is expressed about the physical and mental integrity of Mr. Nguyen Van Hai amid allegations that Mr. Nguyen Van Hai has been subjected to torture, ill-treatment and hard labour while in detention and that he lost his hand in unknown circumstances. Concern is also expressed about the allegations that since 18 October 2010, he has been held incommunicado with no access to his family and medical supplies. Finally, concern is expressed that the situation of Mr. Nguyen Van Hai may be linked to his legitimate right to exercise freedom of opinion and expression.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Nguyen Van Hai is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his 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 Universal Declaration of Human Rights (UDHR), and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context and with respect to the allegations that Mr. Nguyen Van Hai has been subjected to torture, ill-treatment and hard labour while in detention we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

With respect to the allegation that since 18 October 2010, Mr. Nguyen Van Hai has been held in incommunicado detention, we would like to draw the attention of your Excellency's Government to paragraph 8b of Human Rights Council Resolution 16/23, which recalls that "Prolonged incommunicado detention [...] can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment

and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

With respect to the allegation that Mr. Nguyen Van Hai has no access to medical supplies and is deprived of family visits, we would like to draw the attention of your Excellency’s Government to principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, “A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [...]”. We would also like to draw your attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”

In addition, given our concern that the situation of Mr. Nguyen Van Hai may be linked to his legitimate right to exercise freedom of opinion and expression, we would 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 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.”

We also wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting 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 urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Nguyen Van Hai 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.

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. Nguyen Van Hai 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 case accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of Mr. Nguyen Van Hai and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
3. 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 the principle that:
 - a. 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. any sanctions must be proportionate and the least intrusive means to attain a legitimate aim.
4. Kindly respond to the allegation that Mr. Nguyen Van Hai was subjected to torture, ill-treatment and hard labour while in detention and that he lost his arm in unknown circumstances. If this is accurate, please provide information on whether he is currently being provided with medical treatment and access to pain relief medication and the circumstances surrounding the loss of his arm.
5. Please provide the details, and where available the results, of any investigation, medical examinations, 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.

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.

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

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment