

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
UA VNM 10/2016

5 December 2016

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/7, 24/6, 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 continued arbitrary detention of Mr. **Hung Linh Nguyen** and the refusal of prison authorities to provide Mr. Nguyen with adequate healthcare in detention, including the medicine and specialized treatment he requires.

According to the information received:

Mr. Hung Linh Nguyen, born on 15 February 1963, is a citizen of the Socialist Republic of Vietnam and usually resides in the Rach Gia City, the Province of Kien Giang, Vietnam. From February 2006 to March 2015 he was the Chief Executive Officer of the Kien Giang Trade and Tourism Company (KTC), which is a State owned enterprise under control of Kien Giang's People Committee. From February 2014 to March 2015, Mr. Hung Ling Nguyen was also the Chairman of the Vietnam Food Association (VFA)

At 12:45 p.m. on 7 June 2015, a police officer from the Kien Giang Police Department (KGPD) invited Mr. Nguyen to a coffee shop located in Rach Gia City in Kien Giang Province for a private meeting. After the meeting, at approximately 1:15 p.m., Mr. Nguyen was arrested without a warrant or information about any charges against him. Mr. Nguyen was taken to the Police Station Unit PC 46, in Kien Giang Province. The Kien Giang Police Department did not inform the victim's family of his arrest or the place of his detention.

On 8 June 2015, Mr. Hung Linh Nguyen's family tried to contact him at the Police Station PC 46 and asked to see any document regarding his detention or prosecution. The Police refused to provide any information. However, later on the same day, the family received a copy of the arrest decision by the Police Department dated Monday 8 of June 2015. On 9 and 10 June 2015 a formal letter

was presented to the Police Station PC 46 requesting for a bail out and asking information about the situation of Mr. Nguyen. The Police refused to give any information about the detainee or disclose which authorities had ordered the detention.

Despite several subsequent pleas to the People's Prosecution Office and the KCPD, no bail was set and the police denied Mr. Nguyen any contact with a lawyer. When an attempt was made to send a request letter to the Government regarding Mr. Nguyen's detention, the post office employees refused to send the mail to the relevant authorities.

For several months, from June to December 2015, Mr. Nguyen was not allowed contact with his family or lawyer. He was allegedly detained incommunicado in a small cell at the Kien Giang Police Station PC 46 and denied access to medicines, food and personal goods that were sent by his family and friends. During this time, he was reportedly held in deplorable conditions, confined in a damaged cell invaded by swarms, lice and cockroaches, and without access to a toilet. During this time, he had no mattress, blanket, clothing or access to products for personal hygiene. In addition, drinking water and food were only available in small quantities and of very poor quality. From June to October, the cell was flooded for days due to leaks of rainwater and Mr. Nguyen could not lay down to rest.

The reason for the arrest of Mr. Nguyen, as provided by the police, is allegedly his not taking responsibility for financial loss during his tenure as the Chief Executive Officer of the KTC. Reports indicate that Mr. Nguyen was not occupying the above-mentioned position when the financial loss occurred. According to the information received, Mr. Nguyen's detention might be motivated by his refusal to participate in a corruption scheme that was allegedly affecting the KTC, since the end of 2014.

Mr. Nguyen suffers from a number of serious health conditions. He has an abdominal trauma, acute ulcerative colitis, cancerous polyps and colon cancer, for which he has to receive appropriate treatment. It is reported that no healthcare or treatment for these conditions has been provided to Mr. Nguyen while in detention.

Based on the above information, the Working Group on Arbitrary detention issued an opinion on 15 January 2016, following its seventy-fourth session (Opinion No. 46/2015). The Working Group found that the arrest and detention of Mr. Nguyen, conducted in particular violation of articles 9, 10, 11 of the UDHR and articles 9 (1), 9 (2), 9 (3), 9 (4) of the ICCPR, was arbitrary.

In February 2016, Mr. Nguyen was moved to an overcrowded cell in similar dire conditions as above. He was confined day and night to the cell and was only allowed time outdoors during 30 minutes three times per month.

On 29 March 2016, after Mr. Nguyen's first trial, Kien Giang police (KGPD) held Mr. Nguyen incommunicado. Mr. Nguyen's lawyer and family were forbidden from visiting and food and medicine delivery was prohibited.

On 30 March 2016, Mr. Nguyen's lawyer requested to the Kien Giang People's Court his immediate release, as the court was unable to find a legal verdict during the first trial on 28-29 March. The Jail Superintendent informed the lawyer that Mr. Nguyen would not be permitted to meet anyone or accept medicine. The superintendent then reportedly threatened the lawyer and the family, stating that if they continued to complain about Mr. Nguyen's state, adverse action would be taken against Mr. Nguyen.

That same day, Kien Giang Chief Judge allegedly stated that he would continue renewing Mr. Nguyen's temporary detention because the Kien Giang judicial agencies dislike Mr. Nguyen, and the Kien Giang Provincial Party Committee had decided not to release Mr. Nguyen under any circumstances.

As mentioned, Mr. Nguyen suffers from colon cancer, and on 18 April 2016, when his family attempted to deliver medicines and food to Mr. Nguyen, they were told that there was a ban on food and medicine deliveries to him. They were then told to speak with the officer in charge at PC 46 Police Department if they had any further complaints regarding the ban.

At PC 46, the officer in charge of the investigation told the family that Mr. Nguyen was on a list of detainees who merit special treatment, and was therefore not entitled to bail, medicine, or regular visits.

Several complaints regarding the conditions of Mr. Nguyen's detention and appeals asking for his release have been filed. On June 23, 2016, after six months of asking for a meeting with Kien Giang People's Procuracy, Mr. Nguyen's lawyer was finally granted a short meeting with the Rector of Kien Giang Procuracy.

The Kien Giang Procuracy Rector allegedly stated that no rules or laws applied in the detention. Instead, only the directive of Kien Giang Provincial Party Committee was applied and obeyed in this case. He further confirmed that there would be no release or emancipation, and that all existing bans placed upon Mr. Nguyen would remain in effect.

From 2 August 2016 to 22 August 2016, Mr. Nguyen began suffering from heavy bleeding from the lower digestive tract, likely caused by his ulcerative colitis. Mr. Nguyen asked for a visit with his lawyer and family, but the request was reportedly never delivered to either his lawyer or his family.

On 8 August 2016 Mr. Nguyen's lawyer was allowed to see him at the Jail Station given his serious health problems. Mr. Nguyen's health condition had worsened since the court trial in March 2016.

Mr. Nguyen allegedly requested to be taken to the cancer hospital for colon examination and diagnosis on several occasions, but Kien Giang judicial agencies ignored his request and kept him in suffering. The only medicines he was given were some pills which had no drug name, no expiration label and no warranty seal, administered by a prison medical officer. Kien Giang Jail authorities did not allow Mr. Nguyen to access his medicines, prescriptions for which were given by Nguyen's colon doctor.

The Jail Director offered to take Mr. Nguyen to Rach Gia Clinic based on his health status, but he refused the offer given his experience in September 2015, when the police claimed they would bring him to Rach Gia, and he was allegedly brought to an unknown location and tortured by corporal punishment.

On 23 September 2016, the Head of the Judicial Investigation of the Vietnamese Supreme Procuracy told Mr Nguyen's lawyer that the Kien Giang Provincial Party Committee had commanded all Kien Giang agencies to continue holding Mr. Nguyen. Anyone disobeying this command would be disciplined.

Following several delays, Mr. Nguyen's case was tried again on 10 and 11 November 2016. On October 20, the Kien Giang Chief Procuracy had announced that it would continue to detain Mr. Nguyen regardless of the outcome of the trial. The Procuracy had also announced that the Kien Giang Provincial Party would penalize any judge that would attempt to acquit Mr. Nguyen.

On 18 November 2016, with no cross examination, no deliberation, and no evidence presented or induction to support their condemnation, the judge and Procuracy convicted Mr. Nguyen and sentenced him to imprisonment of 13 years.

According to the information received, the lawyer in charge of Mr. Nguyen's case has suffered acts of intimidation, threats, and even physical attacks directly connected to his work on the case. Moreover, Mr. Nguyen's relatives have allegedly been intimidated and harassed by the police due to their active involvement in the case.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern at the continued arbitrary detention of Mr. Nguyen in spite of the Opinion of the Working Group on Arbitrary Detention. We also express serious concern at his health status and treatment in the prison, including but not limited to the denial to receive the medication he requires for his serious health conditions, as well as the prolonged incommunicado detention, which may amount to cruel, inhumane or degrading treatment or punishment, or torture.

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Vietnam ratified in 2015.

We would further like to refer your Excellency's Government to article 12 of the Covenant on Economic, Social and Cultural Rights, ratified by Vietnam on 24 September 1982, which establishes that an obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (General Comment no. 14, para. 34). State parties have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2). Further, States are required to take positive measures that enable individuals to enjoy the right to health and create, maintain and restore the health of the population (General Comment no. 14, para. 37). In addition, we would like to underline the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, according to which prisoners should have access to health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

We would also refer your Excellency's government to the Standard Minimum Rules for the Treatment of Prisoners as revised in 2015 (Mandela Rules), which state that "[a]ll prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care." (Revised Standard Minimum Rules for the Treatment of Prisoners. Rule 27(1)). The Mandela rules also provide for appropriate accommodation, including minimum cubic content of air and floor space, lighting and ventilation (rules 12 to 17), requirements to be met regarding personal hygiene (rule 18), clothing and bedding (rules 19 to 21), food (rule 22) and exercise and sport (rule 23). The **Committee against Torture** and the **Human Rights Committee** have consistently found that bad conditions of detention can amount to inhuman and degrading treatment.

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

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 in compliance with international instruments.

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:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on what measures have been taken to ensure the physical and psychological integrity of Mr. Nguyen, including through access to adequate and timely health services, including a physician and specialist, and adequate medicines to treat his conditions.
3. Please provide detailed information on the status of the criminal proceedings against Mr. Nguyen, and the legal justification for the refusal to access timely healthcare, including adequate medicines to treat his conditions, his lawyer and his family.
4. Please indicate what measures have been taken to ensure that all prisoners have access to health services, their lawyers and their families without discrimination.

While awaiting a reply, we urge your Excellency's Government to immediately release Mr. Nguyen and to take all necessary measures to guarantee his rights. We further request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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.

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