

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA VNM 5/2017

25 August 2017

Excellency,

We have the honour to address you in our capacity as Chairperson of the Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 35/15, 34/18, 31/16, 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest, detention, torture and death in custody of Mr. Nguyen Huu Tan at the Temporary Detention Centre of Vinh Long Provincial Police Department. In addition, we would like to alert your Excellency's Government to allegations of threats and intimidations directed against Mr. Nguyen's family after his death.

Mr. Nguyen Huu Tan, born on 16 April 1979, was a national of Viet Nam. He came from a Hoa Hao Buddhist family who refused to join the local chapter of the State-sponsored Hoa Hao Administrative Council created under the authority of the Viet Nam Fatherland Front. As a result, the family has reportedly been suffering intimidations and harassments from local authorities. In this regard, we recall that the alleged oppression and persecution of independent Hoa Hao Buddhists was the subject of a previous communication VNM 8/2016, sent on 31 October 2016. We thank your Excellency's Government for the reply registered on 26 January 2017. Nevertheless, new information was received indicating the alleged persecution of Mr. Nguyen and his family, members of that religious community.

According to the information received:

The arrest and detention of Mr. Nguyen

On the morning of 2 May 2017, Mr. Nguyen was arrested by officers from the Office of Police Investigation of Vinh Long province on suspicion of

“disseminating documents with contents against the Socialist Republic of Viet Nam” in violation of Article 88 of the Penal Code.

At 6 p.m. of the same day, Mr. Nguyen was escorted back to his home in Thanh Phuoc commune. Meanwhile, around two hundred police officers, some of whom dressed in uniform while the others in civilian clothes, surrounded his house and blocked the street where his house is located.

The police, who read out a search warrant without handing out the document to Mr. Nguyen or his family, searched their house for several hours. In the early morning of 3 May 2017, an Emergency Arrest Notice was read out to Mr. Nguyen although the police had not found any evidence to substantiate their accusation against Mr. Nguyen. He was subsequently arrested and taken into custody at the Temporary Detention Centre of Vinh Long Provincial Police Department.

Mr. Nguyen's alleged torture and death in custody

On the same day, in less than 10 hours after the detention, the police notified the family of Mr. Nguyen that he had committed suicide and died in detention. Surveillance videos from Mr. Nguyen's cell were revealed to the family supposedly recording Mr. Nguyen's suicide. We are informed that the videos present various inconsistencies and contradictions and are too blurry to identify the individual.

After the death of Mr. Nguyen, the police pressured the family to sign a statement of consent that would allow the police to conduct forensic examination on Mr. Nguyen's death; however, the family refused to sign the statement and requested the body of Mr. Nguyen. The body was released several hours later, in a nailed coffin that was sent to the house of his family accompanied by a large group of police officers.

The corpse showed a 5-cm stitched wound on the throat that almost crossed the frontal part of the neck; the windpipe was severed, exposing the neck bone. Other injuries were observed on his body, including bruises on the forehead, softened skull around his forehead, on the side of his head, and lacerations on his wrists, which all indicate signs of severe ill-treatment or torture. When the family tried to take photographs of Mr. Nguyen's body, the police confiscated and destroyed their phones.

Mr. Nguyen's family has requested the authorities of Vinh Long province to conduct a thorough and impartial investigation into the death of their son. On 20 June 2017, the investigation report of Mr. Nguyen's death was delivered to his family by post. The report concludes that Mr. Nguyen had committed suicide without any influence or assistance.

The family hopes to seek an independent autopsy; they have been trying to preserve the body as long as possible for this purpose. However high-ranking officials from the Vinh Long provincial administration have visited their house twice urging them to bury or cremate the body as soon as possible for environmental and cultural concerns.

Threats and intimidations against Mr. Nguyen's family

After the death of Mr. Nguyen, the police has reportedly maintained physical presence around the house and have installed security in order to monitor the movements and activities of Mr. Nguyen's family members. Individuals who identify themselves as officers from the Vinh Long Provincial Police Department visit the house on a daily basis, ordering all adult family members to report to the police.

Mr. Nguyen's family has been threatened with arrest and prosecution. On 7 June 2017, six police officers presented themselves at their house with a video camera and forced one of his family members to sign a letter that the person was not allowed to read. On 11 June 2017, a police officer from Cai Von commune visited the house of persons associated with Mr. Nguyen's and forced them to confess their "anti-State activities". On 12 June 2017, a police officer from Thanh Phuoc commune and a police in civilian clothes from Hamlet No.2 visited Mr. Nguyen's house and asked a family member to sign a document granting consent for searching the person's mobile phone, which had been previously confiscated on 3 May 2017. Apart from the grief for Mr. Nguyen's death, Mr. Nguyen's family members are reportedly frightened by the threats and intimidations, and are now in fear for their own life and security.

While we do not wish to prejudge the accuracy of this information, we express our serious concern at Mr. Nguyen's alleged arbitrary arrest, detention, torture and death in custody. The legal basis for his arrest and detention appears to be unlawful and arbitrary under international human rights law as it represents a criminalization of the rights to freedom of expression. Concern is further expressed at the reported threats and intimidations directed against Mr. Nguyen's family.

The right to life and security of the person of every individual is enshrined in Article 6 and 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Viet Nam acceded on 24 September 1982. When a State holds an individual in its custody, it has the responsibility, and is held to a heightened level of diligence, to protect that individual's rights. When an individual dies because of injuries sustained while in State custody, there is a *presumption of State responsibility*. In order to overcome such

presumption, there must be an independent “thorough, prompt and impartial investigation” into the causes, circumstances and responsibilities (direct or supervisory) of the death. This is particularly warranted in all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions).

We draw the attention of your Excellency’s Government to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in Article 7 of the ICCPR; and 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. Articles 12 and 7 of the CAT further provides that States’ obligation to a prompt and impartial investigation where there is a reasonable ground to believe an act of torture has been committed and to prosecute the alleged perpetrators of torture. Article 15 of the CAT obligates States to respect the fundamental principle not to invoke or admit in any proceedings any evidence that is suspected or established to have been obtained through torture.

With regard to the alleged threats and intimidations against Mr Nguyen’s family, paragraph 8(a) of the Human Rights Council resolution 16/23, recalls States that “Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or torture.”

Principle 4 of the Principles on Effective Prevention and Investigation of Extra-legal, legal, Arbitrary and Summary Executions, which was adopted by the Economic and Social Council resolution 1989/65, provides that effective protection through judicial or other means shall be provided to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

Articles 18, 19, 26 and 27 of the ICCPR highlight the right to freedom of thought, conscience and religion and the right to freedom of expression, including those who belong to religious minorities or unrecognized communities. With respect to article 88 of the Penal Code, we would like to highlight that any restriction to the right to freedom of expression must meet the high threshold established by article 19(3) of the ICCPR. We express concern at the criminalization of the exercise of freedom of expression through the application of national security provisions to target speech that is deemed dissenting or critical. While national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is not enough to simply claim it as a justification to pursue illegitimate purposes such as silencing critical or independent voices. It is the responsibility of the State, under ICCPR, to demonstrate that it is necessary to do so to

achieve a legitimate objective. The Human Rights Committee General Comment 34 underlines that article 19(3) may never be invoked as a justification for the muzzling of any advocacy of human rights (CCPR/C/G/34).

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

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 information concerning the factual and legal grounds for the arrest and detention of Mr. Nguyen Huu Tan and how these measures are compatible with international norms and standards, especially the international human rights obligation of Vietnam under the ICCPR.
2. Please provide full information on the investigation, judicial or otherwise, that may have been conducted into the causes and circumstances of the death of Mr. Nguyen, while in police custody, less than 10 hours after his arrest, including any independent autopsy report that may have been ordered by judicial or other authorities in this connection, as well as any other documentary evidence, such as photographs or video clips. If no investigation has been conducted into this death in custody, please explain why.
3. In the case that an independent and credible investigation was conducted into this death, what were the results and conclusions of the investigation? If ill-treatment or torture have been found to be the cause, please indicate what judicial steps are being taken to prosecute those with direct or supervisory responsibility.
4. Please indicate redress offered to the family of the victim.
5. Please indicate what measures have been taken to guarantee the physical and psychological integrity of all persons who are deprived of liberty by State authorities, so as to ensure that they are protected against any form of abuse of power that may amount to torture or other cruel, inhumane, degrading treatment or punishment as defined in the CAT.
6. Please indicate what measures are being taken to investigate the allegations that the family of Mr. Nguyen has been the subject of continued pressure, intimidation and harassment since his death; and if proved true; to stop them and ensure that they do not recur; and prosecute or punish any public official

or person acting on their behalf found to be responsible according to existing law.

7. Please provide information about steps being taken to repeal article 88 of the Penal Code that criminalizes the exercise of universally-recognized human rights, in order to bring it into line with international human rights standards that Vietnam has ratified.

While awaiting a reply, in view of the seriousness of the allegations and concern, we urge your Excellency's Government to take all steps necessary to guarantee the privacy, security and physical and psychological integrity of Mr. Nguyen's family members, to conduct an impartial, independent and effective investigation into the alleged torture and death in custody of Mr. Nguyen, and if the evidence confirms or suggests the accuracy of the allegations, to ensure the accountability of persons responsible.

Given the seriousness of the case, we reserve the right to publicly express our concerns in the near future as we are of the view that the information on which our expression of concern is based is sufficiently reliable to indicate a matter warranting the most serious attention.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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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