

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; 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:  
AL VNM 6/2017

21 September 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; 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 34/18, 32/32, 33/9, 34/5, 31/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and incommunicado detention of Mr. **Nguyen Bac Truyen**, Mr. **Truong Minh Duc**; Mr. **Nguyen Trung Ton**, Mr. **Pham Van Troi** and Mr. **Nguyen Van Truc**, as well as of Mr. **Le Dinh Duong**, allegedly in relation to their activities as human rights defenders and pro-democracy activists.

The arrests and incommunicado detention of the six human rights defenders and pro-democracy activists took place in the context of a broader crackdown by the Government of Viet Nam on human rights defenders, particularly during the summer of 2017, when most of the leadership of the Brotherhood for Democracy was arrested. Mr. Truong Minh Duc, Mr. Nguyen Trung Ton, Mr. Pham Van Troi and Mr. Nguyen Van Truc are all senior members of the Brotherhood for Democracy, and former prisoners of conscience. Mr. Nguyen Bac Truyen, is a human rights defender, religious freedom activist and a former prisoner of conscience.

Mr. Le Dinh Duong is a human rights defender, not a member of the Brotherhood for Democracy, working on environmental issues. He has opposed the Taiwanese company Formosa Plastics Corp that caused one of Viet Nam's biggest environmental disasters in April 2016.

Mr. Nguyen Bac Truyen is a human rights defender working in the field of social and religious rights in Viet Nam. Through the organization, Vietnamese Political and Religious Prisoners Friendship Association, an organization founded by him in 2010, he provided pro-bono legal assistance to families of political prisoners, victims of land

grabbing and persecuted religious communities in Southern Viet Nam. From 2014 until his recent arrest he worked full-time as coordinator of the assistance program for veterans with disabilities of the Catholic Redemptive Bureau for Justice and Peace. Mr. Truyen was the subject of three previous communications sent on 26 March 2014 (VNM 4/2014), 25 November 2014 (VNM 11/2014) and 1 November 2016 (VNM 8/2016). We appreciate your Excellency's Government's replies to VNM 4/2014 and VNM 8/2016 dated 30 May 2014 and 24 January 2017, respectively. We regret, however, not to have received a reply to VNM 11/2014.

Mr. Truong Minh Duc is a human rights defender, journalist and pro-democracy activist. Mr. Duc started his career as a journalist, writing about corruption, government mismanagement and land petitioners. He later joined the Democratic Bloc (Bloc 8406), and the Brotherhood for Democracy, an online organization working for human rights and multi-party democracy. In March 2008 he was sentenced to five years imprisonment, on charges of "abusing democratic freedom" under article 258 of the Penal Code.

Mr. Nguyen Trung Ton is a human rights defender and protestant pastor who advocates for democracy and freedom of religion in Viet Nam. He is the current president of Brotherhood for Democracy. In December 2011, Nguyen Trung Ton was sentenced to two years' imprisonment and two years' probation on charges of "anti-state propaganda" under article 88 of the Penal Code.

Mr. Pham Van Troi is a human rights defender and co-founder of the Brotherhood for Democracy that he established in 2013 with Mr. Nguyen Van Dai. He was arrested in 2008 and charged with "conducting anti-state propaganda" under article 88 of the Penal Code. He was sentenced to four years in prison. Since his release in 2012, he has continued to work promoting human rights and multi-party democracy.

Mr. Nguyen Van Tuc is a member of the Brotherhood for Democracy in the Thai Binh Province on the Northern coast of Viet Nam. He was imprisoned between 2008 and 2012, after being arrested and convicted of "conducting propaganda against the State" under article 88 of the Penal Code.

According to the information received:

*Le Dinh Duong*

On 24 July 2017, Le Dinh Duong was arrested and charged under article 79 of the Penal Code (article 109 of the new Criminal Code (Law No. 100/2015/QH13 dated November 27, 2015) for "aiming to overthrow the people's administration and cause social disorder". The heaviest penalty of article 79 could carry capital punishment or life imprisonment.

*Mr. Nguyen Bac Truyen*

On 30 July 2017, Mr. Truyen was arrested while waiting outside his work place at the Catholic Redemptorist Church in Ho Chi Minh City. Later in the day, it was announced through state online media that he had been arrested along with three other activists on charges of "acting to overthrow the people's administration", as provided in article 79 of the Vietnamese Penal Code. These charges are perceived to be related to his involvement in social and human rights issues with the independent Hoa-Hao Buddhists and Catholic social movement. Due to his work, he was allegedly assaulted at least six times by state security agents and their associates between 2014 and 2016.

Despite several requests by his family, Mr. Truyen's whereabouts were not revealed until 18 August 2017, when they received a notification from the Investigation Agency of the Ministry of Public Security in Hanoi, stating that Mr. Truyen was being held at Detention Center B14 in Thanh Liet Commune, Thanh Tri District, Hanoi, some 1.600 km away from his home. During the whole period of his detention, Mr. Truyen has not been allowed to have contact with his family or lawyers. It is alleged also that he has been refused medication for the treatment of pre-existing medical conditions, despite his family offering to supply them.

*Mr. Truong Minh Duc*

On 30 July 2017, Mr. Truong Minh Duc was arrested near his residence in Ho Chi Minh City by the Investigative Agency of the Ministry of Public Security of Viet Nam. Reportedly no arrest warrant was presented during his arrest. He has been reportedly accused of having "carried out activities aiming at overthrowing the Government (article 79 of the 1999 Penal Code of Viet Nam), a national security crime carrying a prison sentence of between 12 to 20 years, life imprisonment and even the death penalty, but it is not clear whether he has been officially charged yet.

Since the time of his arrest, Mr. Truong Minh Duc has been detained incommunicado, and denied access to necessary medication which could have fatal consequences for his health.

*Mr. Nguyen Trung Ton*

On 30 July 2017, Mr. Nguyen Trung Ton was arrested at his residence in Ho Chi Minh City, by agents of the Security Investigation Agency of Viet Nam's Ministry of Public Security. His residence was searched and a number of his personal belongings confiscated. He has also been reportedly accused of having "carried out activities aiming at overthrowing the Government" (article 79 of the 1999 Penal Code of Viet Nam).

*Mr. Pham Van Troi*

On 30 July 2017, Mr. Pham Van Troi was arrested at his residence in Hanoi and also accused of having “carried out activities aiming at overthrowing the Government” (article 79 of the 1999 Penal Code of Viet Nam).

*Mr. Nguyen Van Tuc*

On 1 September 2017, Mr. Nguyen Van Truc was arrested on his way to a meeting at the local District People’s Committee, where he had been summoned. Right after he was taken away in a car, dozens of police officers searched his house for a day and confiscated shirts with the Brotherhood for Democracy logo, electric equipment and a sum of money. He was also accused of having “carried out activities aiming at overthrowing the Government” (article 79 of the 1999 Penal Code of Viet Nam).

There is reportedly no information about actions that these human rights defenders allegedly committed and have been charged with, except for “having met with foreigners and bad-mouthed the Government”.

Serious concerns are expressed about the arrest and incommunicado detention of Mr. Nguyen Bac Truyen and Mr. Truong Minh Duc, Mr. Nguyen Trung Ton, Mr. Pham Van Troi and Mr. Nguyen Van Truc, Mr. Le Dinh Duong, which seem to relate to their work as human rights defenders. Grave concerns are expressed given that incommunicado detention creates conditions that facilitate the perpetration of torture and can, in itself, constitute a form of cruel, inhuman or degrading treatment or even torture.

We express equal concern that the arrests and detentions are based on legal charges that are incompatible with Viet Nam’s obligations under international human rights law, as they criminalize the legitimate exercise of the rights to freedom of expression, freedom of religion or belief and freedom of association and peaceful assembly. We express further serious concerns due to the fact that the charges under article 79 of the Penal Code (article 109 of the new Criminal Law) carry the possibility of the death sentence or life imprisonment.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on why access to medication has been denied to Mr. Truong Minh Duc and how this is compatible with his right to the

enjoyment of the highest attainable standard of physical and mental health, in particular while in detention, under the provisions of the International Covenant on Economic, Social and Cultural Rights.

3. Please provide clarification of the acts considered to have amounted to the charges of “acting to overthrow the Government” against the above named individuals and to provide evidence of the charges against them.
4. Please indicate what measures have been taken to ensure that human rights defenders in Viet Nam are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may also publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. 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.

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annalisa Ciampi

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Ahmed Shaheed  
Special Rapporteur on freedom of religion or belief

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the following human rights standards:

The above mentioned allegations appear to be in contravention with articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Viet Nam on 24 September 1982, guaranteeing the rights to freedom of opinion and expression and freedom of peaceful assembly, respectively. In this connection, we reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on reporting on human rights; peaceful demonstrations or political activities, including for peace or democracy.

With respect to the use of national security accusations against the activities of the aforementioned individuals, we would like to remind your Excellency's Government that any restriction on expression that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest. To establish that a restriction on freedom of expression is necessary to protect a legitimate national security interest, a government must demonstrate that: (a) the expression at issue poses a serious threat to a legitimate national security interest; (b) the restrictions imposed is the least restrictive means possible for protecting that interest; and (c) the restriction is compatible with democratic principles.

We would like to further refer to Human Rights Council resolution 24/5 which "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions of the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law" (OP2).

We would like to remind your Excellency's Government of articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by your Government on 5 February 2015, which codify the absolute and non-derogable prohibition of torture and other ill-treatment, and article 11 which provides that interrogation rules, instructions, methods and practices as well as arrangements for custody need to be systematically reviewed in order to prevent torture and other ill-treatment.

Additionally, we wish to bring to the attention of your Excellency's Government 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, also known as the UN Declaration on Human Rights Defenders, in particular its articles 1, 2, 5, 6 and 12.

Regarding the health situation of Mr. Mr. Truong Minh Duc, we would like to refer your Excellency's Government to article 12 of the Covenant on Economic, Social and Cultural Rights, acceded by Viet Nam on 24 September 1982, which establishes that States have 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. (ICESCR General Comment 14, Para.34).

Given the specific health condition of Mr. Truong Minh Duc and the allegations received, we would like to refer your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules, 2015), which state all prisons shall ensure prompt access to medical attention in urgent cases, and prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. According to Rule 27, clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.