

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
UA VNM 2/2018

21 February 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 28/11, 34/18, 36/15 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the conviction and sentencing of Mr. Hoang Duc Binh and Mr. Nguyen Nam Phong**, in what appears to be retaliation for their legitimate environmental human rights work related to the environmental pollution caused by toxic waste discharge from the Formosa Ha Tinh Steel Plant in April 2016.

Mr. Hoang Duc Binh is a blogger and environmental human rights defender, who contributed to the work of Viet Labour, an organisation promoting workers' rights. Mr. Nguyen Nam Phong was driving a car transporting Mr. Hoang Duc Binh to an area where demonstrations calling for accountability for the Formosa incident were taking place.

The alleged use of arbitrary detention and other repressive measures against human rights defenders involved in the Formosa incident have been the subject of previous communications sent by various Special Rapporteurs, dated 10 August 2016, case no. VNM 2/2016, 16 March 2017, case no. VNM 2/2017, and 28 June 2017, case no. VNM 4/2017. While we acknowledge the response of your Excellency's Government of 26 July 2017, Ref:146/HR.VNM.2017 we deeply regret that we are still receiving reports about alleged violations of human rights, which we hereby seek to clarify.

According to the information received:

Mr. Hoang Duc Binh reported online on the environmental disaster caused by the Formosa Ha Tinh Steel Plant in April 2016, its impact on local populations and on popular protests in the affected areas against the company responsible for the pollution. He was arrested on 15 May 2017 for acts he allegedly committed on 14 February 2017 when he was escorting a group of environmental activists and victims to the People's Court in Ky Anh District, Ha Tinh province, to petition Formosa Plastics with a claim for compensation to the fishermen whose livelihoods were destroyed by the toxic spill that took place in April 2016.

On 15 May 2017 at about 9.30AM, Mr. Hoang Duc Binh was in a vehicle bound for Vinh City with a group of environmental activists when their car was stopped in the centre of the Dien Chau district by police officers in uniform and unidentified persons in civilian clothing. The police violently removed Mr. Hoang Duc Binh from the car, took him and drove away. During the arrest the police had allegedly set up cellphone blockers so that witnesses of the scene could not publish any live videos or photos. Later in the day, the authorities of the province of Nghe An publicized an arrest order for Mr. Hoang Duc Binh issued by the province's People's Procuracy two days previously.

On 6 February 2018, in a trial that lasted just one day, the People's Court of Dien Chau district, Nghe An province convicted Mr. Hoang Duc Binh and sentenced him to 14 years in prison for violating Article 330 and Article 331 of the 2015 Penal Code for "Resisting a law enforcement officer in performance of his/her official duties" and "Abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens". In connected charges, the Court convicted Mr. Nguyen Nam Phong and sentenced him to two years in prison for allegedly opposing officers on duty.

We are deeply concerned at the arrest, detention and conviction of Mr. Hoang Duc Binh. We are particularly concerned that one of the legal basis upon which the conviction rests is unlawful under international law as it criminalizes the legitimate exercise of freedom of expression. We express equal concern at the conviction of Mr. Nguyen Nam Phong. We express concern for the reiterated use of loosely defined offences to penalize defenders and journalists who were involved in the protests provoked by the Formosa environmental disaster.

While we do not wish to prejudge the accuracy of these allegations, they appear to be in contravention with articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Vietnam on 24 September 1982, which guarantee to everyone the right to freedom of expression and opinion and the right to freedom of peaceful assembly. Any restriction to freedom of expression must comply with the high threshold established under article 19(3), that is, be provided by law, and be necessary for the respect of the rights of others, or for the protection of national security or public

order, or of public health or morals. In this connection, we reiterate the principle enunciated in Human Rights Council Resolution 12/16 that calls on States to refrain from imposing restrictions which are not consistent with article 19(3) of the ICCPR, including on peaceful demonstrations; reporting on human rights and discussion of government activities

Finally, we would like to highlight the fundamental principles set forth in articles 1 and 2 of the UN Declaration on Human Rights Defenders, which provide for the right to promote and to strive for the protection and realization of human rights and fundamental freedoms.

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, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the conviction and sentencing of Mr. Hoang Duc Binh and Mr. Nguyen Nam Phong and clarify how this complies with Viet Nam's obligations under International Human Rights law.
3. Please provide the details on measures that your Excellency's Government is taking to protect the rights to life and physical and mental health of the citizens as a result of the environmentally unsound disposal of hazardous substances from the Formosa incident including your Excellency's Government's plans to ensure accountability of those responsible for human rights abuse occasioned by the Formosa incident.

We would appreciate receiving a response as soon as possible. While awaiting a reply, we urge the immediate reconsideration of the conviction and sentencing of Hoang Duc Binh and his release alongside fellow environmental human rights defenders with connected charges including Nguyen Nam Phong.

We intend to 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.

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye

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

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