

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

REFERENCE:  
UA VNM 3/2018

13 March 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 34/18, 33/9, 34/5 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 prison transfer, lack of access to adequate medication and poor conditions of detention of Ms. Nguyen Ngoc Nhu Quynh, also known as "Mother Mushroom".

Ms. Nguyen Ngoc Nhu Quynh is an environmental human rights defender and coordinator of the Vietnamese Bloggers' Network, which promotes citizen journalism and freedom of press in the country as an independent civil society group. Since 2006, she has blogged under the pseudonym of "Me Nam" (Mother Mushroom). She has exposed alleged corruption cases and human rights violations committed by the authorities. On 10 October 2016, Ms. Quynh was arrested and charged with violating article 88 of the Penal Code of Viet Nam, for "conducting propaganda against the Socialist Republic of Viet Nam", following a search of her residence which uncovered protest signs relating to the Formosa steel plant toxic spill.

Ms. Quynh has been the subject of two previous communications sent by various Special Rapporteurs, dated 24 February 2017, case no. VNM 1/2017 and again dated 26 June 2017, case no. VNM 4/2017. We acknowledge receipt of the response by your Excellency's Government to the latter communication dated 18 September 2017. We regret, however, that this response, while explaining Ms. Quynh's alleged violations of domestic law, did not explain sufficiently how domestic restrictions on freedoms of expression and opinion and assembly are compatible with international human rights law. We further regret that no response has been received to the former communication.

On 25 April 2017, the Working Group on Arbitrary Detention has adopted Opinion No. 27/2017 finding that the deprivation of liberty of Nguyen Ngoc Nhu Quynh, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and of articles 9, 14, 19, 21 and 22 of the Covenant, is arbitrary and falls within categories II and III. The Working Group considered that, taking into account all the circumstances of the case, in particular the risk of harm to Ms. Quynh's health and to the psychological wellbeing of her family, the appropriate remedy would be to release Ms. Quynh immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law

According to the new information received:

Despite the WGAD Opinion No. 27/2017, on 30 November 2017, the Superior People's Court of Danang upheld Ms. Nguyen Ngoc Nhu Quynh's 10 year sentence for "conducting anti-state propaganda" under article 88 of the Penal Code. Her mother was not permitted entry to the courtroom to observe the hearing.

On 5 February 2018, Ms. Nguyen Thi Tuyet Lan met her daughter, Ms. Quynh, during a 10 minute prison visit in Nha Trang, when she learned that her daughter has problems with blood pressure. Prison authorities had provided Ms. Quynh with medication, but this caused excessive swelling of her face, hands and legs, along with bouts of dizziness and fainting, allegedly due to an allergic reaction. Ms. Quynh subsequently requested that she be permitted to take a particular medication that she used prior to her incarceration instead, but was refused.

On 12 February 2018, during a visit to the prison in Nha Trang, to bring food and new medication to Ms. Quynh, Ms. Lan was notified that Ms. Quynh had been transferred on 7 February 2018 to No. 5 Prison in Yen Dinh, approximately 620 miles away, without prior notification to her family. This distance would reportedly make it impossible for Ms. Quynh's family to visit her.

No. 5 Prison in Yen Dinh is allegedly in an isolated location and is currently flooded. Moreover, its location in the north of the country means that weather conditions are colder and harsher, further exacerbating Ms. Quynh's health condition.

Concern is expressed over the alleged poor conditions of detention and denial of appropriate medication to Ms. Nguyen Ngoc Nhu Quynh, along with the adverse consequences that these may have on both her physical and mental health. Further concern is expressed over her alleged transfer to No. 5 Prison in Yen Dinh, without prior notice, which would make it effectively impossible for her family to visit her and bring her supplies, including medications.

Serious concern is expressed at the upholding of Ms. Nguyen Ngoc Nhu Quynh's conviction on 30 November 2017 for "conducting propaganda against the Socialist Republic of Viet Nam", along with her continued imprisonment contrary to WGAD Opinion 27/2017, for reasons that are ostensibly related to her work as a human rights defender and the exercise of her rights to freedom of expression and opinion, especially as they relate to her documentation, campaigning and reporting on the environmental harm caused by the Formosa steel plant. We reiterate our concerns over the legal basis for the imprisonment of Ms. Quynh and the use of repressive legislation to criminalise expression, including access to information on issues of public interest concerning accountability and public health.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would also like to bring your Excellency's Government's attention to articles 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Viet Nam on 24 September 1982, which enshrine the rights to liberty and security of person and freedom of expression and opinion. Furthermore, article 19(3) requires that restrictions of this right must be necessary and proportionate where such restrictions are put in place to safeguard national security.

We would like to note that, as enunciated in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, endorsed in E/CN.4/1996/39 of 1996, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing.

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment 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 on 5 February 2015

We would also like to bring your Government's attention to article 12(1) of the International Covenant on Economic, Social and Cultural Rights, acceded to by Viet Nam on 24 September 1982, which establishes States' obligation to protect, respect and fulfill the right of everyone to the enjoyment of the highest attainable standard of physical and mental 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. (CESCR, General Comment No. 14, para.34). In addition, Principle 9 of the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, indicates that all prisoners should have access to the health

services available in the country without discrimination on the grounds of their legal situation.

In this connection, we would like to refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, A/Res/70/175), especially rules 22–26; 52; 62; and 71, para. 2, concerning access to adequate healthcare, including prison authorities’ responsibility both to ensure continuity of treatment (rule 24) and to transfer prisoners requiring specialised treatment to specialised institutions or to civil hospitals (rule 27). Mandela Rules also limit and finally ban the prohibition of restricting prisoners’ family contact.

Finally, we would like to refer your Excellency’s Government to the fundamental principles set forth in the UN Declaration on Human Rights Defenders, in particular articles 1, 2 and 6(b and c) of the Declaration which state that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels, that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms and that each person has the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

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 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 any comment(s) you may have on the above-mentioned allegations.
2. Please explain the exact factual and legal basis of Ms. Quynh’s conviction for “conducting propaganda against the Socialist Republic of Viet Nam”, and explain how is that a legitimate, necessary and proportional exception to article 19 of the ICCPR.
3. Please explain the reasons for the transfer of Ms. Quynh to No. 5 Prison in Yen Dinh, and provide details on how her interests, including the condition of her health, and those of her family were taken into account, in compliance with Viet Nam’s obligations under international human rights

law. Please also provide details on the steps taken to allow her adequate access to her family.

4. Please provide detailed information on the current physical and mental integrity of Ms. Quynh, especially regarding her current health conditions, along with information on what steps have been taken to allow her access to adequate medication.
5. 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.

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 responsible of the alleged violations.

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.

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

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

Dainius Puras  
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