

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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**

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 35/15, 33/9 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 situation of Mr. **Ho Duy Hai, who is reportedly at risk of execution in the Socialist Republic of Viet Nam following judicial proceedings that do not appear to have fulfilled the most stringent guarantees of fair trial as well as to information received on the high numbers of death sentences handed down in Viet Nam, the continued application of the death penalty to crimes which do not meet the "most serious crimes" threshold.**

According to the information received:

Case of Mr. Ho Duy Hai

On 1 December 2008, the People's Court of Long An sentenced Mr. Ho Duy Hai to five years' imprisonment for the offence of plundering property (Art. 133 of the Criminal Code) and to death for the murder (Art. 93 of the 1999 Criminal Code) of two female employees of a Post Office in Ho Chi Minh City. There was no forensic evidence or witness testimonies which would link him to the crime scene. Mr. Ho Duy Hai confessed to the killings but later said that he was forced to confess and had repeated a text written for him by the authorities.

On 28 April 2009, the Court of Appeal of the Supreme People's Court in Ho Chi Minh City upheld his conviction and death sentence. Since the appeal hearing, his lawyers continue to be denied access to him in prison. Moreover, despite concerns of serious deterioration of his health and resulting drastic loss of weight, Mr. Ho Duy Hai has allegedly not received healthcare while in detention. There are concerns that his deterioration in health may be linked to ill-treatment in

detention. His family were initially not permitted to visit, but the General Directorate VIII of the Ministry of Public Security confirmed their right to do so on 27 February 2015. They are now able to speak with him 30 minutes once a month in the presence of prison guards, but are required to sign a pledge that they will not talk about the case each time they visit.

Mr. Ho Duy Hai was due to be executed on 5 December 2014, but on the 4 December 2014, the then President of Viet Nam, Mr. Truong Tan Sang, halted the execution.

On 10 February 2015, the Committee on Judicial Affairs of the National Assembly, which is responsible for investigating allegations of miscarriages of justice, concluded the First Instance and Appeal's Court's convictions were based on serious violations of criminal procedural law as they had disregarded his alibis and exculpatory evidence and urged Mr. Ho Duy Hai's case to be reviewed in line with Art. 273 of the Criminal Procedure Code.

On 7 December 2017, the Chief of Long An's Procuracy requested an expedite execution of Mr. Ho Duy Hai, for reasons of local security.

His execution could take place at any time.

#### Death Penalty in Viet Nam

Amendments to the Penal Code which were approved by the National Assembly in 2015 came into force on 1 January 2018. The revised version of the Penal Code now reads “[d]eath sentence is a special sentence imposed upon people committing extremely serious crimes that infringe national security, human life, drug-related crimes, corruption-related crimes and some other extremely serious crimes defined by this document.”

According to a report of the Ministry of Public Security entitled the “Five-year Implementation of the Law on Execution of Criminal Judgements within Police Force” (2011 - 2016), 1134 individuals were sentenced to death between 30 June 2011 and 30 June 2016, and 336 individuals were already on death row, bringing a total number of those sentenced to death to 1470 persons. Of these, 429 persons were executed between 8 January 2013 and 30 June 2016 by lethal injection, 681 individuals are currently on death row, 36 individuals died in prison, 179 cases were commuted to life imprisonment, 80 sentences were cancelled following re-investigation and 65 cases are before the Supreme Court of Appeals.

The report also indicates that in 2011, Viet Nam discontinued executions by firing squad and instead constructed facilities for death sentences to be constructed by lethal injection.

Beyond this report, there is limited information publicly available on death penalty and executions in Viet Nam.

We express grave concern at the death sentence against **Mr. Ho Duy Hai** following judicial proceedings that do not appear to have fulfilled the most stringent guarantees of fair trial and due process as well as his continued detention and lack of access to his lawyer and to health care in detention. We are particularly concerned by the Chief of Long An's Procuracy request that the execution be carried out for "local security" reasons, when the Committee on Judicial Affairs of the National Assembly itself has recognised that the trial was flawed and failed to meet Vietnamese legal standards. Further concern is expressed over the continued application of the death penalty to crimes which do not meet the "most serious crimes" threshold, resulting in a high number of death sentences handed down.

In view of the irreversibility of the punishment of the death penalty, we respectfully urge your Excellency's Government to halt any steps being taken towards the execution of **Mr. Ho Duy Hai**, and to ensure that, he is retried in a process providing all fair trial and due process guarantees as required under international human rights law. Given the allegations described above, the implementation of his death sentence may constitute an arbitrary execution under international law, and therefore be unlawful.

While we do not wish to prejudge the accuracy of these allegations, they indicate a prima facie violation of article 6, 7 and article 12 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Viet Nam on 24 September 1982.

We would like to draw your Excellency's Government's attention to article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, Economic and Social Council resolution 1984/50 of 25 May 1984, which provides that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR. These safeguards include the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings. In addition, article 4 of the Safeguards provides that capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for alternative explanation of the facts.

Moreover, 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 on 5 February 2015, and to article 15 of the Convention against Torture provides that, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

We would like to bring the attention of your Excellency’s Government article 12 of the International Covenant on Economic, Social and Cultural Rights, acceded to by Vietnam on 24 Sep 1982 which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Article 12 provides for the obligation of the State 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. In this regard, the United Nations Standard Minimum Rules for the Treatment of Prisoners, or the Nelson Mandela Rules (rules 22–35;69), further establish that it is the responsibility of States to provide healthcare for prisoners.

Regarding the **use of the death penalty in Viet Nam**, we welcome the amendments to Viet Nam’s Penal Code, which came into force on 1 January 2018, which removed the death penalty for several crimes which did not fall within the “most serious crimes” standard to which the use of the death penalty must be restricted under international law in countries that have not yet abolished it. However, we note with concern that the death penalty is retained for drug-related offences and economic crimes, which also do not meet the “most serious crimes” threshold. We further note the government of Viet Nam supported a number of recommendations at its 2014 Universal Periodic Review including on restricting the use of the death penalty only for the most serious crimes. In line with this commitment, we encourage your Excellency’s government to make further revision to Vietnamese legislation to ensure the death penalty is applicable only for crimes concerning intentional killing.

The publication of statistics on the use of the death penalty by the Ministry of Public Security in February 2017 is a welcome development and we encourage the government to publish these statistics annually as per ECOSOC resolution 1989/64 of 24 May 1989 and Human Rights Council resolution A/RES/71/187, paragraph 5. We are also concerned by the number of individuals executed and on death row. We would like to highlight that there is no evidence that the death penalty deters crime more than other forms of punishment. We encourage your Excellency’s government, in addition to reducing the scope of the crimes subject to the death penalty, to consider taking alternative measures to reduce the number of death sentences handed down, for example introducing sentencing guidelines to limit the application of the death penalty in cases of intentional killing to only the most heinous cases, taking full account of any mitigating

and personal circumstances of the accused. We further encourage the government to consider introducing a moratorium on the death penalty.

As per our mandates, which include enhancing dialogues with Governments, we rest at your disposition for any information or advice on applicable international standards that your Excellency's government may consider useful. 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 any comment you may have on the above-mentioned allegations.
2. Please provide an update on the status of Mr. Ho Duy Hai's case. Please information on why his case has apparently not been subject to review as urged by the Committee on Judicial Affairs of the National Assembly.
3. Please provide detailed information about the healthcare, support and treatment provided to Mr. Ho Duy Hai's during his detention and in case this has not been duly provided, kindly explain why.
4. Please provide detailed information and, where available, the results, of any investigation, medical or judicial, or other inquiries carried out in relation to the allegations of ill-treatment and that confessions extracted from Mr. Ho Duy Hai's under duress may have been used as incriminating evidence during his trial and led to his sentencing to death. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide information on how the continued detention of Mr. Ho Duy Hai and his possible execution are compatible with Vietnamese law as well as the international human rights obligations assumed by Viet Nam. Please provide information on the evidence available in the case and the extent to which it is clear and convincing, leaving no room for an alternative explanation of the facts.

6. Please provide information on whether any steps have been taken or are being considered to restrict the applicability of the death penalty to the most serious crimes and as to whether a moratorium is being considered.
7. Please provide updated disaggregated statistics on the use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, the number of death sentences reversed or commuted on appeal and information on any scheduled execution. Please provide information on the steps taken to ensure transparency of information regarding the death penalty in Viet Nam.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release would 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. Any press release would indicate that we have been in contact with your Excellency's Government's to clarify the issues 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.

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

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