

**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; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE:  
AL VNM 6/2018

17 July 2018

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; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18, 32/32 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 deteriorating health condition in prison of Mr. Nguyen Van Tuc, human rights defender, who was sentenced to 15 years in prison in 2017.

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 for "conducting propaganda against the State" under article 88 of the Penal Code. He was arrested a second time in 2017 and accused of having "carried out activities aiming at overthrowing the Government", in violation of article 79 of the Penal Code.

Concerns regarding the arrest and detention of Mr. Van Tuc, along with 6 other human rights defenders, were raised in a communication by Special Procedures on 21 September 2017 (AL VNM 6/2017). We thank your Excellency's Government for the substantive response of 5 January 2018, but remain concerned in light of the conviction of Mr. Van Ttruc in April 2018.

According to the new information received:

Following the arrest of Mr. Nguyen Van Tuc in 2017, he was detained for seven months without access to a lawyer.

On 10 April 2018, he was convicted to 13 years imprisonment and 3 years in additional house arrest for subversion under article 79 of the Penal Code. The conviction is reportedly based on Mr. Nguyen Van Tuc's affiliation to the Brotherhood for Democracy, which has been outlawed in Viet Nam.

Mr. Nguyen Van Tuc is allegedly placed in a cell without adequate ventilation and only a small hand-made fan. Because of the hot weather he is not able to sleep well or eat. As a result, his health situation has deteriorated.

We express concern at the conviction of Mr. Nguyen Van Tuc on the basis of legislation that criminalizes the legitimate exercise of the rights to freedom of expression and freedom of association, as well as the work of human rights defenders. We express additional concern at what appears to be violations of his right to due process and fair trial, and at the conditions in which he is imprisoned. We are equally concerned at the deterioration of his health situation as consequence of his condition of detention.

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 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 about the evidence used to convict Mr. Nguyen Van Tuc under article 79 of the Penal Code.
3. Please provide information about measures taken to bring the prison conditions of Mr. Nguyen Van Tuc in line with international human rights standards.
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. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

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

Michel Forst  
Special Rapporteur on the situation of human rights defenders

**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, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Viet Nam on 24 September 1982, guaranteeing the rights to freedom of opinion and expression and freedom of peaceful assembly, and freedom of association, 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 legislation to convict Mr. Truc, 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).

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. Tuc, 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 No. 14, Para. 34).