

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 situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL VNM 2/2019

29 May 2019

Excellency,

We have the honour to address you in our capacities 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 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, 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 arrest, ill treatment and detention conditions of journalist **Nguyen Van Hoa** following his coverage of protests in the aftermath of the Formosa steel plant toxic spill, the lack of fair trial guarantees afforded during his pre-trial detention and in the subsequent criminal proceedings brought against him, and the failure to investigate and address complaints of human rights violations.

Mr. Hoa is a citizen journalist, blogger, and human rights defender. He is also a digital security trainer and regular contributor to Radio Free Asia.

Special Procedures have previously raised concern regarding your Excellency's Government's measures in connection with the Formosa steel plant toxic spill, including measures against advocacy work in that regard. We note the allegation letter sent 10 August 2016 (AL VNM 5/2016), to which Your Excellency's Government replied on 28 February 2017 (035/HR.VNM.2017), the urgent appeal sent 21 March 2017 (UA VNM 2/2017 Rev. 1), to which Your Excellency's Government replied on 26 July 2017 (146/HR.VNM.2017), the urgent appeal sent 28 June 2017 (UA VNM 4/2017), to which Your Excellency's Government replied on 18 September 2017 (181/HR.VNM.2017), the allegation letter sent 21 September 2017 (AL VNM 6/2017), to which the Your Excellency's Government replied on 5 January 2018 (02/HR.VNM.2018), the urgent appeal sent 21 February 2018 (UA VNM 2/2018), to which Your Excellency's Government replied on 23 April 2018 (65/HR.VNM.2018), the allegation letter sent 26 July 2018 (AL VNM 8/2018), to which the Your Excellency's Government replied on 29 October 2018 (179/HR.VNM.2018), and the urgent appeal sent 18 April 2019 (UA VNM 1/2019).

According to the new information received:

In 2016 Mr. Hoa covered the peaceful protests outside the Formosa steel plant in the Ha Tinh province in 2016, following the steel plant's toxic spill. Mr. Hoa covered the event through a live broadcast using a fly-cam drone, which went viral in Viet Nam. He also shared information online through photos, videos and articles about the spill, and was active in assisting fishermen's families in demanding compensation and justice following the spill.

Nguyen Van Hoa was apprehended by the police on 11 January 2017 at around 15:00 while he was reporting on a demonstration related to the Formosa steel plant toxic spill. The demonstrations took place in front of the court house in the town of Ky Anh, in the Ha Tinh province of Northern Vietnam. Mr. Hoa was orally informed that the reason for his arrest was suspicion of motor vehicle theft and drug trafficking. He was taken by a prisoner transport vehicle to the town of Hong Linh, where he was placed in detention at the Temporary Detention Centre.

During his subsequent interrogation, police officers reportedly used force to coerce a confession relating to Article 258 of the Vietnamese Criminal Code, which criminalises abuse of democratic freedoms to infringe upon the interests of the State and the rights and legitimate interests of organisations and citizens. He was reportedly hanged to the ceiling by his hands and had water thrown in his face. The following are names and ranks of the eight police officers that would have participated in the interrogation: (1) Colonel Nguyen Anh Tuan, (2) Captain Nguyen Van Sang, (3) Lieutenant Le Anh Duc, (4) Captain Tran Anh Duc, (5) Colonel Nguyen Huy Chuong, (6) Major Truong Quang Quoc, (7) First Lieutenant Bui Xuan Dat, (8) Captain Nguyen Dinh Duc.

Persons associated with Mr. Hoa were informed of the detention on 23 January 2017, when they received a temporary detention notice stating that he was detained under Article 258 of the 1999 Vietnamese Criminal Code.

Mr. Hoa has at no point been given access to a lawyer. He called an attorney requesting the attorney to be his defence counsel on 20 January 2017 from the temporary detention centre where he was detained.

On 23 January 2017, a person associated with Mr. Hoa sent a request in writing to have the same attorney represent Mr. Hoa in court. An official document (No 21/ANĐT) issued on 7 February 2017 and signed by the Deputy Chief of the Security Investigation Bureau on Ha Tinh provincial police, declined to issue the certificate of representation for the attorney. The stated reason was that there was no need for a defence counsel since Mr. Hoa had acknowledged his wrongdoing and would be representing himself. The attorney twice appealed that decision to no avail. In his appeal, the attorney had requested to meet with Mr. Hoa to confirm the accuracy of his refusal to be represented by a lawyer. Mr. Hoa has later confirmed that the decision was prompted by pressure from the investigator

even though Mr. Hoa had consistently wished to have a defence counsel represent him.

On 15 June 2017, the authorities formally changed the charges from Article 258 to Article 88, which criminalises propaganda against the socialist state.

On 27 November 2017, Mr. Hoa was sentenced to seven years of imprisonment and three years of probation based on the same provision in the Criminal Code. He was then transferred to the Cau Dong prison, in the Ha Tinh province of Viet Nam, where he served his sentence until his transfer in February 2018 to the An Diem prison in the Dai Loc district of the province of Quang Nam, Viet Nam. Neither a defence lawyer nor his close ones were present at the trial, which lasted only two hours. Neither Mr. Hoa nor his family have received or gained access to any documents relating to the investigation, the indictment, documents from the court proceedings or the judgment rendered.

On 16 August 2018 at around 09:00, Mr. Hoa appeared as a witness at the trial of a human rights defender in the People's Court in Nghe An province. Prior to appearing as a witness, police officers of Nghe An province had prepared a statement to be presented by Mr. Hoa as his testimony. The statement reportedly confirmed Mr. Hoa's knowledge of the defendant's acceptance of money from a terrorist organization to conduct trainings, coaching, and to organize protest activities in the central provinces of Vietnam. When called to testify, Mr. Hoa recanted the statements drafted by the police. He was then allegedly taken into an isolated room, beaten by several uniformed police officers and insulted with derogatory remarks. The court subsequently prohibited Mr. Hoa from appearing as a witness, stating that he was ill. The assault allegedly happened under the watch of police officers escorting Mr. Hoa

In September of 2018, Mr. Hoa denounced the acts committed against him on 16 August 2018 through a letter to the Supervisory board at An Diem prison, where he is serving his sentence. According to the 2011 Law on Denunciations, the Board had 5 to 10 days to forward the denunciation to the relevant authorities. Despite the legal guarantee to be informed of the status of the denunciation (article 9.1-c), Mr. Hoa still has not received any notification.

On 11 February 2019, Mr. Hoa sent a letter denouncing his apprehension on 11 January 2017 to the Investigation Security Agency and the Temporary Detention Center of Ha Tinh province. Mr. Hoa has not received any notification of the status of his denunciation.

On 22 February 2019, Mr. Hoa began a hunger strike to protest the process for handling his complaints, as well as his detention conditions. Besides the lack of notification Mr. Hoa complains that prison authorities did not allow him to submit his denunciation and specific allegations as originally written by him, Mr. Hoa's complaints concern his detention conditions including lack of access to clean

water and food, verbal abuse by prison officials, intimidations that include arbitrarily entering his prison cell and recording videos without orders from the prison's Supervisory board, Additionally, all communication from prison authorities with Mr Hoa have not been documented and were conducted verbally

We express our grave concern relating to the arrest, detention and prosecution of Mr. Hoa which appears to represent a criminalization of his exercise of the right to freedom of expression. We reiterate our concerns that the legal basis for the prosecution is incompatible with the conditions for permissible restrictions to the right to freedom of expression and as such are unlawful under international human rights law. Furthermore, we are gravely concerned at the information received concerning the ill-treatment he has been subjected to during the interrogations after his arrest, and later when he was called to appear as a witness at the trial on 16 August 2018. Moreover, we are concerned about the detention conditions that Mr. Hoa has been subjected to, particularly allegations of harassment by guards and lack of access to clean drinking water and food, which may severely impact his physical and psychological health situation. In this connection, we call on your Excellency's Government, as a matter of urgency, to address the underlying causes for Mr. Hoa's hunger strike. Moreover, we express our concerns the lack of fair trial guarantees reportedly provided to Mr. Hoa, including the use of pre-trial detention without adequate judicial oversight, a forced confession, his lack of access to a lawyer and lack of access to his case files and the judgment. Lastly, we express our concerns at the lack of follow-up to investigate the alleged violations despite complaints filed by Mr. Hoa.

In this connection, we remind your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights (ICCPR), which Viet Nam acceded to on 24 September 1982, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Viet Nam ratified 5 February 2015. The information received seems to raise concerns under ICCPR Art 7 and CAT Art. 2, which ensure the right to freedom from inhuman and degrading treatment or torture, ICCPR Article 10, which ensures that persons deprived of their liberty shall be treated with humanity and with respect for their inherent dignity, ICCPR Art. 9, which ensures the right to liberty and security of persons, ICCPR Article 19, which ensures the right to freedom of opinion and expression, ICCPR Article 14, which ensures the right to a fair trial guaranteed, and the duty to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies under the ICCPR and CAT. 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 on the measures taken to investigate the allegations of torture and ill treatment of Mr. Hoa during his interrogation and when he was summoned as witness. If no investigation has taken place, please explain why.
3. Please provide an explanation as to why Mr. Hoa was denied a defence counsel to represent him, and why the appeals by the defence counsel, including the attorney's request to meet with Mr. Hoa, were rejected.
4. Please provide an explanation as to why the details of the initial arrest of Mr. Hoa, the charges against him, the documents from the criminal proceedings and the judgment have not been made available to Mr. Hoa.
5. Please provide information as to the measures taken to address the complaints raised by Mr. Hoa in his denunciations, and on measures taken to remedy any violations of international human rights standards in the case of Mr. Hoa.
6. Please indicate what measures have been taken to ensure that human rights defenders and journalists in Vietnam 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.
7. Please provide an explanation as to what measures have been taken to revise and ensure the compatibility of the Criminal Code of Viet Nam with Article 19 of the ICCPR. If no such measures have been taken, please explain why.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such allegation letter in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and to the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Leigh Toomey
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

Michel Forst
Special Rapporteur on the situation of human rights defenders

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

Annex
Reference to international human rights law

Freedom from inhuman, degrading treatment or torture

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.

Furthermore, Article 7 of the International Covenant on Civil and Political Rights, (ICCPR) to which Vietnam is also party since 24 September 1982, provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." and article 10 ensures that persons deprived of their liberty shall be treated with humanity and with respect for their inherent dignity

Furthermore, we would like to draw the attention of your Excellency's Government to **article 15 of the Convention against Torture** which 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 also recall that paragraph **7c of Human Rights Council Resolution 16/23** urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;"

Freedom of liberty and right to security

The right to liberty and security of persons is enshrined in ICCPR Article 9, and ensures the freedom from arbitrary arrest or detention. An arrest will be arbitrary if it includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality (CCPR/C/GC/35 para. 12). Arresting or detaining an individual as punishment for the legitimate exercise of the rights as guaranteed by the Covenant constitutes a violation of Art. 9 (CCPR/C/GC/35 para 17).

Right to a fair trial

The right to a fair trial is guaranteed in Article 14 of the ICCPR. Article 14 Paragraph 3 includes several minimum standards that must be guaranteed anyone facing criminal charges. These include access to a lawyer (14(3)(b) and (d)), the right not to be

compelled to confess guilt (14 (3)(g)), and the right to be brought promptly before a judge or other officer authorised by law to exercise judicial power (Art. 9 (3) and CCPR/C/GC/35 para. 32). Lastly, adequate facilities for the preparation of the defence under Art. 14 (3)(b) includes the to documents and other evidence. As indicated by the Human Rights Committee, access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory CCPR/C/GC/32 para. 33. The right of access to information under ICCPR Art. 19(2) supplements this right. It ensures right of access to information held by public bodies, and includes records held by a public body regardless of the form in which the information is stored, its source and the date of production, CCPR/C/GC/34 para. 18. Lastly, Article 14 ensures the right to publicity of judgments. “All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large”, CCPR/C/GC/32 para. 28. Any restriction must be compatible with the requirements laid out in Art. 14 (1). In all cases, the judgement rendered in a criminal case or in a suit at law shall be made public, including the essential findings, evidence and legal reasoning, CCPR/C/GC/32 para. 29.

Freedom of expression

ICCPR Article 19 grants everyone right to freedom of expression. It protects, inter alia, political discourse, commentary on one’s own and on public affairs, discussion on human rights and journalism, CCPR/C/GC/34 para 11. The protection afforded to journalists under the Covenant is broad. As indicated by the Human Rights Committee, “the function of journalists includes not only full-time reporters and analysts, but also bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere”, Id., para. 44. As mentioned by the Human Rights Committee, a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. This entails a corresponding right of the public to receive media output (Id. para. 13).

Restrictions on the freedom of expression can only be justified by reference to the rights and freedoms of others, or on national security or ordre public, cf. Art. 19 (3). All restrictions must comply with the requirements of necessity and proportionality. However, the penalisation of a journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression, CCPR/C/GC/34 para 42.

Laws justified by national security, whether described by sedition laws or otherwise, can never be invoked to prosecute journalists or human rights defenders for their work, see CCPR/C/GC/34 para 30. Likewise, the arbitrary arrest or torture of individuals because of the exercise of their freedom of expression will under no circumstance be compatible with Article 19, CCPR/C/GC/34 para. 23.

We note the 2019 Concluding Observations by the United Nations Human Rights Committee concerning Viet Nam, where the Committee expressed its concerns “at

reports that persons, particularly human rights defenders, activists, and religious leaders, may face arbitrary arrests, detention, and incommunicado detention without charges. It is concerned of the excessive use of pre-trial detention in the absence of legal guarantees, such as appearance before a judge; access to a lawyer from the time of arrest; and the right to inform family members. The Committee is concerned that following release from custody, some persons are placed under de facto house arrest. It is concerned that under domestic legislation: (a) persons arrested or detained in cases related to national security crimes can be denied access to a lawyer during the whole investigation period; (b) persons arrested or detained on criminal charges may be remanded in custody on the authorization of a prosecutor, who may also decide on any subsequent extensions of custody, which can be indefinite in cases related to national security crimes; (c) a prosecutor, rather than a judge decides, on the lawfulness of detention of persons deprived of their liberty (arts. 2 and 9).” (CCPR/C/VNM/CO/3 para. 25)

We further note the report of the UN Office of the High Commissioner for Human Rights, prepared for the Working Group on the Universal Periodic Review, in its thirty-second session the 21 January – 1 February 2019, which indicates that “The United Nations country team reported that as at May 2018, an estimated 100–150 human rights defenders were in prison. Defenders were allegedly harassed, attacked, arrested, detained and ill-treated in custody for criticizing the Government or its policies, including its management of an environmental disaster in April 2016. Between 2014 and 2017, more than 70 defenders had been arrested and detained for charges under broad provisions of the Penal Code. The United Nations country team recommended that human rights defenders who had been sentenced to prison terms for peacefully expressing their views be released without delay.” (A/HRC/WG.6/32/VNM/2 para 24)

We would also like to refer your Excellency’s Government to 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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 6 (b) and c) of the same Declaration provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.

The duty to investigate alleged violations of human rights law

Lastly, we would like to draw the attention of your Excellency’s Government that the ICCPR and CAT include duties to investigate allegations of human rights violations. We first note that the duty to provide effective remedies in ICCPR Article 2 (3) includes

a general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies, see CCPR/C/21/Rev.1/Add. 13 para 15. For example, the duty to investigate applies in cases where individuals are attacked, including arbitrarily arrested, because of his or her freedom of opinion and expression, CCPR/C/GC/34 para. 23. Secondly, the CAT Article 12 places a duty on the State to “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”.