

**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 freedom of religion or belief**

REFERENCE:  
UA VNM 4/2019

20 November 2019

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; Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 42/22, 34/18, 42/16, 34/5 and 40/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the treatment and detention conditions of journalist **Nguyen Van Hoa** and environmental rights defender **Lê Đình Lượng**, following their public activism in the aftermath of the Formosa steel plant toxic spill.

Mr. Văn Hoá was arrested and detained on 11 January 2017 for his critical reporting and public advocacy in the aftermath of the Formosa environmental disaster in April 2016. Mr Văn Hoá was sentenced, following a short trial, to seven years' imprisonment and three years' house arrest. On 27 November 2017, he was transferred to An Diem Detention Centre in Dai Loc District, Quang Nam Province. To date, he remains in detention.

Mr. Lượng was arrested and detained on 24 July 2017 for his public advocacy and criticism on social media platforms of the Vietnamese government's response to environmental disasters in the country, including the Formosa environmental disaster in April 2016. He remains in detention.

Special Procedures have previously raised concern regarding the measures taken by your Excellency's Government in connection with the Formosa steel plant toxic spill, including measures against peaceful, public advocacy work in that regard. We note the allegation letter sent 10 August 2016 (AL VNM 5/2016), the urgent appeal sent 21 March 2017 (UA VNM 2/2017 Rev. 1), the urgent appeal sent 28 June 2017 (UA VNM 4/2017), the allegation letter dated 21 September 2017 (AL VNM 6/2017), the urgent appeal of 21

February 2018 (UA VNM 2/2018), the allegation letter sent 26 July 2018 (AL VNM 8/2018) and the urgent appeal sent 18 April 2019 (UA VNM 1/2019). We thank your Excellency's Government for its replies of 28 February 2017 (035/HR.VNM.2017), of 26 July 2017 (146/HR.VNM.2017), of 18 September 2017 (181/HR.VNM.2017), of 5 January 2018 (02/HR.VNM.2018), of 23 April 2018 (65/HR.VNM.2018) and of 29 October 2018 (179/HR.VNM.2018).

Moreover, Mr. Văn Hoá and Mr. Lương were the subjects of Opinions by the Working Group on Arbitrary Detention (WGAD) in August 2019 (A/HRC/WGAD/2019/44 and A/HRC/WGAD/2019/45, respectively). On those occasions, the Working Group found that the deprivation of liberty of Nguyễn Văn Hoá and Le Dinh Luong, being in contravention of articles 2, 6, 7, 8, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14, 16, 19, 21, 22, 25 (a) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V. The Working Group considered that, taking into account all the circumstances of these cases, in particular the risk of harm to Mr. Văn Hoá and Mr. Luong's health, the appropriate remedy would be to release both individuals immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

According to the new information received:

In early May 2019, **Mr. Văn Hoá** became aware that the prison authorities were intercepting his mail and restricted written communication between him and his family. On 13 May 2019, after he had queried why his letters were not reaching his family, he was beaten by the prison guards. He suffered injuries to his head and to his ribs. Since this assault, he has complained to his family that he is experiencing pain in his ears and is urinating more frequently. Aside from the pain medication that Mr. Văn Hoá receives from his family, he has not had access to any medical care or to a qualified medical practitioner to treat the injuries he suffered as a result of the beating.

Following the beating, Mr Văn Hoá was placed in solitary confinement. According to the prison authorities, this was to discipline him for not complying with prison rules and regulations. The prison authorities attempted to force his signature on a document confirming that he refused to abide by the prison's rules and regulations in an attempt to justify their assault.

Mr. Văn Hoá is expected to remain in solitary confinement for 6 months. For the first 10 days of his solitary confinement with his feet shackled. Currently, his cell contains a camera to monitor him 24 hours a day. He has access to natural light via a small window in his room and is only permitted to leave his cell once a month to see visitors. Mr Văn Hoá has suffered significant weight loss since his

time in isolation. In the circumstances where he is unable to communicate with other prisoners, or his family on a regular basis, his mental health is rapidly deteriorating.

An Diem Detention Centre, where Mr. Văn Hoá is being imprisoned, is located approximately 500 kilometres from his home town. Members of his family try to visit him every month, a visit which requires that they travel for 2 to 3 days. The trips are reportedly onerous, especially for elderly family members who have only been able to visit him on a few occasions. Family members were denied access to the prison by guards when they attempted to meet with Mr. Văn Hoá on 14 June 2019. Their next visit took place on 25 July 2019. Family visits are often cut short and are supervised by prison guards. This is compounding the effects of Văn Hoá's ill treatment in prison - the lack of regular and unhindered contact with family members have had a serious impact on his health.

Mr. Văn Hoá has received no response to complaints he submitted on 9 April 2019 to the Minister for Public Security and the Ha Tinh Provincial Security Police concerning the physical ill-treatment he was subjected to in 2017. Similarly, he did not receive any reply to the complaint he made following the May 2019 assault.

Mr. Văn Hoá's physical and mental health is poor. He is struggling with the prospect of spending a long time in detention with no prospect of release anytime soon. Mr. Văn Hoá was on hunger strike from 22 February to around 5 March 2019, and this had a significant effect on his physical health.

**Mr. Luợng** is currently being held at Nam Ha Prison in Ha Nam province, having been transferred there from Nghi Kim Detention Centre following his appeal, against conviction and sentence, on 18 October 2018. Over the past months, his physical and mental health have deteriorated considerably.

Nam Ha Prison is located approximately 250 kilometres from his family home. Adding to his sense of isolation and distance from his family and friends is the fact that he is permitted only one social visit a month, lasting only one hour, and which is always supervised by prison wardens. Mr. Luợng has recently been placed under 'disciplinary' status because he was accused of talking with other prisoners detained like him for having peacefully expressed their opinions and suggesting they work together to submit a petition to the National Assembly regarding violations of prisoners' rights in detention. As a result, he is barred from making monthly phone calls, barred from sending and receiving any letters, and barred from purchasing any food from the prison canteen. The last telephone contact Mr Luợng had with his family was in May 2019.

When members of his family try to visit him, obstacles are being created. Sometimes the wardens intervene before his visiting time is over, forcibly taking from him and hanging up the telephone that Mr. Luợng uses to communicate with visitors on the other side of the glass partition that separates him from his visitors. On 6 August 2019, upon arriving at the prison, his family were informed of a new prison regulation requiring them to purchase tickets to use the prison's transport system in order to visit Mr. Luợng. When one of the family members questioned this and requested official documentation confirming the purchase of the tickets was necessary, she was informed that she was no longer able to visit Mr. Luợng and was told to leave the premises. Mr. Luợng's other family members were permitted to attend. The prison authorities told a family member that if she continued to make complaints or raise questions, Mr. Luợng would suffer mistreatment in prison. On 9 August 2019, a family member submitted a complaint to the director of C10 department, which manages all prison facilities. There has been no response to this complaint.

Mr. Luợng's family is not permitted to send food or books to him. Further, serious restrictions have been placed on his ability to practice his religion and he has been denied access to a copy of the Bible. The prison authorities take any religious books that are sent to him, and in July 2019, a pastor was refused entry by prison wardens when he tried to visit Mr. Luợng. He is also prevented from participating in any religious activities in the prison.

Mr. Luợng's physical and mental health is fragile. He suffers from various medical problems, including high blood pressure, osteoarthritis pain, migraines and gout. He relies on medication provided to him by his family, and despite raising his health concerns with the prison authorities, he has not been seen by a medical practitioner. When he was being held in Nghi Kim Detention Centre, Mr. Luợng was told by the prison guards that he was sharing a cell with two inmates who were both HIV positive and he is now very concerned that he may have contracted the virus. To date, the prison authorities have refused his request to see a medical practitioner to test to see whether he is HIV positive.

As a consequence of this, and the fact he has been deprived of his liberty for over two years, where there is no prospect of release, and he is coming to terms with spending a long period of time in detention, his mental health is rapidly deteriorating. The refusal of the prison authorities to allow a religious pastor to visit him is also causing him considerable distress as he takes comfort in practicing his religion.

We reiterate our grave concern about the continued detention of Mr. Văn Hoá which represents a criminalization of his legitimate exercise of his right to freedom of expression. We reiterate our concerns that the legal basis for his 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. The persecutions of a person for the exercise of his or her freedom of expression is a violation of Article 19 of the International Convention on Civil and Political Rights (ICCPR), which Vietnam has been a party to since 1982. We also refer to the General Comment No. 34 (paragraph 23) of the UN Human Rights Committee, the highest UN institution to interpret the provisions of the ICCPR, in this respect.

Furthermore, we express further concern at the information received concerning the ill-treatment he has been subjected to whilst in detention. The beatings and threats suffered by Mr. Văn Hoá, together with his restricted conditions of detention, may amount to torture and ill treatment, in violation of article 5 of the Universal Declaration of Human Rights (UDHR); article 7 of the ICCPR; and articles 2 and 16 of the Convention against Torture, which Viet Nam ratified on 5 February 2015. We remind your Excellency's Government the absolute prohibition on torture as a peremptory norm of international law, and that any violation of that norm contravenes Viet Nam obligation's to guarantee these rights to everyone within their jurisdiction. We draw Your Excellency's attention to the fact that beyond a duration of two weeks, the continued solitary confinement of a person in detention may amount to torture (Rules 43, 44 and 45 of the UN Standard Minimum Rules on the Treatment of Prisons (2015 Rev)).

We recall that Mr. Lượng's treatment in detention, including the beatings and subsequent punishment in prolonged isolation he was subjected to, appears to be related to discussing with other prisoners their conditions of detention and treatment in detention in order to organise a complaint, which cannot be considered as an offence. As stated above, the punishment of a person because of the exercise of his or her freedom of expression is incompatible Article 19 of the ICCPR.

The alleged interference and limitations on Mr. Văn Hoá's and Mr Lượng's contact with their families may amount to a violation of their right to communicate with them as guaranteed under article 17 of the ICCPR and article 12 of the UDHR. In addition, Mr. their right to have contact with the outside world is provided for under rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) and principles 15, 19 and 20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. We would furthermore like to remind your Excellency's Government of rules 1, 2, 3, 13, 14, 24, 25, 27, 30, 31, 42, 65(3) and 66 of the Mandela Rules

In addition, the alleged prison's refusal to allow Mr. Văn Hoá outings for at least one hour a day during his 6-month solitary confinement, and the prison authorities' decision to place him in shackles as punishment for the first 10 days in that detention, appear to be in violation of rule 23 and rule 43(2), respectively of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

We further express concern at allegations that prison authorities have been denying Mr. Văn Hoá and Mr. Lương access to appropriate medical care while in detention, which appears to violate article 25 of the UDHR and article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) acceded to by Viet Nam on 24 September 1982. This provision 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. I also refer to the Committee on Economic, Social and Cultural Rights General Comment No. 14, paragraph.34 to that effect. The United Nations Standard Minimum Rules for the Treatment of Prisoners state that the provision of health care for prisoners is a State responsibility. In addition, with regard the uncertainty in which Mr. Lương is with regard whether he has contracted or been exposed to the HIV virus while in detention, the authorities' denial of appropriate medical care may be considered a form of cruel, inhumane or degrading treatment or punishment in violation of Article 5 of the UDHR and Article 7 of the ICCPR. The denial of medical test to determine whether he contracted that virus may compromise his health, and possibly his life.

The alleged interference and continued restriction imposed upon Mr. Lương to prevent him from practicing his religious beliefs in detention may violate his right to freedom of religion as guaranteed under Article 18 of the ICCPR and Article 18 of the UDHR. The Human Rights Committee's General Comment 22 in paragraph 8 specifies that "Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint."

Last, it is a matter of concern to us that the violations of Mr. Văn Hoá and Mr. Lương's rights appear to be inflicted upon them for having engaged peacefully in activities aimed at defending environmental rights. The peaceful exercise of fundamental human rights and liberties in the defense and protection of matters which are in the public interest – such as the protection of the environment - should never be a crime; their criminalisation should on the contrary be prohibited and punished under the law. In this connection, we would like to refer to 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 articles 1, 2, 6 (b) and c), and article 12, paragraphs 2 and 3.

We urge your Excellency's Government to immediately and unconditionally release Mr. Văn Hoá and Mr. Lương. We also appeal to your Excellency's Government to ensure that they promptly receive appropriate medical care; that

Mr. Luong is afforded access to a HIV test; that the imposition of ‘disciplinary’ status on Mr. Luong is lifted; and that the two men’s right to maintain regular contact with their families is facilitated and not interfered with.

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 comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the measures taken to investigate the allegations that Mr. Văn Hoá has been subjected to beatings to punish him for having sought, in association with other prisoners, to complain about their conditions of detention and treatment; and that he has been held in solitary confinement ever since, and reportedly for a duration of six months. If no investigation has taken place please explain why, and how this is compatible with Vietnam’s obligations of investigation under the CAT.
3. Please provide information on the measures taken to investigate allegations that Mr. Luong has been punished with disciplinary sanctions for having sought to organise a complaint about their treatment in detention; allegations that he requested to be HIV-tested and that this was refused by the prison administration; as well as the restrictions imposed on his contacts with outsiders, including his family, and on his right to freedom of religion and belief. If no investigation has taken place please explain why, and how this is compatible with Vietnam’s obligations of investigation under the ICCPR, the ICESCR and the CAT.
4. Please provide information as to the measures taken to address the complaints raised by Mr. Văn Hoá and Mr. Luong in their attempts to complain about their treatment and detention conditions, and to remedy any violations of international human rights standards in the case of Mr. Văn Hoá and Mr. Luong.

5. Please provide detailed information on the current physical and mental health conditions of Mr. Văn Hoá and Mr. Lương, along with information on what steps have been taken to allow their access to appropriate medical care.
  
7. 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.

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.

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

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

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