

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; 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

Ref.: AL VNM 6/2022
(Please use this reference in your reply)

2 November 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; 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 43/16, 51/8, 51/21 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received, including follow-up on previous communications, concerning **18 Vietnamese human rights defenders, journalists, and activists, who have been allegedly arbitrarily arrested and deprived of their liberty for ostensibly exercising their right to freedom of expression and opinion, sentenced based on vague legal provisions, and in some cases, allegedly subjected to torture and other forms of ill-treatment during pretrial detention.**

The majority of the cases mentioned below have been addressed in previous communications by Special Procedures mandate holders, referenced AL VNM 5/2020, AL VNM 4/2021, and AL VNM 6/2021, as well as opinions by the Working Group on arbitrary detention. We thank your Excellency's Government for its response dated 4 February 2021 to the letter VNM 5/2020. In this regard, we would like to raise serious concerns about provisions in the Criminal Code of Viet Nam permitting the suspension of fundamental safeguards, notably the access to a lawyer and the contact with the family, throughout the investigation period, which exposes defendants to an increased risk of torture and ill-treatment and undermines the principles of fair trial and due process of law.

According to the information received:

1. Mr. Nguyễn Lâm Thắng

Mr. Nguyen Lan Thang is an independent journalist and activist. As a citizen journalist, Mr. Thang has documented peaceful demonstrations on human rights issues and has been an active advocate for human rights promotion and civil society development.

On 5 July 2022, Mr. Thang was arrested by the Investigation Bureau of the Hanoi Police on charges of "making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam", under article 117 of the 2015 Criminal Code. It is unknown if he was properly presented with the arrest warrant.

On the same day, the Police visited Mr. Thang's house, presented a search warrant to his family, and informed them that Mr. Thang had been arrested. The Police searched the house, and confiscated various items: laptops, flycams, cameras, SIM cards, hard drives, all the books on politics, and personal documents, including from his family members. To date, the items have not been returned.

Since his arrest, Mr. Thang has been in Detention Center No. 1 in the Tu Liem District of Hanoi. He has not been permitted to receive any family visits, nor meet with his lawyers. Although Mr. Thang suffers from asthma and digestive diseases, the request from his family to deliver medicines is yet to be approved.

2. *Mr. Bui Tuan Lam*

Mr. Bui Tuan Lam is a human rights activist and street vendor who runs a beef noodle stall in the city of Da Nang, Hai Chau district.

On 7 September 2022, Mr. Lam was arrested on charges of "making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam" under article 117 of the 2015 Criminal Code. Mr. Lam was accused of creating and posting online content deemed to distort the guidelines and policies of the Communist Party of Viet Nam.

On 16 November 2021, just a few days after posting a video on his Facebook account where he made a parody of the Turkish celebrity chef Nusret Gökçe serving food to the Vietnamese Minister for Public Security, Mr. Lam was summoned at his home and questioned by Police. The video, which became viral in Viet Nam, was perceived as mocking the Minister of Public Security, who was earlier caught on camera eating a \$2,000-worth gold-encrusted steak at Gökçe's restaurant in London, raising doubts on the Minister's affordability of the meal due to the modest official salaries and the ongoing anti-corruption campaign in Viet Nam.

It is unclear whether Lam has been arrested specifically for the parody video. According to Police, Mr. Lam is also a member of many "civil society organizations" considered as anti-State and anti-Party groups. If convicted, Mr. Lam could receive a sentence up to 20 years in prison.

3. *Mr. Dang Dang Phuoc*

Mr. Dang Dang Phuoc is a music lecturer at Dak Lak Education Institute, resident in Dak Lak province, who frequently shares posts on his Facebook account regarding Viet Nam's political and social issues, including human rights violations.

On 7 September 2022, Mr. Phuoc commented the arrest of Mr. Lam through a Facebook post criticizing the Police mistreatment of the activist.

On 8 September 2022, the Police searched Mr. Phuoc’s house and arrested him on charges of “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam” under article 117 of the 2015 Criminal Code.

According to State media, since 2019 Mr. Phuoc has reportedly taken advantage of the social network Facebook to compile and publish articles and videos with content distorting and opposing the Socialist State of Viet Nam. Authorities have repeatedly asked Mr. Phuoc to cease violating the law, but Mr. Phuoc reportedly failed to comply.

Currently, Mr. Phuoc’s case is under investigation by the Investigation Security Agency and Dak Lak Provincial Police. If convicted, Mr. Phuoc could receive a sentence up to 20 years in prison.

4. Mr. Trương Châu Hữu Danh

Mr. Trương Châu Hữu Danh is a Vietnamese journalist, born in 1982. He worked for a State-owned newspaper prior to founding his independent journalism platform “Báo Sạch”, in 2019. Mr. Danh is well known for his advocacy against corruption, through the publication of articles, on social media and journalism platforms, regarding corruption cases reportedly involving Government officials.

On 4 September 2018, while he was still working as a journalist at *Nông thôn Ngày nay* Newspaper, a group of unidentified men came to Mr. Danh’s house and threatened his family to compel Mr. Danh to immediately remove all his posts about the misconduct by the government in Quảng Trị Province. The next day, having refused to delete his posts, Mr. Danh was subjected to threats and intimidation. He received a phone call (from number 01212478994) threatening to cut his head off, and a dead dog’s head was sent to his house, as a form of intimidation.

On 14 January 2019, at around 2 pm, the police, security officers and masked men cordoned the vehicles of Mr. Danh and other activists, who were conducting an investigation into a potential case of State corruption in Bình Tân District. They were left in a dead-end alley overnight without food. The next morning, the security forces released them after the imposition of administrative fines on Mr. Danh and the other activists accusing them of parking their cars illegally causing a traffic jam.

From May to October 2020, Mr. Danh led a media campaign denouncing violations of due process principles and challenging decisions made by the Chief Justice of the Supreme People’s Court, who was the head of the prosecutor’s office. In this context, Mr. Danh published numerous articles on social media platforms exposing alleged suspicious assets of the Communist Party Secretary in Binh Duong province and denouncing the Party Secretary in Đắk Lắk Province. His articles reportedly received increased attention from the public.

On 17 December 2020, Mr. Danh was informed by his Bank that money was withdrawn from his account by mistake requiring him to visit the Cần Thơ branch. Upon arrival, the police arrested him without presenting an arrest warrant.

On the same day, the media reported that the Security Investigation Agency of Cần Thơ Police filed criminal charges against Mr. Danh and arrested him on accusations of “abusing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and individuals” under article 331 of the 2015 Criminal Code. Consequently, the police arrested four other members of Báo Sạch.

In May 2021, the Security Investigation Agency of Cần Thơ Police indicted Mr. Danh for using corruption cases for personal financial gains and for causing social disorder. During the investigation process, the Cần Thơ Police instructed investigations in Bình Phước, Quảng Ninh, Đắk Nông, Bắc Ninh, Quảng Trị, Ninh Bình, Khánh Hòa, Thanh Hóa, and Phú Yên districts.

In August 2021, the Cần Thơ Police finished the investigation process and charged Mr. Danh and other members of Báo Sạch with “abusing democratic freedoms which violates the interests of the state”. Since his arrest and throughout investigations, Mr. Danh was denied family visitation rights. He was further held in solitary confinement for the first four months in poor conditions.

In October 2021, the People’s Court of first instance in Thới Lai Town, Cần Thơ City, held the first court hearing. On 26 December 2021, Mr. Danh and the four other members of Báo Sạch were convicted, and Mr. Danh was sentenced to four and a half years imprisonment. This sentence was confirmed by the appellate Court, in January 2022.

Mr. Danh is currently held in Long Xuyên Detention Center, in Cần Thơ City. He was reportedly interrogated by the police for another set of criminal charges. It is feared that Mr. Danh may be facing additional criminal charges for leaking State secrets, carrying a sentence of up to 15 years in prison.

5. *Mr. Bui Van Thuan*

Mr. Bui Van Thuan is a social media activist and member of the Brotherhood for Democracy (BFD) since 2013. He has a Facebook page entitled “Cha Đà Dân Tộc,” which is a wordplay on “Cha Già Dân Tộc” (Father of the Nation, i.e. Ho Chi Minh), where he posts news and jokes critical of the Communist Party and the corruption of the Government. He has also been criticising the Government policies in handling the COVID-19 pandemic.

In June 2017, together with other activists, he founded a group called Legal Research with the aim of designing a new “democratic model” for Vietnam, and in October 2017, he joined the BFD Communication group, in charge of Facebook and Fan Page’s administration.

On 30 August 2021, around 8 AM, a number of police officers in uniform and plainclothes surrounded Mr. Thuan's house, and three men in medical protective clothing entered to allegedly perform COVID testing. Once inside, they went to Mr. Thuan's bedroom, arrested him with handcuffs and read him an arrest warrant. During the arrest, security officers confiscated electronic devices from Mr. Thuan's house.

In October 2021, Cau Cao Detention Center officials notified Mr. Thuan's family that he was admitted to the Thanh Hoa Provincial hospital, suffering from gout and liver infection and that he was detained pending investigation on charges of "making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam" under article 117 of the 2015 Criminal Code.

Since his arrest, Mr. Thuan has been denied family visitation rights, despite multiple requests submitted by the family.

6. *Le Anh Hung*

Mr. Le Anh Hung is a member of the Independent Journalist Association of Viet Nam (IJAVN) and human rights defender. He was a prominent contributor to the Voice of America (VOA) Vietnamese service until his arrest on 5 July 2018. Mr. Hung was the subject of a previous communication sent by Special Procedures mandate holders on 17 September 2020 (AL VNM 3/2020).

Mr. Hung was arrested on 5 July 2018 on charges of "abusing democratic freedoms" under article 331 of the 2015 Criminal Code.

In 2019, Mr Hung was transferred to psychiatric hospital multiple times, to be evaluated and forced-fed after hunger strikes. He was then forcibly committed to a psychiatric hospital from May 2019 to May 2022. His mother saw him in December 2019, at the hospital. He reported receiving high doses of anti-psychotic medications. The family has not been given information on the grounds for which Mr. Hung has been committed to psychiatric hospital, except that he was on hunger strike. Prior to this, on the occasions that Mr. Hung's mother and lawyer have been able to visit him, in October 2018 and January 2019, they reported him to be in good health and spirit. According to his mother and associates, he did not suffer from mental illness prior to his arrest.

Family visitation rights have been denied on multiple occasions, both when he was detained in prison and when he was committed to medical institutions.

Mr. Hung was transferred back to prison from hospital, and on 30 August 2022, he underwent his first instance trial. Neither his lawyer nor his family were informed about the trial. Reportedly, the Court did not inform them since Mr. Hung refused to have a defense counsel. Mr. Hung was sentenced to five years in prison.

Neither Mr. Hung's family nor lawyer have seen him since he was in hospital before his and remain seriously concerned about his mental and physical health.

7. *Ms. Can Thi Theu and Mr. Trinh Ba Tu*

Ms. Can Thi Theu and Mr. Trinh Ba Tu are land rights activist and human rights defenders in Viet Nam. Ms. Theu and Mr. Tu were the subjects of previous communications sent by Special Procedures mandate holders on 22 November 2021 (AL VNM 6/2021) and 10 November 2020 (VNM 5/2020). Furthermore, Ms. Theu was the subject of the WGAD Opinion 2017/79 (A/HRC/WGAD/2017/79), which found her detention arbitrary, urged your Excellency's Government to immediately take steps to remedy the situation of Ms. Theu to bring it into conformity with the relevant international norms, including by releasing her immediately, especially in light of her health condition, and to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention.

On 5 May 2021, they were sentenced to eight years imprisonment followed by three years of probation on charges of "making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam" under article 117 of the 2015 Criminal Code. Both of them have been detained in Hoa Binh Detention Center, in Thong Nhat ward, Hoa Binh city, reportedly held in solitary confinement and denied visitation rights since May 2021. On 24 December 2021, the appeal court upheld the sentence against them.

On 22 February 2022, Ms. Theu was moved to Camp 5 in Thanh Hoa Province, and Mr. Tu was moved to Camp 6 in Nghe An Province, hundreds of kilometres away from their families. Since March 2022, she has been allowed to receive family visitations.

Ms. Theu has been suffering from an eye infection due to poor detention condition, placed in a cell with no proper ventilation, or sufficient water, in extreme heat.

Mr. Tu suffered from physical sequels, including kidney contusions, due to the alleged brutal beating during his arrest by Hoa Binh police.

On 6 September 2022, after writing a denunciation letter, Mr. Trinh Ba Tu was reportedly taken to a room in Detention Center No.6 and beaten by prison guards for 4 to 6 hours. Mr. Tu was then put in solitary confinement with shackles for ten days and was later transferred to the criminal area of Center No. 6. After the beating, Mr. Tu reportedly went on hunger strike.

On 5 October and 15 October 2022, Mr. Tu's father travelled 300 km to visit his son in prison, but he was denied visitation rights twice by prison authorities.

8. *Mr. Trinh Ba Phuong*

Mr. Trinh Ba Phuong is a land rights defender. Mr. Phuong was the subject of previous communications sent by Special Procedures mandate holders (AL VNM 6/2021, and AL VNM 5/2020).

On 15 December 2021, Mr. Phuong was convicted and sentenced to ten years imprisonment followed by five years of probation on charges of “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam” under article 117 of the 2015 Criminal Code. The sentence was confirmed by the appeal court on 17 August 2022. His relatives were not allowed to attend the trial and were reportedly subjected to harassment and physical violence by plainclothes security forces outside the court.

On 24 August 2022, Mr. Phuong was allowed to receive the first family visit since his arrest. For almost two years, he was detained in solitary confinement and denied family visitation rights, despite multiple requests submitted by the family.

Mr. Trinh Ba Phuong has now been transferred to An Diem prison, about 1000 Km from his home. In September 2022, his family visited him in prison and reported that the long distance between their home and An Diem made the visit more difficult and costly.

9. *Ms. Nguyen Thi Tam*

Ms. Nguyen Thi Tam is a woman human rights defender and land rights activist. Ms. Tam was the subject of previous communications by Special Procedures mandate holders (AL VNM 6/2021) and (AL VNM 5/2020).

On 15 December 2021, Ms. Tam was convicted and sentenced to six years imprisonment followed by three years of probation on charges of “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam” under article 117 of the 2015 Criminal Code. She was allowed to meet her lawyers only after the investigation period. The appeal court confirmed the sentence on 17 August 2022. Her relatives were not allowed to enter the courtroom.

On 24 August 2022, Ms. Tam was allowed to receive the first family visit since her arrest. She was denied family visitation and not allowed to receive her prescribed medication. She has further been denied acupuncture treatment for the ligament pain that she suffers from due to a motorcycle injury several years earlier.

On 21 September 2022, Ms. Tam transferred to Gia Trung Prison, about 1,200 km from her hometown.

10. *Ms. Pham Doan Trang*

Ms. Pham Doan Trang is an author, blogger, journalist, publisher, and democracy activist. She received the Martin Ennals Award in June 2022. Ms. Trang was the subject of several previous communications by Special Procedures mandate holders (AL VNM 3/2020; AL VNM 5/2020, and AL VNM 6/2021), and an opinion by the Working Group on Arbitrary Detention (A/HRC/WGAD/2021/40), which found her deprivation of liberty arbitrary; urged your Excellency's Government to immediately take steps to remedy the situation of Ms. Trang to bring it into conformity with the relevant international norms, including by releasing her immediately, and to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention.

On 3 December 2021, Ms. Trang was sentenced to nine years imprisonment for "making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam" under article 117 of the 2015 Criminal Code. The sentence was confirmed in appeal on 25 August 2022. In both trials, her family was not allowed inside the courtroom.

Ms. Trang was held incommunicado in Detention Center N1 Hoa Lo, in Hanoi, without access to a lawyer or her family since the date of her arrest. On 18 October 2021, a year after her arrest, Ms. Trang was allowed to meet with her lawyer for the first time. She was held in solitary confinement for over a year and a half.

During detention, her right to family visitation has been systematically denied, despite eleven requests by her family. On 7 September 2022, Ms. Trang was allowed to meet her mother and brother for the first time since her arrest in October 2020.

On 1 October 2022, without any prior notification to her family, Ms. Trang was transferred to An Phuoc prison, in Binh Duong province. Ms. Trang's family was allowed to visit her and bring supplies, including her guitar, on 12 October 2022. Her relatives reported Ms. Trang's health had deteriorated: her legs were swollen to the point she could not walk by herself but needed to be transported in an electric chair by a prison official.

Ms. Trang is suffering from several health conditions, including anterior cruciate ligament rupture, menorrhagia, anaemia, low blood pressure, and urinary tract infection. She is allegedly not receiving adequate health care in detention.

11. *Ms. Nguyen Thuy Hanh*

Ms. Nguyen Thuy Hanh is a human rights defender. Ms. Hanh was the subject of a previous communication by Special Procedures mandate holders, sent on 22 November 2021 (AL VNM 6/2021), to which your Excellency's Government is yet to respond.

On 7 April 2021, Ms. Hanh was arrested on charges of “making, storing, or spreading information, materials, or items for the purpose of opposing the State of the Socialist Republic of Viet Nam” under article 117 of the 2015 Criminal Code. Her first instance trial is still pending.

Ms. Hanh has been held incommunicado at pre-trial detention centre No. 2 in Hanoi, denied all contact with the outside world, including her lawyer and family. This latter is, however, permitted to bring her antidepressants and other supplies.

At the time of her arrest, Ms. Hanh suffered depression, for which she was pursuing medical treatment. She was reportedly admitted to a psychiatric hospital for medical assessment from 7 December 2021 to 7 January 2022, and then again in April 2022.

On 7 May 2022, Ms. Hanh was able to receive the first family visit, while still at the psychiatric hospital where she is undergoing compulsory medical treatment for depression and insomnia. Ms. Hanh reported having spent 13 months in harsh detention conditions and having attempted to commit suicide many times.

12. Mr. Do Nam Trung

Mr. Do Nam Trung is a social media activist and human rights defender, focussing on press freedom, human rights and democracy. Mr. Trung was the subject of a previous communication by Special Procedures mandate holders, sent on 1 November 2021 (AL VNM 4/2021), to which your Excellency’s Government is yet to respond.

On 6 July 2021, Hanoi Police arrested Mr. Trung on charges of “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam” under article 117 of the 2015 Criminal Code. Mr. Trung was allowed to meet with his lawyer for the first time on 11 November 2021.

On 16 December 2021, he was convicted and sentenced to ten years imprisonment for conducting anti-State propaganda. An appeal is currently pending.

On 26 May 2022, Mr. Trung was transferred from the Nam Dinh Prison to Thanh Hoa Province’s Prison Camp 5, located 200 kilometers away from his home. In May 2022, his family was allowed to visit Mr. Trung in prison for the first time. Trung was reported to be in good health, despite having pre-existing health conditions such as anxiety and ulcers.

13. Mr. Dinh Van Hai

Mr. Dinh Van Hai is a human rights defender and social media activist, focussing on human rights, land, and environmental rights. Mr. Hai was the subject of a previous communication by Special Procedures mandate holders,

sent on 1 November 2021 (AL VNM 4/2021), to which your Excellency's Government is yet to respond.

On 7 October 2021, Lam Dong and Ba Ria Police arrested Mr. Hai on charges of "making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam" under article 117 of the 2015 Criminal Code. Mr. Hai was reportedly transferred to Mat Detention Center at Da Lat City, in Lam Dong Province, for pre-trial detention.

On 22 February 2022, the Lam Dong Provincial Police informed Mr. Hai's family that he was admitted to the hospital for being severely ill and gave them his room number. However, when his family attempted to visit him, they were refused entry due to COVID-19 restrictions. Subsequently, the police contacted the family once more indicating that Mr. Hai's health has stabilised and that he was transferred back to the Detention Center.

On 26 April 2022, Mr. Hai was sentenced to five years in prison. Throughout his detention, Mr. Hai was denied all visits by his family, despite multiple requests. To date, he has not been able to see his family.

14. Mr. Lê Trọng Hùng

Mr. Lê Trọng Hùng is an independent journalist and the founder of the independent news channel "Chấn hưng Việt Nam TV" (CHTV). Mr. Hùng was the subject of a previous communication by Special Procedures mandate holders, sent on 1 November 2021 (AL VNM 4/2021), to which your Excellency's Government is yet to respond.

On 14 March 2021, Mr. Hùng announced, through his Facebook page, that he was running as an independent candidate in the National Assembly elections.

On 27 March 2021, Mr. Hùng was arrested on charges "making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam" under article 117 of the 2015 Criminal Code. Mr. Hùng was allowed to meet with his lawyer for the first time on 22 November 2021.

On 31 December 2021, in a trial that reportedly lasted only four hours, Mr. Hùng was sentenced to five years imprisonment followed by five years of probation. Despite Mr. Hùng's requests, he was denied a pen and paper to write his appeal application, which caused him to miss the deadline for the appeal.

On 19 April 2022, the appellate court upheld Mr. Hung's five-year sentence. Neither Mr. Hung's family nor his lawyer were notified about the trial. On 22 April 2022, Mr. Hung was allowed to meet his family for the first time since his arrest. Mr. Hùng reported that his sight has been deteriorating. His family has been further subjected to harassment and intimidation by security officers.

On 25 May 2022, Mr. Hung was transferred to Nghe An Prison No. 6, far away from his hometown. His family was not informed about the transfer but was able to visit him in June 2022.

15. *Mr. Lê Văn Dũng*

Mr. Lê Văn Dũng, also known as Le Dung Vova, is a freelance journalist. Mr. Dũng was the subject of a previous communication by Special Procedures mandate holders, sent on 1 November 2021 (AL VNM 4/2021).

On 30 June 2021, Mr. Dũng was arrested in Ung Hoa District, in Hanoi City, on charges of “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam” under article 117 of the 2015 Criminal Code. He was transferred to Detention Center N1. On 20 January 2022, Mr. Dũng was allowed to meet with his lawyer.

On 23 March 2022, in a two-hour trial, Hanoi People’s Court sentenced Mr. Dung to five years in prison and five years on probation. Mr. Dung’s family was not allowed inside the courtroom. This sentence was confirmed in appeal, on 16 August 2022.

On 25 August 2022, Mr. Dung’s wife was able to visit him in prison for the first time since his arrest.

16. *Mr. Trần Quốc Khánh*

Mr. Trần Quốc Khánh is a social media activist. Mr. Khánh was the subject of a previous communication by Special Procedures mandate holders, sent on 1 November 2021 (AL VNM 4/2021).

On 6 March 2021, Mr. Khánh announced in a Livestream on his personal Facebook page that he would run as an independent candidate in the National Assembly elections. On 10 March 2021, he was arrested by the Ninh Binh province authorities, on accusations of “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam”, and was detained in Binh Son Detention Center, Yen Mo District, Ninh Binh province.

On 28 October 2021, he sentenced to six years and six months imprisonment followed by two years of probation. This sentence was confirmed in appeal on 17 February 2022. Mr. Khánh was denied his right to defence during trial, with his lawyer and family being denied entry to the room and has only recently had the right to family visitation.

Mr. Khánh reportedly suffers from high blood pressure, severe gout and stomach pain, and mental stress.

17. *Mr. Lê Chí Thành*

Mr. Lê Chí Thành is a former police officer in Camp Z30D in Tan Duc commune, Ham Tan district, the largest prison camp in Vietnam. In July 2020, he was dismissed from his job for denouncing alleged corruption and wrongdoing by prison management. Mr. Thành was the subject of a previous communication by Special Procedures mandate holders, sent on 1 November 2021 (AL VNM 4/2021).

On 14 April 2021, Mr. Thành was arrested on charges of “resisting a law enforcement officer in the performance of his/her official duties” under article 330 of the 2015 Criminal Code, in connection with a stop and search by the traffic police of Thu Duc City, in March 2021, where he was accused of not having car registration papers and driving in the wrong lane.

During his pre-trial detention, Mr. Thành was allegedly subjected to torture. He was beaten and hung by his arms and legs for seven days. As a result, he sustained injuries in his hands and feet. Photographs from his trial show that his fingers were black and that he could not stand upright. In addition, he is reportedly suffering from scabies. He did not receive treatment for his injuries.

On 14 January 2022, Mr. Thành was sentenced to two years imprisonment. During the trial, Mr. Thành informed the judge about his alleged torture in detention, but no investigation was instructed. After the announcement of the sentence, the prosecution added the new charge of “abusing democratic freedoms” under article 331 of the 2015 Criminal Code. The initial sentence was confirmed in the appeal trial on 13 April 2022, and another trial date would be set for the new charges added by the prosecution.

On 22 June 2022, Mr. Thành was sentenced to an additional three years in prison on charging of “abusing democratic freedoms”. According to the indictment, Mr. Thanh had used his social media accounts to publish videos and posts that defamed his former supervisor and another colleague.

Since his arrest and detention, Mr. Thành was denied family visitation rights. Despite several requests, and an attempt to convince the detention centre’s administration, his family has been systematically denied access.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern about the apparent systematic violations of the fundamental human rights of human rights defenders, journalists and activists, through alleged arbitrary arrest, detention, unfair trials and criminal convictions, in relation to the mere exercise of their right to freedom of expression and opinion. These allegations, if confirmed, constitute blatant violations of international human rights law, in particular articles 9, 14, 19, 25 and 26 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Viet Nam on 24 September 1982.

We are further alarmed by the violations of the above mentioned individuals' rights, notably the reported prolonged incommunicado detention, including in solitary confinement, denial of due process rights including the right to defence, to be promptly

brought before a judge and to contest the legality of their detention, in addition to allegations of torture and other forms of ill-treatment. In this regard, we would like to remind your Excellency's Government that the freedom from arbitrary detention and from torture and other cruel, inhuman or degrading treatment or punishment are non-derogable rights under international law that must be respected and protected under all circumstances and that legal and procedural safeguards against such acts must not be subject to measures that would circumvent this right. We would also like to remind your Excellency's Government that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment (paragraph 27 of General Assembly Resolution 68/156) and that prolonged solitary confinement of the detained or imprisoned person, may amount to acts prohibited by article 7 of the ICCPR (paragraph 6 of General Comment No. 20 of the Human Rights Committee). Furthermore, we would like to underline that under the Convention Against Torture (CAT), ratified by Viet Nam on 5 February 2015, the Government has an obligation to prevent acts of torture and ill-treatment (art. 2), to promptly and impartially investigate allegations (art. 12), and prosecute those responsible (articles 4 and 5).

We would like to reiterate our previously detailed concerns about the vague legal provisions, such as "propaganda against the State" (article 117 of the Criminal Code) or "abusing democratic freedoms" (article 331 of the Criminal Code), used to criminalise the free expression of opinion. The Working Group on arbitrary detention has previously indicated to your Excellency's Government (see, e.g. A/HRC/WGAD/2021/40, para. 69) that the principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law, and regulate their conduct accordingly. This clarity and precision prevent unnecessary and disproportionate use of criminal provisions to limit the legitimate activities of human rights defenders, civil society actors and social media activists in the country. In light of these legal shortcomings, we respectfully urge your Excellency's Government to halt the application of articles 117 and 331 of the Criminal Code, bring it in compliance with internal human rights norms, notably article 19 of the ICCPR, and immediately release all individuals who have been sentenced for the mere exercise of their right to freedom of expression and of association.

It is further reported that the abovementioned cases are part of a wider pattern of judicial persecution of social media activists and human rights defenders in Viet Nam, which is exacerbated when they engage with the UN in the field of human rights. As highlighted in the 2021 report of the Secretary-General on cooperation with the UN, multiple UN actors have addressed alleged surveillance, cyber-attacks, intimidation, passport confiscation, arbitrary arrest and detention, and heavy sentencing against those who cooperate or attempt to cooperate with the UN. There is concern that this contributes to an environment of fear leading to self-censorship and deterring others from cooperating or sharing information with the UN (A/HRC/48/28, para. 129, and Annex I, para. 123).

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.

We are issuing this appeal in order to safeguard the rights of the abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

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 factual and legal basis for the arrest, detention, charging and sentencing of the above-mentioned individuals, and explain how these measures comply with Viet Nam's obligations under international human rights law.
3. Please explain whether the abovementioned individuals have had regular and confidential access to a lawyer immediately after their arrest, throughout the detention, trial and appeal. If not, please explain how this is in line with international human rights standards under articles 9 and 14 of the ICCPR and whether they have been able to receive visits from their families, and to communicate directly with them, providing dates. Please also provide information on the measures taken to safeguard the abovementioned individuals' right to a fair trial.
4. Please provide information on any investigations which may have been undertaken, or which are foreseen, with regard to each of the alleged acts of torture or cruel, inhuman or degrading treatment or punishment detailed above. If no such investigations have been initiated, please explain how this is compatible with the human rights obligations of Viet Nam.
5. Please provide information on their health status and the type of health care services provided to those requiring medical assistance.
6. Please provide detailed information on measures taken or foreseen to review articles 117 and 331 of the Criminal Code and ensure their compatibility with articles 9 and 19 of the ICCPR. If no such measures have been taken, please explain why.
7. Please elaborate upon the measures taken by your Excellency's Government to ensure that information concerning human rights, elections and other issues of public interest is freely disseminated in the media. In particular, please explain how the apparent restrictions on the transmission and publication of information detailed above, are in line with your Excellency's Government's obligations under article 19 of the ICCPR.
8. Please indicate what measures have been taken to ensure that human rights defenders and lawyers in Viet Nam are able to carry out their

peaceful and legitimate work, including in cooperation with the UN, in a safe and enabling environment without discrimination, fear of threats or acts of intimidation and harassment of any sort, in line with your Excellency's Government's obligations under article 26 of the ICCPR.

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.

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 cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

In light of the allegations of intimidation and reprisals for cooperation with the United Nations on human rights contained in this communication, we reserve the right to share it – and any response received from your Excellency's Government - with other UN bodies or representatives addressing the issue, in particular the senior United Nations official designated by the Secretary General to lead the efforts within the United Nations system to ensure a coordinated and improved response to intimidation and reprisals.

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

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

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

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Vietnam on 24 September 1982.

We would like to bring to your Excellency's Government attention 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.

We would like to also bring to the attention of your Excellency's Government to article 12, coupled with article 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Viet Nam acceded on 24 September 1982, which enshrines the right of everyone, including people prisoners and detainees, to the enjoyment of the highest attainable standard of physical and mental health. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR Committee) reiterates that "States are obliged 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." Additionally, we would like to refer to the Mandela Rules, adopted unanimously by the UN General Assembly (A/RES/70/175), which recognize the responsibility of States to provide health care for prisoners, free of charge without discrimination (rule 24), paying special attention to those with special healthcare needs or with health issues that hamper their rehabilitation (rule 25) and indicate that prisoners requiring specialized treatment shall be transferred to specialized institutions or to civil hospitals (rule 27).

Moreover, we wish to refer to the report of the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which he made reference to the fact that "[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life" and that "[v]iolations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty".¹ He also stressed that "for the right to health to be enjoyed in detention centres, health-care facilities, goods and services must be available, accessible, acceptable and of good quality".² In addition, the former Special

¹ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/38/36, para. 18.

² *Ibid.* para. 34.

Rapporteur urges States to “[f]ully abide by, and implement, the Nelson Mandela Rules, in particular as regards the provision of health care in prisons”³.

Furthermore, we would like to refer your Excellency's Government to General Comment 14 of the CESCR Committee, which states that the right to health contains the following interrelated and essential elements: Availability, Accessibility, Acceptability and Quality (GC 14, para. 12). In particular, we wish to stress that the element of accessibility contain the dimensions of non-discrimination and physical accessibility, among others. In this connection, the CESCR Committee states that the obligations to *protect* include, *inter alia*, the duties of States to take measures to protect all vulnerable or marginalized groups of society (GC 14, para. 35).

We would also like to reiterate your Excellency's Government of its obligation under the International Convention on the Elimination of Discrimination against Women (CEDAW) through its ratification on 17 February 1982, in particular article 7 which provides that States shall take appropriate measures to eliminate discrimination against women in the political and public life of the country, including the right to participate in non-governmental organizations and associations concerned with the public and political life of the country.

As stressed by the Working Group on Discrimination against Women and girls in one of its thematic report to the Human Rights Council (A/HRC/23/50), stigmatization, harassment and outright attacks are used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex, sexual abuse or rape; they may experience intimidation, attacks, death threats and even murder. Violence against women defenders is sometimes condoned or perpetrated by State actors. The Working Group recommended to accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfil women's human rights and to improve the enabling conditions for women's participation in political and public life.

In its report to the Human Rights Council on Women Deprived of liberty (A/HRC/41/33), the Working Group stresses that women human rights defenders, perceived as challenging traditional notions of family and gender roles in society, are increasingly at risk of facing criminalization and detention as a result of their legitimate public activism, and are likely to be targets of criminal persecution and imprisonment. It has recommended States to support women's engagement in public and political life, including the work of women human rights' defenders, and eliminate any laws or policy measures designed to criminalize the public roles of women.

We would also like to refer your Excellency's Government to the General Assembly Resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to, respectively, publicly, acknowledge the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such

³ *Ibid.* para. 98 (a).

violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.

We would like to refer your Excellency's Government to article 9 of the ICCPR whereby everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention, and no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. As per the jurisprudence of the Working Group on Arbitrary Detention, any detention due to the peaceful exercise of rights, including the right to freedom of expression and opinion and the right to freedom of association may be arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

Further, we would like to recall that in accordance with article 9 (2), anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges against him or her. According to article 9 (3), anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Pretrial detention is an exceptional measure and must be assessed on an individual basis. In addition, in accordance with article 9 (4) of the ICCPR, anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.⁴ In this respect, we emphasize that the right of legal assistance is an essential safeguard to ensure the ability of detainees to personally challenge their detention.

We also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14 (1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 (3) of the ICCPR guarantees the right of any individual charged with a criminal offence to have adequate time and facilities for the preparation of their defense, to communicate with counsel of their own choosing, and to be tried without undue delay.

The Working Group on Arbitrary Detention has raised the issue of prosecution under vague penal laws with the Government of Viet Nam on several occasions, specifically article 117 of the Criminal Code.⁵ We would like to remind your Excellency's Government that the principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law, and

⁴ See A/HRC/30/37.

⁵ See e.g. opinions No. 11/2021; 36/2021; 40/2021; 35/2022.

regulate their conduct accordingly, in accordance with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the ICCPR.

We would further like to refer your Excellency's Government to articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Viet Nam acceded on 24 September 1982, which guarantee the right to freedom of opinion and expression and the right to freedom of association respectively. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right (ICCPR, art. 22 (2)). We would also like to remind your Excellency's Government that, according to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (paras 29 and 31), national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force (para. 29). National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse (para. 31).

We would like to recall that the Special Rapporteur on the situation of human rights defenders noted in her report to the Human Rights Council (A/64/226) that the only legal grounds upon which an interference with the freedom of association that is prescribed by law can be justified is if it meets the test as outlined by article 22, paragraph 2 of the ICCPR. These provisions require the interference in question to be pursuant to 'legitimate aims', such as in the interests of national security or public safety; public order (*ordre public*); the protection of public health or morals, or the protection of rights and freedoms of others. Without such a legitimate aim, interference is rendered contrary to international human rights law, and in the context of the activities of NGOs, the Special Rapporteur has argued that "difficulties in the formation and registration of human rights associations; criminal sanctions for unregistered activities; government interference, supervision and monitoring of NGO activities; and difficulties in accessing funding may restrict the right to freedom of association and therefore must reach the very high threshold under article 22, paragraph 2, of the International Covenant on Civil and Political Rights in order to be admissible" (A/64/226, para. 58.).

We would further like to refer to article 19 of the ICCPR, which protects, *inter alia*, political discourse, commentary on one's own and on public affairs, discussion on human rights, journalism, among others (Human Rights Committee, General Comment no. 34, para. 11). We underline that permissible restrictions on the internet are the same as those offline (A/HRC/17/27). 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" (CCPR/C/GC/34 para. 44). While all restrictions must comply with the requirements of necessity and proportionality, 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). In this connection, we recall that the Human Rights Council, in its Resolution 12/16, called on States to refrain from imposing restrictions which are not consistent with article 19 (3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Furthermore, we recall in this context the 2019 Concluding Observations by the Human Rights Committee concerning Viet Nam, in which 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 would like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, and 42/28 reaffirming the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The Council also urges States to ensure accountability for reprisals by providing access to remedies for victims and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5 (b) and (c), which provides for the right of all persons to form, join and participate in non-governmental organizations, associations and groups; and to communicate with non-governmental or intergovernmental organizations;

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for 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;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

In addition, we would like to recall to your Excellency's Government the principles set forth in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. Article 2 (1) stresses that no one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief. Article 6 (i) of the Declaration also provides that the right to freedom of thought, conscience, religion or belief includes the freedom "to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels".