

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: UA VNM 7/2023

(Please use this reference in your reply)

10 August 2023

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 44/8 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the reported imminent execution of Mr. [REDACTED] a 40-year-old man, sentenced to death on 12 June 2008, despite credible allegations of torture and violation of the right to a fair trial.

This also has reference to previous communications to your Excellency's Government including VNM 5/2018 and VNM 8/2014. While we thank you for the responses provided for those communications, we reiterate that the execution of death sentences without the imposition of the highest criteria of fair trial may amount to an arbitrary execution and a violation of the right to life under international law. We also reiterate our advice, based on objective research and analysis, that there is no convincing evidence worldwide that the death penalty has a particular deterrent effect on the commission of crimes.

According to the information received:

On 3 August 2007, the Hai Phong City Police Department arrested Mr. [REDACTED], along with others, in connection with the murder of a high-ranking police officer. The police officer was beaten and murdered in the city of Hai Phong on 14 July 2007. Among evidence used to convict the accused was their confessions, obtained allegedly under extreme duress, as the defendants later claimed. The information received suggests police brutality, detailing how the suspects were handcuffed, beaten, and threatened until they confessed to the crime.

Mr. [REDACTED] had a strong alibi and witnesses who stated under oath that they were with him in his hometown of Binh Dan village in the Hai Duong province, approximately 40 km away from the scene of the crime on 14 July 2007. The Binh Dan village had a festival on the day of the crime and several witnesses provided written testimonies to the police that they witnessed Mr. [REDACTED] at the festival. Instead of investigating the validity of the alibi, the police arrested Mr. [REDACTED] younger brother, on allegations of manipulating

evidence and influencing witnesses. Further, it is alleged that some witnesses who attested to Mr. [REDACTED] alibi were coerced into changing their testimonies by the police.

The authorities concluded that Mr. [REDACTED], and his accomplices had robbed and murdered the police officer for money in order to purchase heroin without thoroughly examining other leads or potential suspects. During the trial, Mr. [REDACTED] co-defendants received varying sentences. It is alleged that at least one of the other co-defendants received a lighter sentence due to undue influence on the Court. Despite the existence of an alibi and serious doubts about the police's handling of the case, Mr. [REDACTED] was sentenced to death on 12 June 2008.

In 2011, the Procurator General of the Supreme People's Procuracy requested that the Supreme People's Court quash the appellate criminal judgment and commute Mr. [REDACTED] death sentence, citing a number of issues that need to be clarified with Mr. [REDACTED] involvement in the case. However, in December 2011, the Supreme People's Court rejected the appeal.

On 4 August 2023, the People's Court of Hai Phong notified Mr. [REDACTED] parents in writing that he would be executed, and the family should petition to receive his body thereafter. However, the family was not provided information on the set date for the execution nor allowed to visit the inmate prior to execution. There is a risk of secret execution.

While we do not wish to prejudge the accuracy of these allegations, we are gravely concerned at the risk of impending execution of Mr. [REDACTED]. In view of the irreversibility of the death penalty, especially when serious doubts were raised concerning the fairness of the proceedings that led to the death sentence, we urge your Excellency's Government to prevent the execution of Mr. [REDACTED]. If carried out, given the above indications, the execution would be inconsistent with standards of international human rights law, and amount to an arbitrary execution.

We respectfully call upon your Excellency's Government to consider exercising clemency in relation to Mr. [REDACTED] and to commute his sentence to an appropriate term of imprisonment; to review thoroughly the case, and to promptly initiate an independent and impartial investigation into allegations that torture and other ill-treatment were used to extract a confession while in police custody.

Should the information received be confirmed, the execution of Mr. [REDACTED] would violate his rights to life, to integrity and to liberty and security, and to a fair trial by an independent, competent court provided for in articles 3, 5 and 9 of the Universal Declaration of Human Rights (UDHR) and articles 6, 7 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Viet Nam on 24 September 1982. It may also violate his right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment guaranteed by the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) ratified by Viet Nam on 15 February 2015.

Under universal standards of due process and fair trial, the imposition of the death penalty is always arbitrary and unlawful when the court ignores or discounts essential facts that may significantly influence a capital defendant's motivations, situation and conduct. Only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution. We note with concern that the judicial process in this case had ignored the testimonies by witnesses who were ready to attest to an alibi for the accused, the allegations of torture to obtain confessions, intimidation and coercion of witnesses and differential treatment of accused, strongly suggesting that this particular case does not adhere to the legal standards required to safeguard the integrity of a fair trial. It is particularly concerning that the case against the accused was primarily based on their supposed confessions which were allegedly obtained under duress.

International law prescribes that State parties must conduct prompt, impartial and thorough investigations when complaints of torture or other ill-treatment are made (article 12 and 13, CAT; and article 7 and 2(3), ICCPR) and 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" (article 15, CAT).

The circumstances surrounding the imposition of the death penalty can also constitute cruel, inhuman or degrading treatment or punishment or even torture. Physical or mental torture or other cruel, inhuman or degrading treatment or punishment, particularly the so-called death row syndrome, may inflict pain and suffering on convicts and their relatives which reach the threshold of torture or other cruel, inhuman or degrading treatment or punishment (see the Report of the Special Rapporteur on Torture, A/67/279, para. 75).

We remind your Excellency's Government that according to article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, approved by the Economic and Social Council on 25 May 1984 "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings."

We are deeply concerned about the secretive nature of the implementation of the death penalty in Viet Nam. The penalty is considered a State secret as per the Law on State Secrets of 2018, whereby those who disclose data concerning the death penalty, either intentionally or unintentionally, are subject to criminal penalties of up to 15 years in prison. As a result, data and statistics concerning the death penalty are not publicly available in Viet Nam.

In this regard, reasonable transparency is a minimum requirement in the application of the death penalty. Article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty calls upon all Member States "To

publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law.”

The Human Rights Committee has held that “failure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment, which renders the subsequent execution contrary to article 7 of the Covenant” (CCPR/C/GC/36, para. 40). We note that in this case the family of Mr. [REDACTED] has not been informed of an execution date while being informed to petition to receive his remains.

Mr. [REDACTED] has been incarcerated in 2007 and held in a death row since 2008. We refer to the General Comment of the United Nations Committee on Human Rights, which advises that “Extreme delays in the implementation of a death penalty sentence, which exceeds any reasonable period of time necessary to exhaust all legal remedies, may also entail the violation of article 7 of the ICCPR, especially when the long time on death row exposes sentenced persons to harsh or stressful conditions, including solitary confinement, and when they are particularly vulnerable due to factors such as age, health or mental state” (CCPR/C/GC/36, para. 40).

The United Nations Safeguards provide that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence and that pardon or commutation may be granted in all cases of capital punishment.

We also draw the attention of Your Excellency’s Government that in the 40 years of experience of the Special Procedures mandate an extrajudicial, arbitrary or summary executions, and a careful review of numerous studies and evidence, the death penalty has never been proved to be an effective deterrent for crimes (A/HRC/42/28).

The General Assembly has consistently called upon all States to establish a moratorium on executions with a view to abolishing the death penalty since its resolution 62/149 of 18 December 2007 (para. 7) and most recently, in its resolution A/RES/77/222 of 15 December 2022, called upon all States to respect the safeguards guaranteeing protection of the rights of those facing the death penalty. We reiterate that any measures to abolish the death penalty should be seen as progress towards the realization of the right to life.

In view of the urgency of the matter and the irreversibility of the execution of the death penalty, we respectfully call upon the highest authorities of Viet Nam to ensure Mr. [REDACTED] is not executed. His execution, on the facts available to us, may constitute a violation of applicable international human rights standards and constitute an arbitrary execution. We urge the President and the executive branch of the Socialist Republic of Viet Nam to

consider granting clemency and commuting the sentence of Mr. [REDACTED]

We further urge your Excellency's Government to impose a moratorium on all death sentences pending such necessary review.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the extent to which the imposition of the death penalty in the case of Mr. [REDACTED] in light of the alleged irregularities in his trial proceedings and allegations of torture, is consistent with international human rights law, under ICCPR, UNCAT and the United Nations Safeguards for the Protection of the Rights of Persons Facing the Death Penalty.
3. Please inform of any action taken to investigate irregularities in the trial of Mr. [REDACTED] including the allegation that he was tortured and that witnesses were coerced and intimidated.
4. Please provide information on any efforts considered to reduce the scope of application of the death penalty in Viet Nam.
5. Please provide detailed information, on an annual basis, including the number of persons sentenced to death, the number of executions actually carried out, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted in Viet Nam.
6. Please provide detailed information on measures taken to protect those defending persons held on death row against any acts of intimidation, harassment, or reprisals.

While awaiting a reply, we ask that prompt steps be taken to stop the execution of the death penalty against Mr. [REDACTED]

We may continue to publicly express our concerns in the near future on this case, which in our view deserves prompt and undivided attention, as Mr. [REDACTED] life is at stake, and the execution of a death penalty is irreversible. We also believe

that this matter is one of public concern and that the public should be informed about it, and about its human rights implications. Any public expression of concern from our part would indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

We would appreciate receiving a response within 60 days. Past 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.

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

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Margaret Satterthwaite
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