

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL VNM 2/2024
(Please use this reference in your reply)

5 March 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 51/21, 51/8, 52/9, 52/4 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 health situation of **Mr. Le Huu Minh Tuan**, also known as Le Tuan, an independent journalist, a human rights defender and a member of the Independent Journalist Association of Vietnam (IJAVN).

Several Special Procedures mandate holders previously raised concern regarding the alleged arbitrary arrest and detention of Mr. Tuan on 12 June 2020 ([VNM 3.2020](#) and [VNM 6.2021](#)). We thank your Excellency's Government for its responses to these letters. In Opinion No 11/2021, the Working Group on Arbitrary Detention found Mr. Tuan's arrest, detention and sentencing to be arbitrary under categories I, II, III, and V ([A/HRC/WGAD/2021/11](#)).

According to information received:

On 8 June 2020, Mr. Tuan was arrested for allegedly writing "reactionary content" and publishing articles that "distort the truth, incite individuals to rise up and overthrow the people's Government, or even incite hatred and extremism." From the date of his arrest until 11 November 2020, the journalist and human rights defender was reportedly held *incommunicado* in Chi Hoa Prison located in Ho Chi Minh City, and not permitted to meet with his lawyer or family. He was only allowed to meet his lawyer a few times before his trial.

On 5 January 2021, Mr. Tuan was sentenced to 11 years in prison and four years on probation alongside two other members of the IJAVN. The three journalists were tried together and convicted of "Making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam", under article 117 of the 2015 Criminal Code. At the time of sentencing the journalist and human rights defender was reported to be in good health.

On 28 February 2022, the appeal court in Ho Chi Minh City upheld Mr. Tuan's sentence. His family members were initially denied entry to the trial but were later permitted to attend after Mr. Tuan's lawyer insisted. Mr. Tuan's sister was not allowed into the courtroom and Mr. Tuan was reportedly denied access to his lawyer before the appeal trial due to COVID-19 restrictions.

On 26 May 2022, almost two years after his arrest, Mr. Tuan received his first family visit. According to the information received, there was a noticeable deterioration in Mr. Tuan's health, in particular relating to digestive issues. Reportedly, since his arrest, the journalist and human rights defender had been held in unsanitary conditions at detention centre 4 Phan Dang Luu Street, Binh Thanh District of Ho Chi Minh City. He was then transferred to the Bo La facility, in Binh Duong Province, where he was allowed to go outside for 15-30 minutes a day, and finally moved to Xuyen Moc Prison near Ho Chi Minh City in July 2022.

By late 2022, Mr. Tuan's digestive problems worsened and a prison physician diagnosed him with ulcerative colitis. His family attempted to send him prescribed medication by a doctor external to the prison but the prison officials did not allow Mr. Tuan to take any medication other than what was prescribed by the prison medical unit. At this time, Mr. Tuan was reportedly suffering from other illnesses including macular degeneration, hearing loss, osteoporosis, ulcerative colitis, severe weight loss, and osteoarthritis.

In March 2023, Mr. Tuan was reported to be suffering from additional stomach symptoms, such as bloody stools, inability to digest food and abdominal pain. Medical staff in Xuyen Moc Prison confirmed the previous diagnosis of ulcerative colitis. In 2023, Mr. Tuan also contracted scabies.

Since his first reported health issues, Mr. Tuan has allegedly been receiving basic medical care from prison medical staff. Mr. Tuan later told his family that he did receive the medicine that they were sending him, but the prison guards allegedly tore off all medicine labels, mixed up the medicine, or threw away half of it. When he received it, he did not know what medicine it was or how to take it.

Mr. Tuan's family have been continually appealing to the prison and Ministry of Public Security requesting the journalist to be given appropriate medical attention. On 2 November 2023, Mr. Tuan was taken to a hospital in Vung Tau to be examined, where he was given a cursory check, diagnosed with gastritis and duodenitis, gastro-esophageal reflux disease with esophagitis, irritable bowel syndrome, diarrhea, and given some medication that reportedly made his condition worse.

On 27 December 2023, Mr. Tuan's family filed a request with the C10 prison management department, the prison supervisor, and the Supreme People's Procurator of the Ho Chi Minh City petitioning a suspension of his sentence on medical grounds and requesting his transfer to hospital for necessary medical treatment. On 9 January 2024, C10 prison management department denied the request stating he "is not eligible for suspension of sentence".

At the time of drafting, the journalist and human rights defender is reportedly in extremely poor health, and has lost around 20 kilograms while in detention (from 75 kg to 56 kg), which is worrying taking into consideration the symptoms he is reportedly displaying and his family history of colon cancer.

Without wishing to prejudge the accuracy of these allegations, we express our grave concern relating to the sharp deterioration of Mr. Tuan's health while he serves a lengthy 11-year prison sentence. We fear that Mr. Tuan's poor health appears to be exacerbated by insufficient medical attention and treatment while in detention. We are further concerned about reports of the alleged poor standard of living conditions in the prison. We are very concerned about reports we have received that prison officials refuse to give Mr. Tuan vital medication being sent by his family.

Furthermore, we reiterate our previous concern that Mr. Tuan's detention is directly related to his work as an independent journalist and human rights defender and for freely expressing his opinions contrary to Government policies. We note with concern that Mr. Tuan's detention forms part of a wider crackdown against journalists in Viet Nam, in which the charge of "Making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam" is being used to target independent journalists. This has a chilling effect on journalists and human rights defenders' ability to carry out their legitimate work without fear of reprisal.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual basis for the detention and sentencing of Mr. Tuan. Please also provide detailed information on Mr. Tuan's detention conditions and measures which have been taken to ensure his physical and psychological integrity and his right to the highest attainable standard of health while in detention.
3. Please explain the measures taken by the detention authorities to ensure that Mr. Tuan is receiving the appropriate medicine, including that provided by family members.
4. Please provide an update on Mr. Tuan's current medical condition, and outline the measures your Excellency's Government is taking to ensure that Mr. Tuan is receiving adequate medical treatment for all of his medical conditions.
5. Please provide information on measures and safeguards in force to prevent torture or other ill-treatment in detention centers.

6. Please also provide information on all measures and efforts taken or planned to be taken to fulfill the duty to investigate allegations of torture and other cruel, inhuman or degrading treatment or punishment.

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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

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

Matthew Gillett
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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 refer to the obligations of your Excellency's Government under the International Covenant on Civil and Political Rights (ICCPR), acceded by Viet Nam on 24 September 1982, the International Covenant on Economic, Social and Cultural Rights, acceded by Viet Nam on 24 September 1982, as well as the Universal Declaration of Human Rights (UDHR), as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Viet Nam on 5 February 2015.

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

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. As emphasised by the Human Rights Committee in General Comment no. 32 (CCPR/C/GC/32), all trials in criminal matters must in principle be conducted orally and publicly (paragraph 28). We would also like to refer your Excellency's Government to articles 3 and 10 of the UDHR which respectively state that "everyone has the right to life, liberty and security of person", "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". It is also important to recall that the lack of human rights compliant procedures being applied to those arrested and/or detained, and the absence of timely judicial oversight, heightens the risk of threats or ill-treatment.

In this regard, we draw the attention of your Excellency's Government to article 19 of the ICCPR, which provides for the right to freedom of expression, as well as to the Human Rights Council resolution 12/16, which called on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Specifically, article 19 provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". This right applies online as well as offline.

Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were

prescribed and must be directly related to the specific need on which they are predicated. However, the penalisation of a journalist solely for being critical of the Government or the political social system espoused by the Government can never be considered to be a necessary restriction of freedom of expression, CCPR/C/GC/34 para. 42. Laws justified by national security, whether described by sedition laws or otherwise, can never be invoked to prosecute journalists or human rights defenders for their work, see CCPR/C/GC/34 para 30. Likewise, the arbitrary arrest or torture of individuals because of the exercise of their freedom of expression will under no circumstance be compatible with article 19, CCPR/C/GC/34 para. 23.

In its general comment no. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’. Moreover, with regard to the emergency powers recently enacted by the State, the Human Rights Committee made clear that “It is not compatible with article 19 paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information”. Article 19 requires the States to guarantee the right to freedom of expression (Id.). It is the States’ duty to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (paragraph 23).

Furthermore, we would like to also bring to the attention of your Excellency’s Government Articles 12 and 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). These articles enshrine the right of everyone, including people prisoners and detainees, to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. Accordingly, States have the obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health preventive, curative and palliative services (Committee on Economic, Social and Cultural Rights (Committee), General Comment No. 14, para. 34). In relation to the Mr. Le Tuan’s health status, the Committee indicates that "The creation of conditions which would assure to all medical service and medical attention in the event of sickness" (art. 12.2 (d)), both physical and mental, includes the provision of equal and timely access to basic preventive, curative, rehabilitative health services and health education and the provision of essential drugs. (General Comment No.14, para. 17).

Additionally, we would like to refer to the Mandela Rules, adopted unanimously by the UN General Assembly (A/RES/70/175). Rules 24 to 35 establish that healthcare for prisoners is a State responsibility; prisoners should be ensured prompt access to medical attention in urgent cases and those requiring specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. The Mandela Rules are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prevent torture and other forms of ill-treatment in detention. In this regard, we would like to recall that the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is an *erga omnes* and *jus cogens* norm. Torture

and other cruel, inhuman or degrading treatment or punishment is prohibited conduct established in (at least) article 5 UDHR, article 7 ICCPR alone and in conjunction with article 2(3) ICCPR, as well as in multiple articles of the CAT. In the context of detainees, the Committee against Torture and the Human Rights Committee have consistently found that unsanitary conditions of detention and lack of medical care can amount to inhuman and degrading treatment, which would contravene to the absolute prohibition of torture.

In regard with prolonged *incommunicado* detention, we would like to remind that the right to communicate with family or any other designated person as a contact person while detained is protected under article 12 UDHR and rule 68 of the Mandela Rules. Prompt and regular contact to family members is an essential and necessary safeguard for the prevention of torture (A/HRC/WGAD/2022/84, para. 87). In fact, 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 (A/RES/68/156, para. 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 makes 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 Special 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 bring to your 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 draw particular attention to the following provisions of the Declaration:

- Article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all

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.

³ *Ibid.* para. 98 (a).

human rights and fundamental freedoms and to draw public attention to those matters;

- Article 12 (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 their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.