Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL VNM 5/2016:

10 August 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 28/11, 25/2, 32/32, 25/18, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of **excessive use of force against, and arbitrary arrest and detention of, peaceful demonstrators, including children.**

The following Vietnamese citizens were subjected to ill-treatment and/or arrested and temporarily detained by the police in connection with their participation in peaceful environmental demonstrations held in various cities of the country: Mr. Lau Nhat Phong, Mr. Huynh Anh Tu, Ms. Pham Thanh Nghiem, Mr. Huynh Thanh Binh, Mr. Ha Le Tuan, [redacted] (child) and [redacted] (child).

According to the information received:

Since early April 2016, thousands of tons of dead fish have washed ashore a 200km coastline in central Viet Nam (Ha Tinh, Quang Binh, Quang Tri, Thua Thien-Hue provinces). It has been reported that initially, the Government investigated the possibility that the death of the fish might be due to chemical contamination by the Formosa Ha Tinh Steel Plant in construction in the Ha Tinh province. On 27 April 2016, during a press conference, the Deputy Minister of Natural Resources and Environment, Mr. Vo Tuan Nhan, stated that this investigation was inconclusive and that no link could be established between the death of the fish and the steel plant. The investigation then allegedly focused on a massive tide of toxic red algae.

Many people in the country, including human rights defenders and environmentalists, expressed their doubts about the suggestion that red toxic algae could have caused the death of so many fish. Many people were worried about the safety of fish and seafood consumption as well as the lack of reliable information given by the authorities in this regard. As a consequence, they wished to express their anger and frustration regarding what they considered to be the inefficient and irresponsible handling of an environmental disaster by the Government.

On 1, 8 and 15 May 2016, as well as 15 June 2016, peaceful demonstrations were organized in various cities around the country, including in Hanoi and Ho Chi Minh City. These demonstrations, in which women and children participated, were reportedly peaceful. The demonstrators called for more transparency on the investigation on the causes of the death of the fish and its consequences, and demanded the end of the construction of the Formosa steel plant.

At each of these demonstrations, several participants were allegedly arrested, temporarily detained and beaten by law enforcement officials. The level of force used to repress and disperse the demonstrations reportedly increased each week.

In July 2016, the Government announced that toxic discharge from the Formosa Ha Tinh Steel Plant had indeed caused the death of the fish, and ordered the plant's owner to pay damages of USD 500 million.

Concerning the situation of Mr. Lau Nhat Phong:

On 5 May 2016, Mr. Lau Nhat Phong was arrested in Ho Chi Minh City at 8.30 p.m. following his participation in a peaceful sitting during that day. It has been reported that at 11 p.m. he was transferred to the P5 police station in District 11 where he was severely beaten in his cell by four men without uniform. It was later alleged that one of the police officers participating in the beating was the same who had tried to grab him during the sitting. Mr. Phong suffered a swollen jaw, contusion near his left ear, a bruised right elbow and aches and pain all over his body. He reportedly made a complaint to the police. On 15 May 2016, he joined another peaceful demonstration where he was again arrested by several plainclothes officers before being reportedly beaten once again by plainclothes men at the police station. It has been reported that he was later released without charge or information about the reason of his arrest.

Concerning the situation of Mr. Huynh Anh Tu and Ms. Pham Thanh Nghiem:

On 1 May 2016, Mr. Huynh Anh Tu was with his wife, Ms. Pham Thanh Nghiem and four other persons on their way to join a demonstration organized in April Park in District 1, Ho Chi Minh City. They were arrested by plainclothes police officers who reportedly forced them to go to the underground parking of the

Church of Our Lady of Perpetual Help in District 3. The group was then allegedly taken to the police station 15 in Tan Binh District. Mr. Huynh Anh Tu was brought in a taxi where he was held tightly by two men. Ms. Pham Thanh Nghiem was brought on a motorcycle with a police agent sitting behind her. One of the officer's hands was holding her neck tightly and his other hand clamped both her hands behind her back all the way. During the ride, the officer reportedly cursed, threatened and insulted Ms. Pham Thanh Nghiem. At the police station, Mr. Huynh Anh Tu was reportedly handcuffed with his hands behind his back. One of the undercover policemen also grabbed him by the hair and hit his head against the wall while still handcuffed. An undercover policeman also allegedly kneed him in the stomach and in the chest. Afterwards, Mr. Huynh Anh Tu was reportedly requested to sign some documents, but he refused to do so. Ms. Pham Thanh Nghiem was beaten twice, the first time because she had refused to give her mobile phone password, and the second time because she had not told them her name and had requested to know why she and the group had been arrested. The policemen punched her on the head and in the face. It has been reported that two other persons of this group were also beaten at the police station by police officers who were wearing civilian clothes and masks to cover their faces and refused to give their names and ranks. Ms. Pham Thanh Nghiem was reportedly released after 14 hours of detention.

Concerning the situation of Mr. Huynh Thanh Binh:

On 29 April 2016, at 6 p.m., Mr. Huynh Thanh Binh participated in a discussion aiming to prepare for an environmental demonstration to take place on 1 May 2016 in Vinh City, Nghe An province. A group of plainclothes police reportedly came and harassed the participants, before leaving shortly after. At 7.30 p.m., Mr. Huynh Thanh Binh was on his way home on his wheelchair when, about 500 meters away from his house, two allegedly undercover police officers dressed as thugs started arguing with him and pushed him badly so that he fell out of his wheelchair. Mr. Huynh Thanh Binh allegedly suffered injuries to his head and legs.

Concerning the situation of Mr. Ha Le Tuan:

On 1 May 2016, Mr. Ha Le Tuan participated in a peaceful environmental demonstration in Ho Chi Minh City. When he arrived to 126 Nguyen Thi Minh Khai Street, he was allegedly beaten by police officers and plainclothes agents. As a result, he reportedly sustained serious injuries at his temples. While he was in a police car to take him to a police station, the officers used their legs to push his head down in order to prevent him from calling for help.

Concerning the situation of Ms. [redacted] *and Ms. Doan Truong Vinh Phuoc:*

On 8 May 2016, thousands of people protested against the Formosa Company in Hanoi. The protest was reportedly peaceful until the police decided to disperse the gathering. The police allegedly hit Ms. Doan Truong Vinh Phuoc who was holding her two-month old baby and was with her five-year old son. Her sister, [redacted], aged 11, reportedly tried to take the baby away to protect him, but she was in turn beaten up by the police. The officers reportedly pulled her, dragged her and pushed her down the ground. After that, the police allegedly pushed the two sisters, together with the five-year old boy and the two-month old baby into a bus where they were detained with other protesters. While at the police station, the police reportedly denied those arrested access to food.

Concerning the situation of [redacted]:

On 8 May 2016, Ms. Trinh Thi Xuyen, together with her nine-year old daughter, [redacted] participated in a peaceful environment protest at Hoan Kiem Lake, Hanoi. It has been reported that during the protest, [redacted] was pushed and pulled by police officers. She reportedly sustains injury from both of her arms. The police allegedly put her on a bus alone where she was detained several hours.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned at the reported arrests, detentions and excessive use of force by police officers against the individuals aforementioned, in particular children, which appear to be directly related to the legitimate exercise of their rights to freedom of peaceful assembly and expression on an issue of public interest, where the need for transparency and access to information is essential. We express further concern that these are most likely not isolated cases as many others did not testify for fear of possible reprisals. Additional concern is expressed about the broader impact of the abovementioned allegations, which may have a deep chilling effect on human rights defenders and civil society as a whole.

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.

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 therefore 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 further information concerning the legal grounds for the arrest and detention of the abovementioned persons and how these measures are compatible with Viet Nam's obligations under international human rights law as stated in relevant provisions of the International Covenant on Civil and Political Rights.

3. Please provide information on any investigation undertaken for the above mentioned cases, including their progress and the arrest or conviction of the persons responsible for such violations, in particular regarding the complaint allegedly made by Mr. Lau Nhat Phong. If no investigation has been initiated, or if those that have been were not conclusive, please explain why.

4. Please provide information about instructions or guidance given to law enforcement officials on the management of the demonstrations on 1, 8 and 15 May 2016 and that of 15 June 2016, in particular regarding the use of force.

5. Please indicate what measures have been taken to ensure that individuals and human rights defenders are able to demonstrate peacefully without fear of threats or acts of intimidation and harassment of any sort and that their rights to freedom of peaceful assembly and expression are guaranteed.

6. Please indicate whether the Government consulted with affected populations during its investigation of and response to the environmental disaster.

7. Please explain what measures have been taken to prevent recurrence of similar incidents. Please provide information concerning any steps that have been taken by your Excellency's Government to ensure that the alleged victims have received adequate medical care and can seek remedies.

We would appreciate receiving a response within 60 days.

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

John H. Knox
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Juan Ernesto Mendez
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 to articles 7, 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), which Viet Nam ratified in 1982, which guarantee the right to be free from torture or cruel, inhuman or degrading treatment or punishment, the right not to be deprived arbitrarily of liberty, the right to fair proceedings before an independent and impartial tribunal, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly, respectively.

In this connection, we would further like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "[r]eminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law".

We would also like to draw the attention of your Excellency's Government to the principle enunciated in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39, which states that everyone has the right to obtain information from public authorities, and that in all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration.

Furthermore, we would also like to refer your Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. 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. Furthermore, we would like to bring to the attention of your Excellency's Government to - article 12, (1) and (3) which provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms and for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts, attributable to States that result in violations of human rights and fundamental freedoms.

In connection with the above allegations and concerns, we would like to refer to the absolute prohibition of torture and other forms of ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Viet Nam ratified in 2015. Regarding the allegations mentioned above, and especially the one of denial of the right to food to detained persons, we would like to recall article 10 of the ICCPR which provides that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

Regarding allegations of arbitrary arrests, detentions and use of excessive force against children by police officers, we are referring to article 15 of the Convention on the Rights of the Child (CRC), ratified by Viet Nam in 1990, which enshrines the rights of the child to freedoms of association and of peaceful assembly. Article 37 paragraph b of the Convention provides that "no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". Article 37 paragraph c provides that "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".

Finally, we would like to refer to the joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66), which is highly relevant to the present situation.