Mandates of the Working Group on Enforced or Involuntary Disappearances; 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 rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on discrimination against women and girls

Ref.: AL VNM 3/2025
(Please use this reference in your reply)

24 July 2025

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; 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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 54/14, 51/8, 52/9, 50/17, 52/4, 52/5, 58/5, 58/14, 52/7 and 50/18.

In this connection, we would like to bring to the urgent attention of your Excellency's Government information we have received concerning a **reported surge in human rights violations of a transnational nature in the Greater Mekong Subregion, including Cambodia, Lao Peoples' Democratic Republic, Thailand and Viet Nam, Malaysia and China.**

Concerns regarding transnational repression in the region, including transnational transfers leading to enforced disappearance, were raised by Special Procedures mandate-holders on numerous occasions (VNM 01/2019, VNM 6/2019, VNM 4/2020, VNM 06/2021, VNM 4/2024, and VNM 5/2024).

In December 2020, several Special Procedures mandate-holders raised concerns the apparent pattern of cooperation among Member States in the region (Cambodia, Lao People's Democratic Republic (Lao PDR), Thailand and Viet Nam) for the purposes of enforced disappearance, extra-judicial execution and rendition (VNM 4/2020). We thank your Excellency's Government for its response provided on 8 November 2024 (VNM 4/2024), as well as to the other communications. However, we regret that several concerns we highlighted in our communications were not fully addressed in the responses from your Excellency's Government.

According to the information received:

Enforced disappearances of Vietnamese human rights defenders in Thailand

On 13 April 2023, Mr. **Duong Van Thai**, a Vietnamese independent journalist and UNHCR-recognized refugee, was allegedly abducted by Vietnamese security forces while driving his motorbike in the northern outskirts of Bangkok, along Lamphu road, Thanyaburi district, Pathum Thani Province, in Thailand. Prior to his enforced disappearance, Mr. Thai reportedly revealed his security concerns to an acquaintance right after posting videos of political infighting in Viet Nam. Mr. Thai also reportedly added that, on 6 April 2023, one of his neighbours spotted a man riding a motorbike with a Chiang Rai provincial number plate approaching his home to film and take photos. The man reportedly spoke Thai, although with a strange accent. Persons connected to Mr. Thai were able to put together a chronology of his movements on the day of his enforced disappearance through different CCTV camera footage, audio recordings and testimonies which purportedly confirm his abduction.

A few days later, it was reported that, on 14 April 2023, Mr. Thai had allegedly been arrested by Vietnamese officials for entering Viet Nam without proper identification documents. No further information about his fate and whereabouts was reportedly shared with his family until 13 July 2023, when his family was notified that Mr. Thai was detained in Hanoi on charges of "Propaganda against the State", under article 117 of the 2015 Criminal Code. On 30 October 2024, the Hanoi People's Court sentenced Mr. Thai to 12 years in prison and three years on probation in a closed trial and without defence counsel.

On 26 January 2019, Mr. **Truong Duy Nhat**, a refugee blogger and journalist in Thailand, was abducted in Bangkok after having been apprehended by the Thai police. On 20 March 2019, his family was notified that he was arrested on 28 January 2019, shortly after seeking refugee status with UNHCR, and imprisoned at T16 temporary detention facility in Hanoi. In June 2019, Mr. Nhat's family was informed that the Ministry of Public Security (MPS) had opened a case against him for illegally purchasing a plot of land a decade prior. On 9 March 2020, the People's Court of Hanoi tried Mr. Truong Duy Nhat for the crime of "abusing his position and authority", under article 356(3) of the 2015 Criminal Code, and sentenced him 10 years in prison. On 14 August 2020, the Appeal Court upheld the 10-year sentence.

Detention of opposition member and risk of refoulement from Thailand

There are concerns that the Government of Viet Nam may be exchanging information with the Government of Thailand to identify Vietnamese Montagnard refugees in Thailand for their possible forced repatriation to Viet Nam, including those recognized as refugees by the UNHCR and being considered for resettlement in third countries.

There is particular concern about Mr. **Y Quynh Bdap**, the co-founder of the organization "**Montagnards Stand for Justice" (MSFJ)**, a non-violent organization advocating for the rights and freedoms of the Montagnard people

in the Central Highlands of Viet Nam (VNM 4/2024 and THA 6/2024). Mr. Y Quynh Bdap is a UNHCR-recognized refugee residing in Thailand since 2018, and in the process of resettlement to a third country.

On 11 June 2023, a violent assault on the Police stations and Government headquarters situated in Ea Tieu and Ea Ktur communes, in Dak Lak Province in Viet Nam, reportedly claimed the lives of nine individuals, including police officers and civilians, while also leaving numerous others injured.

On 16 January 2024, 100 defendants – of whom, 99 ethnic Montagnards – were brought to trial in connection with this violent attack. On 20 January 2024, all defendants were tried by a 'mobile court' of five judges. The trial proceedings took place over a period of five days, with one day of deliberations. Nineteen lawyers were present at the trial to represent the 94 defendants, who were present at the trial. Six defendants, including Mr. Y Quynh Bdap, were tried and sentenced *in absentia*, and did not receive legal representation. Mr. Y Quynh Bdap received a 10-year prison sentence for "terrorism", for his alleged involvement in the Dak Lak events.

On 4 June 2024, the Thai police visited Mr. Y Quynh Bdap's former residence in Bangkok and questioned neighbours about his whereabouts. On 6 June 2024, the Thai police located the residence where he was staying and stationed themselves out the front, waiting to arrest him, pursuant to an extradition request from Viet Nam. The National Human Rights Commission of Thailand intervened to prevent the arrest and remind the Thai Police of its *non-refoulement* obligations under international and domestic law.

On 11 June 2024, the Thai Immigration Police arrested Mr. Y Quynh Bdap under the Thai Immigration Act (1979) and placed him in judicial custody at the Bangkok Remand Prison. The arrest was made in connection with an extradition request from Viet Nam regarding his 10-year prison "sentence for terrorism". On 13 June 2024, a Thai prosecutor filed an extradition case with Bangkok Criminal Court. On 30 September 2024, the Criminal Court of Bangkok delivered its verdict on the extradition request for Mr. Y Quynh Bdap. The Court found that there were sufficient grounds to proceed with extradition under section 19(1), (2), and (3) of the Thailand Extradition Act (2008) and ordered that Mr. Y Quynh Bdap be detained pending the execution of the extradition request. On 15 February 2025, his lawyer deposited an appeal. The Appeal Court is currently reviewing the case.

Mr. Y Quynh Bdap has denied involvement in terrorism. He and other MSFJ members, who are UNHCR-refugees in Thailand, have expressed fears that Vietnamese security forces may abduct them in Thailand and forcibly return them to Viet Nam, in light of previous cases where this has occurred to critics of the Vietnamese Government.

Terrorist designation of diaspora civil society organizations

On 6 March 2024, in connection with the Dak Lak assault, the Vietnamese MPS listed MSFJ as a "terrorist organization". As a result of the listing, the authorities

warned that "anyone who engaged in, propagated, enticed, incited others to participate, sponsored or receive sponsorship, or participated in training courses organised by' MSFJ, or followed its direction, would be charged with 'terrorism' or 'supporting terrorism'".

On 14 February 2025, MPS listed the US-based organization "**Boat People SOS" (BPSOS)** as a "terrorist organization". Furthermore, at least 43 individuals affiliated with BPSOS or MSFJ have reportedly been designated or are believed to have been designated, including the President of BPSOS and human rights defender, Mr. **Thang Dinh Nguyen**. According to the MPS, BPSOS "works closely with MSFJ, the organization that carried out the terrorist attack on 11 June 2023 in Dak Lak Province and has been included in the list of terrorist organizations and individuals by the Ministry of Public Security".

MSFJ and BPSOS deny involvement in terrorism and view the designation as a pretext for further suppressing Montagnard in Viet Nam and Vietnamese groups in exile, particularly those that document and expose human rights violations against ethnic and religious minorities and Indigenous Peoples.

Intimidation and harassment of Montagnards and Hmong refugees in Thailand

On 14 March 2024, a delegation of several Vietnamese public security police officials went to neighbourhoods with large concentrations of Montagnards refugees in Nonthaburi Province, north of Bangkok, and in the Bang Len district of Nakhon Pathom Province. The delegation was accompanied by the Thai police. The Vietnamese delegation included the director of the Public Security Department in Gia Lai Province, an investigative police officer from Dak Lak Province, two interrogators and official from the Vietnamese embassy. The Thai police pressured Montagnards to present themselves outside their residences for interviews with the Vietnamese delegation, who pressured them to return to Viet Nam and recorded videos of them on phones and cameras. The delegation accused them of having "illegally" left Viet Nam, promised leniency and support for returning, and threatened them with arrest and other repercussions if they refused to return.

The Vietnamese delegation asked about the location of the six Montagnards who were convicted *in absentia* on 20 January 2024. They were part of 100 defendants that were convicted in Viet Nam by a 'mobile court' trial in relation to a violent attack on Vietnamese police stations that took place on 11 June 2023 in Dak Lak Province, in the Central Highlands of Viet Nam. They also showed arrest warrants and photographs of the six individuals and declared that they would also arrest 100 other Montagnard activists. Just prior to the visit to Thailand, on 13 March 2024, Viet Nam's Minister for Public Security met with the Thai Government to propose a bilateral extradition agreement.

On 23 February 2025, Bang Yai District authorities in Nonthaburi Province, detained 65 Montagnards, five of whom are UNHCR-recognized refugees, on charges of "illegal entry and stay" under the Thai Immigration Act (1979). On 25 February 2025, Nonthaburi Kwaeng Court sentenced 43 of them to 6 months in prison. The group was subsequently placed in two Immigration Detention

Centres: women with children were moved to the Mothers and Children Immigration Centre in Bang Khen, while the remaining women and men were transferred to the Suan Phlu Immigration Detention Centre.

Bail requests have been filed for 40 out of 43 individuals. However, the bail request for three members of the Montagnard group, namely Mr. **Y Phuong Enuol**, Mr. **Y Duong Bkrong**, and Ms. **H Leo Nie**, were denied, reportedly due to existing arrest warrants against them in Viet Nam. On 13 March 2025, Vietnamese officials reportedly visited them in the detention centres. All three individuals are refugees registered with UNHCR and have expressed a fear of persecution by the Vietnamese authorities.

Similarly, between 28 March and 22 April 2025, 13 Hmong individuals, all registered as refugees with UNHCR in Thailand, were arrested by the Thai Immigration Police. Since their arrests, all have been sentenced for "illegal entry and stay" under the Thai Immigration Act (1979) and moved to the Suan Phlu Immigration Detention Centre. Reportedly, the individuals are affiliated with the "Hmong Human Rights Coalition", a Hmong a non-violent organization monitoring and reporting on human rights violations against the Hmong community in Viet Nam. On 27 April and 7 May 2025, Vietnamese officials undertook two visits to the Suan Phlu Immigration Detention Centre and met with the Hmong individuals. Reportedly, the group was invited to voluntarily return to Viet Nam, and they were asked to sign repatriation forms. All of them refused to sign the document. On 1 May 2025, one of the Hmong individuals was physically assaulted by another detainee of Vietnamese nationality. Although the victim reported some injuries, he was refused medical care after reporting the incident.

The abovementioned Montagnard and Hmong individuals in Thailand are UNHCR-refugees in Thailand. They fear persecution by the Vietnamese authorities, and they are entitled to protection from *refoulement* under international human rights law. In such circumstances, visits to immigration detention facilities by the Vietnamese authorities pose serious protection concerns. These individuals may be at risk of *refoulement*. Their forced return may expose them to serious human rights violations, including torture, arbitrary detention and enforced disappearance, on account of their activities defending the human rights of ethnic minorities and Indigenous Peoples in Viet Nam, as well as the freedom to practice minority Christian religions, which are not officially recognized by Vietnamese law.

Killings and enforced disappearance in Cambodia, Lao PDR and Viet Nam

At least nine Thai political activists disappeared from Cambodia, Lao PDR and Viet Nam between 2016 and 2021. While all of them were politically active and critical of the authorities, several faced charges for *lese-majesté*/sedition or Strategic Lawsuits against Public Participation lawsuits; and most were also online journalists. Among them, two were found dead; two are suspected to be dead; four were presumably handed over to Thai authorities; and no information is available regarding the fate of the ninth person. None of them has ever been seen again, and the perpetrators remain unknown.

In January 2019, Mr. **Siam Theerawut,** Mr. **Chucheap Chewasut** and another Thai political activist affiliated with the "United Front for Democracy against Dictatorship" in exile in Lao PDR, disappeared while attempting to cross from Lao PDR into Viet Nam. In February 2019, unconfirmed reports were received that they had been arrested and detained on charges of illegal entry into Viet Nam. All three men were reportedly handed over to Thai authorities on 8 May 2019, although the Thai authorities denied these claims. Their whereabouts remain unknown.

Without prejudging the veracity of the allegations, we wish to express our profound concern regarding the reported rise in transnational repression, including acts conducted or directed by a State, or its proxy, to deter, silence or punish dissent, criticism or human rights advocacy towards it, expressed from outside its territory. This includes serious claims of extrajudicial executions, enforced disappearances, and the arbitrary detention of activists, dissidents, human rights defenders, and members of ethnic and religious minorities, for the purpose of rendition. These detentions, reportedly carried out for the purpose of rendition, raise serious concerns about violations of the rights to liberty, fair trial, enforced disappearances, and protection from torture and other cruel, inhuman, or degrading treatment or punishment, as protected under international human rights law. We are deeply troubled by reports that many individuals are currently deprived of their liberty, frequently held incommunicado and denied contact with the outside world, simply for exercising their fundamental rights, such as freedom of opinion and expression, freedom of religion or belief, or for engaging in legitimate human rights advocacy. In some instances, these actions appear to be driven by discriminatory motives related to migratory status or minority identity. Such practices have a profound chilling effect, deterring individuals from freely expressing their views or pursuing their work as journalists, lawyers, or social activists.

We are deeply concerned that your Excellency's Government may be engaging in transnational repression by seeking the return of Vietnamese nationals from Thailand, including members of BPSOS, MSFJ, and other recognized refugees. Reports indicate that visits by Vietnamese public security officials have involved threats, harassment, intimidation, and coercion aimed at compelling these individuals to return to Viet Nam against their will.

We reiterate the concerns expressed in the communication VNM 4/2024, transmitted to your Excellency's Government on 14 June 2024, regarding the application of national security and counter-terrorism legislation in Viet Nam, where the broad and vague definitions of related offences raise serious concerns about compliance with the principle of legal certainty. We recall that criminal laws must be sufficiently precise to ensure individuals understand what conduct constitutes a criminal offence and the legal consequences thereof.

We remain particularly troubled by the designation of Indigenous-led civil society organizations as terrorist entities. In this respect, we recall that all designations must be grounded in credible evidence that the individuals or groups have knowingly engaged in, facilitated, or supported terrorist acts (A/HRC/16/51, para. 35). International human rights law requires that definitions of terrorism be precise, limited to genuinely terrorist conduct, and that any resulting restrictions be necessary,

proportionate, and non-discriminatory. In the absence of substantiated evidence, these designations risk violating a wide range of rights, including freedoms of expression, association, and religion; the right to participate in public affairs; and protection from discrimination. They may also infringe upon due process guarantees, such as the right to be informed of the grounds for listing, the right to challenge the designation, and access to judicial review. Where such organizations promote cultural, religious, or political rights – particularly those of Indigenous or minority communities – these measures may further undermine the rights to self-determination and to participate in cultural life.

We are alarmed that the reported incidents of reprisals and intimidation against Indigenous Peoples and ethnic and religious minorities, including Mr. Thang Dinh Nguyen and other Montagnard activists and human rights defenders in Thailand and members of MSFJ and BPSOS. The undue restrictions imposed on Montagnard diaspora organizations are designed to further discourage cooperation with the United Nations, and to prevent individuals from seeking access or provide information to United Nations' mechanisms, including the Special Procedures.

We are also seriously concerned by the allegations of enforced disappearances. We reiterate that, under international law, the failure or refusal to acknowledge a deprivation of liberty by state agents or persons acting with their authorization, support, or acquiescence constitutes enforced disappearance, regardless of the duration or type of concealment involved. State authorities are thus obliged to take all necessary measures to effectively protect the rights of persons deprived of their liberty, as they automatically assume responsibility for their lives, physical integrity, and wellbeing. State authorities are also obliged to promptly provide accurate information on the detention of persons deprived of liberty and their place or places of detention, including transfers, to their family members, counsel, or any other persons with a legitimate interest. The State should also fully recognize the legal personality of disappeared persons and their families, thus protecting them, bearing in mind their special vulnerability. It should also respect their rights to reparation, including adequate compensation for any damage (physical or mental injury, lost opportunities, material damage and loss of income, damage to reputation, and costs incurred in obtaining legal or expert assistance) resulting from an enforced disappearance.

Moreover, we emphasize the profound and devastating impact that enforced disappearances have on the families of the disappeared individuals and their communities. Enforced disappearances not only cause immense personal suffering but also disrupt the social fabric and cohesion of communities. The enforced disappearance of religious believers and ethnic and Indigenous minorities and human rights defenders violate the economic, social, and cultural rights of those involved in related activities; they harm the larger community that depended on the disappeared individuals to advocate for and defend their rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law and standards** 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 whereabouts of Mr. **Duong Van Thai** and Mr. **Truong Duy Nhat**, any charges brought against them, their detention conditions, and whether they are afforded with access to legal assistance, medical care, means of contacting their relatives, as well as regular visits.

3. Please explain how your Excellency's Government guarantees that persons deprived of their liberty are provided with adequate medical conditions (physical and psychological), proper treatment, and medication to those who need it.

4. Please clarify the measures currently in place to maintain official, reliable, transparent, and publicly available up-to-date registers of all detained persons in every place of detention and to ensure that any person with a legitimate interest, including relatives of persons deprived of their liberty and their representatives or counsel, has access to information on the fate, whereabouts, and state of health of the person deprived of liberty.

5. Please provide information on any measures undertaken to individually assess the protection needs of Mr. **Y Phuong Enuol**, Mr. **Y Duong Bkrong** and Ms. **H Leo Nie** that may be militating against their forced return, including their status as UNHCR-refugees or any request for protection in Thailand. If such steps have not been taken, please explain why.

6. Please provide information as to the involvement of Vietnamese authorities in the detention and possible forced return of ethnic Montagnards and how Vietnamese authorities ensure mutual respect for the obligations of *non-refoulement*.

7. Please explain how your Excellency's Government will ensure full respect for the obligation of *non-refoulement* and the principle of voluntary repatriation under international refugee law and international human rights law in relation to Vietnamese refugees in Thailand or any other third country, including by avoiding any threats, harassment, intimidation or coercion, cross-border abductions or forced returns, in violation of international law.

8. Please provide information on cooperation and extradition agreements with other Member States, including from the Greater Mekong Subregion, and the measures in place to prevent individuals being returned if they may be at risk of enforced disappearance, during or after their forced return.

9. Please provide detailed information on the measures being undertaken to reform Viet Nam's counter-terrorism legislation to ensure full compliance with the principle of legality, necessity, proportionality and non-discrimination as required under international human rights standards. Please explain how these reforms will address concerns about overly broad definitions and the potential misapplication of such laws to activities that do not constitute genuine acts of terrorism.

10. Please clarify how the listing of **MSFJ**, **BPSOS** and the individual designation of Mr. **Thang Dinh Nguyen**, as well as other individuals affiliated to these organizations, as 'terrorist' guarantees due process and judicial safeguards as required by international law and satisfies the requirement of legality. Please indicate how counter-terrorism laws offences meet the requirement of international human rights law. Please also explain how the consequences of listing do not infringe freedoms of expression, peaceful assembly and association; the right to take part in public affairs; freedom from discrimination; minority cultural rights; the right of minority or indigenous self-determination; and the right to communicate with international bodies such as the United Nations.

11. Please provide information on any measures taken to ensure that activists, human rights defenders, journalists and lawyers can do their work in a safe and enabling environment free from fear of reprisals. Please provide information on any measures in place to safeguard their fundamental rights and freedoms, including the freedoms of expression, peaceful assembly and association.

12. Please explain which measures are being taken to ensure that Montagnards and other ethnic, Indigenous and religious minorities can freely exercise their right to freedom of religion or belief and perform cultural, religious, and artistic practices.

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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudges any opinion the Working Group may render. Similarly, the Working Group on Enforced or Involuntary Disappearances may also consider the cases under its humanitarian procedure. The Government is required to respond separately to the present communication and the procedures of each Working Group.

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 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 note that a similar letter was transmitted to the Association of Southeast Asian Nations, Thailand, Lao People's Democratic Republic and Cambodia, and a copy was transmitted to Germany.

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

Gabriella Citroni
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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 and expression

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Nicolas Levrat
Special Rapporteur on minority issues

Nazila Ghanea
Special Rapporteur on freedom of religion or belief

Ben Saul
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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

Laura Nyirinkindi
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law and standards

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international standards applicable to this communication, including under the International Covenant on Civil and Political Rights (ICCPR), acceded to by Viet Nam on 24 September 1982.

We would like to refer to articles 3, 6, 7, 9, 10, 14, 16, 18, 19, 21 and 22 of the ICCPR, read alone or in conjunction with article 2.3, which guarantee the right to non-discrimination; the right to life; the prohibition of torture and other cruel, inhuman or degrading treatment or punishment; the right to liberty and security of person and the prohibition on arbitrary detention, which includes the right to challenge the legality of the detention before the courts and to be released subject to guarantees to appear for trial; the right to be recognized as a person before the law; the right to a fair and public trial before an independent and impartial tribunal without undue delay and with legal assistance of their choosing; the right to be treated with humanity and with respect for the inherent dignity of the human person; the right to freedom of religion or belief, the right to freedom of opinion and expression; the rights to freedom of peaceful assembly and of association; and the right to an effective remedy.

We would like to remind your Excellency's Government of the obligation to investigate gross human rights violations, punish them and provide reparations to the victims. Article 2 of the ICCPR states that States must take measures to ensure that persons whose rights or freedoms are violated have an effective remedy and that competent authorities ensure the enforcement of such a remedy when it is granted.

As established by the Human Rights Committee in its general comment No. 31, States have an obligation to investigate and punish serious human rights violations, such as torture, extrajudicial executions and enforced disappearances (CCPR/C/21/Rev.1/Add.13). The failure to investigate and prosecute such violations is in itself a violation of human rights treaty norms (paragraph 18). Principle 2 of the Updated set of principles for the protection and promotion of human rights through action to combat impunity calls on States to undertake prompt, thorough, independent and impartial investigations into violations of human rights and international humanitarian law and to ensure that those responsible for serious crimes under international law are prosecuted, judged and duly punished (E/CN.4/2005/102/Add.1).

Right to life

We stress that the duty to protect the right to life requires States parties to adopt special measures of protection for persons in situations of vulnerability whose lives are at particular risk due to specific threats or pre-existing patterns of violence. Such persons include human rights defenders. The obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life (CCPR/C/GC/36). In this regard, enforced disappearance is a serious violation of the right to life, which involves the deprivation of liberty followed by concealment or denial, depriving people of any

legal protection and exposing them to constant risk. It also violates other rights set forth in the ICCPR, including the prohibition of torture, liberty and security, and legal recognition. States must prevent such acts, investigate promptly and impartially, prosecute alleged perpetrators, and ensure that victims and families receive full reparations. Families should not be forced to declare the disappeared dead in order to access remedies and should be supported in regularizing their legal status after a reasonable period of time.

Prohibition of torture

We reiterate the absolute and non-derogable prohibition of torture is an *erga omnes* and *jus cogens* norm, as expressed as a principle of customary international law, including article 7 of the ICCPR. The prohibition of other cruel, inhuman or degrading treatment or punishment is also a well-established rule of customary international law. Furthermore, torture and cruel, inhuman or degrading treatment or punishment are prohibited in articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Viet Nam on 5 February 2015. Accordingly, pursuant article 2 of the CAT, Viet Nam has undertaken to ensure to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Prohibition of arbitrary detention

Furthermore, we would like to refer to article 9 of the ICCPR, which provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedure as are established by law.

As interpreted by the Human Rights Committee in General Comment No. 35 (CCPR/C/GC/35), the notion of "arbitrariness" is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity, and proportionality. According to the same General comment and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is 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.

We would like to further remind your Excellency's Government that the right to challenge the lawfulness of detention before a court, protected under article 9 of the ICCPR, is a self-standing human right and a peremptory norm of international law, which applies to all forms of arbitrary deprivation of liberty.

Prohibition of enforced disappearance

We wish to reiterate that the prohibition of enforced disappearance has also attained the status of *jus cogens*. It is a particularly aggravated form of arbitrary detention, and it may amount to torture or other cruel, inhuman or degrading treatment or punishment both regarding the disappeared and their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved ones.

In this regard, we wish to recall that the United Nations Declaration on the protection of all persons from enforced disappearance establishes that "all acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness" (article 4); "no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance" (article 6). Furthermore, "no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances" (article 7), and "the right to a prompt and effective judicial remedy must be guaranteed as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances" (article 9).

In this regard, the Working Group on Enforced or Involuntary Disappearances has noted the increasing practice of forced returns by States in violation of article 8 of the Declaration. It further underlined the importance of preventing human rights violations by ensuring procedural safeguards upon detention and during the first hours of deprivation of liberty, including immediate registration, judicial oversight of the detention, prompt notification of family members, and the availability of a defence lawyer of one's choice. The Working Group observes that transnational transfers embody a denial of justice insofar as individuals are deprived of liberty in the form of secret detention and are removed from the protection of the law. They are, as such, deprived of the rights to an effective remedy and fair trial, in denial of the presumption of innocence. In addition, the individuals concerned are unable to challenge the lawfulness of their detention, denied access to legal representation, and often induced to forced confession of guilt under duress. The Working Group recalls that such practices can also facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment under certain circumstances (A/HRC/48/57).

The Declaration further sets out the necessary protection relating to the rights to "be held in an officially recognized place of detention", and to "be brought before a judicial authority promptly after detention"; to "accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest"; and to "the maintenance in every place of detention of official up-to-date registers of all detained persons" (articles 10 and 12). The Declaration further stipulates that "any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority" (article 13), that "States should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance" (article 14), and

that “the persons responsible for these acts shall be tried only by ordinary courts and not by other special tribunal, notably military courts” (article 16); “not benefit from any amnesty law” (article 18); and that “the victims or family relatives have the right to obtain redress, including adequate compensation” (article 19).

We also wish to recall that the Guiding principles for the search for disappeared persons establish that the search for the disappeared should be undertaken without delay (principle 2); respect the right to participation of the family of the disappeared (principle 5); be considered a continuing obligation (principle 7); and be interrelated with the criminal investigation (principle 13).

In the Joint statement on short-term enforced disappearances, the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances highlighted that, under international law, the duration is not a constituent element of enforced disappearance, stating that "whatever its duration, any enforced disappearance entails serious harm and consequences for the disappeared persons and their families, and poses practical difficulties for the protection of these persons and the defence of their rights".

In its General Comment on the right to recognition as a person before the law in the context of enforced disappearance (A/HRC/19/58/Rev.1), the Working Group noted that when a person deprived of liberty is not acknowledged by the State, the legal rights of this person are placed in a legal limbo, a situation of total defencelessness. The crime of enforced disappearance puts the detainee outside of the protection of the law, denies the person of legal existence and prevents the enjoyment of their rights, including due process rights and judicial safeguards, and other fundamental rights and freedoms.

In its report on standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3), the Working Group recommended that States define enforced disappearance as an autonomous crime in national legislation and establish different modes of criminal liability, including abetting, instigating, acquiescing and actively covering up an enforced disappearance, as well as criminal liability for command or superior responsibility; and create mechanisms that can promptly receive and process complaints of enforced disappearances, under the responsibility of authorities who are independent of the institutions to which the alleged perpetrators belong or may be linked. These mechanisms should be empowered to trigger prompt investigations of the complaints received.

Additionally, in the study on enforced disappearances and economic, social and cultural rights, the Working Group observed that the enforced disappearance of journalists, religious leaders or persons actively promoting the enjoyment of economic, social and cultural rights, are used as a repressive tool to deter the legitimate exercise, defence or promotion of the enjoyment of these rights. Due to their collective character, such measures also violate their economic, social and cultural rights, the rights of others engaged in related activities, and of the larger community of people who relied on the disappeared person to represent and fight for their rights (A/HRC/30/38/Add.5). Similarly, in its General Comment on Women and enforced Disappearances, the Working Group also noted that States have an obligation to recognize the particular types of harm women suffer based on their gender and the resulting psychological damage and social stigma as well as the disruption of family structures

(A/HRC/WGEID/98/2).

Freedom of thought, conscience and religion

Article 18 of the ICCPR recognises the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. Furthermore, article 18(2) bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18(2). The same protection is enjoyed by holders of all beliefs of a non-religious nature (Human Rights Committee General Comment 22, para. 5). According to article 18(3), freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Freedom of expression

Article 19 of the ICCPR guarantees the right to freedom of expression. Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right "to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media". This right applies online as well as offline and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend. 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 "political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse" (CCPR/C/GC/34). The Committee asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Recognizing how journalists and persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers, are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that "all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims be in receipt of appropriate forms of redress".

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR. Under these requirements, restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order, or of public health or morals; and (iii) be necessary and proportionate for those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving "in specific and

individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat" (CCPR/C/GC/34). The Human Rights Committee recalled that the relation between right and restriction and between norm and exception must not be reversed. While certain restrictions may be placed on freedom of expression, for the protection of national security or of public order, or of public health or morals, they may not be arbitrarily imposed on those sharing legitimate concerns, observations or opinions on health or Government policy.

In this regard, as indicated by the Human Rights Committee, attacks against individuals for exercising their right to freedom of expression, including through arbitrary detention, torture, inhuman or degrading treatment or punishment, and enforced disappearance is incompatible with the ICCPR. We would like to further remind Your Excellency's Government that the right to challenge the lawfulness of detention before a court, protected under article 9 of the ICCPR, is a self-standing human right and a peremptory norm of international law, which applies to all forms of arbitrary deprivation of liberty.

Discrimination against women

We would also like to reiterate to your Excellency's Government the obligations of Viet Nam through its ratification in 17 February 1982 of the International Convention on the Elimination of Discrimination against Women, and in particular article 7, which provides that States shall take all 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.

The Working Group on discrimination against women and girls, in one of its reports to the Human Rights Council (A/HRC/23/50), stated that 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 human rights 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 on discrimination against women and girls, 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 a joint declaration, the Working Group on discrimination against women and girls emphasized that women human rights defenders face unique challenges, driven by deep-rooted discrimination against women and stereotypes about their appropriate role in society. In its report on girls' and young women's activism (A/HRC/50/25), the Working Group on discrimination against women and girls expressed that girls and young women are mobilizing worldwide to demand and catalyse change on critical global issues. They are at the forefront of initiatives aimed at transforming societies towards social justice, gender equality and sustainability. The realization of girls' and young women's human right to participate in public and political life, including

organizing and engaging actively with a variety of State and non-State actors, is essential for the protection of their human rights. The Working Group on discrimination against women and girls has called on States to ensure that mechanisms are in place to solicit the views of girls and young women in all matters of public interest affecting them directly or indirectly and to give due weight to those views.

Furthermore, in its thematic report on women deprived of liberty (A/HRC/41/33), the Working Group on discrimination against women and girls underlined the increasing risk faced by women human rights defenders of criminalization and detention as a result of their legitimate work and recommended States to support and protect women's engagement in public and political life, including the work of women human rights defenders. Women who work specifically to combat gender stereotypes and advance women's rights are most likely to be targets for criminal persecution and imprisonment. Certain laws, including "complicity" laws, and "public order" laws or even anti-terrorism laws, may be particularly instrumentalized to target women human rights defenders. The Working Group recommended States to support and protect 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 to 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 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.

Human rights defenders

We would further like to recall 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, which state that everyone has the right to promote and 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 refer to article 6 paragraph (b), which guarantees the right to freely publish, impart or disseminate views, information and knowledge on human rights and fundamental freedoms. Furthermore, we would also like to make explicit reference to article 9 of the Declaration, which states that everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of their rights, and that "everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a

violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay". Finally, we would like to reference article 11 of the Declaration, which states that everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession.

Counter-terrorism and human rights

The principle of legality under article 15(1) of the ICCPR requires that criminal laws must be sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what would be the legal consequences of committing such an offence, so as to avoid overly broad or arbitrary application (general comment No. 35, para. 22) or the impermissible targeting of civil society on political or other unjustified grounds (A/70/371, para. 46). The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the misuse of overly broad definitions of terrorism to quell legitimate activities protected by international law. The General Assembly has affirmed and unanimously recognized that effectively combatting terrorism and ensuring respect for human rights are not competing but complementary and mutually reinforcing goals in the Global Counter-Terrorism Strategy (A/HRC/60/288). Moreover, United Nations resolutions 15 require that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with States' obligations under international law, in particular international human rights law, refugee law and international humanitarian law. Counter-terrorism measures must conform to fundamental assumptions of legality, proportionality, necessity and nondiscrimination. Laws which disregard these principles can have deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities and civil society.

The definition of terrorism must be appropriate and precise, based on relevant provisions of international counter-terrorism instruments, and strictly guided by the principles of legality, necessity, and proportionality. State action should be guided by the acts of terrorism defined in sectoral treaties on terrorism, Security Council resolution 1566 (2004) (" criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury or to take hostages with the purpose of provoking a state of terror in the general public, in a group of persons or in particular persons, intimidate a population or compel a government or an international organization to do or abstain from doing any act, which constitute offenses as defined in the conventions, covenants, and protocols relating to terrorism and covered by their scope") and the model definition of terrorism developed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/51).

The listing of an organization as terrorism must meet the requirements of due process and judicial protection under international human rights law, as set out by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (A/HRC/16/51, para. 35). Specifically, a listed organization must be promptly informed of the listing and its factual grounds, the consequences of such listing and the applicable procedural rights; there must be a right to apply for de-listing and to judicial review of any resulting decision; listings must lapse automatically after 12 months unless renewed afresh; and compensation must be

available for wrongful listing. The underlying definitions of terrorism must also be consistent with those in the international terrorism suppression conventions, United Nations Security Council resolution 1566, the UN General Assembly's Declaration on Measures to Eliminate International Terrorism 1994, and the model definition of Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and be consistent with international law.

The principle of non-refoulement

Interconnected with the issues raised above, *non-refoulement*, embodying the rule that refugee must not be sent back to areas where they might have a well-founded fear of persecution, is a long-established principle of international law and is considered binding on all States and other stakeholders as part of customary international law. It applies universally to all individuals, including migrants and refugees, at all times and under all circumstances, irrespective of their citizenship, nationality, statelessness, or migration status. The norm strictly prohibits the removal or transfer of any individual - regardless of their legal status - when there are substantial grounds to believe that such action would expose them to a real risk of irreparable harm. This includes, but is not limited to, risks of death, torture, cruel, inhuman or degrading treatment or punishment, persecution, enforced disappearance, or other serious violations of human rights in the destination country.

Moreover, the principle of *non-refoulement* interrelates with the ICCPR, including article 13 which provides that "[an] alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

General comment No. 31 of the Human Rights Committee specifies that article 2 of the ICCPR entails 'an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm' (para. 12). General comment No. 36 adds that the duty to respect and ensure the right to life under article 6 of the ICCPR requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life would be violated (para. 30). In this regard, State parties to the ICCPR must adopt special measures and respond urgently and effectively in order to protect individuals who find themselves under a specific threat (para. 23).

Non-refoulement is an absolute rule under the CAT and this is underlined in article 3 which states that: "[no] State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture", and that "[for] the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

In the ASEAN region, there are two countries which are parties to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. This reiterates the universal significance of *non-refoulement* as part of customary international law, obliging States and other stakeholders to respect and abide by it as *lex lata* at the national and other levels.