

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 the independence of judges and lawyers; the Special Rapporteur on the rights of Indigenous Peoples; the Independent Expert on human rights and international solidarity; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

Ref.: AL VNM 4/2024

(Please use this reference in your reply)

14 June 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 the independence of judges and lawyers; Special Rapporteur on the rights of Indigenous Peoples; Independent Expert on human rights and international solidarity; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 49/10, 51/8, 54/14, 53/4, 52/9, 50/17, 52/4, 53/12, 51/16, 53/5, 52/5, 49/5 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning (1) the criminal trial, conviction and sentencing of 100 individuals for terrorism-related charges in the Dak Lak Province in the Central Highlands of Viet Nam on 20 January 2024, in response to a lethal attack on two commune police stations in Dak Lak province on 11 June 2023; (2) the arrest and detention of suspects prior to the trial; (3) restrictions on media and social media reporting of the events; (4) the listing of the non-governmental organization (NGO) Montagnards Stand for Justice (MSFJ) (*Người Thượng vì công lý*) as a terrorist organization on 6 March 2024; (5) steps taken to obtain the forced repatriation to the Socialist Republic of Viet Nam of Vietnamese Montagnard refugees from Thailand; (6) the context of the treatment of Montagnard peoples in the Central Highlands; (7) restrictions on Montagnard minority religions in the Central Highlands; and (8) the killing of Mr Y Būm Byă in Ea Tu commune, Buon Ma Thuot District, Dak Lak Province, on 8 March 2024.

We note that Special Procedures mandate-holders have previously drawn attention to the rights of Montagnard religious minorities in Viet Nam (see AL VNM 2/2023, AL VNM 4/2022 and UA VNM 9/2018) as well as of other religious minorities. While we note with regret that the Government has not provided a reply to the communication VNM 2/2023, we take note of the Government's reply to

communications VNM 4/ 2022 and VNM 9/2018 on 27 July 2023 and 25 April 2019, respectively. We further recall that several Special Procedures experts expressed concern over the alleged arbitrary arrest, disappearance and subsequent repatriation from Thailand of the human rights defender, blogger and journalist Mr. Truong Duy Nhat (see VNM 1/2019, VNM 4/2020 and Opinion No. 42/2020 of the Working Group on Arbitrary Detention).

According to the information received:

Armed attacks on two commune police stations in Dak Lak Province, Central Highlands, on 11 June 2023 killed nine people, including four police officers, two local officials (the Secretary of Ea Ktur commune and the Chairman of Ea Tieu commune) and three civilians, and injured two police officers and a number of others. In response an intense security operation involving heavily armed police and other security units from Viet Nam's Ministry of Public Security rapidly led to the detention of a large number of people. Local residents were called on by state media to assist the authorities to search for and apprehend persons wearing commonplace 'camouflage' clothing, and duly armed themselves with knives, machetes and sticks, leading to individuals being arrested and some being beaten. Some Montagnard residents fled their homes in fear and there were reports of arbitrary arrests, extrajudicial killings, torture, and other forms of cruel, inhuman, or degrading treatment, including of Christian missionaries. The border with Cambodia was closed in cooperation with the Cambodian Government, which declared that anyone crossing the border would be arrested and returned to Viet Nam. Detainees were denied access to lawyers for protracted periods of months following their arrests and were also denied access to family visits.

#### *Mass trial*

On 20 January 2024, 100 defendants were convicted for their alleged involvement in the attacks by a 'mobile court' (*xet xu luu dong*) of five judges, including the Chief Justice of Dak Lak Provincial People's Court (verdict 08/2024/HS-ST).<sup>1</sup> The trial was held in Residential Area 11, Ea Tam ward of Buon Ma Thuot city. 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. However, the six defendants who were tried and sentenced in absentia did not receive legal representation. The Vietnamese authorities claimed that the defendants confessed, expressed remorse, and asked for leniency. The sentences were as follows:

- Ten defendants were sentenced to life imprisonment for the offence of 'terrorism to oppose the people's government' under article 113 of the Criminal Code of the Socialist Republic of Viet Nam, Law No. 100/2015/QH13, 27 November 2015;
- Forty-three defendants received prison sentences of between six to 20 years under the same offence;

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<sup>1</sup> [https://bocongan.gov.vn/KND/khungbo/Lists/BaiVietKhungBo/Attachments/29/Ban%20an%20hs%2008.2024.HS-ST%20DakLak.pdf?\\_ga=2.241677762.1134717538.1711483963-2037278002.1711483963](https://bocongan.gov.vn/KND/khungbo/Lists/BaiVietKhungBo/Attachments/29/Ban%20an%20hs%2008.2024.HS-ST%20DakLak.pdf?_ga=2.241677762.1134717538.1711483963-2037278002.1711483963).

- Forty-five defendants, including six who were tried in absentia, received prison sentences of between three and a half and 11 years for the offence of ‘terrorism’ under article 299 of the Criminal Code 2015;
- One defendant received a two-year prison sentence for ‘organizing, brokering others illegally exit, enter or stay in Viet Nam’ under article 348 of the Criminal Code 2015; and
- One defendant received a nine-month prison sentence for ‘concealment of crimes’ under article 389 of the Criminal Code 2015.

Most of the defendants were indigenous Montagnards (‘mountain people’) (also known as *người Thượng* (‘highlanders’) or ‘Degar’), while one is of the majority Kinh ethnic background (*người Kinh*). The Vietnamese authorities declared that the defendants were incited and directed online by US-based ‘reactionary’ ethnic minority organizations to mount the attack, by forming the armed group ‘Degar Soldiers’, with the aim to overthrow the Vietnamese government and establish the ‘Degar State’. The authorities also identified as responsible the United Front for the Liberation of Oppressed Races (*Front unifié de lutte des races opprimées*) (FULRO), a militant organization founded in 1964 to pursue autonomy of indigenous people and minorities in Viet Nam and dissolved in 1992.

Media coverage of the incident was allegedly restricted to the reporting of official information from the Ministry of Public Security (MPS) on the instructions of the Vietnamese Communist Party (CPV)’s Central Propaganda Committee, resulting in censorship and self-censorship. Over 100 people were reportedly administratively fined under social media regulations<sup>2</sup> for ‘disseminating false information’ after posting online about the events, such as on Facebook and TikTok, with fines of between VND 5.5 million and VND 35.5 million (US\$1,510), plus the requirement to attend corrective ‘work sessions’. Infringing content posted by individuals was also deleted. In addition, criminal charges were brought against some individuals under article 117 of the Criminal Code (2015) for ‘making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam’.

### *Designation of the MSFJ*

In connection with the 11 June 2023 attack, on 6 March 2024 the Ministry of Public Security listed Montagnards Stand for Justice (MSFJ) (*Người Thượng vì công lý*) as a terrorist organization.<sup>3</sup> The designation claims that MSFJ, founded in 2019 in Thailand and also represented in the United States, ‘operates by propagandizing, attracting, recruiting members, assigning tasks, and training methods of operation; sponsoring money, directing the

<sup>2</sup> For ‘providing or sharing fake or false information, false information with the aims of distorting, slandering or damaging the prestige, honor and dignity of other organizations, authorities or individuals’ under article 101 (1) (a) of Decree 15/2020/ND-CP dated 3 February 2020 (amended and supplemented in 2022) on penalties for administrative violations in the fields of postal, telecommunications, and frequency radio numbers, information technology, network information security and electronic transactions.

<sup>3</sup> <https://daibieunhandan.vn/tin-tuc1/bo-cong-an-thong-tin-ve-hai-to-chuc-hoat-dong-khung-bo-i362082/>.

procurement of weapons and vehicles, conducting terrorist attacks, killing officials and people, destroying State and people's property to establish a 'separate State' in the Central Highlands'. MSFJ allegedly engaged the 'Degar Soldiers' group to carry out the 11 June 2023 attack, in order to establish a 'Degar State'. As a result of the listing, the authorities warn that "anyone who engaged in, propagated, enticed, incited others to participate, sponsored or received sponsorship, or participated in training courses organized by' MSFJ, or followed its direction, would be charged with 'terrorism' or 'supporting terrorism'.

MSFJ denies involvement in terrorism or the attack of 11 June 2023<sup>4</sup> and views the designations as a pretext for suppressing Montagnard groups in exile that document and expose human rights violations against Montagnards in Viet Nam.

### *Pursuit of Montagnard exiles in Thailand*

One of the individuals convicted in absentia on 20 January 2024, Mr. Y Quynh Bdap, is the co-founder of MSFJ living in Thailand. Like many other Montagnards, including MSFJ members, in Thailand, he has been recognized as a refugee by the United Nations High Commissioner for Refugees (UNHCR) and is awaiting resettlement to a third country. None of these individuals wishes to return to Viet Nam. As refugees, they have well-founded fears of persecution or other serious human rights violations on account of their activities defending the human rights of the Montagnards in Viet Nam. Several Montagnards await resettlement to a third country, such as Canada and the United States. One case already left to Switzerland seeking asylum, for fear of prosecution in Thailand.

On 14 March 2024, a delegation of several Vietnamese public security police went to neighborhoods with large concentrations of Montagnard 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 an official from the Vietnamese embassy. The Montagnards were allegedly pressured by the Thai police to present 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 illegally leaving Viet Nam, promised leniency and support for returning, and threatened arrest and other repercussions if they refused to return. The Vietnamese delegation asked about the location of Montagnards, convicted in absentia in the 20 January 2024 trial, including showing them photographs and arrest warrants, and warned the refugees not to hide people being hunted by the Vietnamese police. They also inquired about the location of other MSFJ members and declared that they would 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.

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<sup>4</sup> Other Montagnard organisations based abroad have denied involvement in the 11 June 2023 attack, including the Central Highlands Protestant Church of Christ and the Dega Central Highlands Organization.

The Montagnards refugees also fear that Viet Nam 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. Around 13-14 April 2023, a prominent Vietnamese blogger and YouTuber, Duong Van Thai / Thai Van Duong, who had been granted UNHCR refugee status in Thailand, was allegedly abducted in Bangkok by Vietnamese intelligence personnel and forcibly returned to Viet Nam, where the authorities announced that he was in custody.<sup>5</sup> He had earlier been convicted in absentia under article 117 of the Criminal Code (2015). Another refugee blogger and journalist seeking protection in Thailand, Truong Duy Nhat (see VNM 4/2020, VNM 1/2019), was abducted in Bangkok and forcibly returned to Viet Nam in February 2019 and later convicted to ten years in prison for ‘abusing his position and power while on duty’ under article 356 (3) of the Criminal Code (2015). In December 2017, a refugee in Germany was abducted in Berlin and forcibly returned to Viet Nam, resulting in Germany’s expulsion of two Vietnamese diplomats and the conviction of one of the perpetrators (see WGAD Opinion No. 42/2020).

One Montagnard in exile, Ms. H Biap Krong, a human rights defender and member of the overseas Vietnamese NGO Boat People SOS (BPSOS), fled to Thailand in October 2015. She was recognized as a refugee by UNHCR in October 2016. On 6 March 2024, she was labelled as a ‘terrorist’ by the Vietnamese Minister of Public Security in the Vietnamese media. Fearing consequential harassment or detention by the Thai authorities, she fled Thailand and has applied for asylum in a third country.

### *Mistreatment of Montagnards in the Central Highlands*

Persecution and intimidation of the Montagnard population generally in the Central Highlands has increased since the 11 June 2023 attack. Such measures include heavy surveillance, police harassment, media censorship, restrictions on freedom of movement, negative impacts on livelihoods and food security, and administrative obstacles to access by foreign nationals to the Central Highlands. In addition, online hate speech, seemingly emanating from the dominant Kinh majority population, has targeted Montagnard groups in exile, such as MSFJ and the Evangelical Church of Christ in the Central Highlands (ECCCH).

The authorities have also intensified the targeting of minority religious practices in the Central Highlands, including forced renunciation of unrecognized faiths and conversion to official churches, and criminalisation of religious leaders. Montagnard congregations of the ECCCH, including so-called ‘house churches’, are not officially recognized in Viet Nam and are illegal.<sup>6</sup> The authorities have also accused overseas Vietnamese organisations, such as BPSOS, based in the United States and Thailand, of ‘terrorism’ in response to their advocacy for religious freedom in Viet Nam.

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<sup>5</sup> A copy of the case of Duong Van Thai was transmitted to your Excellency’s Government under the urgent humanitarian procedure of the Working Group on Enforced or Involuntary Disappearances on 19 May 2023. The case, counted under the statistics of Thailand, was clarified during the 131st session of the Working Group according to information received by the source.

<sup>6</sup> The Vietnam Fatherland Front, the Communist Party entity responsible for mass organizations and religions, only recognizes six religions and controls their clergy and organization, including two official Protestant churches: Southern Evangelical Church of Vietnam (SECV) and Evangelical Church of Vietnam North (ECVN).

We are particularly alarmed by the apparent death and prior torture in official custody of Y Būm Byă, a member of the ECCCH, on 8 March 2024 in Ea Tu commune, Buon Ma Thuot District, Dak Lak Province. Mr. Byă was found hanging by a rope from a dome in a cemetery near his house after he responded to a phone call from the police to meet them at a specified location. His body had been badly beaten. Mr. Byă was previously forced to publicly renounce his unofficial house church, was arrested and beaten by police, and was charged with undermining national unity under article 116 of the Criminal Code (2015) in December 2023.

Further, a member of the ECCCH, Nay Y Blang, was convicted of ‘abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens’ under article 331 of the Criminal Code (2015) and sentenced in January 2024 to four and a half years in prison for refusing to disband his house church and stop hosting prayer meetings in Phu Yen Province. It was alleged that he used the meetings to ‘gather forces, divide the national unity bloc, incite secession, self-rule, and establish a separate state for ethnic minorities in the Central Highlands’ and he was further accused of ‘providing false information about freedom of religious belief, slander, distorting religious policies, and violating the interests of the State’. No defence lawyer was present at the trial. Mr Blang had been previously punished for his religious activities on multiple occasions.<sup>7</sup>

On 28 March 2024, another ECCCH member, Y Krec Bya, was sentenced to 13 years in prison for ‘sabotaging implementation of solidarity policies’ under article 116 of the Criminal Code (2015), which can include sowing religious or class divisions or causing hostility, discrimination, secession or infringement of ethnic equality rights. Mr. Y Krec Bya’s brother was prevented from entering the courthouse, along with several other relatives and other members of the ECCCH. On 14 April 2024, police officers interrupted a Sunday worship gathering at the home of Y Krec Bya’s wife, H Ik Kbuôr, demanding that those present join the officially recognized Evangelical Church of Vietnam – South (ECVS).

These events followed ‘public denunciations’ of other members of the ECCCH, including on 22 March 2024, when police ordered members including Y Brê Êban, his wife H Nguôm Bya, and Y Lem Mlô to return to the fold of the ECVS. Public denunciations of this kind have previously been reported, inter alia, as a form of retaliation against ECCCH members for their activities in the context of the International Day for Commemorating the Victims of Acts of Violence Based on Religion or Belief, held on 22 August (‘International Day of Commemoration’).

In this regard, on 20 August 2023, two police officers entered Y Sî Êban’s ([VNM 2/2023](#)) residence and threatened to have him fined and imprisoned if he observed the International Day of Commemoration. Police officers were

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<sup>7</sup> Mr. Blang was convicted and sentenced in 2005 in relation to his religious activities for ‘undermining the unity policy’ and on release from prison in 2010 he was sent to an ‘educational facility’ for two years for ‘abusing democratic freedoms’. In 2022 he was also administratively fined 4 million Vietnamese Dong by the People’s Committee of Song Hinh district for ‘abusing democratic freedoms and belief freedoms.’

stationed near his home to monitor his movements throughout the day, preventing him from leaving his home. On 10 and 11 April 2024, his wife was interrogated at the police station of Êa Tu Commune and her mobile telephone was examined.

On 9 April 2024, Y Khiu Niê, a Montagnard Christian whose case was also raised in [VNM 2/2023](#), was summoned to the Government centre of Ea Tu Commune. Mr. Nie was interrogated as to whether he had been taking part in further civil society trainings, pressured to convince his family members to return from Thailand to Viet Nam, and questioned about his contacts with civil society organizations overseas.

While we do not wish to prejudge the accuracy of the information received, if the above allegations prove to be true, under international human rights law they may constitute a violation of the right to life, the right to a fair trial; the right to liberty; freedom from torture and cruel, inhuman or degrading treatment or punishment; freedoms of expression, peaceful assembly and association; the right to take part in the conduct of public affairs; the principle of legality; due process; non-discrimination; the rights of indigenous peoples; minority rights; freedom of religion; privacy; and of the duty of *non-refoulement* under international human rights and refugee law.

Viet Nam ratified the International Covenant on Civil and Political Rights ('ICCPR') and the International Covenant on Economic, Social and Cultural Rights ('ICESCR') on 24 September 1982, the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment ('CAT') on 5 February 2015, and the Committee on the Elimination of Racial Discrimination on 9 June 1982. Viet Nam voted for the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP') when it was adopted by the General Assembly on 13 September 2007 and adopted the ASEAN Human Rights Declaration ('ASEAN HRD') on 19 November 2012.

While legitimate law enforcement and security measures must be taken in response to attacks such as that experienced by Viet Nam on 11 June 2023, including to ensure perpetrators are held accountable and victims receive justice, such measures must be consistent with your Excellency's Government's obligations under international law, including international human rights law and international refugee law.

#### *Fair trial by an independent court*

We are concerned that the mobile court criminal trial of 100 defendants in January 2024 did not meet fair trial standards under international human rights law, including as reflected in art. 10 of the Universal Declaration of Human Rights ('UDHR'), art. 14 of the ICCPR and art. 20 of the ASEAN HRD.

First, trial before an exceptional 'mobile court' does not appear to meet the international law requirement of equality before the courts, which requires that 'similar cases are dealt with in similar proceedings' and that any exceptional criminal procedures or specially constituted courts must be justified on objective and reasonable grounds (General Comment No. 34). We note that Vietnamese law has never sought to regulate the use of mobile court procedures, such that they lack an

adequate legal basis and are necessarily arbitrary in operation. We note that in 2018 the Chief Justice of the Supreme People's Court proposed to stop the use of mobile courts. We further emphasize that in its 2019 Universal Periodic Review at the United Nations Human Rights Council, Viet Nam accepted recommendations to abolish this practice of outdoor trials, which are still frequently used.

Secondly, an apparent purpose of 'mobile trials' is to 'educate' the public about the law, by prosecuting defendants in a public place near their place of residence. However, we are concerned that the proceedings did not perform a legitimate educative function but resulted in publicly embarrassing, shaming, humiliating or degrading the defendants and their families before other members of their community. Such a performative trial and public denunciation in a communal society can unjustifiably stigmatize and traumatize defendants and their family members and could constitute inhuman or degrading treatment or punishment prohibited by international law, including under art. 5 UDHR, art. 7 ICCPR, art. 16 CAT, and art. 14 ASEAN HRD. Such public shaming may also present a barrier to reintegration and rehabilitation in the community after a genuinely guilty person has served their sentence.

Thirdly, we are concerned that the mobile court was not independent of political influence as required by art. 10 UDHR, art. 14 (1) ICCPR and art. 20 (1) ASEAN HRD). The Communist Party of Viet Nam may exercise a high level of control over the appointment of judges and direct or indirect political interference by the Viet Nam Government in their work is common, particularly in sensitive or high-profile national security cases. The exceptionally speedy delivery of the judgment in a case involving a very large number of 100 defendants may indicate that the court was under political pressure to ensure a conviction. Separately, the practical burden involved in managing a mass trial involving 100 defendants, coupled with limited resources, may infringe on judicial discretion to manage cases and procedures and thus further undermine judicial independence.

Fourthly, we are concerned that the right of the defendants to be presumed innocent until proven guilty by law was infringed (art. 11 (1) UDHR, art. 14(2) ICCPR and art. 20 (1) ASEAN HRD). Public authorities have a duty to refrain from public comments that prejudge or prejudice the outcome of a trial, by abstaining from making public statements affirming the guilt of the accused. In addition, the media should avoid news coverage undermining the presumption of innocence (General Comment No. 34). In this case, we note that senior Vietnamese Government officials made highly prejudicial pre-trial public comments about the defendants' perceived responsibility for terrorist crimes, and state-controlled media (including television) both reported on the defendants as 'terrorists' and published images of some of the recently captured defendants reported on their purported confessions.

Fifthly, for similar reasons, we are concerned that the trial was not generally 'fair' and did not meet the specific standards of fair trial required by art. 10 UDHR, art. 14 (1) ICCPR, and art. 20 (1) ASEAN Declaration. The fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive (General Comment No. 34). A hearing is not fair if, for instance, the defendant in criminal proceedings is faced with the expression of a hostile attitude from the public or support for one party in the courtroom that is tolerated by the court, thereby impinging on the right to defence, or is exposed to other manifestations of hostility with similar effects (General Comment



No. 34). In this case fairness was impaired by the combination of the above-mentioned comments by state officials undermining the presumption of innocence and the public shaming inherent in mobile court trial in the Dak Lak community, where ethnic divisions had been aggravated by the authorities' incitement of civilian vigilantism against Montagnards.

Sixthly, in a mass trial involving 100 defendants, it may be very difficult, if not impossible, for each defendant to enjoy each of the specific guarantees of fair trial under international law. This is even more true in the context of an outdoor mobile court. The underlying principle of individual criminal responsibility, and the presumption of innocence of each defendant may be compromised because of the cumulative effect of the adverse evidence about the terrorist organization generally and potentially numerous acts allegedly committed by the multiple defendants on trial. Likewise, the court may face difficulty in disentangling the responsibility of each defendant from the mass of highly prejudicial evidence about alleged terrorist activities, most of which will not relate to each defendant personally. For the same reasons, there is a significant risk in sentencing that convicted persons will receive punishment that exceeds their individual responsibility. In this respect, we emphasise that criminal punishment must be individually tailored and proportionate to the culpability of each perpetrator. Appeal may be made more difficult following mass trials since the trial record for each individual defendant may be less well developed than it would have been in the case of individual trials.

Further, trial in a single proceeding may, for practical reasons related to the procedural management of multiple defendants, inhibit the ability to guarantee adequate time and facilities for the preparation of the defence of each defendant and to communicate with counsel of their own choosing; the right of each defendant to defend themselves in person or through legal assistance of their own choosing; the right of each defendant to examine witnesses and to access relevant evidence; the right to an interpreter; the right to silence of each defendant; and the right of appeal.

We are particularly concerned that the defendants were denied access to lawyers for protracted periods before their trial; that only 19 lawyers were appointed at the trial to represent the 94 defendants present at trial, that the defendants did not enjoy the right to freely choose their lawyers; and that six persons tried in absentia did not receive any legal representation. We note that article 74 of Viet Nam's Criminal Procedure Code No. 101/2015/QH13 of 27 November 2015 permits the head of the procuracy to deny a detainee access to legal counsel until after investigation is concluded when confidentiality of investigations into a national security breach is believed to be vital. We note that at its UPR in 2019, Viet Nam committed to amending its Criminal Procedure Code to guarantee representation by a lawyer immediately following an arrest, and to respect lawyer-client confidentiality, including in national security cases. The absence of adequate legal representation prior to trial necessarily prejudiced the right of each defendant to prepare their defence, as did media restrictions and the coercive atmosphere after the 11 June 2023 attack, which limited the ability of the defendants to obtain evidence that may have been relevant and had probative value to their defence.

#### *Arbitrary arrest and detention*

We are concerned that some arrests after the 11 June 2023 attack may not have been based on reasonable grounds substantiated by sufficient evidence and were thus

arbitrary and contrary to art. 9 UDHR, art. 9 ICCPR and art. 12 ASEAN HRD. Arrest or detention must be not only authorized by domestic law but also not arbitrary. Arbitrariness may include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality (General Comment No. 35, paras. 12 and 15). We are concerned that the heavy security response after the 11 June 2023 attacks, including the state's co-optation of civilian vigilantes (of majority Kinh ethnicity), may have resulted in the arrest of innocent people. These risks were accentuated by ethnic divisions, with Montagnards being publicly blamed by state officials and media, encouraging potential profiling and arrests on the basis of minority ethnic status. We note that arrests of detention on discriminatory grounds are arbitrary and unlawful (General Comment No. 35, para. 17).

We emphasize that anyone arrested must be informed at the time of arrest of the reasons for their arrest and to be promptly informed of any charges against them (art. 9 (2) ICCPR). We note with concern that Vietnamese law provides for extended periods of investigative detention in security cases. Detained persons must also be brought promptly before a judge and there is a presumption in favour of bail not pre-trial detention (art. 9 (3) ICCPR). Further, any detainee has a right to challenge their detention before a court and to receive legal assistance (art. 9 (3) and (4) ICCPR; General Comment No. 35, para. 34). We reiterate our above-mentioned concerns about the denial of access to lawyers by the defendants for protracted periods following their arrest.

We are concerned that some defendants were allegedly intimidated, threatened, tortured or subjected to cruel, inhuman or degrading treatment or punishment, including multiple and severe beatings, in order to induce them to give forced confessions, contrary to art. 5 UDHR, art. 7 ICCPR, art. 16 CAT, and art. 14 ASEAN HRD.

#### *Terrorism Offences*

We further express concern on the scope and interpretation of the terrorist-related offences under Vietnamese law brought against these individuals. We note that article 113 of the Criminal Code covers certain violent acts 'for the purpose of opposing the people's government', while article 299 concerns such acts 'to bring terror to the public'. Such general terms are potentially vague, imprecise, uncertain and over-broad in their practical application and seem incompatible with the principle of legal certainty. We recall that 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).

#### *Restrictions on Freedom of Expression and the Media*

We are concerned that the use of administrative regulations (article 101 of Decree 15/2020/ND-CP) to prohibit and punish social media postings in relation to the 11 June 2023 attack and its aftermath, as well as official directives censoring media reporting about it, may amount to unjustified restrictions on freedom of expression and of the media under international law. We recall that Special

Procedures mandate holders previously expressed concern that this Decree is likely to prevent the sharing of information that may be critical of government positions or policies, or who disseminate diverging political views or reactionary ideologies, and as such does not comply with the requirement of necessity and proportionality in pursuit of a legitimate public security interest, as required under article 19 (3) of the ICCPR (see [OL VNM 6/2023](#)). We note that the operative terms of article 101 permit a broad discretion to determine what content qualifies as ‘fake or false information, and that that other operative terms of the provision are vague and over-broad (‘with the aims of distorting, slandering or damaging the prestige, honour and dignity’) and are thus prone to arbitrary application and abuse, particularly when applied to shield against legitimate criticism of public officials or public authorities. We encourage your Excellency’s Government to consider alternative means to combat disinformation, including enhancing your Excellency’s Government’s transparency and flow of public information, strengthening media freedom, and promoting media and digital literacy (See A/HRC/47/25). We note that the application of the regulations in relation to this case forms part of the ongoing restriction of freedom of expression among Montagnards and other ethnic minorities in the Central Highlands and in Viet Nam generally.

#### *Listing of Organizations as Terrorist*

We are concerned that the listing of MSFJ as a terrorist organization on 6 March 2024 may not be consistent with international human rights law. We note that under international law, the listing of an organization as terrorist must be based on reasonable grounds to believe that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act (A/HRC/16/51, para. 35), which requires substantiation with credible evidence. Further, the operative definition of a terrorist act must itself be limited to conduct that is genuinely terrorist in nature and consistent with international standards on the definition (A/HRC/16/51, para. 35),<sup>8</sup> including the requirement of legality, and that any restriction of rights and freedoms must be strictly necessary and proportionate in pursuit of a legitimate security aim and non-discriminatory.

We note that one reason publicly given for the listing of MSFJ is that it had ‘incite[d] protests... to demand secession and autonomy’ and a separate state. We emphasize that the encouragement of peaceful political protests is protected freedom of expression under article 19 of the ICCPR, including when it challenges the nature of a state’s political arrangements. To the extent that the designations are related to alleged incitements to terrorism, we draw your attention to the recommendations on incitement to terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/51, para. 35, practice 9), including requirements that incitement must: be precisely prescribed by law and avoid vague terms; be based on a precise underlying definition of terrorism; be strictly necessary and proportionate to counter-terrorism; and include both an intent to incite terrorism and an objective risk that it will be committed). To the extent that the designations are related to alleged incitement of ethnic division, we refer your Excellency’s Government to the six-part test on hate speech in the Rabat

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<sup>8</sup> As defined by the 19 United Nations sectoral conventions on terrorist offences, Security Council Resolution 1566 (2004) and the Declaration on Measures to Eliminate International Terrorism and the Declaration supplementing the 1994 Declaration on Measures to Eliminate International Terrorism, approved by the General Assembly in 1997, as well as the model definition of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (E/CN.4/2006/98, para. 72).

Plan of Action (A/HRC/22/17/Add.4), referring to context; speaker; intent; content or form; extent of the speech; and likelihood of harm occurring, including imminence.

We also emphasize that the listings do not appear to 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.

We are concerned that the listing of MSFJ, absent substantiation of its engagement in terrorism, could infringe upon a range of internationally protected human rights. To the extent that the listing targets the legitimate political activities or the defence of human rights by Montagnard peoples, it may impermissibly interfere with the freedoms of expression, assembly and association (art. 19 and 20 UDHR; art. 19, 21 and 22 ICCPR; and art. 23, 24 and 32 ASEAN HRD); the right to take part in public affairs (art. 25 (a) ICCPR); and freedom from discrimination on the basis of race, language, religion, national or social origin, or political opinion (art. 2 UDHR; art. 2 (1) ICCPR and ICESCR; art. 3 and 9 ASEAN HRD). In addition, consequential criminal prosecution of individuals associated with organizations which are not genuinely terrorist would violate the right to liberty (art. 9 ICCPR).

To the extent that MSFJ is advocating for the cultural or religious rights of Montagnards, the listing may infringe on the right of ethnic, religious or linguistic minorities to enjoy their own culture (art. 27 ICCPR) and the right to take part in cultural life (art. 15 (1) (a) ICESCR; art. 32 ASEAN HRD). To the extent that the MSFJ is advocating for the rights of Montagnards as indigenous peoples, the listing may violate the right of self-determination of the Montagnard peoples to freely determine their political status and to freely pursue their economic, social and cultural development within the sovereignty of Viet Nam (common art. 1 (1) ICCPR and ICESCR).

We emphasize that MSFJ in particular has often publicly engaged with the United Nations human rights system, including Special Procedures mandate-holders, treaty bodies, the Universal Periodic Review and the Office of the High Commissioner for Human Rights. We are concerned that the listing of MSFJ, as an organization based outside of Viet Nam, is a form of transnational repression to prevent, silence or punish individuals who document and report human rights violations or advocate for accountability from abroad, which has a further chilling effect on advocacy and dissent by Montagnards in exile, whether in Thailand, the United States or elsewhere. The listing of MSFJ effectively criminalizes any Vietnamese citizen – inside and outside the country – who engages with the organization in connection with its human rights awareness-raising, monitoring and international advocacy role, including at the United Nations. Human Rights Council resolutions 12/2, 24/24, 36/21, 42/28, 48/15 and 54/24 reaffirm the right of everyone, individually or in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights; and the resolutions urge States to refrain from all acts of intimidation or reprisals and to take all appropriate measures to

prevent the occurrence of such acts.

*Pursuit of Vietnamese in exile*

We are concerned that your Excellency's Government seems to be engaging in a further practice of transnational repression by visiting Thailand to seek the return of one member of MSFJ convicted in absentia in relation to the 11 June 2023 attack, as well as other MSFJ members and other Vietnamese refugees in Thailand, despite them being refugees. We are concerned that the visits by the Vietnamese public security authorities have threatened, harassed, intimidated, and coerced the refugees in an attempt to force them to return to Viet Nam against their will.

We emphasize that under international law, the refugees have a right not to be returned to a country where there is a well-founded fear of persecution or substantial grounds for believing that they would be at risk of irreparable harm due to other serious human rights violations. This obligation of *non-refoulement* would be violated by involuntary returns and any repatriation of the refugees must be voluntary (UNHCR Handbook on Voluntary Repatriation (1996), ch. 2.3). Voluntariness includes 'the absence of measures which push the refugee to repatriate', including 'any physical, psychological, or material pressure' (UNHCR Handbook on Voluntary Repatriation (1996), ch. 2.3).<sup>9</sup>

We highlight that the prohibition on *refoulement* under international human rights law applies to any form of removal or transfer of persons, including deportation and extradition, where there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, cruel, inhuman or degrading treatment or punishment, or other serious human rights violations,<sup>10</sup> such as arbitrary deprivation of life, arbitrary detention, or a flagrant denial of fair trial. The prohibition is absolute and without any exception. The prohibition applies to all persons, irrespective of their citizenship, nationality, statelessness, or migration status, and it applies wherever a state exercises jurisdiction or effective control, including outside its own territory. Risks of serious rights violations are clearly present in Viet Nam given the well documented mistreatment of Montagnard human rights activists and defenders of freedom of minority religions.

We are aware that some of the Montagnard refugees may be regarded by the Vietnamese authorities as suspects in the 11 June 2023 attack in Dak Lak Province in Viet Nam. We reiterate that the obligation of *non-refoulement* under international human rights law is absolute, even in relation to persons suspected of criminal activity in another country. In this regard we are concerned that any bilateral extradition agreement sought by Your Excellency's Government with Thailand must fully respect the obligation of *non-refoulement*, by providing for it as a mandatory ground of refusal of an extradition request.

We are further concerned that the imposed attendance of Vietnamese public security police at the residences of Vietnamese refugees in Thailand, without their consent and not at their request, may violate their right to non-interference with their

<sup>9</sup> See also UNHCR ExCom Conclusions 18 of 1980, 40 of 1985, and 74 of 1994 et seq; UNHCR, Voluntary Repatriation: Global Consultations on International Protection. UN Doc. EC/GC/02/5.

<sup>10</sup> See e.g. CAT, art. 3; UNHCR, 'Complementary Forms of Protection', EC/50/SC/CRP.18 (2000); UNHCR, ExCom Conclusion No. 103 (LVI) (2005); Global Compact for Migration, Objective 21; OHCHR, The Principle of Non-refoulement under International Human Rights Law 2018; OHCHR, Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations 2018.

privacy under article 17 of the ICCPR. Refugee protection aims to guarantee safety abroad from persecution or other serious rights violations by a country of origin. Pursuit of refugees in a foreign state undermines the integrity of protection. Transnational repression of refugees aggravates their fears for their safety, particularly where their legal status and rights are precarious in a country of refuge.

We are also concerned about the physical safety and security of Montagnard refugees in Thailand, given the previous communications of Special Procedures mandate-holders on illegal abductions by Vietnamese security agencies, including alleged cooperation by the Thai authorities in some of them (see, for example, [VNM 4/2020](#), [THA 8/2020](#), [LAO 4/2020](#) and [KHM 7/2020](#)). We note that any abduction of Vietnamese refugees in Thailand and forced repatriation to Thailand would not only violate the obligation of *non-refoulement* but also constitute an arbitrary deprivation of liberty and a violation of security of person (art. 3 UDHR; art. 9 ICCPR; art. 12 ASEAN HRD) and an enforced disappearance.

#### *Discrimination against and mistreatment of Montagnard indigenous peoples*

We are concerned that the excessive response to the 11 June 2023 attack, the unfair mass trial of January 2024, the listing MSFJ as terrorist in March 2024, and the alleged intimidation of Vietnamese refugees in Thailand in March 2024 seem to be part of a larger and intensifying pattern of discriminatory and repressive surveillance, security controls, harassment and intimidation against the Montagnard indigenous minority peoples in the Central Highlands. The attack of June 2023 appears to have served as a pretext for this escalation. This repressive campaign appears directed against Montagnard individuals and groups in Viet Nam and abroad who criticize or protest against the actions and policies of the Vietnamese Government, including human rights defenders, as well as those who identify as members of unregistered evangelical Christian ‘house churches’.

Dak Lak Province in particular contains around 30 ethnic tribes and religious minorities known as Montagnards, who are the original inhabitants of the Central Highlands. Since the late 1970s, your Excellency’s Government has facilitated the migration to the Central Highlands of over three million people from other areas of Viet Nam, such that Montagnards constitute less than 37% of the 5.8 million inhabitants, according to the official census of 2019.<sup>11</sup> Migration was accompanied by the nationalization of all land and forests in the Central Highlands and its use by state and private businesses, including for rubber, coffee, other agribusinesses, as well as construction projects. These activities have displaced many Montagnards from their traditional swidden agriculture practices, causing significant deforestation, biodiversity loss, pollution and other environmental harms, and have generated land disputes, protests and clashes with state authorities. Dak Lak Province is among the poorest in Viet Nam, with limited education and employment opportunities and health care. There has also been historic discrimination against Montagnards for their perceived association with the former French colonial administration and the United States military presence during the Viet Nam war, casting them as reactionary, bourgeois public enemy. This has been coupled with ethnic condescension by the Kinh majority towards Montagnards.

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<sup>11</sup> [https://www.gso.gov.vn/wp-content/uploads/2019/10/2.-ENG\\_Census-on-Housing-and-Population\\_2019\\_final.pdf](https://www.gso.gov.vn/wp-content/uploads/2019/10/2.-ENG_Census-on-Housing-and-Population_2019_final.pdf).

In this context, we are concerned that the treatment of Montagnards in the Central Highlands is inconsistent with Viet Nam's international human rights law obligations. The repression of individuals and organizations engaged in peaceful political activities or protests appears to infringe on freedoms of expression, assembly and association and the right to take part in public affairs under the ICCPR.

### *Indigenous Peoples' rights*

The treatment of the Montagnards appears to be inconsistent with Viet Nam's obligations in relation to indigenous peoples under customary international law, as reflected in the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP'). Article 35 of UNDRIP recognizes the right of indigenous people to determine their own identity and membership and the Montagnards self-identify as indigenous peoples. We note with concern that in its reply dated 20 September 2021 to communication [VNM 3/2021](#), your Excellency's Government has regrettably refused to recognize the existence of any indigenous peoples among the 54 ethnic groups recognized by the Government and has specifically denied that Montagnards are indigenous. We are concerned that the mistreatment of the Montagnards in the Central Highlands in Viet Nam may violate numerous indigenous rights reflected in UNDRIP, including in relation to self-determination; participation in decision-making; land and resources; free, prior and informed consent; political, economic, social, health, cultural, linguistic and religious matters; freedom from violence and forced assimilation or destruction of culture, including dispossession from lands and discriminatory propaganda (see Annex).

We highlight that grievances resulting from the systemic mistreatment of particular groups in society may have the potential to inflame violence of the kind that your Excellency's Government experienced in the attack on 11 June 2023. In this regard we emphasize that Pillar I of the United Nations Global Counter-terrorism Strategy, adopted by consensus by all states in the General Assembly in 2006, calls on states to address the conditions conducive to terrorism, which relevantly include 'prolonged unresolved conflicts, dehumanization of victims of terrorism..., lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization, and lack of good governance'. We note that discrimination and other human rights violations against the Montagnard minority may be fertile ground for violent resistance. Pillar I of the Global Strategy recommends that states should address the conditions conducive to terrorism by resolving conflict; pursuing development, economic growth and social inclusion, and eradicating poverty and reducing marginalization; and improving the rule of law, human rights and good governance.

Further, we note that the Human Rights Committee has indicated that indigenous peoples are additionally entitled to the protection of their cultural rights under article 27 of the ICCPR (General Comment No. 23, para. 7). In this regard, the apparent targeting of Montagnard activism, and adverse and discriminatory impacts of migration and development in the Central Highlands, seem to violate the rights of persons belonging to ethnic, religious or linguistic minorities not to be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion (art. 27 ICCPR). We note that '[p]ositive measures of protection are... required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party' (General Comment No. 23,

para 6.1). We also emphasize that states ‘shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity’ (art. 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992) and ensure they may exercise their human rights without discrimination and in full equality before the law (art. 4 (1) of the 1992 Declaration).

#### *Violations of Montagnards’ freedom of religion or belief*

We are concerned that the authorities have particularly escalated the targeting of Montagnard minority religious practices in the Central Highlands since the June 2023 attack, including through harassment, intimidation, forced renunciation of faith and forced conversions, criminalization and violence against leaders and members of officially unrecognized Montagnard evangelical ‘house churches’.

We believe that such measures impermissibly interfere in the right of every person to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of one’s choice, and freedom, either individually or in community with others and in public or private, to manifest one’s religion or belief in worship, observance, practice and teaching (art. 18 (1) ICCPR; 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief). In particular, ‘[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice’ (art. 18 (2) ICCPR).

While freedom of religion is enshrined in the Vietnamese Constitution, the 2016 Law on Religion and Belief poses severe limitations to freedom of religion and belief on religious groups, especially for those that have not been recognized by the State as a religious organization or are not affiliated with a registered religious organization. Moreover, authorities maintain the right to approve or refuse requests for registration as religious group, or systematically deny registration, or exceedingly delay it, resorting to the protection of national security and social unity as a justification. In this regard, we recall that the right to freedom of religion or belief, by individuals and/or in community with others, cannot be made dependent on administrative registration or other form of official state recognition; and any registration practices should not limit the right of persons to manifest their religion or belief (see Annex).

Furthermore, interference with Montagnard religious practices also involves violations of related freedoms of expression, assembly and association (art. 19, 21 and 22 ICCPR); as well as the right of minorities to profess and practice their own religion (art. 27 ICCPR; art. 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992) and the right of indigenous peoples to maintain their religions (art. 12 UNDRIP).

#### *Unexplained death and apparent torture in custody*

We are alarmed by the alleged death and prior torture apparently in official custody of Y Būm Byă on 8 March 2024, in violation of the right to life (art. 6 ICCPR) and freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 7 ICCPR and CAT). We further highlight that States have a



heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity. Loss of life occurring in custody creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation that establishes the State's compliance with its obligations under article 6 of the ICCPR (General Comment No. 36). There is a further duty to investigate wherever there are reasonable grounds to believe that torture has been committed (art. 12 CAT). Investigations into death or torture in custody must meet international standards (see Annex).

### *Criminalization of religious leaders*

We are also concerned at the apparent misuse of vague criminal charges against other religious leaders such as Nay Y Blang and Y Krec Bya. We emphasize that the definitions of the offences of 'abusing democratic freedoms' and 'sabotaging implementation of solidarity policies' contain multiple vague, imprecise, uncertain and over-broad terms, contrary to the requirement of legality. We recall that 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, so as to avoid overly broad or arbitrary application (General Comment No. 35, para. 22) and the impermissible targeting of civil society on political or other unjustified grounds (A/70/371, para. 46), which could include discrimination against indigenous peoples or religious minorities. We emphasize that '[t]he harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19 of the ICCPR' (General Comment No. 34, para. 9).

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 explain how the mass mobile court trial of January 2024 complies with requirements of fair trial by an independent and impartial court.
3. Please explain how the arrests of suspects and their treatment in custody in relation to the 11 June 2023 attack were consistent with the right to liberty, including prompt information on the reasons for arrest and any charges, access to lawyers, freedom from torture or cruel, inhuman or degrading treatment or punishment, and prompt judicial review of detention.

4. Please clarify how the mobilization of civilian vigilantes to assist the authorities to locate suspects is consistent with international law.
5. Please indicate how the terrorism offences charged in relation to the 11 June 2023 attack are consistent with the requirement of legality in international law.
6. Please explain how the censorship of media and social media reporting of the 11 June 2023 attack, subsequent actions of the authorities, and the January 2024 trial are consistent with freedom of expression and the media.
7. Please clarify how the listing of MSFJ as ‘terrorist’ guarantees due process and judicial safeguards as required by international law and satisfies the requirement of legality. 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.
8. Please explain how your Excellency’s Government will ensure that its officials do not undermine 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, including by avoiding any threats, harassment, intimidation or coercion, cross-border abductions or forced transfers, or extraditions in violation of international law.
9. Please indicate how the treatment of Montagnards in the Central Highlands is consistent with freedoms of expression, peaceful assembly and association; the right to take part in public affairs; freedom from discrimination; the rights of indigenous peoples; and minority religious and cultural rights.
10. Please explain how the treatment of officially unrecognized Montagnard religions in the Central Highlands is consistent with freedom of religion or belief, including as regards the criminalization of religious leaders and worship.
11. Please indicate what steps have been taken to ensure that there is an independent, impartial, prompt, thorough, effective, credible and transparent investigation into the apparent death in custody, and torture or cruel, inhuman or degrading treatment or punishment, of Y Būm Byă on 8 March 2024, and on the compliance of the investigation with international standards, particularly the Minnesota Protocol on the Investigation of Potentially Unlawful Deaths.
12. Please indicate what administrative, legislative and judicial measures have been, or will be, taken to ensure that the alleged violations detailed in this communication will not reoccur, and that victims of any

violations receive reparation in accordance with international law.

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.

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 to clarify the issue/s in question.

Please be informed that a letter on this subject matter has also been sent to the Government of Thailand. A copy of the communication has also been sent to the Governments of Canada, Switzerland, and the United States of America.

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

Ben Saul

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

Ganna Yudkivska

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

Aua Baldé

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

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

José Francisco Cali Tzay

Special Rapporteur on the rights of Indigenous Peoples

Cecilia M. Bailliet  
Independent Expert on human rights and international solidarity

Nicolas Levrat  
Special Rapporteur on minority issues

Nazila Ghanea  
Special Rapporteur on freedom of religion or belief

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

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

#### *Fair trial by an independent court*

All individuals, regardless of the severity of the charges brought against them, have a right to due process and fair trial. The right to a fair trial is recognized not only in human rights treaties but also within international humanitarian law, international criminal law, counterterrorism conventions and customary international law (see A/63/223). Article 14 of the ICCPR, ratified by Vietnam, provides inter alia for trial and equality before competent, independent, and impartial courts and tribunals; the presumption of innocence; provision of adequate time and facilities for the preparation of the defence; the right of accused persons to communicate with counsel of their own choosing; the right to defend oneself in person or through legal assistance of their own choosing; the right to examine witnesses; the right to an interpreter; the right to silence of each defendant; and the right of appeal.

#### *Arbitrary arrest and detention*

Article 9 of the ICCPR prohibits arbitrary detention. Specifically, it establishes that no one shall be deprived of his or her liberty (unless it is in accordance with appropriate laws), and that anyone who is arrested shall be brought promptly before a judge or officer authorized by law to exercise judicial power, and that anyone arrested shall be entitled to trial within a reasonable time. Pre-trial detention should thus be the exception rather than the rule (General Comment No. 35, para. 38). A person may only be deprived of liberty in accordance with national laws and procedural safeguards governing detention (including in relation to arrest and search warrants), and where the detention is not otherwise arbitrary. In this respect, deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by the ICCPR is considered arbitrary (General Comment No. 35, para. 17). 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. The Human Rights Committee, in its Concluding Observations on Viet Nam has recommended Viet Nam bring its legislation and practice on detention into line with article 9 of the Covenant, including by ensuring amongst others that persons arrested or detained on criminal charges have access to counsel from the outset of the deprivation of liberty (CCPR/C/VNM/CO/3, para. 26).

#### *Torture or inhuman or degrading treatment or punishment*

The prohibition on torture and cruel, inhuman or degrading treatment or punishment is absolute and non-derogable (UDHR art. 5; ICCPR arts. 7 and 2 (3); Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), ratified by Viet Nam on 5 February 2015, arts. 1, 2, 15 and 16).<sup>12</sup>

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<sup>12</sup> See also A/77/502; A/HRC/52/30).

States parties to the CAT must establish all acts of torture as offences under domestic law (art. 4), exercise jurisdiction over said offences (art. 5), receive complaints and examine them promptly and impartially (art. 13), and investigate those allegations promptly and impartially (art. 12). At no time shall torture be used to extract information or a confession (art. 1), and any statement which has been obtained via such methods shall be excluded from any proceedings except against a person accused of torture as evidence that the statement was made (art. 15). Victims are to be protected from reprisals or intimidation during said investigations (art. 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (art. 14).

Defendants cannot rely on orders of a superior or public authority, or states of emergency, to exonerate their actions (arts. 2(3) and 2(2)), while any legal mechanisms which interfere with that obligation, such as statutes of limitations, immunities or amnesties, are considered contrary to the non-derogable nature of the prohibition (art. 2(2)). Amnesties provided at domestic law do not remove criminal liability pursuant to international tribunals or universal jurisdiction.

States parties to CAT have overarching obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment via effective legislative, administrative, judicial and other measures (articles 2 and 16), to educate and train relevant personnel on the prohibition (art. 10) and to keep all rules, instructions, methods and practices relating to interrogation, custody and treatment under systematic review (art. 11).

The standards of conditions and treatment of persons deprived of their liberty are contained in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which establish that all prisoners shall be treated with dignity and no prisoner shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.<sup>13</sup>

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 (General Assembly Resolution 68/156, para. 27); prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 of the ICCPR (General Comment No. 20, para. 6). Furthermore, under CAT there is an obligation to prevent acts of torture and ill-treatment (art. 2), to promptly and impartially investigate allegations (art. 12), and to prosecute those responsible (arts. 4 and 5).

### *Enforced disappearances*

Enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life. States are required to conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance and introduce prompt and effective procedures to investigate cases of disappearances thoroughly, by independent and impartial bodies (Human Rights Committee, General Comment No. 36). The UN Declaration on the Protection of All Persons from Enforced Disappearance 1992 sets out necessary protection by the State. In particular, it states that no State shall

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<sup>13</sup> See further A/HRC/55/52.

practice, permit or tolerate enforced disappearances (art. 2) and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction (art. 3). The Declaration underscores that accurate information on the detention of individuals and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel (art. 10 (2)), and that states should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (art. 14). Enforced disappearances also constitute a violation of article 9 (liberty and security of persons) of the ICCPR. Enforced disappearance is a particularly aggravated form of arbitrary detention (General Comment No. 35, para. 17). It may also amount to torture or other cruel, inhuman or degrading treatment or punishment both with regard to the disappeared and their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones.<sup>14</sup> We further highlight that families of forcibly disappeared persons should be protected from ill-treatment or intimidation (art. 13 Declaration).

#### *Unexplained death in custody*

The Human Rights Committee states that an important element of the protection afforded to the right to life by the ICCPR is the obligation on States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving allegations of excessive use of force with lethal consequences (General Comment No. 36). Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing immunity. Investigations should always be independent, impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future.

#### *Terrorism-related offences*

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-

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<sup>14</sup> See, for example, on Algeria (A/52/44, para. 79), Namibia (A/52/44, para. 247) and Sri Lanka (A/53/44, paras. 249 and 251); CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4.

Terrorism Strategy (A/HRC/60/288). Moreover, United Nations resolutions<sup>15</sup> 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 non-discrimination. Laws which disregard these principles can have deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities and civil society.

#### *Listing of organisations as terrorist*

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.

#### *Restrictions on freedom of expression and the media*

Article 19 of the ICCPR grants everyone the right to freedom of expression. It protects, inter alia, political discourse, commentary on one's own and on public affairs, discussion on human rights and journalism (General Comment No. 34, para. 11). As indicated by the Human Rights Committee, 'the function of journalists includes not only full-time reporters and analysts, but also bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere' (Id., para. 44). While all restrictions must comply with the requirements of necessity and proportionality, the penalisation of a journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression (General Comment No. 34, para. 42). Furthermore, detention purely due to peaceful exercise of rights protected by the Covenant may be arbitrary (General Comment No. 35, para. 53). Laws justified by national security, whether described by sedition laws or otherwise, can never be invoked to prosecute journalists (General Comment No. 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 (General Comment No. 34, para. 23).

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<sup>15</sup> See e.g. Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); General Assembly resolutions 49/60, 51/210, 72/123 and 72/180; and Human Rights Council resolution 35/34.



With respect to the use of terrorism and counter-violent extremism justifications to restrict freedom of expression, any restriction on expression or information must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (General Comment No. 34). Counter-terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights must not be a criminal offence. Counter-terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members (General Comment No. 34).

#### *Restrictions on freedom of peaceful assembly*

Article 21 of the ICCPR states that '[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others'. Article 22 of the ICCPR protects the right to freedom of association with others. States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards (A/HRC/17/27, para. 66 and A/HRC/29/25/Add.1).

#### *Human rights defenders*

The UN Declaration on Human Rights Defenders provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms (art. 6 (a)); the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights (art. 6 (b)-(c)); and the duty of states to take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration (art. 12 (2)-(3)).

Human Rights Council resolutions 12/2, 24/24, 36/21, 42/28 and 48/17 reaffirm the right of everyone, individually or in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies, as well as the issuance of appropriate guidance to national authorities, in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The Council also urges States to ensure accountability for reprisals by providing access to remedies for victims, and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts. Human Rights Council resolution 22/6 provides for the right to 'unhindered access to and communication with international bodies, in particular the United Nations, its

representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms’.

### *Discrimination against Indigenous peoples*

The UN Declaration on the Rights of Indigenous Peoples (‘UNDRIP’), which Viet Nam voted for, recognizes the right of indigenous peoples to determine their own identity and membership (art. 35) and the structures and membership of their own institutions (art. 33 (2)); the right to practice their own cultural traditions and customs (art. 11); the right to maintain their religions (art. 12) and their histories, language and cultural knowledge systems (art. 13); and freedom from violence (art. 7) and forced assimilation or destruction of culture, and redress for violations, including dispossession from lands, territories and resources, forced population transfer, or discriminatory propaganda (art. 8).

In relation to political rights, UNDRIP recognizes the right of indigenous peoples to self-determination (art. 3) within the sovereignty of the state (art. 46 (1)); internal and local self-governance (art. 4); voluntary participation in the political, economic, social and cultural life of the state (art. 5); the right to participate in decision-making in matters that would affect their rights, through their chosen representatives (art. 18); and the right to give free, prior and informed consent before legislative or administrative measures that may affect them are adopted or implemented (art. 19).

At the level of social and economic policy, UNDRIP ensures the right of indigenous peoples to education in their own cultures and languages (art. 14); the right to freely engage in and develop, among other things, their traditional and other economic activities, and to redress where they are deprived of their means of subsistence and development (art. 20); the right to the improvement of social and economic conditions, including through special measures taken by the state (art. 21); and the right to active involvement in health, housing and other economic and social programmes affecting them (art. 23).

In relation to lands and resources, UNDRIP guarantees indigenous peoples the right to the territories and resources that they traditionally owned, occupied or used or acquired, to own, use, develop and control these, and to have these legally recognized by the state (art. 26); the right to conserve and protect the environment and the productive capacity of their lands or territories and resources (art. 29); and the right to formulate their own development priorities and strategies, including through the free, prior and informed consent of affected peoples to any project affecting their lands, territories or resources, and mitigation and redress regarding any adverse effects (art. 32). Indigenous peoples must not be forcibly removed from their lands or territories and relocation requires their free, prior and informed consent after agreement on just and fair compensation and where possible with the option of return (art. 10). Where their lands or territories have been confiscated, taken, occupied, used or damaged’ without such free, prior and informed consent, indigenous peoples are entitled to redress, including restitution, equal replacement and compensation (art. 28).

### *Freedom of religion or belief*

Article 18 of the ICCPR stresses that '[E]veryone shall have the right to freedom of thought, conscience and religion. This right shall include 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.' The Human Rights Committee emphasizes in article 18 of ICCPR 'distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice' (General Comment No. 22, para. 3).

The right to freedom of religion or belief, by individuals and/or in community with others, cannot be made dependent on administrative registration or other form of official state recognition. Any registration practices should not limit the right of persons to manifest their religion or belief. Any limitations on freedom of religion under article 18 (3) of the ICCPR must be strictly interpreted (General Comment No. 22) and must be necessary, proportionate and non-discriminatory in pursuit of a legitimate aim. As such, a blanket prohibition placed upon any religious activity without registration infringes upon article 18 (3). Any administrative registration procedures should be voluntary and facilitate the legal personality and related benefits of an organization but not impede the full enjoyment of freedom of religion or belief or assess the substantive content of the religion (Special Rapporteur on freedom of religion or belief, A/HRC/19/60, para. 73 and E/CN.4/2005/61, para. 58). The Human Rights Council has urged States to review, existing registration practices to ensure the right of all persons to manifest their religion or belief, alone or in community with others and in public or in private (Resolution 6/37, para. 9 (f)).

### *Criminalization of religious leaders*

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) and the impermissible targeting of civil society on political or other unjustified grounds (A/70/371, para. 46), which could include discrimination against religious or ethnic minorities. Further, 'All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19 of the ICCPR' (General Comment No. 34, para. 9).