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Viet Nam: Vietnamese human rights blogger should be immediately and unconditionally released

Vietnamese authorities should immediately and unconditionally release human rights defender **Nguyễn Ngọc Như Quỳnh**, also known by her blogging pseudonym, Mẹ Nấm (Mother Mushroom), Amnesty International and Civil Rights Defenders said today. She is a prisoner of conscience, being held and tried solely for her peaceful activities promoting and defending human rights.

Nguyễn Ngọc Như Quỳnh is scheduled to appear for trial before the first instance People's Court of Khánh Hòa province on 29 June 2017. She is accused of "conducting propaganda" against the State under Article 88 of Viet Nam's Penal Code and faces imprisonment of between three and 20 years if convicted. Her trial comes as Viet Nam's human rights situation appears to be deteriorating, with increasing numbers of arrests, restrictions on freedom of movement, and intimidation and violence against human rights defenders and political activists, as well as suppression of freedom of expression rights generally.

Nguyễn Ngọc Như Quỳnh co-founded the independent Vietnamese Bloggers Network in December 2013. She is a single mother with two children, who has on numerous occasions faced harassment, arrest and interrogation for her peaceful activities, and has been prevented from travelling overseas. She has advocated for human rights and justice for more than 10 years and is a popular and well-known blogger. Issues that she is known to have campaigned on include government transparency, State accountability for human rights violations, environmental protection, and promotion of the rights set out in the Universal Declaration of Human Rights (UDHR). In 2015, Civil Rights Defenders named Nguyễn Ngọc Như Quỳnh their Civil Rights Defender of the Year. In 2017, she was honoured in absentia by the US State Department, receiving one of 13 International Women of Courage Awards.

After her arrest on 10 October 2016, Nguyễn Ngọc Như Quỳnh was held incommunicado until 20 June 2017, when she was reportedly able to meet with one of her lawyers for the first time. She has yet to be allowed visits from family members. Incommunicado detention can facilitate torture and other cruel, inhuman or degrading treatment or punishment and when prolonged can itself amount to such practices. In addition, the right to promptly communicate with a lawyer and prepare a defence is an essential part of the right to a fair trial.

ARREST

Nguyễn Ngọc Như Quỳnh was arrested at 10 am on 10 October 2016 in her home town of Nha Trang in Khánh Hòa province. She was arrested by security police while accompanying an activist who was trying to visit her son in a local prison. The security police handcuffed her and brought her to her home where they conducted a search, and according to information in State-controlled media, confiscated demonstration placards related to the Formosa environmental disaster, a corporate scandal that involved discharge of toxic waste into the ocean, affecting fish stocks and livelihoods in multiple Vietnamese provinces. After the search concluded Nguyễn Ngọc Như Quỳnh was taken away and has since been held in detention.

CHARGES

State-controlled media outlets reported in October 2016 that Nguyễn Ngọc Như Quỳnh was arrested for her activities on Facebook and other social media, including writing, uploading and sharing articles and video content critical of the ruling Communist Party of Viet Nam and the State. The reports also specifically referenced a document that she had shared on Facebook listing 31 people who had died while being held and questioned in police custody. The police were reportedly quoted as saying that the document was "causing detriment to national security and social safety and order".

The offence of "conducting propaganda" against the State falls within Chapter XI of Viet Nam's 1999 Penal Code, which sets out, in broad and ill-defined terms, crimes "infringing upon national security". However, Nguyễn Ngọc Như Quỳnh has been arrested and charged solely for peacefully exercising her right to freedom of opinion and expression, as provided for under Article 19 of the UDHR and the International Covenant on Civil and Political Rights (ICCPR), which is binding on Viet Nam as a State party.

Article 19(3) of the ICCPR allows for certain restrictions on freedom of expression for specific reasons including the protection of national security or public order, however, restrictions must be necessary, proportionate for a legitimate aim and provided for by law.

The actions of Nguyễn Ngọc Như Quỳnh do not fall under any of the grounds for restrictions on the right to freedom of expression provided in Article 19(3), nor are the charges reasonably necessary or proportionate to the aim of protecting national security. The Human Rights Committee, the expert body charged with overseeing the implementation of the ICCPR, has stated in its General Comment on Article 19 (No. 34) that such restrictions may not be invoked to muzzle human rights advocacy (para. 23) or to prevent human rights defenders from disseminating information of legitimate public interest (para. 30).

On 14 October 2016, Zeid Ra'ad Al Hussein, the United Nations High Commissioner for Human Rights urged the Government of Viet Nam "to abide by its obligations under human rights law, to drop these charges against Ms. Quỳnh and to release her immediately". He noted that Article 88 of the Vietnamese Penal Code is "overly broad and ill-defined" and "effectively makes it a crime for any Vietnamese citizen to express an opinion, to discuss or to question the Government and its policies".

DETENTION AND ACCESS TO LAWYER

Nguyễn Ngọc Như Quỳnh has been held in pre-trial detention since her arrest on 10 October 2016 and was not granted access to a lawyer until 20 June 2017. Article 9(3) of the ICCPR provides that pre-trial detention should not be a general rule for those awaiting trial and that anyone arrested or detained on a criminal charge must be brought promptly before a Judge and tried within a reasonable time or else released. Nguyễn Ngọc Như Quỳnh has not had an opportunity to challenge the lawfulness of her detention in court, as required by Article 9(4), and has not had adequate time and facilities for the preparation of her defence (Article 14(3)(b)), having spoken to a lawyer for the first time less than ten days before her trial is set to begin.

In an opinion adopted on 25 April 2017, the Working Group on Arbitrary Detention concluded that the detention of Nguyễn Ngọc Như Quỳnh is in contravention of several provisions of the UDHR and the ICCPR (relating to arbitrary detention, freedom of expression, and fair trials) and is therefore arbitrary. The Working Group considered that the appropriate remedy would be to release Nguyễn Ngọc Như Quỳnh immediately and accord her an enforceable right to compensation and other reparations in accordance with international law.

THE RIGHT TO A FAIR TRIAL

As outlined above, Nguyễn Ngọc Như Quỳnh's right to a fair trial has been violated by her lengthy period of incommunicado detention, and the denial of prompt and confidential access to a lawyer in order to adequately prepare her defence. In addition, she has been charged with offences that violate the right to freedom of expression and are not consistent with international human rights law and standards.

We call on the Vietnamese authorities to immediately and unconditionally release Nguyễn Ngọc Như Quỳnh. In addition, she should be provided the right to a remedy for her arbitrary arrest and incommunicado detention.

We further call on the Vietnamese government to amend the national security section of the Penal Code to bring it into line with international human rights law and standards. Finally, we urge the government to refrain from criminalizing and prosecuting people for peacefully expressing the right to freedom of expression and to respect and protect the right to a fair trial.

BACKGROUND

Amnesty International has documented information on at least 90 persons currently deprived of liberty whom the organization considers prisoners of conscience, including bloggers, labour and land rights activists, political activists, ethnic and religious minorities, and advocates for human rights and social justice who have either been convicted after unfair trials or are held in pre-trial detention, solely for peacefully exercising their human rights. Prison conditions in Viet Nam are harsh, with inadequate food and health care that falls short of the minimum requirements set out in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and other international standards. Prisoners of conscience have been held

in solitary confinement as a punishment for prolonged periods and have been subjected to ill-treatment, including beatings by prison guards and by other prisoners with prison guards failing to intervene.

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