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November 25, 2019

Senator Marise Payne
Foreign Minister
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

Re: Australian detained in Vietnam

Dear Foreign Minister,

Human Rights Watch writes to urge you to publicly and privately press the Vietnamese government to overturn the convictions of imprisoned Australian citizen Chau Van Kham and his Vietnamese colleagues Nguyen Van Vien and Tran Van Quyen, sentenced to 12, 11, and 10 years respectively on bogus terrorism charges. The court also sentenced three other people to between three and four years for manufacturing fake stamps and documents. Chau Van Kham has until December 3 to file his appeal and make an urgent case for clemency.

We know you have been vocal this year in speaking out on the cases of Bahraini-Australian football player Hakeem al-Araibi and Chinese-Australian writer Yang Hengjun. We ask you to take a similar approach here so that it is crystal clear to the Vietnamese government and people that the Australian government is deeply concerned about the lack of due process and the severity of the sentences, based on the evidence presented.

The Vietnamese authorities prosecuted these three men for “terrorism that aims to overthrow the people’s administration,” under article 113 of Vietnam’s Penal Code. But the activities listed in the indictment do not amount to terrorism. Instead, these men were prosecuted simply for their affiliation with a foreign political group deemed a threat to the Communist Party of Vietnam.

Vietnamese authorities arrested Chau Van Kham in January and yet so far no Australian official has pressed publicly for his release. During a visit to Hanoi in August 2019, Australian Prime Minister Scott Morrison said in response to a question about Chau Van Kham, “Australians need to abide by the laws of the countries which they visit. They must. They don’t get a leave pass from laws when they go into someone else’s country and commit crimes. That is not something that Australia can support or excuse. But we will always seek to support our citizens in these difficult circumstances.”

Prime Minister Morrison’s public comments could be seen by the Vietnamese government as giving a green light to move ahead with their prosecutions. Vietnam frequently uses vaguely worded and loosely interpreted provisions in

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its penal code to imprison political and religious activists in violation of international law. As of November 2019, Human Rights Watch has documented that at least 140 people are behind bars for exercising basic rights.

Following Morrison's comments, the Department of Foreign Affairs and Trade (DFAT) has refrained from public comments due to "privacy reasons" and only stated they are extending consular support to Chau Van Kham. We understand from Chau Van Kham's family and lawyer that he does want the Australian government to speak out.

Following Chau Van Kham's conviction, you said "As Mr. Chau is able to appeal the sentence under Vietnamese law, it would be inappropriate, and not in Mr. Chau's best interests, to comment while legal processes remain available. However, the Government of Vietnam is well aware of our interest in Mr. Chau's case and his welfare. We will continue to engage with our Vietnamese counterparts on this matter."

Especially given the Prime Minister's earlier, potentially harmful statement about Chau Van Kham's case, this approach seems inadequate. Scott Morrison wrote in a private letter to Chau Van Kham's wife that Australia cannot interfere in the legal affairs or court processes of another country. But there are myriad due process concerns with this case which violate international law and should be raised with the Vietnamese government, in particular the short duration of the trial, the nature of the prosecution's evidence, and the lack of access to legal representation.

The trial lasted only 4.5 hours, suggesting the verdict was pre-determined. With six defendants, the court would barely have enough time to carry out normal process including reading the names and charges, let alone listening to presentation of evidence and defense arguments in a fair and unbiased manner. All Vietnamese judges are required to be members of the Communist Party of Vietnam. According to Chau Van Kham's Australian lawyer, some family members were refused entry to the court room.

Police arrested Chau Van Kham and Nguyen Van Vien in Ho Chi Minh City, and Tran Van Quyen in Binh Duong province in January. All three men were accused of being affiliated with the overseas political party Viet Tan. Vietnam's Ministry of Public Security officially labeled Viet Tan a terrorist group in October 2016. Viet Tan has a history of resistance to the Vietnamese communist government in the 1980s, but more recently has said it is "committed to peaceful, nonviolent struggle."¹

The indictment lists the "crimes" that alleged members of Viet Tan committed in Vietnam between 1989 until today: explore routes for its overseas members to go to Vietnam; order its domestic members to make leaflets calling for protests and boycott of national election; expand its network; write articles that "distort the policies and guidelines of the Communist Party of Vietnam"; send people from Vietnam abroad for training. Among others arrested and imprisoned listed in the indictment are blogger Pham Minh Hoang and Catholic and Protestant pro-democracy activists.²

¹ "Introduction: Why Viet Tan," Viet Tan, <https://viettan.org/en/about-viet-tan/introduction/> (accessed November 23, 2019).

² "Vietnam: Overturn Democracy Activist's Sentence," Human Rights Watch news release, November 28, 2011, <https://www.hrw.org/news/2011/11/28/vietnam-overtturn-democracy-activists-sentence>; "Vietnam: Release Convicted Activists," Human Rights Watch news release, January 9, 2013, <https://www.hrw.org/news/2013/01/09/vietnam-release-convicted-activists>.

The Vietnamese police label Viet Tan as a terrorist group. But the indictment does not indicate any violent acts, much less any evidence of acts that would generally be considered “terrorist,” such as killing or causing serious harm to civilians, or intending to do so, for political, ideological, or political motives, in the last decade.³

In accordance with Vietnam’s criminal procedure code, those accused of national security offenses can be denied access to a lawyer until the investigation is concluded.

Police arrested Chau Van Kham in January 2019, but only in October authorities let him meet with a defense lawyer for the first time. He met the lawyer a second and final time in November 2019, three days before the trial and both meetings were in the presence of police officers.

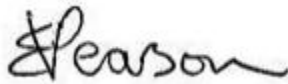
Chau Van Kham has had monthly consular visits from the Australian embassy, but the meetings are in the presence of prison officials, other Vietnamese government officials and video-recorded, which may hamper his ability to speak freely.

We urge you to strongly, publicly, and persistently condemn the trial and imprisonment of Chau Van Kham, Nguyen Van Vien, and Tran Van Quyen, and seek the immediate release of the three men. Chau Van Kham is 70 years old and has prostate issues. The notorious conditions inside Vietnam’s prisons makes it critical that he is released sooner rather than later.

Australia deepened ties with Vietnam, signing a Strategic Partnership in 2018. This is supposed to boost economic relations for both countries. But a prosperous economy means nothing if people are denied of basic human rights. Australia should not tolerate Vietnam’s systemic abuses of rights for the sake of prosperity and stability.

We would be happy to meet with you and your staff to discuss this case and more broadly the concerning state of human rights in Vietnam.

Sincerely,



Elaine Pearson
Australia Director
Human Rights Watch

³ “Việt Tân phản đối phiên tòa xét xử các nhà hoạt động Châu Văn Khảm, Nguyễn Văn Viễn, Trần Văn Quyền,” *Radio Free Asia*, November 5, 2019, <https://www.rfa.org/vietnamese/news/vietnamnews/viet-tan-opp-trial-11052019083200.html> (accessed November 23, 2019).