

Mandates of the the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL VNM 5/2019

22 January 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18, 42/22, 41/12, and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention of human rights defender Ms. Dinh Thi Phuong Thao and the confiscation of her passport by the Vietnamese authorities, as well as the detention of independent journalist Mr. Pham Chi Dung, in what appears to be an act of reprisal for his human rights advocacy.

Ms. Dinh Thi Phuong Thao is a Vietnamese human rights defender and pro-democracy activist. She has been involved with VOICE, a Vietnamese civil society organization that focuses on improving the human rights situation and strengthening civil society and the rule of law in the country.

Mr. Pham Chi Dung is a journalist, writer and independent analyst who works with various international news agencies. Mr. Pham Chi Dung is a member of the Civil Society Forum and the Former Vietnamese Prisoners of Conscience Association (FVPOC). He was also a founder of the Independent Journalists Association of Viet Nam (IJAVN). Mr. Pham Chi Dung was the subject of a communication sent by the Special Procedures in 2014 (VNM 5/2014) after he had been prevented from traveling to Geneva to participate in a side-event in connection with the second cycle of the Universal Periodic Review (UPR) of Viet Nam. His case was included in the 2014 report of the Secretary-General for cooperation with the UN, its representatives and mechanisms in the field of human rights (A/HRC/27/38, para. 40).

According to the information received:

Situation of Ms. Dinh Thi Phuong:

Ms. Dinh Thi Phuong was arrested in 2015 after she took part in a series of demonstrations against the Hanoi authorities following the decision to cut down 6700 trees. Since then, she engaged in various activities advocating for environmental protection, supported victims of police brutality and denounced the

use of the death penalty. She left Viet Nam in 2016 but continued to campaign for the improvement of the country's human rights record, engaging with various human rights mechanisms and bodies from the United Nations, the European Union, and foreign governments, as well as regional and international human rights NGOs. In particular, she represented a group of human rights defenders during the 36th Session of the Human Rights Council in September 2017 and delivered a statement in room XX regarding the human rights situation in Viet Nam.

Since she started her human rights work, she and her family have been subjected to harassment. She is currently facing an online campaign attacking her work allegedly run by pro-government commentators.

On 15 November 2019, Ms. Thao traveled to Viet Nam for the first time since 2016. At approximately 9:30 am upon her arrival at Hanoi International Airport, about 10 security officers from the Ministry of Public Security apprehended her and took her to an interrogation room.

During the 8 hours she was held for interrogation, she had no access to a lawyer, was unable to communicate with her family members and was not informed of the charges against her. However, she was told at the beginning of the interrogation that she was being questioned because of her advocacy work and her involvement with the non-profit organisation VOICE.

At approximately 5:00 pm on the same day, Ms. Thao was released without charges. However, her passport was confiscated by the Vietnamese authorities, which prevents her from leaving the country, returning to her place of residence and pursuing her advocacy activities with international actors.

Situation of Mr. Pham Chi Dung:

Since 2014, Mr. Pham Chi Dung, as chairman of IJAVN, has focused his writing on key human rights and legislative issues but has also engaged in other forms of human rights activities such as national advocacy on amending the Press Law to comply with Article 19 of the ICCPR. He has also been actively involved in observing the negotiations between your Excellency's Government and the European Union regarding the establishment of a European Union-Vietnam Free Trade Agreement (EUVFTA). Additionally, he has published numerous articles in Vietnamese raising human rights concerns, notably on freedom of expression, the detention of human rights defenders, the lack of independent unions and other labor rights, and the harassment of independent civil society.

For a number of years, Mr. Pham Chi Dung has also engaged with UN human rights bodies. Mr. Pham Chi Dung has also communicated with and provided information to other Vietnamese NGOs engaging with UN special procedures and treaty bodies.

On 10 November 2019, two weeks after a European Parliament Committee on Trade (INTA) delegation went to Viet Nam, Mr. Pham Chi Dung sent a public appeal addressed to the President of the European Parliament and key committee chairs, along with Members of the European Parliament, in which he explicitly laid out his human rights concerns, and called on the European Parliament to postpone the ratification of the EUVFTA until concrete human rights benchmarks have been met by the Government of Viet Nam.

The following week, Mr. Pham Chi Dung commented to colleagues that he had heard from contacts within the Ministry of Public Security that he was at risk of arrest because of the petition.

On 21 November 2019, Pham Chi Dung was arrested after taking his son to school, at around 6:30am. Between 12 and 20 police officers took him into custody and brought him to his house. At around 8:30am, police officers commenced a search of the premises. A search warrant was later presented and signed at 9:05am. During the search, police officers reportedly forced Mr. Pham Chi Dung to log onto his computer and to print certain documents that could be related to the IJAVN work and his advocacy before the European Union.

Mr. Pham Chi Dung was formally arrested, with a notice of arrest signed on 18 November 2016. According to the information received, he is currently being held under Article 117 of the Vietnamese Penal Code, which relates to “making, storing or disseminating information, documents, materials and items against the Socialist Republic of Viet Nam”, a crime which carries between 10-20 years imprisonment. This provision was reportedly used previously against peaceful human rights defenders and journalists. It is believed that he is being held at a temporary detention facility at: 4 Phan Dang Luu, Phu Nhuan, in Ho Chi Minh. This detention facility allows for family visits twice a month, however until now his family has not been able to visit him. On 4 December, authorities refused family access on the grounds that Mr. Pham Chi Dung had been recently arrested. He has reportedly been in detention for over a month without being able to see a defense counsel or his family.

Meanwhile, the website for IJAVN has been taken down along with its Facebook page. IJAVN workers have tried to contact the web host and Facebook but believe the sites may have been compromised.

We express our concerns about the alleged arbitrary detention and confiscation of the passport of Ms. Thao, which prevents her from leaving the country and pursuing her human rights activities. We also express our concern about the alleged arbitrary detention of Mr. Pham Chi Dung and the fact that he may be held without access to his family or his lawyer. We are concerned that a lengthy period before being allowed any outside contact puts him at a higher risk of torture or cruel and inhuman treatment. In addition, we are concerned that the IJAVN website and its Facebook page has been taken down and the impact this has on their freedom of expression online. We express further concern

that these acts appear to be directly linked to the exercise by Ms. Thao and Mr. Pham Chi Dung of their rights to freedom of expression and to their work as human rights defenders, including Ms. Thao's engagement with the UN in the field of human rights.

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 the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal and factual grounds for the detention and interrogation of Ms. Dinh Thi Phuong Thao, and the ongoing detention of Mr. Pham Chi Dung and explain how these are compatible with international human rights norms and standards.
3. Please provide information concerning the alleged refusal to allow Mr. Pham Chi Dung to receive family visits and have access to his defense counsel.
4. Please provide information on the legal and factual basis for confiscating the passport of Ms. Dinh Thi Phuong Thao and for searching Mr. Pham Chi Dung's house.
5. Please provide information about whether any judicial or administrative appeal procedures are available to review the decision to confiscate the passport of Ms. Dinh Thi Phuong Thao.
6. During the third cycle of the Universal Periodic Review, several countries made recommendations to Viet Nam that it amend or repeal article 117 of the Penal Code, and bring it into line with international human rights norms. Although Viet Nam has not accepted any recommendations to amend or repeal this article, please provide information regarding any measures taken to ensure the implementation of the Penal Code is in line with international human rights law and standards.
7. Please indicate what measures have been taken to ensure that human rights defenders and journalists in Viet Nam are able to carry out their legitimate work in a safe and enabling environment without fear of threats, harassment or acts of intimidation and reprisals of any sort.

We would appreciate receiving a response within 60 days. Passed 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.

We would like to inform your Excellency's Government that having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

In light of the allegations of possible acts of reprisals for cooperation with the United Nations on human rights, we reserve the right to share this communication – and any response received from Your Excellency's Government - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official designated by the Secretary General to lead the efforts within the United Nations system to address this issue.

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

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

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government attention to the following human rights standards:

In particular, we would like to remind your Excellency's Government of articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Viet Nam in 1982, which provide for the right not to be subject to arbitrary arrest and detention, the right to a fair trial, the right to freedom of opinion and expression and to freedom of association.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the concerned individuals is or was arbitrary, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR.

The Human Rights Committee has stated that the persecutions of a person for the exercise of his or her freedom of expression is a violation of article 19 of the ICCPR (General Comment No. 34, para. 23). In addition,

The alleged limitations on both individuals' contact with their family members may amount to a violation of their rights guaranteed under article 17 of the ICCPR and article 12 of the UDHR.

Concerning both individual situations, we would also like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

We would further like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (b) and (c), which provide for the right to form, join and participate in non-governmental organizations, associations or groups, as well as for the right to communicate with non-governmental or intergovernmental organizations;
- article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- article 9, paragraph 4, point a), which provides for the right to unhindered access to and communication with international bodies.

Regarding the allegations that reported violations against Ms. Thao could be an act of intimidation and reprisals for her cooperation with the UN in the field of human rights, we would like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, and 42/28 reaffirming the right of everyone, individually or in association with other, 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.

We would finally like to recall that one of the recommendations put forward in the report on the situation of women human rights defenders presented by the Special Rapporteur on the situation of human rights defenders to the fortieth session of the Human Rights Council (A/HRC/40/60) is to address barriers to the participation of women defenders in public life, including in regional and international human rights forums, such as travel bans, visa restrictions and their lack of identity or travel documents and resources.