



PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9) G/SO 214 (53-24) G/SO 214 (89-15)
VNM 6/2013

20 September 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, 15/22, 16/5, 16/23, and 23/25.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning Ms. [REDACTED], a labour rights defender and member of the Dân Oan (Victims of Injustice) movement. She has previously been the subject of an Opinion of the Working Group on Arbitrary Detention, adopted on 14 November 2012, in which the Working Group requested her release.

According to the information received:

On 23 February 2010, Ms. [REDACTED] was allegedly arrested because of her involvement in a strike from 28 January to 1 February 2010 at the My Phong Leather Shoes factory in Tra Vinh province. It is reported that Ms. [REDACTED] was arrested when she went to renew her identity card at the Di Linh Public Security Office and was not initially informed of the reason for her arrest. It is alleged that

upon her arrest Ms. [REDACTED] was beaten in the head by security guards until she bled and lost hearing in one ear. Messrs. [REDACTED] and [REDACTED] were also arrested on 13 February and 24 February 2010, respectively, due to their alleged role as organizers of the strike.

Ms. [REDACTED] was initially held in Prison B34 in Ho Chi Minh City. She was later transferred to a prison in Tra Vinh province. It is reported that Ms. [REDACTED] was subject to intimidation, harassment and pressure to admit her culpability, which she resisted. She was reportedly not permitted to seek any legal counsel during her pre-trial detention.

After being held for eight months without charge, Ms. [REDACTED] was charged on 18 October 2010 for disrupting national security in violation of Article 89 of the Penal Code of Viet Nam. She was also accused of receiving funding from the Warsaw-based 'Committee to Protect Vietnamese Workers' to print and distribute anti-Government leaflets and facilitate labour strikes. On 28 October 2010, Ms. [REDACTED], together with Messrs. [REDACTED] and [REDACTED], received a one-day trial in the People's Court of Tra Vinh. Reports indicated that they were not provided with legal counsel, were interrupted when speaking in their defense, and were only permitted to answer 'yes' or 'no' to questions. Ms. [REDACTED] was convicted and sentenced to seven years in prison. Mr. [REDACTED] was sentenced to seven years' imprisonment, and Mr. [REDACTED] to nine years.

Following the trial, Ms. [REDACTED] continued to be held in Tra Vinh province. Reportedly, she continued to suffer mistreatment, intimidation and pressure to admit her guilt, including being forced to use dirty water and being prevented from using mosquito nets given to her by her family. It is alleged that during monthly visits with her family she was permitted to speak about her health, but not about seeking legal advice or appealing her case.

On 31 December 2010 an appeal case was initiated on behalf of the three defendants. It is alleged that their lawyer's repeated requests to see his clients were denied by prison authorities. The initial appeal date was set for 24 January 2011 but was delayed as they had not been allowed to meet.

On 5 March 2011, Ms. [REDACTED] lawyer was granted an audience with her. They were permitted two meetings before the appeal hearing on 18 March 2011. The Appeals Court upheld the original verdict, despite allegations that Ms. [REDACTED] recorded statements had been distorted.

On 27 April 2011, Ms. [REDACTED] mother was informed that her daughter's visitation rights had been suspended for disciplinary reasons. It was alleged that Ms. [REDACTED] had sung a song about the injustice and cruelty of the Communist Party and that

prison staff had instructed other prisoners to enter her cell and beat her up. Reportedly, Ms. [REDACTED] continued to be pressured into admitting her ‘guilt’.

At the end of April 2011, Ms. [REDACTED] was transferred to a prison in Ben Luc, Long An province where she was allegedly placed in solitary confinement and not allowed to receive money from her family to buy food. Furthermore, she was reportedly forced to sleep on a bare floor, endure physical assault and intimidation, and was continually pressured to plead guilty to the crimes she has been convicted of.

On 5 May 2011, Ms. [REDACTED] was transferred to Prison Z30D in Binh Thuan province. It is alleged that there she was forced to perform hard labour, and when refusing to perform such work, she was assigned a space measuring 62cm wide to live, eat and sleep. It is further reported that the prison authorities in this prison use a widespread practice of using detainees to discipline other detainees. This ‘discipline’ reportedly involves physical abuse such as being beaten, kicked, dragged down stairs, and locked in a cage. It is alleged that in one incident in which her fellow inmates were made responsible for disciplining her that Ms. [REDACTED] was kicked all over her body, struck on the head with a water scoop, dragged out of her cell, locked in a cart and then pushed to the entrance of the camp for others to see her. Further allegations detail discipline by prison staff, such as being tied to a post in the sun for several hours.

In late April 2013, Ms. [REDACTED] was moved to Prison Z30A in Xuan Loc, Dong Nai province. It is alleged that mistreatment of Ms. [REDACTED] has continued there. Allegations indicate that Ms. [REDACTED] has lost a considerable amount of weight, is covered in skin lesions, and is experiencing pain in one breast which has shrunk in size. It is believed that her breast pain may be due to cancer and that she has repeatedly asked staff to access medical treatment but that these requests have been denied.

On 15 August 2013, three letters were sent by Ms. [REDACTED] family to authorities in Vietnam requesting that she be granted access to health treatment. No reply has been received to date.

Concern is expressed at the arrest and detention of [REDACTED], [REDACTED] and [REDACTED], particularly given concerns that this may be as a result of their work in claiming and defending their labour rights. Profound concern is expressed at the allegations of torture, or other cruel, inhuman or degrading treatment which Ms. [REDACTED] has reportedly experienced throughout all of her detention period. Further concern is expressed at the alleged violations of the right to fair trial reported during the trial of [REDACTED], [REDACTED] and [REDACTED]. Deep concern is finally expressed at the fact that Ms. [REDACTED] may be experiencing a denial of her right to adequate health care whilst in detention.

In this regard, we would like to take the opportunity to remind your Excellency's Government of Opinion No. 42/2012 rendered by the Working Group on Arbitrary Detention finding the deprivation of Ms. ██████ liberty to be arbitrary, being in contravention of articles 9, 10, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 22 and 25 of the International Covenant on Civil and Political Rights, and requesting her release.

We would also like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights, which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would like to refer to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the International Covenant on Civil and Political Rights, which provides that "The 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."

Similarly, we would like to refer to article 22 of the International Covenant on Civil and Political Rights, which provides that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In this connection, we would 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to 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, through these and other appropriate means, to draw public attention to those matters;

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms; and

- article 13 which stipulates that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means, in accordance with article 3 of the declaration.

In connection to article 13 of the Declaration, resolution 22/6 adopted by the Human Rights Council on 21 March 2013 also calls upon States to ensure “ (b) that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration (...), other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto” (A/HRC/RES/22/6, OPs 8 and 9).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would like to draw your Excellency's Government's attention to paragraph 6 of General Comment 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights. (Adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged". (Adopted by the General Assembly by resolution 45/111 of 14 December 1990).

We would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

With regard to the allegations of denial of Ms. [REDACTED] right to adequate medical care in detention, we would like to stress that this right is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights (acceded by Viet Nam on 24 September 1982), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. We also would like to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which provides that, "States are under the obligation to

respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services...” (para.34). Furthermore, we would like to draw the attention of your Excellency’s Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, “The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.” (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

We would also like to bring to your Excellency’s attention article 7 (c) of the International Convention on the Elimination of all forms of Discrimination against Women, which requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

We would, moreover, like to bring to your Excellency’s attention article 4 (o & p) of the United Nations Declaration on the Elimination of Violence against Women which notes that States should recognize the important role of the women's movement and non-governmental organizations world-wide in raising awareness and alleviating the problem of violence against women, and should, moreover, facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels.

We deem it appropriate to make reference to article 7(c) of the Convention on the Elimination of all Forms of Discrimination against Women which explicitly provides for the promotion and protection of women in freely participating in public matters. States agreed to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure to women, on equal terms with men, the right to participate in non-governmental organizations and associations concerned with the public and political life of the country. Further, we wish to reiterate the principle reiterated in Resolution 2005/38 of the Commission on Human Rights which calls on States to facilitate the full, equal and effective participation and free communication of women at all levels of decision making in their societies and in national, regional and international institutions, including in mechanisms for the prevention, management and resolution of conflicts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. [REDACTED] in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide information on the legal basis of the arrest and detention of the above-mentioned individuals, and how such measures are compatible with the aforementioned international human rights norms and standards.
3. Please provide information on whether all aforementioned detainees have access to family members, legal counsel, and medical personnel.
4. Please provide information concerning access of human rights monitors and independent civil society representatives to Prison Z30D and Prison Z30A, and to all places of detention in Viet Nam.
5. Please provide the details, and where available the results, of any investigation, medical or otherwise, carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
6. Please provide information concerning any steps that have been taken by your Excellency's Government to ensure that [REDACTED] receives the medical attention and medication that she requires while in detention.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. [REDACTED] are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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