

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL VNM 7/2017

29 November 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 28/9, 34/18, 34/9 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 eviction of Ms. Mai Khoi from her home following her protest against the visit to Hanoi by the President of the USA.

Ms. **Mai Khoi** is a musician and a human rights defender. She is known as an outspoken activist on issues relating to freedom of expression, LGBTI rights and violence against women. In 2016 she presented herself as a candidate for the National Assembly elections, but was rejected from running during the Communist Party's strict vetting process.

According to the information received:

On 12 November 2017, Ms. Mai Khoi and her husband were told to leave their apartment in Hanoi after Ms. Khoi had staged a demonstration along a route travelled by the US President a few hours earlier. During this demonstration, Ms. Mai Khoi held a sign saying "Peace on you Trump", in which the letters of the word "peace" were crossed out and replaced with the word "piss".

The same evening, a man and woman claiming to be employees of the building's owner, forced their way into her home and ordered her eviction on the spot. It has been reported that the two individuals were agents of the secret police. A visiting family friend filming the proceedings was physically assaulted and his camera was broken. The landlord later arrived to Ms. Khoi's home and reportedly also attempted to force Ms. Khoi to leave on the basis of an alleged violation of her rental contract. Following this incident, Ms. Khoi's home has been surrounded and monitored by unidentified persons. It has been reported that Ms. Mai Khoi is at risk of being arrested and that she is banned from performing.

This is reportedly the second time that Ms. Khoi has been forced to leave her house. In July 2017, one of her concerts was raided by 40 police officers and her landlord forced her to leave her house.

We express concern at the eviction of Ms. Mai Khoi from her home, which appears to be directly related to her legitimate exercise of the right to freedom of expression. We express concern at the recurrent use of forced evictions and bans on performing as retaliation for the exercise of freedom of expression. We reiterate our concerns at the targeting of human rights defenders, artists and political activists for their peaceful human rights activities in Viet Nam.

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 therefore 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 provide information concerning the legal grounds for entering the home of Ms. Mai Khoi and for evicting her.
3. Please provide information about the legal grounds for banning Ms. Mai Khoi from performing, and explain how this is compatible with article 19 of the ICCPR.
4. Please kindly indicate what measures have been taken to ensure that human rights defenders in Viet Nam are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the eviction.

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

Karima Bennoune
Special Rapporteur in the field of cultural rights

David Kaye

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

Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate
standard of living, and on the right to non-discrimination in this context

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 refer to the right to freedom of expression as guaranteed under article 19 of the International Covenant on Civil and Political Rights (ICCPR), which was acceded by Viet Nam on 24 September 1982.

We would also like to refer to Human Rights Council resolution 24/5 (operative paragraph 2), in which the Council “reminds States of their obligation to respect and fully protect the right of all individuals to... associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders... seeking to exercise or to promote this right, and to take all necessary measures to ensure that any restrictions on the free exercise of the right to freedom of association are in accordance with their obligations under international human rights law.”

Reference should also be made 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. Of particular relevance are 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 that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 6 of the Declaration provides for the right to know, seek, obtain, receive and hold information as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms. Similarly, article 12, (1) and (3), provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms, as well as for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms.

Furthermore, we would like to refer your Excellency’s Government to article 15 of International Covenant on Economic, Social and Cultural Rights (ICESCR), which your Excellency’s Government has ratified on 10 April 1984, recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have undertaken to respect the freedom indispensable for scientific research and creative activity. As stressed by the Special Rapporteur in the field of cultural rights, all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. (A/HRC/23/34, paras. 85 and 89 d).

In addition, we would like to bring to the attention of your Excellency's Government to article 11 of the ICESCR on the right to adequate housing, and specifically general comments No. 4 (1991) and No. 7 (1997) of the Committee on Economic, Social and Cultural Rights. General comment No. 4 defines seven fundamental characteristics of the right to adequate housing that the Government must ensure notably, legal security of tenure, which includes rental housing. (See more on security of tenure in the report of the former Special Rapporteur on adequate housing, A/HRC/25/54). In its general comment No. 7 on forced evictions, paragraph 1, the Committee recognizes that "forced evictions are prima facie incompatible with the requirements of the Covenant". The Committee says, in paragraph 15, that: appropriate procedural protection and due process are essential aspects of all human rights, especially pertinent in relation to forced evictions. These protections on forced evictions include, *inter alia*: (a) an opportunity for genuine consultation; (b) adequate and reasonable notice prior to the scheduled date of eviction; (c) information on the proposed evictions, made available in reasonable time to all those affected; (d) all persons carrying out the eviction to be properly identified; (e) evictions not to take place in particularly bad weather or at night; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.