

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL VNM 8/2018

26 July 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 37/8, 34/18, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the deteriorating conditions of detention of blogger **Nguyen Ngoc Nhu Quynh**, known as "Mother Mushroom" and at the allegations of ill-treatment and the adverse impact this may have on her physical and psychological integrity.

Ms. **Nguyen Ngoc Nhu Quynh** is an environmental human rights defender and coordinator of the Vietnamese Bloggers' Network, which promotes citizen journalism and freedom of press in the country as an independent civil society group. Since 2006, she has blogged under the pseudonym of "Me Nam" (Mother Mushroom). She has exposed alleged corruption cases and human rights violations committed by the authorities. On 10 October 2016, Ms. Quynh was arrested and charged with violating article 88 of the Penal Code of Viet Nam, for "conducting propaganda against the Socialist Republic of Viet Nam", following a search of her residence which uncovered protest signs relating to the Formosa steel plant toxic spill.

Ms. Quynh has been the subject of three previous communications sent by various Special Rapporteurs, dated 24 February 2017, case no. VNM 1/2017; dated 26 June 2017, case no. VNM 4/2017; and dated 13 March 2018, case no. VNM 3/2018. We acknowledge receipt of your Excellency's Government's responses of 18 September 2017 and 10 July 2018 to the above-mentioned communications. We regret, however, that the responses while explaining Ms. Quynh's alleged violations of domestic law, do not explain sufficiently how domestic restrictions on freedoms of expression and opinion and assembly are compatible with international human rights law, and they do not explain how Ms. Quynh's exercise of freedom of expression amounts to an alleged incitement to violence.

On 25 April 2017, the Working Group on Arbitrary Detention adopted Opinion No. 27/2017 finding that the deprivation of liberty of Nguyen Ngoc Nhu Quynh, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and of articles 9, 14, 19, 21 and 22 of the Covenant, is arbitrary and falls within categories II and III. The Working Group considered that, taking into account all the circumstances of the case, in particular the risk of harm to Ms. Quynh's health and to the psychological wellbeing of her family, the appropriate remedy would be to release Ms. Quynh immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law.

According to the new information received:

On 26 June 2018, Ms. Quynh's mother travelled to Prison Camp No.5 to visit her in Thanh Hoa province. Ms. Quynh was kept in a cell together with two other inmates. Reportedly, the jail lock could not be opened during the scheduled open hours. Prison authorities explained that the lock was filled with sand, and that someone had poured soap into it. A locksmith was requested from the city but nobody had come out for repair.

In addition, it has been reported that the cell was often blacked out with no electricity. Ms. Quynh has reportedly been subject to long periods of solitary confinement and has been threatened by other inmates in the cell, following which she made an official complaint to the prison authorities. However, prison authorities allegedly ignored her requests and grievances concerning the harassment, threats and psychological ill-treatment towards her by her cell mates and by other prisoners. Since June 2018, Ms. Quynh has refused to eat any prison food as it made her feel sick and nauseous, but she was allowed to receive and consume a limited amount of dry food sent from home on a monthly basis. In July, Ms. Quynh reportedly initiated a hunger strike to compel the authorities to take action and preserve her life. This will be Ms. Quynh's third hunger strike since her arrest in 2016 to protest against the worsening prison conditions.

We express serious concern at the poor and deteriorating conditions of detention of Ms. Nguyen Ngoc Nhu Quynh and at the allegations of ill-treatment and the adverse impact this may have on her physical and psychological integrity while in prison. We express our serious concern at allegations according to which the authorities failed to address human rights violations that reportedly have led Ms. Quynh to initiate a hunger strike as an ultimate form of protest. We reiterate our concern at the conviction of Ms. Quynh, which represents a criminalization of the legitimate exercise of her right to freedom of expression, following legal procedures that appear to violate the standards of due process and fair trial.

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 about the official complaint by Ms. Quynh about her conditions of detention. In particular, please provide information about the justification for not taking action regarding complaints about her physical and psychological safety while in prison.

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 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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

John H. Knox
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a
safe, clean, healthy and sustainable environment

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to recall that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Viet Nam on 5 February 2015, in article 7 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Viet Nam on 24 September 1982.

We moreover refer to articles 19 of the ICCPR that guarantee the rights to freedom of opinion and expression. In connection with the use of national security legislation, we highlight that article 19(3) of the ICCPR sets out the requirements that any restrictions to the right to freedom of expression must be necessary, proportionate and prescribed by law that in itself is compatible with international human rights. While national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is not enough to simply claim it as a justification to pursue illegitimate purposes such as silencing critical voices. The state has to demonstrate that it is necessary to do so to achieve a legitimate objective. We reiterate the statement by the Human Rights Committee in General Comment 34 that article 19(3) may never be invoked as a justification for the muzzling of any advocacy of human rights (CCPR/C/G/34).

We would like to draw the attention of your Excellency to the reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 also known as the “Mandela Rules”) that provide for prisoners’ appropriate accommodation, including minimum cubic content of air and floor space, lighting and ventilation (rules 12 to 17), requirements to be met regarding personal hygiene (rule 18), clothing and bedding (rules 19 to 21), food (rule 22) and exercise and sport (rule 23).

With regards to the solitary confinement, we would like to recall the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the General Assembly of 5 August 2011 (A/66/268), in which solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, is defined as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. It is observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days under conditions of total or almost total isolation) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering.

Prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore,

due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

We would also like to refer to report E/CN.4/2003/68 of the Special Rapporteur on torture which states "countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals, without marginalizing them from the prison population more than is required by the need for protection and without putting them at further risk of ill-treatment. In accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, prisoners should be segregated according to gender, age and seriousness of the crime, alleged/committed; first-time prisoners should be segregated from repeat offenders and pre-trial detainees from convicted prisoners." (E/CN.4/2003/68, para. 26 (j)).

Finally, we would like to refer your Excellency's Government to the fundamental principles set forth in the UN Declaration on Human Rights Defenders, in particular articles 1, 2 and 6 (b and c) which state that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels, that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms and that each person has the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.