

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
UA VNM 1/2020

31 March 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 41/12, 42/22, 36/6 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 alleged arbitrary arrest and detention of Ms. **Truong Thi Ha** while crossing the border into Viet Nam, in what appears to be an act of reprisal for her human rights advocacy.

Ms. Truong is a Vietnamese lawyer and woman human rights defender, and regularly comments on social and human rights issues. In November 2019 she participated in a workshop, organized by the Special Rapporteur on the right to freedom of peaceful assembly and association in Geneva, Switzerland. In this workshop she voiced her fear of reprisals for her cooperation with UN mechanisms. Furthermore, she had continued to liaise with different UN mechanisms and provided them with information on human rights violations over the last months. Ms. Truong was returning to Viet Nam for the first time since she had engaged with the UN mechanisms and took part in the workshop organized by the Special Rapporteur on the right to freedom of peaceful assembly and association.

Ms. Truong's case has also been treated under the humanitarian mandate of the Working Group on Enforced or Involuntary Disappearances.

According to the information received:

Ms. Truong was originally due to cross the land border at Cha Lo Border Gate, Dân Hoá into the Socialist Republic of Viet Nam on 25 March 2020 at about 11pm. However, upon her arrival at the border crossing on 26 March 2020, Ms. Truong was detained and questioned by border control officials for 20 hours without being able to contact persons associated with her. Border officials confiscated Ms. Truong's passport and her possessions, including two notepads, apparently upon request of the Ministry of Public Security. Shortly before midnight on 26 March 2020, Ms. Truong was moved to a quarantine facility,

where she will have to spend the next two weeks. Her lawyer and persons associated with her have not been formally informed of her whereabouts, nor has she been given a way to communicate with them by the authorities. She has been able to intermittently communicate by borrowing a phone from other individuals. Ms. Truong fears that she will be detained on criminal charges again upon the end of her quarantine. Reportedly no charges have been brought against Ms. Truong so far.

We express grave concern at the arbitrary arrest and detention and possible enforced disappearance of Ms. Truong.

Should these allegations be confirmed, they would be in violation of international human rights law, particularly articles 6, 7, 9, 12, 19 and 21, of the International Covenant on Civil and Political Rights (ICCPR), ratified by Viet Nam on 24 September 1982. The ICCPR guarantees the rights to life, to liberty and to personal security, to freedom from torture and other cruel, inhuman or degrading treatment or punishment, and freedom of association and peaceful assembly.

The United Nations Declaration on the Protection of All Persons from Enforced Disappearance sets out necessary protection by the State. In particular, it states that no State shall practice, permit or tolerate enforced disappearances (article 2) and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction (article 3). The Declaration underscores that accurate information on the detention of individuals and their place or places of detention, including transfers, shall be made promptly available to their family members and their counsel (article 10 (2)), and that States should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (article 14). We would like to highlight that there is no time limit, no matter how short, for an enforced disappearance to occur (A/HRC/30/38, para. 102).

Regarding allegations indicating that the violations could be an act of intimidation and reprisals against those who cooperate 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 others, 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, States are urged to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. The Human Rights 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.

Furthermore, we would like refer your Excellency's Government to article 5 (b) of 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 which provides for the right to form, join and participate in non-governmental organizations, associations or groups. Articles 1 and 2 of the Declaration also 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.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to identify the whereabouts of Ms. Truong, to inform her family and lawyer and to safeguard all human rights of Ms. Truong in compliance with international instruments.

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/comment you may have on the above mentioned allegations.
2. Please provide information on the whereabouts of Ms. Truong. Please include information why your Excellency's Government has arrested Ms. Truong, on what legal basis the arrest has taken place and any legal charges against her.
3. Please provide information on whether Ms. Truong has been given access to a lawyer and her family.
4. Please provide information if charges will be pressed against Ms. Truong; if so which ones and whether she risks being detained as a result, again after the end of the 14 day quarantine.
5. Please provide information on the safeguards in place in Viet Nam to ensure that accurate information on the detention of individuals and their place or places of detention, including transfers, is made promptly available to their family members and their counsel.

6. Please 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, harassment or acts of intimidation and reprisals of any sort.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Moreover, we would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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

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

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Michel Forst
Special Rapporteur on the situation of human rights defenders