

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; Special Rapporteur on the human rights of migrants and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/6, 42/22, 44/5, 43/4, 43/16, 43/6 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged enforced disappearance of Mr. Siam Theerawut, a Thai national, believed to have been arrested by the authorities of Viet Nam in 2019; and the case of Mr. Truong Duy Nhat, a Vietnamese human rights defender, blogger and journalist who was allegedly apprehended by Thai police and returned to Viet Nam in 2019**, and who remains in detention in Viet Nam. The information received also indicates that the **current legislative provisions in Viet Nam would allow for enforced disappearance and incommunicado detention.**

Concerns at a previous arrest, detention and conviction of Mr. Truong Duy Nhat in connection with his criticism of the Government, were raised in a communication by Special Procedures to your Excellency's Government sent on 12 August 2014. We thank you for your Excellency's Government's reply of 24 October 2014.

More recently, concern was raised about the alleged arbitrary arrest, enforced disappearance and subsequent repatriation of Mr. Truong Duy Nhat, in an urgent appeal sent on 18 April 2019 (UA VNM 1/2019). We thank your Excellency's Government for the reply received on 30 January 2020. However, we regret that no information was provided on the circumstances of his arrest or on any agreement or coordination with Thailand regarding the case. We are further concerned by the information provided indicating that notices of Mr. Truong Duy Nhat's arrest were not sent out until 11 June 2019.

Furthermore, in Opinion No. 42/2020, the Working Group on Arbitrary Detention found that Mr. Truong Duy Nhat is being arbitrarily deprived of his liberty and called for his immediate release.

We would also like to recall that the case of Mr. Siam Theerawut has also been treated under the humanitarian mandate of the Working Group on Enforced or Involuntary Disappearances.

According to the latest information received:

Case of Mr. Siam Theerawut

Mr. **Siam Theerawut** is a Thai national and political activist affiliated with the United Front Against Dictatorship for Democracy (UDD). He was charged in absentia in 2014 by the Royal Thai police under article 112 of the Criminal Code for lèse majesté for his involvement with a play in 2013 about pro-democracy, student-led demonstrations that took place in Thailand's Thammasat University in 1973. The arrest warrant remains active.

In January 2019, Mr. Theerawut was last in contact with persons associated with him. In February 2019, unconfirmed reports were received that he had been arrested and detained on charges of illegal entry into Viet Nam.

In May 2019, complaints were lodged with the National Human Rights Commission of Thailand (NHRC), who indicated that the case was being investigated. Also in May 2019, requests were submitted to the Thai Ministry of Foreign Affairs, Protection of Thai Nationals Abroad Division, and the Thai Ministry of Justice, Rights and Liberties Protection Division.

Complaints were also lodged with the Embassy of the Socialist Republic of Viet Nam in Thailand. In June 2019, information was received from the Embassy of Viet Nam transmitting a letter from the Crime Suppression Division dated 24 May 2019, informing that no information had been submitted from other parties regarding Mr. Theerawut's arrest warrant.

The case has been filed with the Standing Committee on Legal Affairs, Justice, and Human Rights of the House of the Representatives of Thailand. The Standing Committee has engaged with the relevant Thai authorities and the report of its inquiry into this and other cases, and its recommendation will be submitted to the Cabinet shortly.

The fate and whereabouts of Mr. Siam Theerawut remain unknown to date.

Pattern of disappearances of Thai opposition activists who had fled abroad

In addition to the aforementioned case there are at least two other known cases of Thai opposition activists disappearing between 2016 and 2020 in Viet Nam. These cases would point to a pattern of disappearances.

Given the political affiliations of the individuals, there are reports that the Thai authorities were involved in their disappearances. Furthermore, several of the cases have indications that the individuals were being sought or surveilled prior to their disappearance. For example, Mr. Theerawut had an outstanding arrest

warrant issued against him and initial information indicated that he was in the custody of the Thai authorities, although this was later denied.

The pattern of cases appears also to point towards countries in the region coordinating, assisting or acquiescing to extraterritorially abducting political activists leading to enforced disappearances.

Case of Mr. Truong Duy Nhat

Mr. Truong Duy Nhat, is a Vietnamese human rights defender, blogger and journalist, regularly commenting on social and political issues, including human rights issues, who left Viet Nam on 19 January 2019 and approached UNHCR Thailand to submit an application for refugee status, and was apprehended by the Thai police on 26 January 2019. His fate and whereabouts were unknown until he reappeared in March 2019 in a detention facility in Viet Nam.

Mr. Truong Duy Nhat remains in detention. He has been able to receive visits and has his own lawyers. However, the meetings between the Mr. Truong Duy Nhat and his legal representation are closely watched by prison officials. His appearance before the court of appeal is pending.

Mr. Truong Duy Nhat's detention conditions are reportedly poor. He is now being held in a considerably small room he shares with 6 other inmates in Hanoi T16 center. The cell does not have fans or windows, meaning that during the summer, the temperature in the cell is excessively high. These conditions have caused Mr. Truong Duy Nhat sleeping troubles and a skin irritation. While these ailments have received a superficial medical observation, no medication has been prescribed.

Moreover, providing Mr. Truong Duy Nhat with indispensable supplies for his wellbeing, like food or medicine, is particularly difficult. The value of the products Mr. Truong Duy Nhat can receive is limited to 60,000 VND (around \$2.6 US dollar) per visit. While he can receive money to buy goods in prison, the prison stores are double or triple the normal price.

Pattern of delayed notification and incommunicado detention

There are a number of other cases of individuals being arrested whereby their families are not informed for periods of between 24 hours and several weeks. Even after notification, individuals continue to be held in incommunicado detention, and their families and lawyers are not permitted to visit them.

While the revised Criminal Procedure Code includes a right to access counsel at all stages of the criminal proceedings, there is an exception under article 74 for cases related to "national security." Furthermore, according to article 172 and 173 of the Code, persons charged with "extremely serious" national security crimes can be held in pre-trial detention until the investigation is completed, which amounts to a prolonged period of time.

Additionally, article 116 of the Code requires families of detained individuals to be informed within 24 hours. However, it contains a broad exception, stating that “if such notice obstructs the pursuit of suspects or investigative activities, investigation authorities taking in detainees and arrestees shall release notices after such obstructions suspend to exist.” Article 22(4) of the Law on Enforcement of Custody and Temporary Detention additionally allows the prevention of family visits by the head of a detention facility if the meeting may seriously affect the settlement of the case.

These provisions *de facto* legalise enforced disappearance and incommunicado detention for a prolonged period of time.

We are deeply concerned about the reported lack of progress in the search and investigation into the disappearance of Mr. Siam Theerawut especially given that his disappearance occurred more than a year ago. We also reiterate our concern about the alleged abduction of Mr. Truong in Thailand and his forceful repatriation to Viet Nam, as well as the alleged arbitrary detention following a period of enforced disappearance. We further express concern at his conditions of detention and the charges brought against him which appear to be directly linked to his journalistic activities and the exercise of the right to freedom of expression.

We are seriously concerned that in the reply to communication UA VNM 1/2019, dated 30 January 2020, your Excellency’s Government indicated that “due to the evaluated risks of hindering the investigation and collection of evidences if notice of arrest is sent out early, in accordance with Article 116 of the Criminal Procedures Code of 2015, the police informed local authorities and the family of Truong Duy Nhat about his arrest on 11 June 2019.” We are also concerned by information that there is a pattern of delays in notifying families of arrested individuals of their places of detention, and provisions permitting this under the Code of Criminal Procedure. We are further concerned that individuals are reportedly being held in incommunicado detention for extended periods.

We underline that a failure to promptly inform the families of arrested individuals of their arrest and place(s) of detention or transfer constitutes an enforced disappearance and that no circumstances whatsoever may be invoked to justify an enforced disappearance. We further underline that, prolonged incommunicado detention can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment. Furthermore, the risk of torture and ill-treatment is greatest in the first hours of custody and during incommunicado detention. Therefore, preventive safeguards must be implemented immediately after arrest.

We note that Viet Nam accepted a recommendation in the third cycle of its Universal Periodic Review in 2019 to “amend the Criminal Procedure Code so that persons are represented by a lawyer immediately following their arrest and to guarantee their right to a fair trial” (A/HRC/41/7, para. 38.164, as accepted in A/HRC/41/7/Add.1).

We call on your Excellency's Government to review all cases currently being treated under the exception provided in section 116 of the Code of Criminal Procedure, and immediately inform the families of such individuals of their place of detention and to allow all those held in incommunicado detention to be visited by their legal representative and families. We also call on your Excellency's Government to amend the Code of Criminal Procedure, including articles 72, 173 and 174 as well as the Law on Enforcement of Custody and Temporary Detention to ensure enforced disappearance and incommunicado detention are prohibited and all arrested individuals are able to be visited by their lawyer and have family visits in all circumstances.

Should these allegations be confirmed, they would be in violation of international human rights law articles 6, 7, 9 and 19, of the International Covenant on Civil and Political Rights (ICCPR), ratified by Viet Nam in 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 expression, association and assembly.

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 your observations on the following matters:

1. Please provide any additional information/comment you may have on the above mentioned allegations.
2. Regarding the case of **Mr. Siam Theerawut**, please provide information on his fate and whereabouts.
3. Please also provide information on:
 - a. The steps taken to search, locate and protect him including through a comprehensive strategy of search and investigation.
 - b. The authorities leading and involved in the search and investigation and the extent to which they are independent, have access to all relevant information, have access to all relevant places where people are deprived of the liberty (official or unofficial) and have sufficient resources.
 - c. The steps taken to ascertain the identity and affiliation of the perpetrators and to hold them responsible.
 - d. The steps taken to ensure cooperation in the search and investigation between the Thai and Vietnamese authorities.
 - e. Any requests received from Thailand regarding Mr. Siam Theerawut prior to his disappearance.

4. Please provide detailed information about the arrest of Mr. Truing Duy Nhat, particularly the date and location where it took place and the authorities involved.
5. Please provide information on cooperation and extradition agreements with Thailand, and the measures in place to prevent individuals being returned if they may be at risk of enforced disappearance, during or after the extradition.
6. Please provide information on the safeguards in place in Viet Nam to ensure accurate information on the detention of individuals and their place or places of detention, including transfers, is made promptly available to their family members or their counsel and to prevent enforced disappearances including in cases falling under Article 116 of the Code of Criminal Procedure.
7. Please provide information on any plans to amend the Code of Criminal Procedure provisions which allow for enforced disappearance and incommunicado detention.

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 responsible of the alleged violations.

We would like to inform your Excellency's Government that a letter with similar concerns has been transmitted to the Government of Thailand.

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.

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punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to highlight that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life and that states are required to conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance and introduce prompt and effective procedures to investigate cases of disappearances thoroughly, by independent and impartial bodies (Human Rights Committee, General Comment 36).

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, 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 furthermore like to underline that enforced disappearances constitute a violation of article 9 (liberty and security of persons) of the ICCPR. Furthermore, we recall that the Human Rights Committee, in its General Comment No. 35, paragraph 17, has qualified the enforced disappearance to be a particularly aggravated form of arbitrary detention

We would also like to remind your Excellency's Government that while enforced disappearance is a crime in itself, it may also amount to torture or other cruel, inhuman or degrading treatment or punishment, and is a serious violation of international law. The Committee against Torture¹ and the Human Rights Committee² have concluded that enforced disappearances may amount to torture and other forms of ill-treatment both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones. The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is an international norm of *jus cogens*, and as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. We further highlight that families of forcibly disappeared persons should be protected from ill-treatment or intimidation if required (article 13 of the Declaration).

¹ See, for example, conclusions and recommendations on the second periodic report of Algeria (A/52/44, para. 79), on the initial report of Namibia (A/52/44, para. 247) and on the initial report of Sri Lanka (A/53/44, paras. 249 and 251).

² CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4.

Additionally we refer to paragraph 27 of General Assembly Resolution 68/156, which, ‘[r]eminds all States that prolonged incommunicado detention can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person’.

We also refer to General Assembly Resolution 73/2017, which notes that the risk of torture and ill-treatment is greatest in the first hours of custody and during incommunicado detention. Therefore, preventive safeguards must be implemented immediately after arrest, including the notification of a third party, access to a lawyer and a physician and the furnishing of the detainee with information on their rights, available remedies and the reasons for arrest.

We highlight that the Human Rights Committee, in its Concluding Observations on Viet Nam has recommended Viet Nam bring its legislation and practice on detention into line with article 9 of the Covenant, including by ensuring amongst others that persons arrested or detained on criminal charges have access to counsel from the outset of the deprivation of liberty (CCPR/C/VNM/CO/3, paragraph 26).

ICCPR Article 19 grants everyone the right to freedom of expression. It protects, inter alia, political discourse, commentary on one’s own and on public affairs, discussion on human rights and journalism, according to CCPR/C/GC/34 para 11. As indicated by the Human Rights Committee, “the function of journalists includes not only full-time reporters and analysts, but also bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere”, Id., para. 44. While all restrictions must comply with the requirements of necessity and proportionality, the penalisation of a journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression, CCPR/C/GC/34 para 42. Furthermore, Human Rights Committee, in its General Comment No. 35 paragraph 53 has stated that detention purely due to peaceful exercise of right protected by the Covenant may be arbitrary.

Laws justified by national security, whether described by sedition laws or otherwise, can never be invoked to prosecute journalists, see CCPR/C/GC/34 para 30. Likewise, the arbitrary arrest or torture of individuals because of the exercise of their freedom of expression will under no circumstance be compatible with Article 19, CCPR/C/GC/34 para. 23.

We reiterate that all public figures, including those exercising the highest political authority such as the heads of State, are legitimately subject to criticism and political opposition. As stated by the Human Rights Committee in General Comment 34, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the ICCPR. Lèse-majesté and defamation laws should be crafted with care to ensure that they comply with article 19(3) and that they do not serve, in practice, to stifle freedom of expression (CCPR/C/GC/34). We are also particularly concerned at the chilling effect that these legal provisions have on the legitimate exercise of the right to freedom of expression in the region.

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, 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 freedom.

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 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for 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;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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.