

Mandates of the Special Rapporteur on minority issues; 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 the rights of indigenous peoples

REFERENCE:
AL VNM 3/2021

22 June 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues; 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 the rights of indigenous peoples, pursuant to Human Rights Council resolutions 43/8, 43/4, 43/16 and 42/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and alleged arbitrary detention of Mr. Duong Khai, reportedly for his human rights work regarding the rights of the Khmer Krom people, including his efforts to disseminate the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Mr. Duong Khai is a Khmer-Krom youth and human rights defender who has been active regarding the rights of the Khmer Krom. The Khmer-Krom people are an indigenous people and an ethnic, religious and linguistic minority of the Mekong Delta. They self-identify as Khmer Krom and speak Khmer language.

According to the information received:

Mr. Duong Khai had been working together with other Khmer Krom youth and had made several posts on Facebook regarding a recent translation into both Vietnamese and Khmer language of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

At around 4 pm on 13 April 2021, one day before the Khmer-Krom New Year, over one hundred police officers surrounded Duong Khai's house in Dong Nai Province. When family members asked information about the police operations, the police responded they were carrying out an Administrative Examination (Kiêm Tra Hành Chánh), and checking the identification and household papers. The police did not present a warrant.

When Duong Khai heard the police, he tried to use his mobile phone to record the police searching his house. The police immediately confiscated his phone, his computer and continued searching the premises. Police continued their search until they found the UN Declaration on the Rights of Indigenous People (UNDRIP). They seized over one hundred copies of the UNDRIP that had been translated into Khmer.

To prevent any livestreaming of the incident on social media, the authorities reportedly coordinated to turn off the power and Wi-Fi for the whole block where the house was located.

After confiscating the translated copies of the UNDRIP, the police questioned Duong Khai at his residence until 10 pm. In the absence of a warrant, Duong Khai refused to respond. The Police then took Duong Khai to the Trang Bom police station. Fearing for his safety, his mother requested to accompany him, but was forbidden from doing so by the police.

Upon arrival at the police station, five police officers questioned him, and approximately 30 police officers were standing and sitting nearby, pressuring and intimidating him. He was allegedly threatened with physical force. During the questioning, the police recorded his entire conversation. However, when they intimidated and threatened to beat him up, the police immediately turned off the recording. Duong Khai remained in detention and was subject to questioning until noon the following day. Failing to lay any charges, he was released around midday on 14 April 2020. The police returned his phone and computer, but the translated copies of the UNDRIP were not returned to him.

Although he is no longer in police custody, Duong Khai is reportedly under continued surveillance by the authorities and fears further reprisals.

Without prejudging the accuracy of the information received, we express our concern regarding the claims that Mr. Duong Khai was targeted for raising minority and indigenous people's issues in Vietnam. We express our concern that these reported threats may be connected to his efforts to disseminate United Nations documents, in particular the promotion and translation of the UNDRIP, and may have a chilling effect on any expression, by all those, including human rights defenders, who draw attention to minority and indigenous people's issues in the country.

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 and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain the legal and factual grounds for the arrest of Mr. Duong Khai, and how these are compatible with your Excellency's Government international human rights obligations under the ICCPR.
3. Please indicate the measures undertaken by your Excellency's Government to ensure that human rights defenders, and in particular those advocating and working for the rights of persons belonging to minorities and indigenous peoples, are able to carry out their legitimate work in a safe and enabling environment, without the fear of prosecution, harassment and violence, in full respect of their civil and political rights.

4. Please provide detailed information on the steps that have been taken to ensure that human rights defenders and civil society actors in Vietnam, and their families, are not subject to acts of intimidation and/ or reprisal for their promotion and dissemination of UN documents.
5. Please indicate the measures undertaken by your Excellency's Government to ensure protection and promotion of the human rights of minorities and indigenous peoples to hold opinions without interference and to enjoy the right of freedom of expression either orally, in writing, print, art or through any other media of her choice.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

Fernand de Varennes
Special Rapporteur on minority issues

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Vietnam on 24 September 1982.

Under article 9.1 of the ICCPR “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Moreover, article 9.2 stipulates that the person must be informed, at the moment of the arrest, about the reasons for such deprivation of liberty; in addition, the information about the charges against the person should be provided without delay. According to Article 9.3, anyone deprived of his or her liberty “shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.” Article 9.4 incorporates the right to initiate proceedings before a court to determine the lawfulness of the detention. These guarantees must be satisfied since the very start of the detention period and irrespective of its duration.

Article 27 of the ICCPR protects the rights of persons belonging to minorities, and the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In particular, the Declaration refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes “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 remind your Excellency's Government that any limitation to the right to freedom of expression must meet the criteria established by article 19 (3) of the ICCPR. Any limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

As stated by the Committee, the deprivation of liberty of an individual for exercising their freedom of expression constitutes an arbitrary deprivation of liberty contrary to Article 9 of the Covenant, see CCPR/C/GC/35 para. 17, and a concurrent violation of Article 19. Such attacks against individuals for exercising their rights to freedom of expression should be “vigorously investigated in a timely fashion, and the perpetrators prosecuted”, CCPR/C/GC/34 para. 23.

We reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions on freedom of expression, including by persons belonging to minorities or vulnerable groups.

We wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which

elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. In particular, we would like to recall Article 7, which provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. UNDRIP states in Article 2 that, ‘indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.’

Article 8 asserts the right of indigenous peoples not to be subjected to forced assimilation or destruction of their culture. UNDRIP furthermore states in Article 15 (2) that, ‘States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.’

According to Article 16 of the UNDRIP, indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination; States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity and – without prejudice to ensuring full freedom of expression – should encourage privately owned media to adequately reflect indigenous cultural diversity.

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:

- articles 1 and 2 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 freedoms.
- article 6 (b) and c) which provide that everyone has the right, individually and in association with others to 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 to draw public attention to those matters;
- article 9, paragraph 4, point a), which provides for the right to unhindered access to and communication with international bodies;
- 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.