

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

Ref.: UA VNM 7/2022
(Please use this reference in your reply)

15 December 2022

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 45/3, 50/17 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arbitrary detention, enforced disappearance and imminent risk of refoulement to China by the Vietnamese authorities of Chinese refugee and human rights defender Mr. Dong Guangping**. At the time of writing the present communication, his fate and whereabouts continue to be unknown.

Similar allegations of forced returns of activists, human rights defenders and of persons facing substantial risk of persecution in their countries of origin have already been transmitted to your Excellency's Government by Special Procedures mandate-holders in recent years, including two urgent appeals on 3 December 2019 ([VNM 6/2019](#)) and on 31 March 2020 ([VNM 1/2020](#)). We would like to thank your Excellency's Government for the responses provided. However, most of the concerns expressed in the urgent appeals concerned remain valid.

On 1 December 2022, the Working Group on Enforced or Involuntary Disappearances transmitted the case of Mr. **Dong Guangping (10012285)** to your Excellency's Government under its urgent procedure. We wish to note that the present communication is to be considered in addition to the urgent procedure of the Working Group. In this regard, we reiterate the call on the Vietnamese authorities to take all necessary measures as soon as possible to investigate and conduct search activities¹ to ascertain Mr. Dong's fate and whereabouts.

According to the information received:

On 24 August 2022, Mr. Dong Guangping, a Chinese human rights defender and former police officer from Henan, China, was reportedly detained arbitrarily by Vietnamese police in Hanoi, Viet Nam. The official reason for his detention is unknown.

Mr. Dong was last seen handcuffed and blindfolded, entering a police car and escorted by about a dozen police officers of the Vietnamese

¹ [OHCHR | Guiding principles for the search for disappeared persons](#)

Ministry of Public Security. This occurred just outside his apartment in Hanoi where he had been in hiding for 31 months while waiting for resettlement to Canada. There were witnesses to the arrest.

Prior detention in China for his human rights work

Prior to his detention, Mr. Dong was criminally prosecuted in China on three occasions for his work in support of human rights and democracy and for his legitimate exercise of his rights to freedom of expression and of peaceful assembly in the context of commemoration activities of the Tiananmen events in 1989.

According to available information, Mr. Dong was convicted and imprisoned for three years from around 2001 to 2004 on a charge of “inciting subversion of State power”. In May 2014, Chinese authorities again detained and held him incommunicado for over eight months following his participation in an event commemorating the Tiananmen Square events of 1989. While he was initially charged with “gathering a crowd to disrupt order of a public place,” he was formally arrested on 2 July 2014 but for “picking quarrels and provoking trouble.” Mr. Dong was held at Zhengzhou No. 3 Detention Center until his release on “bail pending further investigation” on 11 February 2015.

Refugee status in Thailand and refoulement to China

It is further reported that the Chinese authorities regularly pressured Mr. Dong after his release from prison in February 2015, which forced him to flee to Thailand in September 2015. His family joined him in Thailand and sought asylum with the United Nations High Commissioner for Refugees (UNHCR) offices in Bangkok. UNHCR recognized him as refugee in October 2015. However, on 28 October 2015, the Royal Thai Immigration Police detained Mr. Dong and another person in Bangkok, ostensibly due to violations of their visa regulations. He was forcibly returned to China in November 2015 against his will notwithstanding the high risk of persecution in China. His *refoulement* took place only days ahead of Mr. Dong’s and his family’s planned resettlement in Canada as refugees and after talks between the Thai and Canadian Governments broke down. Mr. Dong’s family resettled to Canada without him.

Upon arrival in China, Chinese authorities detained Mr. Dong for over 30 months and held him incommunicado for the entirety of his pre-trial detention. On 13 July 2018, he was brought to trial, where the Chongqing Court tried, convicted, and sentenced him following a closed-door proceeding to three years and six months in prison and a 1,000 Chinese Yuan fine for “inciting subversion of State power” and “illegally crossing national borders”. At that time, he had already served most of his sentence in incommunicado detention.

Renewed attempts to flee persecution in China

On 2 August 2019, Mr. Dong was released from prison after completing his sentence. However, faced with constant police surveillance, harassment, and lack of access to housing, work or financial resources, he decided to flee again in an attempt to reunite with his family.

On 8 December 2019, Mr. Dong evaded local police who were monitoring him and travelled to the coastal city of Shishi, in Fujian Province, where he attempted to swim across to Kinmen Island. However, he floundered at sea, and was forced to cling to a piece of styrofoam to stay afloat. He was rescued shortly after by Chinese fishermen, who turned him over to a local police station in Xiamen, also in coastal Fujian province. Police escorted him back to his home in Henan Province, China.

On 5 January 2020, Mr. Dong fled China once again and managed to cross the border into Viet Nam, where he remained in hiding in Hanoi.

Failed resettlement and enforced disappearance in Viet Nam

In the fall of 2021, after earlier documents issued by Canada had expired, Mr. Dong was granted a renewed Temporary Resident Visa for Canada. However, on 24 August 2022 the Vietnamese police detained Mr. Dong near his residence in Hanoi.

The Canadian authorities received information for several weeks from the Vietnamese authorities following his detention, indicating that Mr. Dong was safe. However, around 19 October 2022 no further information was made available about Mr. Dong, and at this stage it is not possible to confirm whether he remains in Viet Nam or he was forcibly returned to China.

Vietnamese officials have continued to fail or refuse to provide any details about Mr. Dong, and his fate and whereabouts remain unknown.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned about what appears to be the **arbitrary detention, enforced disappearance and risk of *refoulement*** of Chinese asylum seeker and former political prisoner **Mr. Dong Guangping**. We are also alarmed at the imminent risk of persecution facing Mr. Dong should Vietnamese authorities decide to forcibly return him to China and at the harmful impact that his current situation might have on his physical and psychological integrity. We are further concerned by the fact that neither Mr. Dong's family, legal representatives nor anyone else have received timely and accurate information regarding his fate and whereabouts. The information at hand

indicate that Mr. Dong may be facing reprisals for his legitimate work in the defence of human rights and fundamental freedoms in China, and that he has been forcibly disappeared in Vietnam for the peaceful exercise of his rights to freedom of expression and of assembly in his country of origin.

If confirmed, these allegations would also amount to violations of several rights protected under international human rights treaties to which Viet Nam is a State party, including articles 6.1, 7, 9, 13, 16, 17, 19, 21 and 26, read alone and in conjunction with article 2.3, of the International Covenant on Civil and Political Rights, acceded on 24 September 1982; articles 5 and 12 of the International Covenant on Economic, Social and Cultural Rights, acceded on 24 September 1982; and articles 2.1, 3, 12, 13 and 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 5 February 2015.

The principle of non-*refoulement* is an essential protection under international human rights, refugee, humanitarian and customary law, which stipulate its absolute nature, applying to all persons, including all migrants, at all times, irrespective of their citizenship, nationality, statelessness, migration or other status. Non-*refoulement* prohibits all forms of removal and transfer of any individual, regardless of their status, when there are substantial grounds for believing that the individual would be at risk of irreparable harm, such as death, torture or cruel, inhuman or degrading treatment or punishment, persecution, enforced disappearance or other serious human rights violations. General Comment No. 31 of the Human Rights Committee specifies that States' undertakings under article 2 of the International Covenant on Civil and Political Rights² entail "an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm" (para. 12). Similarly, General Comment No. 4 of the Committee against Torture³ stipulates that the non-*refoulement* obligation exists whenever there are foreseeable, personal, present and real grounds for believing that the person concerned would be in danger of being subjected to torture in a State to which the person is facing deportation. Additionally, the Working Group on Enforced or Involuntary Disappearances has noted⁴ the increasing practice of forced returns by States in violation of article 8 of the 1992 *Declaration on the Protection of all Persons from Enforced Disappearance* and the principle of non-*refoulement*. It further underlined the importance of preventing human rights violations by ensuring procedural safeguards upon detention and during the first hours of deprivation of liberty, including immediate registration, judicial oversight of the detention, prompt notification of family members, and the availability of a defence lawyer of one's choice. Moreover, articles 9 to 12 of the Declaration further spell out the rights of detained persons to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty. Access by competent national authorities to all places of detention must be ensured and any deprivation of liberty be held in officially recognized places of detention. Detainees have the right to be

² [OHCHR | CCPR/C/21/Rev.1/Add.13: General Comment No. 31 \(2004\) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#)

³ [OHCHR | CAT/C/GC/4: General comment No. 4 \(2017\) on the implementation of article 3 of the Convention in the context of article 22](#)

⁴ [OHCHR | A/HRC/48/57; Report of the Working Group on Enforced or Involuntary Disappearances \(2021\) to the UN Human Rights Council on enforced disappearances in the context of transnational transfers](#)

released also in a manner permitting verification of whether their human rights have been fully ensured. Lastly, each State should establish rules and stipulate penalties in the national legislation for officials who refuse to provide information on the detention and to ensure strict supervision, including clear chain of command, of officials responsible for deprivation of liberty and authorized by law to use force and firearms.

We wish to further highlight that failing to acknowledge a deprivation of liberty by State agents or refusing to acknowledge a detention constitute an enforced disappearance, regardless of the duration of the deprivation of liberty or concealment concerned. By apprehending and detaining individuals, including activists and human rights defenders, the State assumes responsibility for their lives and physical integrity. Due to the heightened duty of care, States must take the necessary measures to protect the lives of all individuals deprived of their liberty. We add that the reported failure by the Vietnamese authorities to ensure due process guarantees and judicial safeguards, and to provide accurate information about his well-being, whereabouts and conditions of detention to the families; their representatives; or persons with a legitimate interest immediately after their detention are also constitutive of serious crimes under international law.

We would like to refer your Excellency's Government also to its prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms under international human rights law. In this regard, human rights defenders have the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels as stipulated in 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 Recognised Human Rights and Fundamental Freedoms, adopted on 9 December 1998 (also known as the UN Declaration on Human Rights Defenders), and in particular articles 1 and 2 of the Declaration. Due to the collective character of certain economic, social and cultural rights, violations stemming from enforced disappearances not only impact the rights of human rights defenders but also the rights of others engaged in related activities and of the larger community relying on the disappeared person to represent and fight for their rights.⁵

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 safeguard the rights of the above-mentioned person 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 your observations on the following matters:

⁵ [OHCHR | A/HRC/30/38/Add.5: Report of the Working Group on enforced disappearances and economic, social and cultural rights.](#)

1. Please provide any additional information and any comment you may have on the above-mentioned allegations;
2. Please provide detailed information on the fate and whereabouts of Mr. Dong Guangping and all the measures taken by the authorities to search for him. Kindly inform on his current state of health and all the measures taken to avoid any irreparable harm to his life and personal integrity;
3. Please provide detailed information on the factual and legal grounds of the detention of Mr. Dong Guangping; and on any criminal charges imposed on him. Please provide detailed information on the reasons for the denial of his due process rights and judicial safeguards, particularly his right to a legal defence of his own choosing and to communicate with his family, legal representatives and persons with a legitimate interest;
4. Please provide detailed information clarifying how these practices are compatible with Viet Nam's international obligations and their adherence to peremptory norms of international law relating to the principle of non-*refoulement* and the absolute prohibition of torture, arbitrary detention and enforced disappearance, including the relevant provisions of the Universal Declaration on Human Rights, the International Convention on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment, and the Declaration on the Protection of All Persons from Enforced Disappearance;
5. Please provide information about any inquiry or investigation, judicial or otherwise - and on the conclusions of such inquiries, if any - that may have been undertaken in connection with the aforementioned alleged violations concerning Mr. Dong Guangping; to assess the protection of his human rights, including his right to liberty, to personal security, to recognition as a person before the law, to health and access to essential medicines, medical treatment and other basic services, to physical and psychological integrity, and to a fair trial;
6. Please provide information on the measures in place to protect the legitimate work of activists, human rights defenders, civil society representatives, and of persons expressing opinions in a peaceful manner. In this regard, please kindly provide specific details of any measure or public engagement by the Vietnamese authorities aimed at ensuring that activists and human rights defenders of different nationalities can freely carry their legitimate human rights work without fearing harassment, threats or any form of violence by the police or State institutions or acts of reprisals for cooperating with the United Nations.

We would appreciate receiving a response within 60 days. Past 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 establish without delay the fate and whereabouts of Mr. **Dong Guangping** and prevent any irreparable harm to his life and personal integrity, and to halt the alleged violations and to prevent their re-occurrence. Moreover, in the event that the investigations support or suggest the allegations to be correct, to ensure that his rights are fully respected and the persons responsible for his alleged arbitrary detention and enforced disappearance are adequately identified, tried and brought to justice.

Please note that copies of this letter have been sent to Canada, China and Thailand in accordance with the established working methods of the Special Procedures.

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

Aua Baldé

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

Clement Nyaletsossi Voule

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders