

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: AL VNM 5/2024

(Please use this reference in your reply)

20 December 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 52/4, 51/8, 54/14 and 52/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **sentencing of journalist and human rights defender Mr. Duong Van Thai to 12 years in prison by the Hanoi People's Court in October 2024, following his alleged abduction in Bangkok, Thailand, enforced disappearance and forcible return to Viet Nam.**

Mr. Thai is an independent investigative journalist, blogger and a human rights defender, who has engaged in peaceful protests on environmental rights and has advocated for democracy and human rights in Viet Nam. Mr. Thai was associated with the Independent Journalists Association of Viet Nam and Brotherhood for Democracy, groups engaged in the promotion and protection of human rights and media freedom, which reportedly faced severe repression in Viet Nam. Mr. Thai also worked on exposing alleged cases of corruption and published critical reports about the political situation in the country.

We previously raised concern regarding the alleged enforced disappearance, arbitrary arrest and detention of Mr. Thai in a communication to your Excellency's Government ([VNM 4/2024](#)). We thank your Excellency's Government for the response received to this communication, while we reiterate our concerns about his case.

The Working Group on Enforced or Involuntary Disappearances transmitted a copy of the case of Mr. Duong Van Thai to Your Excellency's Government on 19 May 2023. His fate and whereabouts and the case were subsequently clarified during the Working Group's 131st session based on information received from the source. We wish to remind you that the fact that the case was clarified does not exempt the Government concerned from its obligations under the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly on 18 December 1992, especially in terms of investigating, identifying and prosecuting those responsible for the crimes concerned, and providing reparation for the harm suffered by Mr. Duong Van Thai (arts. 12 and 19 of the Declaration).

According to the information received:

In 2018, Mr. Thai fled to Thailand fearing persecution for his journalistic work in Viet Nam. In Thailand, in 2019 the UN Refugee Agency (UNHCR) recognized his refugee status, and he was being interviewed for a resettlement to a third country.

On 13 April 2023, Mr. Thai was allegedly abducted by Vietnamese security forces while driving his motorbike in the northern outskirts of Bangkok, along Lamphu road, Thanyaburi district, Pathum Thani province, in Thailand.

Prior to his enforced disappearance, Mr. Thai reportedly revealed his security concerns to an acquaintance right after posting videos of political infighting in Viet Nam. Mr. Thai also reportedly added that, on 6 April 2023, one of his neighbors spotted a man riding a motorbike with a Chiang Rai provincial number plate approaching his home to film and take photos. The man reportedly spoke Thai, although with a strange accent.

A few days later, it was reported that on 14 April 2023 Mr. Thai had allegedly been arrested by Vietnamese officials for entering Viet Nam without proper identification documents. No further information about his fate and whereabouts was reportedly shared with his family until July 2023.

Additionally, persons connected to Mr. Thai were able to put together a chronology of his movements on the day of his enforced disappearance through different CCTV camera footage, audio recordings and testimonies, which purportedly confirm his abduction.

According to this chronology, Mr. Thai left his home in the afternoon of 13 April 2023 and went to a nearby coffee shop (Amazon Café), where he met with an acquaintance. At the shop, he bought two cups of coffee, one for him and one for his acquaintance. Together, they went to the park inside Rajamangala Technology University's campus, in Phatum Thani, north of Bangkok. Mr. Thai livestreamed a video on YouTube while at the park in which he spoke about U.S. Secretary of State Anthony Blinken's visit to Hanoi and the trial of a blogger in Viet Nam. The livestream was available online in the days following his enforced disappearance, but it has now been removed, together with Mr. Thai's YouTube page. Furthermore, at around 5:30 p.m. Mr. Thai ended the livestream and left the park to go home. Footage by two security cameras near Rajamangala Thanyaburi University of Technology recorded the moment in which Mr. Thai left the location from where he had previously live streamed. From the footage, it appears that, prior to being abducted on a white Mitsubishi car, four men riding two motorbikes were closely tailing him.

On 21 April 2023, Thai media allegedly reported that that Royal Thai Police had contacted Vietnamese authorities to inquire about Mr. Thai, but they did not receive a formal reply. The Foreign Ministry of Viet Nam also reportedly remained silent.

On 14 July 2023, the authorities of Viet Nam informed Mr. Thai's family that the human rights defender was officially under arrest and had been detained in Hanoi for "making, storing, disseminating, or propagating information, documents, and items aimed at opposing the Socialist Republic of Vietnam", which constitutes a violation under article 117 of the Penal Code of Viet Nam. The document delivered to Mr. Thai's family about the charges brought against him also reportedly stated that his temporary detention period was due to end on 12 August 2023. However, he was not released past this date and remained held incommunicado, reportedly with no access to legal assistance nor to his family until several months later.

On 30 October 2024, the Hanoi People's Court sentenced Mr. Thai to 12 years in prison for "making, storing, disseminating, or propagating information, documents, and items aimed at opposing the Socialist Republic of Vietnam" under article 117 of Viet Nam's Penal Code. He was also condemned to serve an additional probation period of 3 years. It has been reported that the family of the human rights defender could not attend the proceedings, as it was a closed trial. Further, his legal representatives reportedly did not receive the approval to handle his case, which prevented them from properly preparing for the trial. Mr. Thai was tried together with seven other individuals, who were also charged under article 117 but received shorter prison sentences.

While we do not wish to prejudge the accuracy of the information received, we wish to express serious concern about Mr. Thai's reported enforced disappearance and rendition, which we fear might have been directly related to his legitimate work as an independent journalist and human rights defender, and to the exercise of his right to freedom of opinion and expression. We are deeply concerned by allegations that Mr. Thai was subjected to enforced disappearance prior to the commencement of his trial, thereby undermining the integrity of the legal proceedings from the outset.

We further note with concern that the charges brought against Mr. Thai are often being used to target independent journalists in Viet Nam, thus hindering their right to freedom of opinion and expression as well as their ability to conduct their human rights work freely without fear of intimidation or reprisals. We call for the immediate release of Mr. Thai and urge your Excellency's Government to guarantee that Mr. Thai can avail himself, without any hindrances, of his right to appeal the decision of Hanoi People's Court, if so requested, as a part of due process requirements.

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 indicate the legal and factual basis for the prolonged detention and conviction of Mr. Thai, and how these are consistent with the right to freedom of expression according to international standards.
3. Please indicate which steps have been taken to investigate the reported enforced disappearance of Mr. Thai, to identify those responsible and to prosecute and sanction them, as well as to guarantee that Mr. Thai obtains adequate redress for the harm suffered.
4. Please indicate the measures that were taken to ensure Mr. Thai's right to a fair trial and explain how the judicial process complied with due process requirements and fair trial standards, as well as applicable judicial guarantees, including access to a lawyer of his choice, the right to a fair and public hearing by an impartial and independent tribunal and to appeal the decision of the Court, on the basis of Viet Nam's obligations to respect international human rights.
5. Please provide detailed information on Mr. Thai's prison conditions and measures which have been taken to ensure his physical and psychological integrity and his right to have access to a lawyer and to family visits while in prison.
6. Please indicate what measures have been put in place by your Excellency's Government to ensure that journalists and human rights defenders can carry out their peaceful and legitimate work free from fear of threat, violence, harassment or retaliation of any sort. If no specific measures in this regard have been put in place, please indicate a means by which we may engage with your Excellency's Government on the development of such measures.

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.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable damage to the life and personal integrity of Mr. Thai, to halt the alleged violations and to 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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Ganna Yudkivska
Vice-Chair on communications of the Working Group on Arbitrary Detention

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

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

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 articles 9, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Viet Nam on 24 September 1982, which guarantee the right to liberty and security of person, the right to a fair trial and due process, and the right to freedom of expression. The same rights are also enshrined in articles 3, 11 and 19 of the Universal Declaration of Human Rights (UDHR).

Article 9 of the ICCPR provides that "no one shall be subjected to arbitrary arrest or detention". An arrest will be arbitrary if it includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality (CCPR/C/GC/35 para. 12). Arresting or detaining an individual as punishment for the legitimate exercise of the rights as guaranteed by the Covenant constitutes a violation of article 9 (CCPR/C/GC/35 para. 17).

We emphasize that the prohibition of enforced disappearances and the corresponding obligation to investigate them have attained the status of *jus cogens*. Furthermore, enforced disappearances also constitute a violation of article 9 of the ICCPR. In fact, enforced disappearance is a particularly aggravated form of arbitrary detention (general comment No. 35, para. 17). It may also amount to torture or other cruel, inhuman or degrading treatment or punishment both with regard to the disappeared and their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones.¹

The 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearances establishes that all acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness (article 4), no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance (article 6). Furthermore, no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7), the right to a prompt and effective judicial remedy must be guaranteed as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances (article 9). The Declaration further sets out the necessary protection relating to the rights to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons (articles 10 and 12). The Declaration further establishes that States should take any lawful and appropriate action to bring to justice

¹ See, for example, on Algeria (A/52/44, para. 79), Namibia (A/52/44, para. 247) and Sri Lanka (A/53/44, paras. 249 and 251); CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4.

persons presumed to be responsible for acts of enforced disappearance (article 14), and that the persons responsible for these acts shall be tried only by ordinary courts and not by other special tribunal, notably military courts (article 16); not benefit from any amnesty law (article 18).

In its report to the UN Human Rights Council on enforced disappearances in the context of transnational transfers², the Working Group on Enforced or Involuntary Disappearances noted the increasing practice of forced returns by States in violation of article 8 of the Declaration and the principle of non-refoulement. In its report to the UN Human Rights Council on enforced disappearances in the context of transnational transfers,³ the Working Group on Enforced or Involuntary Disappearances noted the increasing practice of forced returns by States in violation of article 8 of the Declaration 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 defense lawyer of one's choice.

In its study on enforced or involuntary disappearances and economic, social and cultural rights⁴ the Working Group has highlighted the chilling effect of the disappearance of journalists and human rights defenders and called States to “ensur[e] the existence of and respect for cultural diversity and the existence of space where multiple opinions, positions and interpretations of history can find their expression in the public sphere diminishes the level of vulnerability of those questioning in one way or another mainstream ideas and positions, and so prevents against targeting of human rights defenders”. In its study on enforced or involuntary disappearances and economic, social and cultural rights⁵ the Working Group on Enforced or Involuntary Disappearances has highlighted the chilling effect of the disappearance of journalists and human rights defenders and called States to “ensur[e] the existence of and respect for cultural diversity and the existence of space where multiple opinions, positions and interpretations of history can find their expression in the public sphere diminishes the level of vulnerability of those questioning in one way or another mainstream ideas and positions, and so prevents against targeting of human rights defenders”.

Article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent, and impartial tribunal established by law. As emphasized by the Human Rights Committee in general comment no. 32 (CCPR/C/GC/32), all trials in criminal matters must in principle be conducted orally and publicly (paragraph 28). We would also like to refer your Excellency's Government to article 10 of the Universal Declaration of Human Rights (UDHR) which states that, “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

² A/HRC/48/57, pg. 14

³ A/HRC/48/57, pg. 14

⁴ [A/HRC/30/38/Add.5](#)

⁵ [A/HRC/30/38/Add.5](#)

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right “to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media”. This right applies online as well as offline, protects the freedom of the press as one of its core elements and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

In its general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (CCPR/C/GC/34, para. 11). The Committee states that article 19 also covers the right of a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion and a corresponding right of the public to receive media output.

The Committee further asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23). Recognizing how journalists and persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers, are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that “all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress” (para. 23).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR. Under these requirements, restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate for those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (CCPR/C/GC/34, para. 35). The Human Rights Committee recalled that the relation between right and restriction and between norm and exception must not be reversed. In this regard, the Human Rights Committee stated that the restrictions must be “the least intrusive instrument among those which might achieve their protective function”. (CCPR/C/GC/34, para. 34).

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). The penalisation of a journalist solely for being critical of the government or the political or social system espoused by the government can never be considered to be a necessary restriction of freedom of expression (general comment No. 34, para. 42). Furthermore, detention purely due to peaceful exercise of rights protected

by the Covenant may be arbitrary (general comment No. 35, para. 53). Laws justified by national security, whether described by sedition laws or otherwise, can never be invoked to prosecute journalists (general comment No. 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 (general comment No. 34, para. 23).

Furthermore, we wish to bring to your Excellency's Government's attention 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 freedoms.

We further would like to draw particular attention to the following articles of the Declaration:

- Article 6 (b) and (c), which provides for the right to freely 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 8 (2), which provides for the right to draw attention to any aspect of work of governmental bodies and agencies and organizations that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.
- Article 11, which grants everyone the right to the lawful exercise of his or her occupation or profession.
- Article 12 (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 their legitimate exercise of the rights referred to in the Declaration. In this connection, the Declaration provides that "everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms".

Furthermore, we would like to refer your Excellency's Government to recommendations in the report of the Special Rapporteur on the situation of human rights defenders focusing on the long-term detention of human rights defenders (A/76/143), in which the Special Rapporteur emphasized that States should desist from jailing human rights defenders for their legitimate human rights work, stop subjecting them to long terms in detention, and ensure their legal rights, including prompt access to their lawyers and their family (paragraph 158 (a), (e) and (i)).