

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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

REFERENCE: UA VNM 6/2016:

16 August 2016

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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 24/7, 25/2, 32/32, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of arbitrary arrest and detention of land rights defender, Ms. Can Thi Theu, for the legitimate exercise of her rights to freedom of expression and freedom of peaceful assembly.**

Ms. Can Thi Theu has campaigned against, and documented, land seizures in Hanoi and its surrounding provinces since 2007 when her own family's farm was seized.

According to the information received:

In April 2014, Ms. Can Thi Theu was arrested while filming a land grab in Ha Dong district in Hanoi. She was charged with 'resisting on-duty state officials' and imprisoned for fifteen months.

In January 2016, Ms. Can Thi Theu was briefly detained while protesting against the local government's attempt to seize farms from families in Hanoi.

On 8 April 2016, Ms. Can Thi Theu participated in a peaceful protest in Dong Da district calling for the release of a detained human rights lawyer and also commemorating the founding of a pro-democracy group.

On 10 June 2016, Ms. Can Thi Theu was arrested in her home in Hoa Binh province by the police. Numerous police officers searched her home and her mobile phone was confiscated. Once in detention, Ms. Can Thi Theu went on a hunger strike.

On 22 June 2016, Ms. Can Thi Theu met with her lawyer for the first time in the detention facility. She was brought to a room in a wheelchair, with the support of

two persons. Her lawyer urged her to end her hunger strike, which she did, but she is still in a fragile state. Ms. Can Thi Theu remains detained in the Hoa Lo Detention facility No. 1, charged under Article 245 of Vietnam's Penal Code for 'causing public disorder', relating to her attending a peaceful demonstration. Ms. Can Thi Theu is facing seven years' imprisonment, if convicted, but no trial date has yet been set for her case.

Serious concern is expressed at the alleged arbitrary arrest and detention of Ms. Can Thi Theu, which is believed to be linked to her human rights work in the defence of land rights in Vietnam, while exercising her rights to freedom of expression and freedom of peaceful assembly. Further concern is expressed at Ms. Can Thi Theu's deteriorating health condition while in detention. More generally, serious concern is expressed about the criminalization of the rights to freedom of expression and peaceful assembly, and the chilling effect this is likely to have on civil society and human rights defenders.

The above mentioned allegation appear to be in contravention with articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Vietnam on 24 September 1982, which provide that no one shall be subjected to arbitrary arrest or detention; everyone shall be equal before the courts and tribunals and have right to a fair trial; everyone shall have the right to hold opinions without interference; and everyone shall have the right to freedom of peaceful assembly.

We reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3) of the ICCPR, including on discussion of government policies and political debate, reporting on human rights, government activities, peaceful demonstrations or political activities, and expression of opinion and dissent.

Moreover, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2, in which the Council reminds States of their obligations in relation to the rights of all individuals to freedom of peaceful assembly and association.

We further would like to draw your attention to 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 articles 1, 2, 5, 6 and 12.

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 Ms. Theu 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:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest and detention of Ms. Can Thi Theu, as well as the conditions of her detention, and how they are compatible with international human rights law. In particular, please explain how Ms. Can Thi Theu 's exercise of her rights to freedom of expression and freedom of peaceful assembly amounts to "causing public disorder" under Article 245 of the Penal Code.
3. Please provide information about measures taken to ensure the physical and psychological integrity of Ms. Can Thi Theu while in detention.
4. Please provide information about the legal basis for entering and searching Ms. Can Thi Theu's home, as well as the legal basis for confiscating her mobile phone.
5. Please provide information about measures taken to ensure that Ms. Can Thi Theu is guaranteed a fair trial in accordance with international human rights standards.
6. Please indicate what measures have been taken to ensure that human rights defenders in Vietnam are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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.

In addition, we would like to draw your Excellency's Government's attention to paragraph 23 of the methods of work of the Working Group on Arbitrary Detention, according to which, "after having transmitted an urgent appeal to the Government, the Working Group 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 — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure."

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

José Guevara
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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Maina Kiai
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