

Mandates of 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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
AL VNM 7/2016

4 October 2016

Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 25/2, 32/32, 25/18 and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, detention and sentencing of environmental human rights defender, Ms. Can Thi Theu, which are believed to be directly linked to her human rights work in the defence of land rights in Vietnam.

Ms. **Can Thi Theu** is an environment and land rights defender who has campaigned against, and documented, land seizures in Hanoi and its surrounding provinces since 2007 after her own family's farm was seized.

Ms. Can Thi Theu was the subject of one previous communication sent by various Special Rapporteurs, dated 16 August 2016, case no. VNM 6/2016. We regret that, to date, no response has been received to this communication.

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 allegedly charged with 'resisting on-duty state officials' and arbitrarily imprisoned for fifteen months.

In January 2016, the land rights defender 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 by the police in her home in Hoa Binh province. Numerous police officers searched her home, and her mobile phone was confiscated. Once in detention, Ms. Can Thi Theu went on a hunger strike in protest of the arbitrariness of the detention.

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 the hunger strike, which she did, but she is still in a fragile health state. During the pre-trial detention, Ms. Can Thi Theu was granted no access to medical treatment and her family.

On 20 September 2016, Ms. Can Thi Theu was sentenced to 20 months imprisonment by the People's Court of Dong Da district, in Hanoi, on charges of “causing public disorder” under article 245 of the Penal Code.

Serious concern is expressed at the arrest, detention and sentencing of Ms. Can Thi Theu, which are believed to be linked to her human rights work in the defence of land rights in Vietnam and the legitimate exercise of her right to freedom of expression and assembly. Furthermore, concern is expressed in relation to the 12 days during which Ms. Can Thi Theu remained in detention without access to a lawyer, severely hindering the guarantees of due process in a particularly important stage of the criminal procedure. Further concern is expressed at Ms. Can Thi Theu's deteriorating health condition in detention, and the alleged denial of access to medical treatment and family. Lastly, concern is expressed about the criminalization of human rights work and the exercise of the right to freedom of expression and peaceful assembly, as well as the “chilling-effect” this may have on human rights defenders and civil society as a whole.

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government 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.

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 therefore 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 provide information concerning the legal grounds for the arrest, detention and conviction of Ms. Can Thi Theu, and explain how these measures are compatible with international human rights norms and standards.
3. Please provide detailed information regarding the conduct of the criminal proceedings of Ms. Can Thi Theu. In particular, please explain the reasons for depriving her of access to a lawyer during the first 12 days following her detention.
4. Please provide information concerning the legal basis for the search of Ms. Can Thi Theu's house and the confiscation of her mobile phone, and

explain how these actions are compatible with international human rights norms and standards.

5. Please provide information about measures taken to bring the enforcement of article 245 of the Penal Code into line with Vietnam's obligations under international human rights law.
6. Please indicate what measures have been taken to ensure that human rights defenders in Vietnam, including environmental human rights defenders, 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.

We would appreciate receiving a response within 60 days.

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.

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.

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the following human rights standards:

The above mentioned allegation appear to be in contravention of 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 entitled to (...) have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing; everyone shall have the right to hold opinions without interference; and everyone shall have the right to freedom of assembly with others, including the right of peaceful assembly.

Concerning the guarantees of due process under article 14, and in particular the guarantee of prompt access to a lawyer, it should be noted that the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 7, state that "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention."

We would like to underline that any restriction on expression that a government seeks to justify on grounds of public order must have the genuine purpose and demonstrable effect of protecting a legitimate public order interest. In this regard, a government must demonstrate that the expression at issue poses a serious threat to public order; the restriction imposed is the least restrictive means possible for protecting public order; and the restriction is compatible with democratic principles. In this connection, we reiterate the principle enunciated in Human Rights Council Resolution 12/16 which calls on States to refrain from imposing restrictions on the exercise of the right to freedom of expression that are not consistent with Article 19(3), including on reporting on human rights; and peaceful demonstrations or political activities.

We would also like to refer to Human Rights Council resolution 24/5 of the Human Rights Council in which it "[r]eminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law" (OP2).

We would like to further 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 freedoms.

Furthermore, we refer to article 5 (a), which provides for the right to meet and assemble peacefully; and article 6, which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as 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 on these rights. And article 12, (1) and (3) which provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms and for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts, attributable to States that result in violations of human rights and fundamental freedoms.

Finally, we would like to refer to the Human Rights Council resolution 31/32, which calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards the realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy (para. 2).