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HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the independence of judges and lawyers; 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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 218/2 Assembly & Association (2010-1) G/SO 214 (56-23) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)
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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the independence of judges and lawyers; 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 torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 14/11, 17/2, 15/21, 16/5, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the situation of Pastor **Duong Kim Khai**, Ms. **Tran Thi Thuy**, Mr. **Nguyen Thanh Tam**, Mr. **Pham Van Thong**, Mr. **Nguyen Chi Thanh**, Ms **Pham Ngoc Hoa** and Mr. **Cao Van Tinh**. Pastor Duong Kim Khai, Ms. Tran Thi Thuy, and Mr. Nguyen Thanh Tam are members of Viet Tan, a human rights organisation which advocates for rights such as freedom of expression, religion, association and assembly to be respected. Pastor Duong Kim Khai is also the founder of the Mennonite Cattle Shed Congregation and Mr. Pham Van Thong, Mr. Nguyen Chi Thanh, Ms Pham Ngoc Hoa and Mr. Cao Van Tinh are land rights and religious freedom advocates who oppose the confiscation of land by the authorities.

According to the information received:

On 30 May 2011, the aforementioned human rights defenders appeared before the People's Court of Ben Tre, Mekong Delta charged with "attempting to overthrow the socialist Government" under article 79 of the Vietnamese Penal Code, a charge which carries the death penalty. This charge is reportedly linked to their affiliation with Viet Tan.

It is alleged that Ms. Tran Thi Thuy was sentenced to eight years imprisonment and five years probation; Mr. Pham Van Thong was sentenced to seven years imprisonment and five years probation; Mr. Nguyen Thanh Tam, Mr. Nguyen Chi Thanh and Ms. Pham Ngoc Hoa were sentenced to two years imprisonment and three years probation; and Pastor Duong Kim Khai was sentenced to six years imprisonment and five years of probation. It is believed that the families of Ms. Tran Thi Thuy, Pastor Duong Kim Khai, Mr. Cao Van Tinh and Mr. Pham Van Thong plan to appeal the sentences. It is alleged that Pastor Duong Kim Khai has previously been arrested and detained 13 times while trying to organize prayers sessions.

It is reported that since their arrests in July and August 2010, the aforementioned human rights defenders were held *incommunicado* until the trial and were denied access to their families despite numerous requests, as well as access to their lawyers. It is also reported that their lawyers were denied access to essential documents which are relevant to their clients' cases. According to information received, the human rights defenders are no longer being held *incommunicado*, their families are permitted to visit them twice a month and they have had access to their lawyers starting from the trial.

According to the information received, Ms. Thuy was subjected to physical abuse while in detention. For four consecutive days the police allegedly beat her with metal sticks and poked her arms and legs with sharp, pointy metal equipment. It is reported that following these beatings Ms. Thuy is experiencing on-going pains however requests by her family to bring her the necessary medication in prison have been refused.

According to reports received the prosecution of the aforementioned human rights defenders forms part of an ongoing crackdown by Vietnamese authorities against human rights defenders in the Mekong Delta region.

Concern is expressed about the long prison sentences handed down by the People's Court of Ben Tre particularly considering allegations that the charges are linked to the affiliation of the aforementioned human rights defenders with Viet Tan and their advocacy for freedom of expression, religion, association and assembly. Concern is also expressed amid allegations that the defendants were held in *incommunicado* detention for a number of months before being brought before to trial, during which time they were not permitted access to their families and lawyers. Serious concern is expressed about allegations that Ms. Thuy was subjected to physical abuse while in detention and that she

is allegedly being denied access to pain relief medication which she requires. Moreover, considering allegations that their lawyers were denied access to essential documents pertaining to the case, concern is expressed that the right to a fair trial was not respected. Finally, concern is expressed that the situation of the aforementioned human rights defenders may be linked to their legitimate work in the defence of human rights, in particular, their work issues related to the right to land.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of Pastor Duong Kim Khai, Ms. Tran Thi Thuy, Mr. Nguyen Thanh Tam, Mr. Pham Van Thong, Mr. Nguyen Chi Thanh, Ms Pham Ngoc Hoa and Mr. Cao Van Tinh. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth, *inter alia*, in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). We should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the persons named above.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the aforementioned human rights defenders is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the UDHR, and articles 9 and 14 of the ICCPR.

Regarding allegations received about the incommunicado detention of the mentioned persons for a period of several months since their arrest, we would also like to draw the attention of your Excellency's Government to paragraph 8b of Human Rights Council Resolution 16/23 of 18 June 2008, which reminds all States that "Prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished;"

Concerning allegations of physical abuse of Ms. Thuy while in detention as well as of alleged denial of medical treatment, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment;"

Furthermore, we would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2)

provides that, “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.” Furthermore, rule 25(1) provides that, “The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.” (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

We would also like to draw your Excellency's Government's attention to principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, “A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [...]”. We would also like to draw your Excellency's Government's attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”

Regarding the allegations received indicating that the situation of the mentioned human rights defenders is linked to their affiliation with Viet Tan and their advocacy for freedom of expression, religion, association and assembly, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief of Pastor Duong Kim Khai, Mr. Pham Van Thong, Mr. Nguyen Chi Thanh, Ms. Pham Ngoc Hoa and Mr. Cao Van Tinh in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the UDHR as well as of the ICCPR.

We would also like to recall that the General Assembly, in its resolution 64/164, urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end “(b) To ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights; [...] (g) To ensure, in particular, the

right of all persons to worship, assemble or teach in connection with a religion or belief and their right to establish and maintain places for these purposes and the right of all persons to write, issue and disseminate relevant publications in these areas”.

In view of the foregoing, while we believe that the aforementioned human rights defenders should not be tried for exercising their legitimate activities – should the allegations be true – we wish to stress that all of them should have had access to their lawyers following their arrest. This is essential to ensure the defendants’ right to a fair trial, as set forth in art. 14 of the ICCPR, which stipulates that in the determination of any criminal charge against him, everyone shall be entitled: “(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;” and “(d) ... to defend himself in person or through legal assistance of his own choosing.” Such access to a lawyer should have been granted “in any case not later than forty-eight hours from the time of arrest or detention” according to 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, principle 7).

With regard to the allegations that their defence lawyers were denied access to essential documents pertaining to their clients’ case, we wish to stress that such access is also an important attribute of the right to a fair trial. In its General Comment No. 32 on art. 14 of the ICCPR, the Human Rights Committee considered that “adequate facilities” must include access to documents and other evidence, *i.e.* all materials that the prosecution plans to offer in court against the accused or that are exculpatory (CCPR/C/GC/32, para. 33).

Furthermore, we would like to 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, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 9, para. 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration; everyone has the right, individually and in

association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights; and

- article 12, paras. 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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. In this connection, 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, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Pastor Duong Kim Khai, Mr. Pham Van Thong, Mr. Nguyen Chi Thanh, Ms. Pham Ngoc Hoa and Mr. Cao Van Tinh are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Kindly respond to the allegation that Ms. Tran Thi Thuy was subject to physical abuse while in detention and that she is currently being denied access to pain relief medication that she allegedly requires.
3. Please provide the details regarding the charges brought against the aforementioned human rights defenders, paying particular attention to allegations that these charges may be linked to their affiliation with Viet Tan and their advocacy for freedom of expression, religion, association and assembly.
4. Please provide details regarding allegations that the aforementioned human rights defenders have been held incommunicado since July and August 2010. In this respect, please explain why they have not been permitted access to their families.
5. Please provide information regarding the allegations that the defendants were denied access to a lawyer until their trial and that their lawyers were denied access to essential documents pertaining to their clients' case, and how this is compatible

with the relevant provisions of the ICCPR and the Basic Principles of the Role of Lawyers, as referred to above. Please indicate what measures are taken to ensure the defendants' right to a fair trial in further stages of the proceedings.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

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

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment