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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on freedom of religion or belief; and the Independent Expert on minority issues.

REFERENCE: UA Housing (2000-9) Cultural rights (2009) G/SO 214 (56-23) Minorities (2005-4)
VNM 3/2014

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on freedom of religion or belief; and the Independent Expert on minority issues pursuant to Human Rights Council resolutions 15/8, 19/6, 22/20, and 16/6.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **forced eviction of the residents of the Con Dau village, near Da Nang city, in Central Viet Nam.**

According to the information received:

Con Dau is a small farming village on the outskirts of Da Nang city. Host to a small catholic community, Con Dau was built by the work of many generations of residents. The first church built in 1895 is where the current parish church is located, which remains the center of public activities in the parish. Over the years, farming rice and church activities have shaped the culture of the community. The parish's cemetery, recognized by the Government as a national culture heritage site, has a chapel which serves as the second place of worship for the parishioners. The cemetery was built in when the Con Dau commune was being formed, and more than 1,600 Con Dau parishioners have been buried there in the last 135 years.

In May 2007, the local Government of Da Nang city announced a plan to expropriate 430 hectares of land in the Hoa Xuan ward area, including the entire village of Con Dau (110 hectares), and leased them to a private international developers' company, The Sun Group, to build an eco-resort,

The local Government promised to compensate displaced residents for their land but at rates far below market value. Con Dau residents, who were opposed to the project, proposed moving closer to their church and offered the surrounding rice fields to the Government to build the new eco-resort. The local Government rejected this proposal and made it clear that remaining in the areas was not an option and ordered the relocation of the cemetery to a mountainous area, far from any inhabitable place. The 1,600 tombs were moved to the new cemetery and a ban was placed on further burials in the old cemetery. The local Government resorted to many measures to ensure implementation of the plan, including, allegedly, threats and harassment.

With a few exceptions, Con Dau parishioners refused to move. On 4 May 2010, hundreds of anti-riot polices cracked down on thousands of parishioners who attended the funeral of a 93-year old parishioner. Police used tear gas, metal baton, electric rods and rubber bullets to attack the funeral procession. More than 100 mourners were injured, including children, pregnant women and the elderly. Sixty-two parishioners were arrested and brought to the police station for further investigation. They were all subjected to torture. Six of them were sentenced to jail terms. Allegedly one parishioner was tortured to death.

In 2013, hundreds of residents had to move under pressure and threat or after their homes had been forcefully demolished. Most of them are unemployed while hundreds of hectares of rice fields are abandoned and littered with trash as the Government has cut off water to the area. Moreover, the contract developer stopped work due to a shortage of funds and has begun selling their land use rights by lots to private buyers. Currently more than 100 families are still refusing to leave Con Dau despite the tremendous pressure from the local Government.

Con Dau parishioners sought intervention from the central Government, which responded that they had approved the expropriation of land along the riverbank but not the farmland, the residential area or the cemetery. The central Government ordered the local Government to resolve the issue by relocating parishioners around their church and paying fair compensation to those who had been wronged, but with no result.

Instead, on 7 March 2014, the local Government of Da Nang city gave a deadline to the remaining hundred households to give up their land and move out by 15 April 2014. The request by the parishioners to be resettled near the church was once again rejected. In the meantime, the forced eviction of households and the destruction of houses continue.

Concerns are expressed that the forced eviction of the residents of Con Dau is not in accordance with international standards and results in seriously disrupting the cultural and religious life of the community.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which your Excellency's Government acceded on 24 September 1982, regarding the right of everyone to take part in cultural life. According to General Comment 21 (2009) of the Committee on Economic, Social and Cultural Rights, this provision protects the rights of all persons to express their cultural identity freely and to exercise their cultural practices and way of life. States should respect and protect cultural heritage of all groups and communities, in particular the most disadvantaged and marginalized individuals and groups, in economic development and environmental policies and programmes. They should take appropriate measures to support minorities or other communities in their efforts to preserve their culture. In addition, the Committee considers as a core obligation to allow and encourage the participation of persons belonging to minority groups, indigenous peoples or to other communities in the design and implementation of laws and policies that affect them. In particular, States parties should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk. (E/C.12/GC/21, paragraphs 49 (a), 50 (b), 52 (f) and 55 (e)).

The Special Rapporteur in the field of cultural rights also recalls that, following her visit to Viet Nam in November 2013, she expressed her concern regarding cases of local or minority communities whose ways of life and culture have been completely disrupted by development programmes. She specifically mentioned the people of the Con Dau Parish near Da Nang and expressed her hope that your Excellency's Government would intervene in a timely manner to resolve this particular case. More generally, she encouraged your Excellency's Government to ensure that the collective ownership of land is recognized for communities wishing to retain and develop their traditional ways of life, most often based on agriculture, forest husbandry or fishing (see end of mission statement).

We also recall article 11.1 of the International Covenant on Economic, Social and Cultural Rights as a component of the right to an adequate standard of living to be read in conjunction with article 2.2 of the Covenant which provides for the exercise of any right under the Covenant without discrimination of any kind. The Committee on Economic, Social and Cultural Rights in its General Comment No. 4 has stressed that the right to adequate housing should not be interpreted in a narrow sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. In the Committee's view, the right to housing includes guaranteeing the following aspects: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.

Furthermore, in its General Comment No. 7 on forced evictions, the Committee clarified that "appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both

International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, Government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions should not take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts”.

As the Special Rapporteur on adequate housing has noted in her guiding principles on security of tenure for the poor in urban and peri-urban areas (A/HRC/25/54), States should promote the social function of property, including land, and take measures to combat speculation of land while ensuring access to secure and well located land for housing for the poor. The Rapporteur noted that the inability of the poor to access secure and well-located housing is often a direct result of policies that promote the commodification of land and housing to the detriment of their social function. Policies that promote the social function of property aim to ensure that land is allocated, used and regulated in a manner that serves both individual and collective needs.

We would also like to appeal to your Excellency’s Government to ensure the right to freedom of religion or belief in accordance with article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights, which your Excellency’s Government also acceded on 24 September 1982.

Furthermore, we would like to recall article 6 (a) of the 1981 Declaration on the elimination of All Forms of intolerance and of Discrimination Based on Religion or Belief according to which “the right to freedom of thought, conscience, religion or belief includes the freedom, ‘to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes’”. In this connection, Human Rights Council Resolution 6/37 urges States to “9 (e) Exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction”.

We would also like to draw the attention of your Excellency’s Government to international standards relevant to the protection and promotion of the rights of minorities. The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities requires under article 1.1 that States “shall protect the existence and the national or ethnic, cultural or religious identity of minorities within its respective territories and shall encourage conditions for the promotion of that identity”. Article 2.1 states that “persons belonging to national or

ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination”. Article 2.3 highlights that “Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation”. Article 4.1 establishes that “States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”.

It is our responsibility under the mandates provided by the Human Rights Council to seek to clarify all cases brought to our attention. Since we shall be expected to report on these cases to the Human Rights Council, we would be grateful for the cooperation and observations of your Excellency’s Government on the following matters:

1. Do you have comments on the facts alleged in the above summary?
2. What specific measures were put in place to effectively consult the communities to be affected by the expropriation and resettlement, and how were their views and objections taken into account prior to the actual demolitions? Please provide further information of the reasons why the requests of the parishioners to be resettled near the church in two occasions have been rejected?
3. What measures were put in place to ensure adequate handling of the human remains in the cemetery prior to relocating it? What criteria and procedures were followed in ensuring prior informed consent by the relatives and community members? What measures have been taken to ensure that the location of the cemetery is easily accessible by community members?
4. What criteria were considered when defining relocation areas for the community, in particular in consideration of the following elements: security of tenure, location, accessibility, habitability and cultural adequacy? Please provide details on the area and quality of land and housing, access to public services, including water and sanitation, and access to livelihood sources.
5. Please provide details of the amount and type of compensation that was provided to the individuals who were already settled, and of the offers for compensation that have been made to the remaining 100 households.
6. What legal remedies have been made available for individuals as well as for the community who were affected by these decisions, including those who suffered the demolition of their homes?

We undertake to ensure that your Excellency’s Government’s response will be available in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the Con Dau residents as mentioned above are fully respected and protected, and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

We also wish to inform you that in light of the potentially serious implication of these cases, we are considering to publicly express our concern in the near future.

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

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