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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 (107-9) G/SO 214 (53-24) Health (2002-7)
VNM 4/2012

29 August 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 15/21, 16/5, 15/22, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the alleged ill-treatment in detention of Ms. **Tran Thi Thuy**.

Ms. Tran Thi Thuy, land rights defender and member of human rights organization Viet Tan, was the subject of a previous communication sent to your Excellency's Government on 29 July 2011, by 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; 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. We acknowledge the reply received from your Excellency's Government in relation to this communication.

In its Opinion No. 46/2011, adopted on 2 September 2011, the Working Group on Arbitrary Detention declared Ms. Tran Thi Thuy's detention arbitrary being in contravention of articles 9, 10, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 22 and 25 of the International Covenant on Civil and Political Rights (ICCPR) and requested the Government of Viet Nam to release her and provide with adequate compensation.

According to the new information received,

Ms. Tran Thi Thuy has been subjected to inhuman treatment, forced labour and harassment while in detention at K5 Long Khanh prison in Dong Nai province, where she was recently moved without notification to her family. Sources indicate that Ms. Tran Thi Thuy is required to perform work reserved for male prisoners, namely the husking and skinning of cashew nuts for extended periods of time, which has reportedly resulted in caustic burns to her skin and repeated fainting spells. Despite the alleged deterioration of Ms. Tran Thi Thuy's health, she has allegedly been denied access to medical care. It is further alleged that Ms. Tran Thi Thuy is detained with common criminals and has been restricted to two clothing outfits.

We are also informed that the motive behind the alleged ill-treatment of Ms. Tran Thi Thuy's is her refusal to plead guilty. Prison guards reportedly urged Ms. Tran Thi Thuy to accept guilt in order to receive "lighter punishment".

Grave concern is expressed at the physical and psychological integrity of Ms. Tran Thi Thuy in light of the new information received concerning allegations of ill-treatment in detention and denial of access to medical care. Concern is reiterated that the sentencing and detention of Ms. Tran Thi Thuy is directly related to her legitimate and peaceful human rights work, in particular her membership of Viet Tan and her defence of the rights of persons whose land was allegedly confiscated.

We subscribe to the holding of the Working Group on Arbitrary Detention in Opinion No. 46/2011 and would like to request your Excellency's Government to inform us about the measures taken to comply with the Working Group's recommendations and to bring Mr. Tran Thi Thuy's situation into conformity with the norms and standards set out in the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR).

We would like to draw the attention of your Excellency's Government 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."

We would appreciate information from your Excellency's Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of Ms. Tran Thi Thuy. This right is reflected, *inter alia*, in article 12 of ICESCR (acceded by your country on 24 December 1982), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. We also

wish to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which holds that, "States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services..." (para.34).

We would also 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 also wish to refer to the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation" (Principle 9).

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 article 12 paragraphs 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.

In this connection, we would like to appeal to your Excellency's Government to take all necessary steps to secure 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 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 the above-mentioned person in compliance with the above international instruments.

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, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. In the case that the alleged facts are accurate, please confirm whether immediate measures will be put in place to guarantee the physical and psychological integrity of Ms. Tran Thi Thuy, including access to medical care and the immediate ceasing of forced labour.
3. Has a complaint been lodged by or on behalf of Ms. Tran Thi Thuy?
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the alleged ill-treatment of Ms. Tran Thi Thuy in detention. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Please provide the details on the measures taken to ensure the enjoyment of the right to health, including access to medical care, by Ms. Tran Thi Thuy.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected 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 Ms. Tran Thi Thuy are respected 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.

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

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

Maina Kiai

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

Margaret Sekaggya

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