

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 31/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning arbitrary arrest and detention of Pastor A Ga and his family, facing possible deportation to Viet Nam.

According to the information received:

Mr. A Ga is a Christian pastor belonging to the Ha Lang minority from Kon Tum Province in Viet Nam. He officially joined the Christ's Protestant Church of Vietnam (Hội Thánh Tin Lành Đấng Christ) in 2003. He was ordained as a pastor in 2006 but the registration of his church with the government was denied. Since joining the church in 2003, Pastor A Ga has been the subject of ongoing investigation and interrogation, repeated harassment, police surveillance, forced renunciation of his belief, and threats of imprisonment for his religious activities. He has also been active in reporting human rights violations concerning freedom of religion or belief of the Christians belonging to the minorities of the central highlands of Vietnam. Pastor A Ga fled from Vietnam in 2013 after the local authorities raided his home. The authorities issued an arrest warrant for Pastor A Ga and posted it on the website of the police in Kon Tum Province and the Central Highland in February/March 2017.

Pastor A Ga received recognition of refugee ("person of concern") status from UNHCR in Bangkok in December 2015. He is registered together with his wife and their ten-year-old child under 815-13C01198.

In the evening of 10 January 2018, Pastor A Ga, his wife and their child were arrested in Bangkok and detained at Suan Phlu Immigration Detention Centre. On the night of arrest, the Thai authorities allegedly called Pastor A Ga to invite him to a meeting pretending that they wanted to learn about the Bible. When he arrived at the meeting venue, he was arrested. The immigration authorities

claimed that his family was arrested because the Thai authorities received a letter from the Vietnamese authorities for Pastor A Ga to be sent back to his country.

Pastor A Ga and his family were at the immigration court on the following day where they were fined for immigration-related offences, namely “entering illegally” and “overstaying”. However, the arrest warrant by the Vietnamese authorities was not mentioned. When enquired by the lawyer representing Pastor A Ga’s family about the arrest warrant, the police refused to make any comment while another officer indicated that there was a red notice by Interpol for Pastor A Ga. Despite paying the fines by the immigration court, Pastor A Ga and his family have remained in detention.

In the morning of 12 January 2018, Vietnamese Embassy staff reportedly visited Pastor A Ga at the immigration detention center, persuading him to return to Viet Nam.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concern about the reported arrest and detention, which appear to be contrary to international human rights law. Serious concern is expressed that Thai authorities may proceed to extradite Pastor A Ga and his family to Viet Nam despite the fact that he has faced religious persecution in his country, evidenced by the refugee (“persons of concern”) status granted to them by UNHCR that has assessed their situation and claim for protection. In particular, grave concern is expressed at the possible deportation, which may expose Pastor A Ga and his family to the risk of deprivation of liberty for their religious beliefs, arbitrary arrest, and the risk of torture or other cruel, inhuman and degrading treatment or punishment.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Pastor A Ga and his family 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 Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which your country has acceded to 29 Oct 1996. In addition, we would like to draw attention of Your Excellency’s Government to article 37 (b) of the Convention on the Rights of the Child, ratified by Thailand in 1992, which provides that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

In this context, we would like to draw your Excellency's Government attention to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment, acceded by Thailand on 2 Oct 2007 which provides that no State party shall expel, return (“refouler”), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this regard, paragraph 9 of General Comment No. 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in which the Human Rights Committee states that State parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement”.

We would also like to appeal your Excellency's Government to protect Pastor A Ga and his family's right to freedom of religion or belief in accordance with the principles set forth in article 18 of the UDHR, as well as articles 2 (1) and 18 of the ICCPR.

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 the above-mentioned person(s) in compliance with Thailand's international human rights obligations under the conventions it has ratified.

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 any comment you may have on the above-mentioned allegations.
2. Please provide further details about the legal basis for the arrest and detention Pastor A Ga and his family, and how these measures are compatible with international norms and standards as stipulated in the ICCPR, which Thailand has ratified .
3. Please provide any information regarding any safeguards to ensure that any deportation carried out does not include the risk of torture or other forms of ill-treatment upon return.
4. Please explain what measures have been taken to ensure in particular those with valid refugee status can carry out their peaceful and legitimate activities, without fear of arrest, detention or deportation.

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.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention 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 urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal 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.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment