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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26-30 August 2013

No. 26/2013 (Viet Nam)

Communication addressed to the Government on 8 October 2012

concerning Francis Xavier Dang Xuan Dieu, Peter Ho Duc Hoa, John the Baptist Nguyen Van Oai, Anthony Chu Manh Son, Anthony Dau Van Doung, Peter Tran Huu Duc, Paulus Le Van Son, Hung Anh Nong, John the Baptist Van Duyet, Peter Nguyen Xuan Anh, Paul Ho Van Oanh, John Thai Van Dung, Paul Tran Minh Nhat, Mary Ta Phong Tan, Vu Anh Binh Tran, Peter Nguyen Dinh Cuong

The Government has replied to the communication on 18 December 2012.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

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(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized hereafter has been reported to the Working Group on Arbitrary Detention as follows:

4. The following persons, Vietnamese nationals, were arrested and detained:

- Francis Xavier Dang Xuan Dieu; born in 1979; a community organizer and contributing citizen journalist for the Vietnam Redemptorist News; signatory of a petition calling for the release of Dr. Cu Huy Ha Vu; with usual residence in Vinh City, Nghe An Province, was arrested on 30 July 2011, at the Tan Son Nhat International Airport, Tan Binh District, Ho Chi Minh City, and taken to B14 Detention Centre, Thanh Liet Ward, Thanh Tri District, Hanoi
- Peter Ho Duc Hoa, born in 1974; a community organizer; social activist; and contributing citizen journalist for the Vietnam Redemptorist News; signatory of a petition calling for the release of Dr. Cu Huy Ha Vu; with usual residence in Vinh City, Nghe An Province, was arrested on 30 July 2011, at the Tan Son Nhat International Airport, Tan Binh District, Ho Chi Minh City, and taken to B14 Detention Centre, Thanh Liet Ward, Thanh Tri District, Hanoi
- John the Baptist Nguyen Van Oai, born in 1981; a member of the Congregation of the Most Holy Redeemer and of the Yen Hoa Parish, Vinh Diocese; a contributing citizen journalist for the Vietnam Redemptorist News; signatory of a petition calling for the release of Dr. Cu Huy Ha Vu; with usual residence in Di An, Binh Duong Province, was arrested on 30 July 2011, at the Tan Son Nhat International Airport, Tan Binh District, Ho Chi Minh City, and taken to B14 Detention Centre, Thanh Liet Ward, Thanh Tri District, Hanoi
- Anthony Chu Manh Son, born in 1989; a social volunteer; a participant in citizen journalism training by the Vietnam Redemptorist News, with usual residence in Vinh City, Nghe An Province, was arrested on 2 August 2011, at Vinh City, and detained at Nghi Kim Detention Centre, Nghi Loc District, Nghe An Province
- Anthony Dau Van Doung, born in 1986; a social volunteer; participant in citizen journalism training by the Vietnam Redemptorist News; a signatory of a petition calling for the release of Dr. Cu Huy Ha Vu; with usual residence in Vinh City, Nghe An Province, was arrested on 2 August 2011 at Vinh City, and taken to Nghi Kim Detention Centre, Nghi Loc District, Nghe An Province

- Peter Tran Huu Duc, a social volunteer, participant in citizen journalism training by the Vietnam Redemptorist News; with usual residence in Vinh City, Nghe An Province, was arrested on 2 August 2011, at his home in Vinh City, and taken to Nghi Kim Detention Centre, Nghi Loc District, Nghe An Province
- Paulus Le Van Son, born in 1985; a blogger and journalist for the Vietnam Redemptorist News; a signatory of a petition calling for the release of Dr. Cu Huy Ha Vu and a journalist covering his trial; with usual residence in Hoang Mai District, Hanoi, was arrested on 2 August 2011, outside his home in Hanoi, and taken to B14 Detention Centre, Thanh Liet Ward, Thanh Tri District, Hanoi, and afterwards to Detention Centre 1 (Hoa Lo Prison), Xuan Phuong Ward, Tu Liem District, Hanoi
- Hung Anh Nong, born in 1988; a blogger and participant in religious activities organized by the Baptist Church; with usual residence in Lang Son Province, was arrested on 5 August 2011 at Hanoi, and taken to B14 Detention Centre, Thanh Liet Ward, Thanh Tri District, Hanoi
- John the Baptist Van Duyet, born in 1980; President of the Association of Catholic Workers of Vinh in Hanoi; journalist for the Vietnam Redemptorist News covering the trial of Dr. Cu Huy Ha Vu; with usual residence in Vinh City, Nghe An Province, was arrested on 7 August 2011 at Vinh City, and taken to B14 Detention Centre, Thanh Liet Ward, Thanh Tri District, Hanoi
- Peter Nguyen Xuan Anh, born in 1982, a social activist; with usual residence in Vinh City, Nghe An Province, was arrested on 7 August 2011 in Vinh City, and detained at B14 Detention Centre, Thanh Liet Ward, Thanh Tri District, Hanoi
- Paul Ho Van Oanh, born in 1985; a social activist, participant in citizen journalism training by the Vietnam Redemptorist News; with usual residence in Vinh City, Nghe An Province, was arrested on 16 August 2011 in Thu Duc, Ho Chi Minh City, and taken to B34 Detention Centre, 237 Nguyen Van Cu, District 1, Ho Chi Minh City, and afterwards to B14 Detention Centre, Thanh Liet Ward, Thanh Tri District, Hanoi
- John Thai Van Dung, born in 1988; a participant in citizen journalism training by the Vietnam Redemptorist News and covering the trial of Dr. Cu Huy Ha Vu; with usual residence in Hanoi, was arrested on 19 August 2011, in Hanoi, and taken to B14 Detention Centre, Thanh Liet Ward, Thanh Tri District, Hanoi
- Paul Tran Minh Nhat, born in 1988; a journalist for the Vietnam Redemptorist News; with usual residence in Ho Chi Minh City, was arrested on 27 August 2011 at the Ho Chi Minh University of Foreign Languages and Information Technology, 155 Su Van Hanh, Ward 13, District 10, Ho Chi Minh City, and taken to B34 Detention Centre, 237 Nguyen Van Cu, District 1, Ho Chi Minh City, and afterwards to B14 Detention Centre, Thanh Liet Ward, Thanh Tri District, Hanoi
- Mary Ta Phong Tan, born in 1968; a well-known freelance journalist and blogger; with usual residence in Ho Chi Minh City, was arrested on 5 September 2011 in Ho Chi Minh City, and taken to Phan Dang Luu Prison (PA 24), 4 Phan Dang Luu Street, Binh Thanh District, Ho Chi Minh City
- Vu Anh Binh Tran, born in 1974; a songwriter and social activist; with usual residence in Ho Chi Minh City, was arrested on 19 September 2011, at his home in Ho Chi Minh City, and taken to Phan Dang Luu Prison (PA 24), 4 Phan Dang Luu Street, Binh Thanh District, Ho Chi Minh City; and

- Peter Nguyen Dinh Cuong, born in 1981; an activist concerning the arrest of the other mentioned persons; with usual residence in Vinh City, Nghe An Province, was arrested on the street in Vinh City, and taken to B14 Detention Centre, Thanh Liet Ward, Thanh Tri District, Hanoi.

General background

5. According to the source, these persons have been arrested and are being detained on account of their activities as journalists and bloggers on the Internet and in contravention of the fundamental rights enshrined in the Vietnamese Constitution such as the right to participate in public affairs, and freedom of expression, thought, religion, and association.

6. The source submits that several of the persons mentioned above appear to have been arrested and detained due to their attempts to attend and report on the trial of Dr. Cu Huy Ha Vu, who had published on the Internet articles on human rights and religious freedoms in Viet Nam.

7. Each of the 16 detainees has been an active participant in the realm of Vietnamese political affairs. Some have engaged in issues directly related to the political system, such as multiparty democracy;¹ electoral fairness;² official corruption;³ Sino-Vietnamese relations;⁴ and the arrest and trial of Vietnamese individuals on political grounds⁵ such as Dr. Cu Huy Ha Vu's trial. Furthermore, almost all the alleged victims have served as activists and community organizers, working for the protection of human rights and social justice,⁶ including such wide-ranging issues as opposition to abortion;⁷ bauxite mining;⁸ unfair taxation;⁹ land-grabbing;¹⁰ advocacy for labour rights;¹¹ access to education;¹² mistreatment of children;¹³ assistance to the disabled, orphans, and victims of natural disasters¹⁴ and HIV infection¹⁵; and blood donations.¹⁶

¹ Mr. Anthony Chu Manh Son; Mr. Anthony Dau Van Doung; Mr. Peter Tran Huu Duc; Mr. Vu Anh Binh Tran; and Mr. John the Baptist Hoang Phong.

² Mr. Anthony Chu Manh Son; Mr. Anthony Dau Van Doung; Mr. Peter Tran Huu Duc; and Mr. Hung Anh Nong.

³ Ms. Mary Ta Phong Tan; Mr. Vu Anh Binh Tran; and Mr. John the Baptist Hoang Phong.

⁴ Mr. John the Baptist Nguyen Van Oai; Mr. Anthony Chu Manh Son; Mr. Peter Tran Huu Duc (Petitioner 6); Mr. Hung Anh Nong; Mr. Paul Tran Minh Nhat; and Mr. Vu Anh Binh Tran.

⁵ Mr. Francis Xavier Dang Xuan Dieu; Mr. Peter Ho Duc Hoa; Mr. John the Baptist Nguyen Van Oai; Mr. Anthony Dau Van Doung; Mr. Peter Tran Huu Duc; Mr. Paulus Le Van Son; Mr. John the Baptist Van Duet; Mr. Paul Ho Van Oanh; Mr. John Thai Van Dung; and Ms. Mary Ta Phong Tan.

⁶ Mr. John the Baptist Nguyen Van Oai; Mr. Paulus Le Van Son; Mr. Paul Ho Van Oanh; and Mr. Vu Anh Binh Tran.

⁷ Mr. Francis Xavier Dang Xuan Dieu; Mr. Peter Ho Duc Hoa; Mr. Anthony Chu Manh Son; Mr. Anthony Dau Van Doung; Mr. Peter Tran Huu Duc; Mr. Paulus Le Van Son; Mr. Peter Nguyen Dinh Cuong; and Mr. John the Baptist Hoang Phong.

⁸ Mr. Francis Xavier Dang Xuan Dieu; Mr. Peter Ho Duc Hoa; Mr. John the Baptist Nguyen Van Oai; Mr. Anthony Dau Van Doung; Mr. Peter Tran Huu Duc; Mr. Paulus Le Van Son; Mr. Hung Anh Nong; and Mr. Paul Tran Minh Nhat.

⁹ Ms. Mary Ta Phong Tan.

¹⁰ Ms. Mary Ta Phong Tan; and Mr. Peter Nguyen Dinh Cuong.

¹¹ Mr. Paul Ho Van Oanh.

¹² Mr. Francis Xavier Dang Xuan Dieu; Mr. Peter Ho Duc Hoa; and Mr. Paulus Le Van Son.

¹³ Ms. Mary Ta Phong Tan.

¹⁴ Mr. Francis Xavier Dang Xuan Dieu; Mr. Peter Ho Duc Hoa; Mr. Anthony Chu Manh Son; Mr. Anthony Dau Van Doung; and Mr. John the Baptist Hoang Phong.

¹⁵ Mr. Paulus Le Van Son.

¹⁶ Mr. Anthony Chu Manh Son; Mr. Anthony Dau Van Doung; Mr. Peter Tran Huu Duc; and Mr. John

8. Several of the alleged victims had been active online journalist or bloggers or had at least participated in communication training organized by the Vietnam Redemptorist News, a faith-based news website. In addition, they have also participated in non-violent demonstrations, joined as signatories to petitions or sought to attend trials of individuals reportedly prosecuted on political grounds. All of them are also members of faith-based associations.

9. Fifteen of the above-mentioned persons are members of the Redemptorist Church, while Mr. Hung Anh Nong is a practising Protestant who has undertaken journalist training with the Vietnam Redemptorist News. Several of them have undertaken activities through faith-based publications or associations such as the John Paul II Group for Pro-Life.

Circumstance of their arrest and detention

10. According to the source, all these persons were arrested without arrest warrants. Mr. Vu Anh Binh Tran was detained without charges, while Mr. Paulus Le Van Son and Ms. Mary Ta Phong Tan were held in custody beyond the legal limit provided for under Vietnamese law for pre-indictment detention. Under article 87 of the Criminal Procedure Code of the Socialist Republic of Viet Nam, persons may be legally held in custody for up to six days after their initial arrest, or nine days in special cases, which are defined under article 18 as situations “where State secrets should be kept or the national customs and practices should be preserved or the involved parties’ secrets must be kept”.

11. The source argues that it is not clear whether the definition of “special cases” in article 18 is exhaustive, nor is there any indication to suggest that the alleged victims’ cases constitute “special cases”. Therefore, the source points out that where there is no temporary detainment order or other information about the order of detention against him or her, it should be assumed that the alleged victim was held in custody for the usual maximum limit of six days before being transferred to detention.

12. Some persons were reportedly arrested violently. Mr. Paulus Le Van Son was made to fall off his motorcycle and then thrown into a waiting vehicle. Mr. Peter Nguyen Dinh Cuong was abducted in the street by three plainclothes police officers on Christmas Eve and bundled into a waiting taxi.

Criminal charges

13. The above-mentioned individuals were arrested over a five-month period, starting in July 2011, around the time of the trial of Dr. Cu Huy Ha Vu. Twelve persons, Mr. Francis Xavier Dang Xuan Dieu; Mr. Peter Ho Duc Hoa; Mr. John the Baptist Nguyen Van Oai; Mr. Paulus Le Van Son; Mr. Hung Anh Nong; Mr. John the Baptist Van Duet; Mr. Peter Nguyen Xuan Anh; Mr. Paul Ho Van Oanh; Mr. John Thai Van Dung; Mr. Paul Tran Minh Nhat; Mr. Vu Anh Binh Tran and Mr. Peter Nguyen Dinh Cuong, were charged with violating article 79 of the Penal Code, which prohibits “activities aimed at overthrowing the people’s administration”. Five persons, Mr. Anthony Chu Manh Son; Mr. Anthony Dau Van Doung; Mr. Peter Tran Huu Duc; Mr. John the Baptist Hoang Phong; and Ms. Mary Ta Phong Tan, were charged with violating article 88, which prohibits the conduct of “propaganda against the Socialist Republic of Viet Nam”; with four of them having recently been convicted of this offence.

14. The source argues that temporary detainment orders were not available. These persons were arrested due to their political and social activities. Mr. Peter Nguyen Xuan Anh; Mr. Paulus Le Van Son and Mr. Peter Nguyen Dinh Cuong, were accused of “joining

the Baptist Hoang Phong.

the subversive ‘Viet Tan Party’ and of attempting to overthrow the people’s administration pursuant to article 79 of the Penal Code”.

15. Four persons, Mr. Anthony Chu Manh Son; Mr. Anthony Dau Van Doung; Mr. Peter Tran Huu Duc and Mr. John the Baptist Hoang Phong, were convicted by the People’s Court of Nghe An Province on 25 May 2012, in relation with the act of distributing leaflets demanding a multiparty system; rejecting the national election results; promoting freedom of expression; opposing abortion and blood donation, and aiding orphan and victims of natural disasters.

16. Another eight persons, Mr. Francis Xavier Duan Xuan Dieu; Mr. Peter Ho Duc Hoa; Mr. John the Baptist Nguyen Van Oai; Mr. Hung Anh Nong; Mr. John the Baptist Van Duyet; Mr. Paul Ho Van Oanh; Mr. John Thai Van Dung and Mr. Paul Tran Minh Nhat, were arrested on the basis of their alleged involvement in the Viet Tan Party.

17. Ms. Mary Ta Phong Tan has not received formal notification of the basis on which she has been charged, but media reports indicate that it is on the basis of denigration, distortion, and opposition to the State. Moreover, her custody should not have extended beyond 10 September 2011, without being charged; however, she was only formally charged on 15 April 2012. Mr. Paulus Le Van Son’s custody should not have extended beyond 8 August 2011; however, he was not charged until 11 August 2011. Finally, there is no available information about the alleged criminal acts committed by Mr. Vu Anh Binh Tran, but the source sustains that given the similarity between his background and that of the 15 other persons, as well as the reportedly overall pattern of arrests by the State, it is likely that he was arrested for similar acts.

Conditions of arrest and detention and access to legal representation

18. All the 16 above-mentioned persons were initially held in incommunicado detention. In addition seven requests for legal representation were rejected, from Mr. Francis Xavier Dang Xuan Dieu; Mr. Peter Ho Duc Hoa; Mr. John the Baptist Nguyen Van Oai; Mr. Paulus Le Van Son; Mr. John the Baptist Van Duyet; Mr. Peter Nguyen Xuan Anh and Mr. John Thai Van Dung.

19. The Ministry of Public Security sent a letter dated 13 March 2012 to the Tin Viet Va Cong Su law firm, rejecting the firm’s request to represent these persons on the basis that the case was still under investigation and involved national security charges. The Ministry quoted article 58 of the Criminal Procedure Code – that permits the delay of defence counsel participation in a case that involves “crimes of infringing on national security” until the termination of the investigation.

20. Mr. John the Baptist Hoang Phong was tried and convicted without legal representation at all. The remaining 15 persons had limited access to legal representation.

21. All the relatives’ requests to visit these persons in prison were denied for several months before finally being granted. All of them have only been able to meet with their family once or twice, with the exception of Mr. Francis Xavier Dang Xuan Dieu.

Source’s contention regarding the alleged arbitrary character of the aforementioned detention

22. The source states that these 16 people were arrested and detained due to their activities in relation to a range of political and social issues, being charged as attempting to overthrow the people’s administration (art. 79 of the Penal Code) or spreading propaganda against Viet Nam (art. 88 of the Penal Code). Furthermore, 11 persons are alleged to have committed the criminal act of being members of the non-authorized Viet Tan Party. The

source reminds the Working Group that the Group has already held that membership of the Viet Tan Party alone does not justify an individual's detention or conviction.

23. One of the alleged victims, a renowned journalist and blogger, was arrested and accused of denigrating, distorting, and opposing the State through these activities. Four others were arrested and convicted for distributing leaflets advocating, among other things, multiparty democracy, free and fair elections, and freedom of expression. Several of the detainees are online journalists; bloggers, or participants in communications training for such activities. They participated in non-violent demonstrations, signed petitions, or sought to monitor trials. They undertook activities through faith-based publications or associations, or organized demonstrations associated with religious freedoms and beliefs.

24. Accordingly, the source claims that their arrests and detentions, on the basis of their political opinions, their opinions on matters of social justice, and their religious beliefs, in the framework of a consistent pattern of persecution and discrimination against this group of persons that shares common factors, constitute a violation of articles 18, 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights (UDHR) and articles 9, 14, 19 paragraph 3, 18, 25 (a), and 27 of the International Covenant on Civil and Political Rights (ICCPR).

25. Furthermore, it also constitutes a violation of article 53 of the Constitution of Viet Nam, which provides that "[c]itizens have the right to take part in managing the State and society, in debating on general issues of the whole country or of the locality, and make petitions or recommendation to the State offices and vote at any referendum held by the State"; article 69 which lays down that "[c]itizens are entitled to freedom of speech and freedom of the press; they have the right to receive information and the right of assembly, association and demonstration in accordance with the law"; and article 70 which states that "[c]itizens have the right to freedom of belief and religion, and may practise or not practise any religion. All religions are equal before the law".

26. The source holds that although article 19 of the ICCPR allows certain restrictions on the freedom of opinion and expression, the Human Rights Committee has stated in its general comment No. 34 that paragraph 3 of this article may never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights. The penalization of a journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.

27. Henceforth, the source considers that the arrest and detention of the above-mentioned 16 persons is arbitrary, according to category II of the Working Group, since their deprivation of liberty results from the exercise of the rights or freedoms guaranteed by the UDHR and the ICCPR.

28. In addition, the source asserts that these persons were arrested without an arrest warrant provided to them at the time of their apprehension, and that they were only informed of the charges against them through the issuance of Temporary Detainment Orders after their arrest.

29. At least two persons were kept in custody and only informed of charges against them after the legal time limit for pre-indictment custody had expired. Mr. Paulus Le Van Son was informed two days after the limit and Ms. Mary Ta Phong Tan was informed seven months after the limit. There may be other persons who have been held beyond the legal custody time limit established under article 87 of the Criminal Procedure Code before being charged.

30. Thus, the source adds that the arrest and detention of these individuals under such conditions is a clear violation of article 9 of the UDHR; article 9, paragraphs 1 and 2;

and 14, paragraph 3 (a), of the ICCPR; and principle 3 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. It also points out that the absence of arrest warrants to provide a legal justification for the arrests; as well as the delay or failure to inform the detainees of the charges or the alleged criminal acts underlying those charges, violate article 6 of the Vietnamese Criminal Procedure Code, which provides that “[n]obody shall be arrested without a court decision, decision made or approved by the procuracies, except for cases where offenders are caught red-handed”.

31. Mr. Francis Xavier Dang Xuan Dieu; Mr. Peter Ho Duc Hoa; Mr. John the Baptist Nguyen Van Oai; Mr. Paulus Le Van Son; Mr. John the Baptist Van Duyet; Mr. Peter Nguyen Xuan Anh and Mr. John Thai Van Dung, were held in incommunicado detention. Mr. John the Baptist Hoang Phong was convicted without any legal representation at all. Access to legal counsel was denied on the basis of article 58 of the Criminal Procedure Code, which permits the delay of defence counsel participation in a case until the termination of the investigation if it involves “crimes of infringing on national security”. Moreover, the remaining nine persons have each faced limited access to legal representation. The source upholds that the detentions in such conditions are a clear violation of article 11 of the UDHR and article 14, paragraph 3 (b), of the ICCPR, and principles 15 and 18 of the Body of Principles.

32. The detainees’ families had to request authorization to visit their relatives in prison over several months. In some cases, they were only able to meet their relatives between four and six months after their initial arrest. These visits have taken place once or twice, despite the length of the arrest and detention. The source argues that this constitutes a violation of principles 15 and 19 of the Body of Principles and an arbitrary detention according to category III of the Working Group.

33. The source adds that these persons have been limited in their ability to pursue domestic remedies with legal and administrative authorities because of significant restrictions on their right to legal representation and defence and to meet with the outside world.

34. The source recalls that the Working Group has previously determined that the arrest and detention, under articles 79, 87 and 88 of the Penal Code of persons affiliated with the Viet Tan Party and/or who were active on social justice issues, constitutes arbitrary detention. The Working Group has also stated that the legal prohibition on membership of the Viet Tan Party violated the rights protected by articles 22 and 25 of the ICCPR.

35. The Working Group transmitted these allegations to the Government requesting it to provide it with detailed information about the current situation of the above-mentioned 16 persons and to clarify the legal provisions justifying their continued detention.

Response from the Government

36. The Government, in its communication to the Working Group on 18 December 2012, responded to the allegations from the source as follows:

37. “Concerned agencies in Viet Nam have seriously looked into the information on each case and their review shows that the claims of alleged arbitrary deprivation of liberty appear to be incorrect and misleading. In this regard, please be advised as below:

38. “These persons were arrested, detained and tried not for being journalists and bloggers, their attempt to report on political, social and economic affairs, their exercises of freedom of expression, thought, religion, belief and association or their activities in relation to a range of other issues in the society. Instead, these persons were arrested for their violation of laws.

39. “All legal procedures applied to each individual, especially on conditions of arrest, custody, detainment and detention processes and access to legal representation, have been carried out in full and strict compliance with current laws and regulations of Viet Nam, and in conformity with international norms and practices.

40. “During their arrest, custody and detention, these persons have been treated the same and equally as other offenders, free from discrimination and torture. They are now in good health and have been provided with normal services, such as regular family visits, living conditions, food portions, health treatment and entertainment.”

41. The Government response states that the 16 detainees were tried in four different cases of which three trials were open to the public; the fourth case where the accused are alleged to have “carried out activities aimed at overthrowing the people’s administration” would be tried later.

42. The Government has charged four persons (Mr. Anthony Dau Van Doung; Mr. Anthony Chu Manh Son, Mr. Peter Tran Huu Duc, Mr. Vu Anh Binh Tran, and Ms. Mary Ta Phong Tan) in three cases for “conducting propaganda against the Socialist Republic of Viet Nam” under article 88 of the 2003 Criminal Code of Viet Nam.

43. In the view of the Government, Mr. Anthony Dau Van Doung; Mr. Anthony Chu Manh Son and Mr. Peter Tran Huu Duc: “Prior to the election of the National Assembly XIII on 22 May 2011, these persons created, stored and distributed leaflets in Nghe An Province with the contents propagating against, distorting and falsifying policies in order to defame the people’s administration, calling on and inciting people to boycott and reject the result of the national assembly elections.”

44. According to the response of the Government of Viet Nam, the fourth person Mr. Vu Anh Binh Tran “... is a member of a “patriotic Youth” organization, with activities aiming at causing social instability and disorder, aimed at destabilizing security and overthrowing the legal government of Viet Nam. Mr. Tran composed, collected, edited and disseminated on the Internet a large number of songs with contents against the Socialist Republic of Viet Nam. In addition, Mr. Tran also participated in distributing leaflets falsely accusing, propagating against, slandering and defaming the people’s administration”.

45. The fifth detainee, Ms. Mary Ta Phong Tan was a member of the Free Journalists Club. The Government states in its response that: “She wrote and published articles with contents against the Socialist Republic of Viet Nam. She, in collaborating with other elements, called for and organized illegal demonstrations, instigated riots, with the aim of causing instability and disorder in society and sowing racial hatred.”

46. The last case comprises allegations against 11 persons, namely Mr. Peter Ho Duc Hoa; Mr. Francis Xavier Dang Xuan Dieu; Mr. John the Baptist Nguyen Van Oai; Mr. Paulus Le Van Son; Mr. Hung Anh Nong; Mr. John the Baptist Van Duet; Mr. Peter Nguyen Xuan Anh; Mr. Paul Ho Van Oanh; Mr. John Thai Van Dung; Mr. Paul Tran Minh Nhat; and Mr. Peter Nguyen Dinh Cuong for “carrying out activities aimed at overthrowing the people’s administration” as stated in article 79 of the 2003 Criminal Code of Viet Nam.

47. The Government alleges that these persons “were members of the terrorist group Viet Tan. They several times joined activities with and participated in overseas training organized by the terrorist Viet Tan group on overthrowing the people’s administration of Viet Nam.”

Follow up comments from the source

48. In follow-up comments submitted by the source on 26 April 2013, it was stated that Ms. Mary Ta Phong Tan and two other activists writing about human rights abuses and corruption in Viet Nam were tried on 24 September 2012 in a trial that lasted a few hours.

Ms. Tan was convicted of “propaganda against the State” under article 88 of the Criminal Code of Viet Nam to 10 years imprisonment and five years house arrest thereafter. On 28 December 2012, an appeals court in Ho Chi Minh City upheld the conviction of Ms. Tan and fellow activists.

49. On 26 September 2012, appeal proceedings lasting less than four hours were conducted for Mr. Anthony Chu Manh Son, Mr. Anthony Dau Van Doung and Mr. Peter Tran Huu Duc and in the presence of only seven family members. These persons had similarly been accused of “propaganda against the State”.

50. On 20 October 2012, Mr. Vu Anh Binh Tran along with another songwriter were brought to trial for posting songs online that were critical of governmental policies and convicted for “propaganda against the State”.

51. In early December 2012, the remaining 11 detainees, namely Mr. Peter Ho Duc Hoa; Mr. Francis Xavier Dang Xuan Dieu; Mr. John the Baptist Nguyen Van Oai; Mr. Paulus Le Van Son; Mr. Hung Anh Nong; Mr. John the Baptist Van Duet; Mr. Peter Nguyen Xuan Anh; Mr. Paul Ho Van Oanh; Mr. John Thai Van Dung; Mr. Paul Tran Minh Nhat; and Mr. Peter Nguyen Dinh Cuong were made aware of the charges against them comprising the serious offence of “carrying out activities aimed at overthrowing the Government under article 79 of the Vietnamese Criminal Code”.

Source’s comments on the Government’s response

52. The source, in responding to the Government’s reply of 18 December 2012 reiterates its earlier position regarding the detention of the above-named individuals.

53. The source states that the Government of Viet Nam invokes the domestic law to criminalize exercise of rights to free expression, free association and other basic rights in violation of its obligations under international law. It argues that the arrest and detention of these individuals is due to their membership and involvement in a pro-democracy party, Viet Tan, and not in any criminal activities. Furthermore all of the detained individuals are members of faith-based organizations detained around the time of the trial of the human rights activist, Dr. Cu Huy Ha Va.

Further developments

54. Due to the serious nature of the continued arrest and detention of the aforementioned individuals and concerns for their safety, health and well-being, four special procedures mandate holders¹⁷ of the United Nations Human Rights Council jointly sent out an urgent appeal on 14 January 2013 to the Government of Viet Nam regarding these 14 individuals: Messrs. Peter Ho Duc Hua, Francis Xavier Dang Xuan Dieu, Paulus Le VanSon, John the Baptist Van Duet, John the Baptist Nguyen Van Oai, Paul Ho Van Oanh, Peter Nguyen Dinh Cuong, Peter Nguyen Xuan Anh, John Thai Van Dung, Paul Tran Minh Nhat, Hung Anh Nong, Nguyen Dang Vinh Phuc, Nguyen Dang Minh, Dang Ngoc Minh.

55. The Government’s response to the urgent appeal repeated the position adopted in its earlier response to the allegations raised by the source in a communication to the Working Group dated 18 December 2012. The Government, referring to the allegations communicated by the Group states that: “Except for personal details and charge descriptions of each individual, the facts are incomplete, inaccurate and do not fully reflect the law violations of these persons.”

¹⁷ Working Group on Arbitrary Detention; 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; and the Special Rapporteur on the situation of human rights defenders.

Discussion

56. At the outset, the Working Group would like to state that, as in a number of previous opinions rendered relating to Viet Nam, including Nos. 27/2012, 24/2011, 1/2003, 13/2007 and 1/2009, the 16 detainees who are the subject of the present opinion have been either convicted or indicted under two particular articles of the Penal Code of Viet Nam, articles 79 and 88. Article 79 refers to carrying out activities aimed at overthrowing the people's administration and activities include establishing or joining organizations with intent to overthrow the people's administration. The penalty for carrying out these activities is a sentence of between 12 and 20 years of imprisonment, life imprisonment or capital punishment. Other accomplices shall be subject to between five and 15 years of imprisonment. Article 88 refers to conducting propaganda against the State and those who commit the following acts are subject to between three and 12 years of imprisonment: (a) propagating against, distorting and/or defaming the people's administration; (b) propagating psychological warfare and spreading fabricated news in order to foment confusion among people; (c) making, storing and/or circulating documents and/or cultural products with contents against the State.

57. The Working Group further notes some common elements in the case of these individuals.

58. All individuals, subject of the present opinion, are human rights activists (as were all previous detainees relating to which the Working Group has adopted opinions.)

59. In the case in hand, all subjects of the present case are members of faith-based organizations and religious denominations.

60. Thirdly, all detainees in the present case have been arrested around the time of the trial of the human rights activist, Dr. Cu Huy Ha Va.

61. It is the position of the Government of Viet Nam that the persons in question have been arrested, detained, tried and convicted not for the exercise of their right to freedom of expression, opinion and association but for violation of Vietnamese law on the subject. Reading through the Government's response, however, it is evident that all these detainees have indeed been detained due to the exercise of these very rights for the simple reason that the criminal law declares these as offences against the Government and the State.

62. Violation of national legislation as referred to by the Government does not in and of itself justify detention. As stated by the Working Group in its previous opinions relating to Viet Nam, it had underlined that:

63. "In conformity with its mandate, it must ensure that national law is consistent with the relevant international provisions set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments to which the State concerned has acceded. Consequently, even if the detention is in conformity with national legislation, the Working Group must ensure that it is also consistent with the relevant provisions of international law."

64. The Working Group also reiterates its previous finding that broad criminal law provisions, which criminalize "taking advantage of democratic freedoms and rights to abuse the interests of the State", are inherently inconsistent with any of the rights and liberties guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Viet Nam is a party.

65. The Working Group also refers to its report from the official visit to Viet Nam in 1994, where it is pointed out that the wording of certain criminal offences was "so vague that it could result in penalties being imposed not only on persons using violence for

political ends, but also on persons who have merely exercised their legitimate right to freedom of opinion or expression” (E/CN.4/1995/31/Add.4, para. 58).

66. The Government in its response neither alleges nor provides evidence of any violent action or actions on the part of any of the detainees. In the absence of any information as to any violence involved in the petitioners’ activities, the Working Group holds that the criminal provisions that gave rise to the charge against the 16 individuals and their subsequent conviction by the court cannot be regarded as consistent with the relevant provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Group recalls that the holding and expressing of opinions, including those which are not in line with official Government policy, are protected under article 19 of the International Covenant on Civil and Political Rights.

67. There is also a contradiction in the statements of the Government regarding the nature of the struggle of the detainees and their critical stance towards the Government. On the one hand, the Government describes the organization of which the detainees are either members or with which they have links as a “terrorist” organization (citing Viet Tan). According to the source, in the indictment order issued by the Chief Prosecutor’s office in Hanoi dated 18 September 2012 against 11 of the detainees, the main accusation stems from the alleged membership and activities of the Viet Tan organization comprising learning about “non-violent” methods of struggle to promote democracy in Viet Nam; the fact that they linked up with branches of this organization outside Viet Nam including in the Philippines, Thailand and the United States of America. The detention, summary trials and long prison sentences therefore are disproportionate with the allegations against the detainees.

68. The Working Group believes that this outcome is due to the vague and overly broad formulation and application of criminal offences in particular articles 79 and 88. All previous opinions rendered by the Group regarding Viet Nam point to this fact.

69. At a procedural level too, standards of fair trial have been compromised. Trials have only lasted a few hours and without consistent and adequate access to legal counsel and family members. An example is the arrest and detention of one of the legal counsels, Mr. Le Quoc Quan who was also the subject of an urgent appeal by special procedures mandate holders (see paragraph 54) as well as that of an opinion under the regular procedure of the Working Group.

Disposition

70. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

71. The deprivation of liberty of Francis Xavier Dang Xuan Dieu, Peter Ho Duc Hoa, John the Baptist Nguyen Van Oai, Anthony Chu Manh Son, Anthony Dau Van Doung, Peter Tran Huu Duc, Paulus Le Van Son, Hung Anh Nong, John the Baptist Van Duyet, Peter Nguyen Xuan Anh, Paul Ho Van Oanh, John Thai Van Dung, Paul Tran Minh Nhat, Mary Ta Phong Tan, Vu Anh Binh Tran and Peter Nguyen Dinh Cuong, is in contravention of articles 9, 10, 11, 18, 19 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 18, 19, 25 (a) and 27 of the International Covenant on Civil and Political Rights to which Viet Nam is a party, and falls within category II, III and V of the categories applicable to the consideration of the cases submitted to the Working Group.

72. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, which include the immediate release of the aforementioned individuals, and provide them adequate reparation in accordance with article 9, paragraph 5, of the ICCPR.

73. The Working Group brings to the attention of the Government, its obligations as a State party to the UDHR and ICCPR to bring its laws into conformity with international law, in particular international human rights law.

[Adopted on 29 August 2013]
