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## Human Rights Council Working Group on Arbitrary Detention

### **Opinions adopted by the Working Group on Arbitrary Detention at its sixty-first session, 29 August–2 September 2011**

#### **No. 46/2011 (Viet Nam)**

#### **Communication addressed to the Government on 24 June 2011**

**Concerning: Tran Thi Thuy; Pham Ngoc Hoa; Pham Van Thong; Duong Kim Khai;  
Cao Van Tinh; Nguyen Thanh Tam; and Nguyen Chi Thanh**

#### **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. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.
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 sentence or despite an amnesty law applicable to him) (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);
  - (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 the 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; 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. According to the source, Tran Thi Thuy, Pham Ngoc Hoa, Pham Van Thong, Duong Kim Khai, Cao Van Tinh, Nguyen Thanh Tam and Nguyen Chi Thanh (hereinafter collectively referred to as the “Petitioners”) are land rights activists. They were arrested at different times by officers of the Public Security, and tried on 30 May 2011 by the People’s Court of Ben Tre Province. Their conviction was exclusively based on their association with the Viet Nam Reform Party (hereinafter the “Viet Tan”), an opposition party in Viet Nam.

4. The source reports that the Petitioners were arrested and convicted under the following circumstances:

- Tran Thi Thuy was arrested on 10 August 2010. No information was provided to her family about her fate or whereabouts until 20 August 2010. According to the indictment, “Tran Thi Thuy joined the Viet Tan, frequently contacted and met the organization to receive documents, slogans to distribute and often received money from the Viet Tan to pay for operational expenses totalling 8.000.000 VND and 350 USD”. She was sentenced to eight years’ imprisonment and 5 years’ probation.
- Pham Van Thong was arrested on 19 July 2010. His indictment refers to article 79 of the Vietnamese Penal Code. According to the indictment, “Pham Van Thong received documents, slogans to distribute, established the Vietnamese Friendship Association for Mutual Support across the nation and received money from Viet Tan to pay for expenses totalling 900.000 VND”. He was sentenced to seven years’ imprisonment and five years’ probation.
- Duong Kim Khai was arrested on 16 August 2010. He was charged under article 79 of the Vietnamese Penal Code. According to the indictment, “Duong Kim Khai joined the Viet Tan, received documents, slogans, directions, organized distribution and received money from Viet Tan to pay for operational expenses totalling 700 USD”. He was sentenced to six years’ imprisonment and five years’ probation.
- Cao Van Tinh was arrested on 22 February 2011. He was charged with violation of article 79 of the Vietnamese Penal Code. According to the indictment, “Cao Van Tinh joined the Viet Tan, often contacted and met the organization, received and distributed documents, slogans, and received money from the Viet Tan to pay for operation expenses totalling 1.700.000 VND”. He was sentenced to five years’ imprisonment and four years’ probation.
- Nguyen Thanh Tam was arrested on 20 July 2010. His indictment makes reference to article 79 of the Vietnamese Penal Code. It is stated in the indictment that “Nguyen Thanh Tam joined the Viet Tan, received documents, slogans to distribute, formed the Vietnamese Friendship Association for Mutual Support throughout the country, and received money from Viet Tan to pay for operational expenses totalling 900.000 VND”. He was sentenced to two years’ imprisonment and three years’ probation.

- Nguyen Chi Thanh was arrested on 19 November 2010. He was charged under article 79 of the Vietnamese Penal Code. The indictment states that “Nguyen Chi Thanh joined the Viet Tan, directed and distributed documents, slogans, and received money from Viet Tan to pay for operational expenses totalling 1.800.000 VND”. He was sentenced to two years’ imprisonment and three years’ probation.
  - Pham Ngoc Hoa was arrested on 19 November 2010. She was charged under article 79 of the Vietnamese Penal Code for “having joined the Viet Tan, received money from the Viet Tan as operational expenses totalling 500 USD and 1.500.000 VND and distributed it to the operational groups in Ho Chi Minh City and Ben Tre”. She was sentenced to two years’ imprisonment and three years’ probation.
5. The source informs that from the moment of their respective arrests until their trial, the Petitioners were held incommunicado, despite requests about their whereabouts by family and defence lawyers. They were all tried on 30 May 2011 by the People’s Court of Ben Tre Province and their conviction was exclusively based on their association with Viet Tan, an opposition party in Viet Nam.
6. According to the source, the indictment against the Petitioners stated that “Viet Tan is a reactionary organization in exile, acting against the Communist Party of Viet Nam and the Government of the Socialist Republic of Viet Nam. During the period from August 2009 to April 2010, the accused, Tran Thi Thuy, Duong Kim Khai, Pham Van Thong, Cao Van Tinh, Pham Ngoc Hoa, Nguyen Thanh Tam and Nguyen Chi Thanh, were connected and transported by the Viet Tan to Thailand and Cambodia to train, join and receive tasks from the Viet Tan to return to Viet Nam and operate under the direction of the Viet Tan in order to overthrow the People’s Government”.
7. The source contends, however, that the Viet Tan, with members in Viet Nam and among the Vietnamese diaspora, aims to establish democracy and reform Viet Nam through peaceful means. Reportedly, its activities focus on empowering the Vietnamese people to seek social justice and defend their rights through non-violent civic action.
8. The source submits that the Petitioners’ deprivation of liberty is arbitrary because it is a result of their exercise of the right to freedom of association and the right to take part in the conduct of public affairs. According to the source, the authorities failed to prove that the Petitioners had engaged in a single illegal act under international law, but rather justified their detention and conviction on the basis of the Petitioners’ affiliation with Viet Tan. The source contends that by doing so, the Vietnamese authorities have contravened the provisions of article 22 of the International Covenant on Civil and Political Rights and article 20 of the Universal Declaration of Human Rights, which guarantee the right to freedom of association and assembly.
9. The source cites article 79 of the Vietnamese Penal Code as follows:
- Those who carry out activities, establish or join organizations with intent to overthrow the people’s administration shall be subject to the following penalties:
- Organizers, instigators and active participants or those who cause serious consequences shall be sentenced to between 12 and 20 years’ imprisonment, life imprisonment or capital punishment;
- Other accomplices shall be subject to between 5 and 15 years’ imprisonment.
10. In the source’s view, this provision is vague and does not provide criteria for distinguishing between those acts that endanger national security, and those which are part of peaceful political advocacy. The source alleges that, in practice, the authorities consider membership in groups that advocate multi-party democracy as “attempting to overthrow the

people's administration". According to the source, the manner in which article 79 of the Vietnamese Penal Code is implemented is in violation of article 25 of the International Covenant on Civil and Political Rights and article 21 of the Universal Declaration of Human Rights, both of which guarantee the right to participate in national affairs. Hence, the source concludes that the arrest, trial and conviction of the Petitioners are a direct consequence of their peaceful exercise of the right to participate in public affairs.

11. According to the source, the activities undertaken by the Petitioners, as referred to in the indictment by the People's Procuracy of Ben Tre Province, presented no threat to the national security of Viet Nam. In the source's view, actions such as attending seminars on non-violent struggle in Thailand and Cambodia; producing and disseminating signs bearing the HS.TS.VN logo, which stands for Hoang Sa, Truong Sa, Viet Nam; and organizing farmers to protest against corruption fall squarely within the scope of the rights guaranteed by articles 12, 19 and 22 of the Covenant, respectively.

12. Furthermore, the source contends that the Petitioners' detention is arbitrary due to non-observance by the Vietnamese authorities of the minimal guarantees relating to the right to a fair trial. With the exception of Nguyen Thanh Tam, all the Petitioners had defence lawyers mandated by their families shortly after their arrests. However, the Vietnamese authorities allegedly prevented the lawyers from meeting their clients during the entire investigation phase of the case, which was concluded only on 21 March 2011. The lawyers were only able to briefly confer with their clients a few days before the trial on 30 May 2011. In the week prior to the trial, the defence lawyers were still denied access to a copy of the indictment and other essential documents relating to the Petitioners' case. The source maintains that these obstacles created by the Vietnamese authorities constitute a violation of the guarantees provided under article 14, paragraph 3 (b), of the Covenant, which provides for everyone to be entitled to "have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing" in determining any criminal charge against him.

13. The source further refers to article 58 of the Vietnamese Criminal Procedure Code which stipulates that the defence counsels shall participate in each stage of the criminal proceedings, as well as to article 166 of the Vietnamese Criminal Procedure Code which guarantees that the prosecution must notify the accused and the defence counsels within three days of the decision to prosecute the case and hand over the indictments. According to article 166, defence counsels may read the indictments, take notes and copy documents from the case files. None of these guarantees were allegedly respected in the Petitioners' case.

14. The source reports that the Petitioners were convicted in a one-day closed trial in violation of article 14, paragraph 1, of the Covenant, article 11 of the Universal Declaration of Human Rights and article 18 of the Vietnamese Criminal Procedure Code. According to the information received, the Vietnamese authorities prevented family members of the defendants from attending the trial. The source informs the Working Group that supporters of the Petitioners, including members of the Mennonite Church and other aggrieved citizens, were allegedly harassed or placed under house arrest by the Security police in the days leading up to the trial, so as to prevent them from attending the proceedings. The source further alleges that individuals gathered in front of the People's Court of Ben Tre Province on 30 May 2011 were forcibly taken away by the police. Allegedly, foreign diplomats were denied access to the trial by the Vietnamese authorities.

15. According to the source, during the one-day trial, each Petitioner appeared in court separately, despite being listed together in the same indictment and considered by the prosecution as belonging to the same case. Allegedly, this was done to deny the Petitioners adequate knowledge of the court proceedings and to reinforce the sense of isolation among them.

16. The source also informs that Tran Thi Thuy and Pham Van Thong's lawyer was removed from the courtroom while arguing on behalf of his clients, who were then left without legal counsel for the remainder of the trial. According to the source, this incident took place when the defence lawyer was arguing that the slogan "HS.TS.VN" promoted by the Viet Tan was not subversive, as alleged by the prosecution, but rather meant Viet Nam's sovereignty over the Paracel (Hoang Sa) and Spratly (Truong Sa) islands.

17. The source further reports that following their trial on 30 May 2011, the Petitioners have been held at the Ministry of Public Security Detention Centre in Ben Tre Province and allegedly have no access to their families and defence lawyers.

#### *Response from the Government*

18. In its letter of 24 June 2011, the Working Group provided the Government of Viet Nam with the summary of the case and requested any information that it may wish to provide regarding the allegations. The Working Group regrets that the Government has not responded to the allegations within the prescribed time limits.

#### **Discussion**

19. Despite the absence of information from the Government, the Working Group considers that it is in a position to render an opinion on the detention of the Petitioners, in conformity with paragraph 16 of its revised methods of work.

#### *Violations under category II*

20. The Working Group considers that the Petitioners were arrested and convicted due to their association with the Viet Nam Reform Party, an opposition party in Viet Nam, whose activities focused on empowering the Vietnamese people to seek social justice and defend their rights through non-violent civic action.

21. The Working Group recalls that the right to freedom of association and the right to take part in the conduct of public affairs are protected under articles 22 and 25 of the International Covenant on Civil and Political Rights, respectively. The deprivation of liberty of the Petitioners solely for their exercise of the right to freedom of association and the right to take part in the conduct of public affairs falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

22. Regarding the alleged violation of national legislation referred to by the source, namely article 79 of the Vietnamese Penal Code, the Working Group recalls that in its previous opinions No. 1/2009, para. 37; and No. 1/2003, para. 17, it had reiterated that, in conformity with its mandate, it was required to 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. In the absence of information as to whether any violence was involved in the Petitioners' activities, the Working Group holds that their detention, based on the provisions contained in article 79 of the Vietnamese Penal Code, falls short of their rights and freedoms recognized under the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

#### *Violations under category III*

23. In the present case, the accused were denied their right to communicate with counsel of their own choosing at the pretrial stage, in violation of article 14, paragraph 3 (b), of the

International Covenant on Civil and Political Rights. Furthermore, their counsel was not provided access to the case file for the purpose of adequately preparing the defence.

24. The Petitioners were denied a public hearing in violation of article 14, paragraph 1, of the International Covenant on Civil and Political Right and articles 10 and 11 of the Universal Declaration of Human Rights. Indeed, it is the public character of the hearing that protects an accused against the administration of justice without public scrutiny.

25. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial, as established in Article 14 of the Covenant, is of such gravity as to give the Petitioners' deprivation of liberty an arbitrary character.

#### **Disposition**

26. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Tran Thi Thuy; Pham Ngoc Hoa; Pham Van Thong; Duong Kim Khai; Cao Van Tinh; Nguyen Thanh Tam; and Nguyen Chi Thanh is 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, to which Viet Nam is a party, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

27. Consequent upon the opinion rendered, the Working Group requests the Government of Viet Nam to take the necessary steps to remedy the situation of Tran Thi Thuy; Pham Ngoc Hoa; Pham Van Thong; Duong Kim Khai; Cao Van Tinh; Nguyen Thanh Tam; and Nguyen Chi Thanh, and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

28. The Working Group is of the opinion that, taking into account all the circumstances of the case, the adequate remedy would be to release the above-mentioned individuals and to accord them an enforceable right to compensation, in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

*[Adopted on 2 September 2011]*