

**NATIONS UNIES  
HAUT COMMISSARIAT DES NATIONS UNIES  
AUX DROITS DE L'HOMME**



**PROCEDURES SPECIALES DU CONSEIL DES  
DROITS DE L'HOMME**

**UNITED NATIONS  
OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE HUMAN  
RIGHTS COUNCIL**

**Working Group on Arbitrary Detention.**

Téléfax: (41) (0) 22 917 90 06  
Télégrammes: UNATIONS, GENEVE  
Télex: 41 29 62  
Téléphone: (41) (0) 22 917 92 89  
Internet: [www.ohchr.org](http://www.ohchr.org)  
E-mail: [wgad@ohchr.org](mailto:wgad@ohchr.org)



Address:  
Palais des Nations  
CH-1211 GENEVE 10

REFERENCE: G/SO 218/2

28 November 2011

**OPINION No. 46/2011 (THE SOCIALIST REPUBLIC OF VIET NAM)**

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

**Concerning Mmes. Tran Thi Thuy and Pham Ngoc Hoa; Messrs. 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 by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. The Human Rights Council assumed the mandate by its decision 2006/102. The mandate was extended for a further three-year period by resolution 15/18 adopted on 30 September 2010.

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

I. 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);

II. 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);

III. 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).

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

V. 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, Mmes. Tran and Pham; and Messrs. Pham, Duong, Cao, Nguyen Thanh Tam, and Nguyen Chi Thanh (hereinafter collectively referred to as 'Petitioners') are land rights activists. They were arrested 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 'Viet Nam Reform Party' [hereinafter 'Viet Tan'], an opposition party in Viet Nam.

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

- Ms. **Tran**, 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 times received money from 'Viet Tan' to pay for operational expenses totalled in 8.000.000 dong VND and 350 USD". She was sentenced to 8 years of imprisonment and 5 years of probation.
- Mr. **Pham**, 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' all over the nation and received money from 'Viet Tan' to pay for expenses totalled in 900.000 dong VND". He was sentenced to 7 years of imprisonment and 5 years of probation.
- Mr. **Duong**, 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 organization 'Viet Tan', received documents, slogans, directions, organized the distribution and received money from 'Viet Tan' to pay for operational expenses totalled in 700 USD". He was sentenced to 6 years of imprisonment and 5 years of probation.
- Mr. **Cao**, was arrested on 22 February 2011. He was charged of having violated Article 79 of the Vietnamese Penal Code. According to the indictment, "Cao Van Tinh joined the organization 'Viet Tan', often times contacted, met the organization 'Viet Tan', received and distributed documents, slogans, and received money from the organization 'Viet Tan' to pay for operation expenses totalled in 1.700.000 dong VND". He was sentenced to 5 years of imprisonment and 4 years of probation.
- Mr. **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 organization 'Viet Tan', received documents, slogans to distribute, formed the organization 'Vietnamese friendship association for mutual support' throughout the country, received money from 'Viet Tan' to pay for operational expenses totalled in 900.000 dong VND". He was sentenced to 2 years of imprisonment and 3 years of probation.
- Mr. **Nguyen Chi Thanh**, was arrested on 19 November 2010. He was charged under Article 79 of the Vietnamese Penal Code. The indictment points out that "Nguyen Chi Thanh joined the organization 'Viet Tan', joined the directing and distributing of documents, slogans, and received money from 'Viet Tan' to pay for operational expenses totalled in 1.800.000 dong VND". He was sentenced to 2 years of imprisonment and 3 years of probation.
- Ms. **Pham**, was arrested on 19 November 2010. She was charged under Article 79 of the Vietnamese Penal Code for "having joined the organization 'Viet Tan', received money from 'Viet Tan' as operation expenses and distribute it to the operational group in Ho Chi Minh City and Ben Tre totalled in 500 USD and 1.500.000 dong VND". She was sentenced to 2 years of imprisonment and 3 years of probation.

5. The source informs that from the moment of their respective arrests until their trial, the Petitioners were held incommunicado despite requests 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 of time 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 organization 'Viet Tan' to go over to Thailand and Cambodia to train, join, and receive tasks given by the organization 'Viet Tan' to return to Vietnam and operate under the direction of the organization 'Viet Tan' in order to overthrow the People's Government".

7. The source contends, however, that '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 have failed to prove that the Petitioners engaged in a single illegal act under international law, justifying their detention and conviction on the basis of Petitioners' affiliation with Viet Tan. The source contends that by doing so the Vietnamese authorities have contravened the provisions of Article 22 of the ICCPR and Article 20 of the UDHR, 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 twelve and twenty years of imprisonment, life imprisonment or capital punishment; Other accomplices shall be subject to between five and fifteen years of imprisonment.

10. In the source's view, this provision is vague and does not provide any criteria for distinguishing between those acts that endanger national security and those which are part of the peaceful political advocacy. The source alleges that, in practice, the authorities consider membership in groups that advocate for 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 ICCPR and Article 21 of the UDHR, both guaranteeing 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 nonviolent 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 ICCPR, 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 Mr. Nguyen Thanh Tam, all the Petitioners had defence lawyers mandated by their families shortly after their arrests. However, the Vietnamese authorities have allegedly prevented these lawyers

from meeting their clients during the entire phase of investigation 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. 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 in Article 14(3)(b) of the ICCPR, which provides that "everyone shall be entitled to (...) have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing".

13. The source further refers to Article 58 of the Vietnamese Criminal Procedure Code which stipulates that the defence counsels shall participate during each stage of the criminal proceedings as well as Article 166 of the Vietnamese Criminal Procedure Code. The latter guarantees that the prosecution must notify the accused and 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 present case.

14. The source reports that the Petitioners were convicted in a one-day closed trial in violation of Article 14(1) of the ICCPR, Article 11 of the UDHR and Article 18 of the Vietnamese Criminal Procedure Code. According to the information received, the Vietnamese authorities have 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 had been 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 who gathered in front of the People's Court of Ben Tre on 30 May 2011 were forcibly taken away by the police. Allegedly, foreign diplomats were denied access to trial by the Vietnamese authorities.

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

16. The source also informs that Ms. Tran's and Mr. Pham's lawyer was removed from the courtroom while arguing on behalf of his clients, who were 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 'Viet Tan' was not subversive, as alleged by the prosecution, but instead meant Viet Nam's sovereignty over the Paracel (Hoang Sa) and Spratly (Truong Sa) islands.

17. The source further reports that, following their trial of 30 May 2011, the Petitioners are currently being 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 which the Government would wish to provide regarding the allegations. The Working Group regrets that the Government has not responded to the allegations transmitted by the Group within the requested delays.

## **Discussion**

19. Despite the absence of any information from the Government, the Working Group considers it is in a position to render its 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 'Viet Nam Reform Party', an opposition party in Viet Nam, and their 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 freedom of association and the right to take part in the conduct of public affairs are protected accordingly by Articles 22 and 25 of the ICCPR. The deprivation of liberty of the Petitioners solely for freedom of association and the right to take part in the conduct of public affairs, thus, falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

22. As to 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 (Viet Nam) (UN Doc. A/HRC/13/30/Add.1, para. 37.) and No. 1/2003 (Viet Nam) (UN Doc. E/CN.4/2004/3/Add.1, para. 17), the Working Group reiterated that, 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. In absence of any information as to any violence involved in the Petitioners' activities, the Working Group holds that their detention based on the provision contained in Article 79 of the Vietnamese Penal Code falls short of their rights and freedoms recognized under the ICCPR and UDHR.

### *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 pre-trial stage in violation of Article 14(3)(b) of the ICCPR. Nor was their counsel provided with an access to the case file for the purposes of adequate preparation of the defence.

24. The Petitioners were denied a public hearing in violation of Article 14(1) of the ICCPR and Articles 10 and 11 of the UDHR. 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 above non-observance of the international norms relating to the right to a fair trial, established in Article 14 of the ICCPR are of such gravity as to give the deprivation of liberty of the Petitioners an arbitrary character.

## **Disposition**

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

The deprivation of liberty of Mmes. Tran and Pham; and Messrs. Pham, Duong, Cao, 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 to take the necessary steps to remedy the situation of Mmes. Tran and Pham; and Messrs. Pham, Duong, Cao, Nguyen Thanh Tam, and Nguyen Chi Thanh and 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 believes that, taking into account all the circumstances of the case, the adequate remedy would be to release the mention individuals and accord him an enforceable right to compensation in accordance with Article 9(5) of the International Covenant on Civil and Political Rights.

Adopted on 2 September 2011