

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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

REFERENCE:
UA VNM 4/2018

4 April 2018

Excellency,

We have the honour to address you in our capacity as 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 situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the trial of a group of six prominent human rights defenders: Mr. **Nguyen Van Dai**, Ms. **Le Thu Ha**, Mr. **Pham Van Troi**, Mr. **Truong Minh Duc**, Mr. **Nguyen Trung Ton**, and Mr. **Nguyen Bac Truyen**, allegedly in relation to their activities as human rights defenders and pro-democracy activists.

Mr. Nguyen Van Dai, Ms. Le Thu Ha, Mr Pham Van Troi, Mr. Truong Minh Duc and Mr. Nguyen Trung Ton, are all pro-democracy campaigners, members of the Brotherhood for Democracy movement.

The Brotherhood for Democracy movement is a group, created in 2013, of mostly former jailed dissidents in Vietnam that set up a new online group advocating for democratization.

Similar concerns regarding members of the Brotherhood for Democracy have been raised in previous communications, sent on 6 January 2016 (VNM 3/2015) and on 21 September 2017 (AL VNM 6/2017).

Mr. Nguyen Bac Truyen is a human rights defenders, working in the field of social rights and advocating for the right to freedom of religion in Vietnam. He is a former prisoner of conscience. Mr. Truyen was the subject of three previous communications, sent on 26 March 2014 (VNM 4/2014), on 25 November 2014 (VNM 11/2014), on 1 November 2016 (VNM 8/2016) and on 21 September 2017 (AL VNM 6/2017).

The Working Group on Arbitrary Detention has issued Opinion No. 1/2009 on the detention of Mr. Pham Van Troi and Mr. Truong Minh Duc, as well as Opinion No. 26/2017 with regard to the deprivation of liberty of Mr. Nguyen Van Dai.

We appreciate your Excellency's Government's replies to all our communications. Nevertheless, in light of recent developments, we remain concerned about the continued detention of the above-mentioned defenders.

According to the information received:

As previously indicated, in communication AL VNM 6/2017:

- Mr. Pham Van Troi was arrested on 30 July 2017, at his residence in Hanoi.
- Mr. Truong Minh Duc, was arrested, on 30 July 2017, near his residence in Ho Chi Minh City without any arrest warrant.
- Mr. Nguyen Trung Ton was arrested, on 30 July 2017, at his residence in Ho Chi Minh City, by agents of the Security Investigation Agency of Viet Nam's Ministry of Public Security.
- Mr. Nguyen Bac Truyen was arrested, on 30 July 2017, while waiting outside his work place at the Catholic Redemptorist Church in Ho Chi Minh City.

In addition, Mr. Nguyen Van Dai, human rights lawyer and founder of the Brotherhood for Democracy and Ms. Le Thu Ha, also a human rights lawyer, were both arrested on December 16, 2015 while attempting to meet with EU delegates for the annual EU-Vietnam Human Rights Dialogue.

All defenders have reportedly been accused of having "carried out activities aiming at overthrowing the Government" (article 79 of the 1999 Penal Code of Viet Nam), a national security crime carrying a prison sentence of between 12 to 20 years, life imprisonment and even the death penalty.

To date, all of them are being held in pre-trial detention at the B14 Detention Centre in Hanoi. Their trial is scheduled for 5 April 2018, at the People's Court of Hanoi. It is alleged that the co-defendants have not had access to their legal counsel in detention and that their family members have not been officially informed of the trial date. Information received indicates that trials held in Vietnam, in particular in similar cases, are closed, expedite, being completed in

just a few hours. Furthermore, although a possibility to appeal exists, appeals are usually rejected on procedural grounds.

Serious concerns are expressed about the arrests and detentions of Mr. Nguyen Van Dai, Ms. Le Thu Ha, Mr Pham Van Troi, Mr. Truong Minh Duc, Mr. Nguyen Trung Ton, and Mr. Nguyen Bac Truyen, which seem to relate to their work as human rights defenders. Further concerns are expressed that the co-defendants have not had proper access to their legal counsel in detention and that the trial may not be public.

We further reiterate our serious concerns at the wide application of charges under Article 79 of the Penal Code (Article 109 of the new Criminal Law) to human rights defenders in Vietnam, especially as it carries the possibility of the death sentence or life imprisonment. Our concerns are heightened by the allegations regarding the lack of a fair and independent judicial system.

We are concerned these cases are part of a general crackdown on civil society, aiming at dissuading any dissent and muzzling people's rights to freedom of expression, freedom of peaceful assembly and association, in violation of Vietnam's obligations under international human rights law.

The above mentioned allegations appear to be in contravention of articles 7, 9, 10, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Viet Nam on 24 September 1982, guaranteeing the rights not to be subjected to torture, the right to liberty and security of person, the right to be treated humanely while in detention, the right to a fair trial, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and the right to freedom of association, respectively.

We would like to bring to the attention of your Excellency's Government the United Nations Safeguards Protecting the Rights of those facing the Death Penalty (UN Safeguards), including article 5 which stresses capital punishment may only be carried out pursuant to legal procedures which give all possible safeguards to ensure a fair trial. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.

We also recall that under article 1 of the UN Safeguards, countries that have not abolished the death penalty may only impose it for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para. 39 stresses that the term "the most serious crimes" must be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing (see also, Human Rights Committee's Concluding Observations: Iran (1993), para. 8., Concluding Observations: Thailand

(2005), para. 14., Concluding Observations: Libya (1998), para. 8; Concluding Observations: Iran (1993), para. 8; Concluding Observations: Sudan (1997), para. 8.). It was also submitted in a report by the mandate on extrajudicial, summary or arbitrary executions to the Human Rights Council that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

With respect to the use of national security accusations against the activities of the aforementioned individuals, we would like to remind your Excellency's Government that any restriction on expression that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest. Under article 19 of the ICCPR, to establish that a restriction on freedom of expression is necessary to protect a legitimate national security interest, a government must demonstrate that: (a) the expression at issue poses a serious threat to a legitimate national security interest; (b) the restrictions imposed is the least restrictive means possible for protecting that interest; and (c) the restriction is compatible with democratic principles.

Additionally, we wish to bring to the attention of your Excellency's Government 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, also known as the UN Declaration on Human Rights Defenders, in particular its articles 1, 2, 5, 6 and 12.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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 international instruments.

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/or comment(s) you may have on the above-mentioned allegations.

2. Please provide information on the legal grounds for the arrest and detention of the six above-mentioned individuals, as well as clarification regarding the acts considered to have amounted to the charges of “acting to overthrow the Government” held against them, and how these measures are compatible with international norms and standards as stated, *inter alia*, in articles 9, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR).
3. Please provide information regarding the grounds justifying the measure of detention of the six above-mentioned individuals, and please specify how these are in compliance with Vietnam’s international obligations, in particular with articles 7 and 10 of the ICCPR.
4. Please indicate what measures have been taken to ensure that human rights defenders in Viet Nam are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would like to inform your Excellency’s Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion as to whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the allegation letter and the regular procedure.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

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