

NATIONS UNIES
HAUT COMMISSARIAT AUX DROITS DE L'HOMME



UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS



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11 November 2004

Dear Mr. Genser,

I would like to refer to the fortieth session of the Working Group on Arbitrary Detention, in which the Working Group adopted several Opinions on cases of detention submitted to it. The Working Group decided, inter alia to transmit its Opinions, three weeks after having transmitted them to the governments concerned, to the sources of information which had submitted the cases to the Group.

In accordance with the Working Group's decision, I am sending to you, attached herewith, the text of Opinion No. 19/2004 submitted by your organization. This Opinion will also be reproduced in the Working Group's report to the forthcoming session of the Commission on Human Rights.

Yours sincerely,


Miguel de la Lanza
Secretary

Working Group on Arbitrary Detention

Attached: Opinion No. 19/2004 (Viet Nam)

Mr. Jared Genser
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OPINION No. 19/2004 (VIET NAM)

Communication addressed to the Government on 11 June 2004

Concerning: Dr. Nguyen Dan Que

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

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group conveys its appreciation to the Government for having submitted information concerning the case.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. In the light of the allegations made, the Working Group welcomes the co-operation of the Government. On 22 June 2004, it transmitted the reply provided by the Government to the source, which provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. According to the information received from the source, Dr. Nguyen Dan Que is the founder of the "Non-Violent Movement for Human Rights" and a long-standing peaceful advocate for democracy and human rights. Dr. Que received a medical doctor degree from Saigon Medical School at the age of 24 and became a teacher at the University's medical school shortly after graduation. He was awarded with training scholarships to work in Belgium, France and the United Kingdom in 1968, 1969 and 1972, respectively. He returned to Vietnam in 1974 to serve on the Faculty of Medicine at Saigon (Ho Chi Minh City) University. The following year, Dr. Que became Director of the Medical Department of Cho-Ray Hospital. Some years later, he was fired from this position when he questioned the Government's medical and social policies.

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6. In 1978, Dr. Que formed the "National Front for Progress", explicitly embracing non-violence in its efforts to get the Government to cut down military spending, invest more in the welfare of the people and hold free and fair elections. On 18 February 1978, he was arrested for rebelling against the regime and forming a reactionary organization. He was detained without trial until his release ten years later. Upon his release from prison, Dr. Que created the "Non-Violent Movement for Human Rights" on 11 May 1990 and became the first member of Amnesty International in Vietnam.

7. On 14 June 1990 he was again arrested. This time he was sentenced to 20 years imprisonment for attempting to overthrow the Government. In 1998, he was released under a general amnesty. He has been nominated for the Nobel Peace Prize on four occasions and has been awarded several international human rights prizes.

8. According to the source, on 13 March 2003 Dr. Que emailed a statement from an Internet café criticizing the Government's claims that it respects freedom of information, as well as another statement supporting the United States of America legislation known as the "Freedom of Information in Vietnam Act of 2003", a bill introduced in the United States Congress. In his statements, Dr. Que challenged the Government of Vietnam for its alleged restrictions on freedom of information.

9. On 17 March 2003, Dr. Que was arrested outside of his home in Ho Chi Minh City by members of the City Public Security Office and was taken to a local security station. Later, security officials searched his home and seized a computer and a laptop containing his essays, as well as his personal documents. After the search of his house, he was moved to a municipal jail on 237 Nguyen Van Cu Street, District 1, Ho Chi Minh City, where he remains to this day.

10. The source further reports that Dr. Que has not been officially charged. A trial date has not been set. He has been held *incommunicado* since his arrest and denied access to his family. His relatives have been prohibited from providing him proper medication for his peptic ulcers, kidney stones and high blood pressure. Because of Dr. Que's age and medical conditions, his family is exceedingly worried about his health.

11. Dr. Que was arrested for transmitting statements over the Internet criticizing the Government of Vietnam for denying citizens their right to freedom of information. The authorities allegedly plan to charge Dr. Que under Article 80 (spying) of the Criminal Code of Vietnam, reportedly for trying to transmit documents that contain information critical of the State. The sentence for this crime ranges from 12 years imprisonment to the death penalty.
12. The source further considers that the authorities exacerbated the violation of Dr. Que's right to exercise his fundamental freedoms of opinion and expression by failing to provide him with his rights to a prompt hearing, of access to counsel, to be informed of the charges against him, and to be released pending trial. Dr. Que has been held for over one year without a charge, hearing or trial date. Dr. Que was never brought before a judicial authority for a determination of the lawfulness of his detention.
13. In its response, the Government stated that the rights to freedom of expression and freedom of information of Vietnamese citizens are clearly enshrined in the Constitution and laws, and in practice these rights are guaranteed and strictly observed. With regard to the case of Dr. Que, the Government assured that the information and allegations contained in the communication are not true: Dr. Que was arrested and is held in custody for having committed acts in violation of article 80 of the Criminal Code of Vietnam. As a result, he will be brought to trial when investigation procedures are completed and, like in any other case, the right of the defendant to a fair proceeding before a court shall be guaranteed in strict accordance with the law.
14. Acting in accordance with its methods of work, the Working Group forwarded the information supplied by the Government to the source, so that it could make additional comments, which it has done. The source stated that the Government response does not offer evidence to refute its presentation of facts and analysis of law. The source added that in its reply the Government stated that Dr. Que was arrested for having allegedly committed acts in violation of article 80 of the Criminal Code of Vietnam. However, since the petition and reply, Dr Que has been charged and convicted of violating Article 258 of the Penal Code, which prohibits abusing "democratic freedom to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens". The source ascertained that after being held *incommunicado* for

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16 months in jail, without being informed of the charges against him or access to counsel of his choosing, Dr. Que was convicted and sentenced, without access to counsel, in a trial closed to all outsiders except for his family.

15. From the above it results that the Government did not reply to the detailed allegations of the source. It limited itself to declaring that they are untrue. In its reply, the Government asserts that Dr. Nguyen Dan Que was arrested on the ground of having committed acts in violation of Article 80 of the Criminal Code of Vietnam, but it does neither elaborate what the charges under the above-mentioned Article 80 consist of, nor which facts underlie such charges.

16. On this basis, the Working Group concludes that the facts Dr. Nguyen Dan Que is accused of are indeed those indicated in the communication, i.e. to have written statements criticizing the Government and expressing his point of view on the freedom of information in the country, and to have disseminated these statements via the internet. The Working Group concludes that Dr. Que's actions constitute only the peaceful exercise of his freedom of opinion and expression, which is enshrined in Article 19 of the Universal Declaration of Human Rights and in Article 19 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Vietnam is a party.

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

The deprivation of liberty of Dr. Nguyen Dan Que is arbitrary, being in contravention of Article 19 of the Universal Declaration of Human Rights and in article 19 of the International Covenant on Civil and Political Rights, to which the Republic of Vietnam is a party, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

18. Having found that the detention of Dr. Nguyen Dan Que is arbitrary, the Working Group requests the Government of the Socialist Republic of Vietnam to take the steps necessary to remedy the situation, in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

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Adopted on 16 September 2004.