

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairperson-Rapporteur: Ms. Leïla Zerrougui (Algeria)
Vice-Chairperson: Mr. Tamás Bán (Hungary)
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Ms. Manuela Carmena Castrillo (Spain)
Mr. Seyed Mohammed Hashemi (Islamic Republic of Iran)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Dr. Pham Hong Son,
Citizen of Vietnam

v.

Government of Vietnam

**URGENT ACTION
REQUESTED**

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, and 2003/31¹

Submitted By:

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¹ These were resolutions adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. As of June 19, 2006, the Commission on Human Rights has been abolished pursuant to UN General Assembly Resolution 60/251. Under this Resolution, the Human Rights Council “shall assume . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights . . .” G.A. Res. 60/251, ¶ 6 (Mar. 15, 2006).

BASIS FOR “URGENT ACTION” REQUEST

Dr. Pham Hong Son, a peaceful advocate for democracy and human rights in Vietnam, was arrested for transmitting statements over the Internet advocating political openness and democracy in Vietnam. The Government of Vietnam (“Government”) has charged and convicted Dr. Son of espionage under Article 80 of the Vietnamese Penal Code.

Dr. Pham Hong Son is currently being held at a remote prison camp in Yen Giang Village, Thanh Hoa Province. He has been detained for over four years. Dr. Son, who is thirty-eight years old, is in extremely poor health and has been suffering a hernia for the past two years² and in the last year a tumor has developed in his nose. His wife recently reported that Dr. Son has coughed up blood three times since January, and that his condition is worsening.³ Because of inadequate medical facilities at the prison, Dr. Son and his family have requested that he be treated at a hospital in Hanoi. To this date, Dr. Son has not received treatment for his ailments and he has resorted to using a plastic band to support his hernia.

Meanwhile, Dr. Son’s activism and international prominence has generated numerous negative news articles about the Vietnamese government, thereby placing him at further risk of maltreatment.⁴ Accordingly, the Petitioner hereby requests that the Working Group consider this Petition pursuant to the Working Group’s “Urgent Action” procedure.⁵ In addition, the Petitioner requests that this Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights.

² See “Medical Action, Vietnam: Dr. Pham Hong Son,” Report of Amnesty International, 1 October 2004, Vol. AI INDEX ASA 41/023/2004, available at <http://web.amnesty.org/library/Index/ENGASA410232004?open&of=ENG-VNM>.

³ Affidavit of Vu Thuy Ha, wife of Dr. Pham Hong Son, May 12, 2006 (on file with counsel) (hereinafter Vu Affidavit).

⁴ A search on Lexis-Nexis “News Group File” on May 15, 2006 showed that more than two hundred and fifty articles have been written about Dr. Son and his activism against the government of Vietnam since his detention in March, 2002. The U.S. Congress also recently passed a resolution calling for Dr. Son’s release. See H.R. Con. Res. 320, 109th Congress (2006) (enacted).

⁵ Report of the Working Group on Arbitrary Detention, E/CN.4/1998/44 (19 December 1997), Annex 1 at ¶ 22-24.

MODEL QUESTIONNAIRE⁶

I. IDENTITY OF THE PERSON ARRESTED OR DETAINED

1. **Family Name:** Son
2. **First Name:** Pham Hong
3. **Sex:** Male
4. **Birth date or age (at time of detention):** 11 March 1968
5. **Nationality/Nationalities:** Citizen of Vietnam
6. **Identity documents (if any):**

ID Card No. 012009011, issued by the Police of Hanoi on 10 January 1997
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**

Dr. Son graduated from Hanoi Medical University in 1992 and worked as a business manager for Tradewind Asia, a foreign pharmaceutical company, until his arrest in 2002.
8. **Address of usual residence:**

72 B Thuy Khue, Tay Ho, Hanoi, Vietnam.

II. ARREST

1. **Date of arrest:** 27 March 2002
2. **Place of arrest:** Dr. Son was arrested at his home in Hanoi.
3. **Forces who carried out the arrest or are believed to have carried it out:** The Security and Investigation Bureau of the Ministry of Public Security.

⁶ Lack of access to Dr. Son renders it impossible to obtain all of the information requested in the Working Group's model questionnaire at this time. The Working Group has consistently stated that inability to provide all of the information requested in the model questionnaire "shall not directly or indirectly result in the inadmissibility of the communication." *See, e.g.*, Report of the Working Group on Arbitrary Detention, E/CN.4/1997/4 (17 December 1996), Annex 1, at ¶ 8.

4. **Did they show a warrant or other decision by a public authority?**

Unknown. To the best of counsels' knowledge, Dr. Son did not receive an arrest order upon his detention. Vu Thuy Ha, Dr. Son's wife, requested a copy of a warrant from the Government days after Dr. Son's arrest but did not receive one.⁷

5. **Authority who issued the warrant or decision:** Unknown

On 6 April 2002, ten days after Dr. Son's arrest, his wife, Va Thuy Ha, received Report No. 215/ANDT signed by the Deputy Commander of the PSS Security Investigations Unit that Dr. Son was under temporary custody due to actions of gathering and supplying information and documents on behalf of foreign nations(s) to use in opposition of the Socialist Republic of Vietnam.⁸

An official indictment against Dr. Son was issued over a year later on 10 April 2003 by the Chief Prosecutor of the Supreme People's Procurary.⁹

6. **Relevant legislation applied (if known):** Unknown.

III. DETENTION

1. **Date of detention:**

Dr. Son has been detained since his arrest on 27 March 2002.

2. **Duration of detention:**

The Government has detained Dr. Son for over four years.

3. **Forces holding the detainee under custody:** Vietnamese security forces.

4. **Places of detention (indicate any transfer and present place of detention):**

From 27 March 2002 to 18 September 2003, Dr. Son was held at Detention Center B-14, Thanh Liet, Thanh Ri, Hanoi.

⁷ See Vu Affidavit, *supra* note 2.

⁸ See "Dr. Pham Hong Son – Prisoner of Conscience," Amnesty International, 26 June 2003, AI Index: ASA 41/017/2003, available at <http://web.amnesty.org/library/index/engasa410172003> (hereinafter Son AI 2003), at Appendix 2 (Translation of letter of complaint from Dr. Pham Hong Son's wife to the Supreme People's Procurary).

⁹ See Son AI 2003, *Id.*, at Appendix 1 (Unofficial translation of the official indictment against Dr. Pham Hong Son, 10 April 2003). An unofficial translation may also be found at Internet Dissident: Vietnam, *at* <http://hrw.org/advocacy/internet/dissidents/phs-english.pdf>. An unofficial translation of the official indictment is attached at Exhibit 1.

From 18 September 2004 to 27 August 2004, Dr. Son was held at Prison Nam Ha, Ba Sao Village, Phu Ly Province. Since 27 August 2004, Dr. Son has been held at Prison No. 5, Camp 3, Yen Giang Village, Yen Dinh District, Thanh Hao Province.

5. **Authorities that ordered the detention:**

Vietnamese Ministry of Public Security.

6. **Reasons for the detention imputed by the authorities:**

Dr. Son was accused of espionage crimes stemming from his email contact with exiled reactionary elements. Dr. Son was also accused of receiving money from Thong Luan, a French group that supports democracy in Vietnam, and disseminating materials and information “denigrating and distorting the policy of the Party and the State...and falsely accuse the State of violating human rights” to exiled reactionary persons.¹⁰

7. **Relevant legislation applied (if known):**

Article 80 of the Vietnamese Criminal Code.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY.

The Statement of Facts presented in Part A of this section details the detention and arrest of Dr. Pham Hong Son. The analysis set forth in Part B of this section explains the specific basis upon which Dr. Pham Hong Son asserts that his detention is an arbitrary deprivation of liberty.

A. Statement Of Facts

1. Freedom of Expression in Vietnam

Although the Constitution of Vietnam provides for freedom of speech, this right is severely curtailed by broad national security and anti-defamation provisions in the Constitution and Criminal Code.¹¹ In particular, during 2003, the Government prohibited free speech that promoted multiparty democracy or criticized the Government’s human rights policies.¹² In

¹⁰ See unofficial indictment, *supra* note 9.

¹¹ U.S. Department of State, 2003 *Country Reports on Human Rights Practices: Vietnam* (2004) (hereinafter 2003 Report).

¹² *Id.* See also Didier Laurus, “Vietnam Moves to Counter Internet ‘Cyber-Dissidents,’” *Agence France Presse*, 24 Mar. 2003.

enforcing this ban, the Government arbitrarily decided whether statements constituted permissible private speech on these matters or impermissible public speech.¹³

The Government began a wide-ranging crackdown against intellectuals and dissidents who use the Internet to disseminate statements criticizing the government.¹⁴ The Government owns and oversees the Vietnam Data Communications (“VDC”), which is the sole Internet access provider in Vietnam.¹⁵ VDC was given permission to monitor sites that subscribers visit.¹⁶ To further control Internet material, on 10 October 2002, the Government Ministry of Information and Culture demanded that all Vietnamese websites submit their content to authorities before posting it.¹⁷ Further, the Government implemented firewalls to block sites with “politically or culturally inappropriate” materials, including sites maintained by exile groups in other countries.¹⁸ The government has tried to require Internet cafe owners to monitor customers to prevent them from visiting sites containing anti-government material.¹⁹

Security forces have arrested and given lengthy sentences to a number of dissidents in Vietnam for expressing their opinions over the Internet. For example, Li Chi Quang was arrested in October 2002 in an Internet cafe in Hanoi for transmitting an email to a democracy advocate in another country.²⁰ He was sentenced to four years imprisonment for “disseminating propaganda against the state.”²¹ Nguyen Dan Que was arrested in March 2003 for emailing a statement to his brother, who lives in the United States, and to members of the Non-Violent Movement for Human Rights.²² Dr. Que’s email was critical of Vietnam’s assertions that it respects freedom of expression, and it affirmed Dr. Que’s support for the Freedom of Information in Vietnam Act of 2003, a bill introduced in the U.S. Congress.²³

Despite the Government’s heightened scrutiny of anti-government Internet material, Dr. Son attempted to exercise his freedom of speech and speak out peacefully over the Internet against the Government’s restrictions on freedom of information.

¹³ *Id.*

¹⁴ Ben Rowse, “Vietnamese Cyber-Dissident to Face Trial Next Week,” *Agence France Presse*, 12 June 2003.

¹⁵ Ben Rowse, “Vietnam Attacks US Over Internet Rights Accusations,” *Agence France Presse*, 23 Apr. 2003.
¹⁶ 2003 Report, *supra* note 11.

¹⁷ Luras, *supra* note 12.

¹⁸ 2003 Report, *supra* note 11.

¹⁹ *Id.*

²⁰ Human Rights Watch, Vietnam: *U.N. Delegates Should Condemn Internet Arrests*, Human Rights News (N.Y.), 31 Mar. 2003, at <http://hrw.org/press/2003/03/vietnam0033103.htm>.

²¹ *Id.*

²² “Human Rights Watch Launches Internet Arrests Campaign on World Press Freedom Day,” *Africa News*, 2 May 2003; “Vietnam Makes Exile Offer to US for Dissident: Radio Free Asia,” *Agence France Presse*, 14 July 2003; “Vietnam: Imprisoned Journalist Offered Exile as Condition for Release,” *BBC Monitoring Int’l Rep.*, 17 July 2003.

²³ *Internet Dissidents: Vietnam*, Dr. Nguyen Dan Que, Human Rights Watch, at <http://www.hrw.org/advocacy/internet/dissidents/3.htm>.

2. Background Information on Dr. Pham Hong Son

Dr. Pham Hong Son was born in Nam Dinh, Vietnam in 1968. He received a medical degree from Hanoi Medical University in 1992 and practiced medicine until 1996. In 1997 Dr. Son graduated from the Franco Vietnamese Administrative School in Hanoi with a Master in Business Administration degree, after which he worked as the head of the Hanoi Bureau of the Alcon Pharmaceutical Company and then as a sales director for Tradewind Asia Pharmaceuticals until his arrest.²⁴

Dr. Son became an advocate for democracy and human rights-related issues in Vietnam approximately in 2000. To promote those issues, Dr. Son corresponded with friends, colleagues, and other dissidents abroad, including Nguyen Gia Kieng, leader of Thong Luan, a French-based advocacy group, regarding Vietnam's political restrictions.²⁵ Dr. Son also leveraged the internet to promote his views on expanding freedom and human rights in Vietnam. For example, Dr. Son published numerous articles online, such as, "[T]he Promotion of Democracy: A Key Focus in a New World Order," and "Sovereignty and Human Rights: The Search for Reconciliation."²⁶ Dr. Son also translated and posted articles online, such as "What is Democracy," an exposition on democratic values.²⁷

In July 2003, Human Rights Watch awarded Dr. Son the Hellman/Hammett grant in recognition of his courage to write in the face of political persecution.²⁹

3. Dr. Pham Hong Son's Arrest and Detention on 27 March 2002

In February 2002, Dr. Son translated an article in English entitled "What is Democracy?", which he had downloaded from the American Embassy in Vietnam's website.³⁰ Dr. Son later

²⁴ Dr. Quan Nguyen, *A Brief Report on Three Vietnamese Scientist Dissidents Before the Annual Meeting of the Committee on Human Rights of the National Academies*, 4 May 2005

²⁵ See Son AI 2003, *supra* note 8. For information on Thong Luan, see <http://www.thongluan.org/vn/>. See also Vietnam links in Europe, available at <http://vietfrance.com/europe.htm>.

²⁶ See Son AI 2003, *supra* note 8.

²⁷ *Id.*

²⁹ Human Rights Watch Press Release, "Vietnam: Supreme Court Should Overturn Cyber-Dissident's Conviction," 26 August 2003, available at <http://hrw.org/english/docs/2003/08/26/vietna6328.htm>.

³⁰ Dr. Son's arrest on espionage charges was pretextual for his posting of the article, "What is Democracy." More than two hundred newspaper and magazine articles have discussed Dr. Son's arrest in this context. For recent publications, see Didier Lauras, "Vietnam's Dissidents No Major Threat to Regime," *Agence Presse France*, 19 April 2006 ("This month [the Government of Vietnam] rejected a call from the US Congress to free cyber-dissident Pham Hong Son from a five-year jail term for translating and publishing online a US State Department article entitled "What is Democracy?"). See also "US Asks Vietnam to Free Key Prisoners Before Bush Visit," *AFX News Limited*, 30 March 2006. The IFX article quotes the official statement of the Honorable Barry Lowenkron, Assistant Secretary of State for Democracy and Human Rights, before the U.S. Congress ("I bluntly told the [Vietnamese Government] that the American people will not understand why a country that wants to have better relations with us would imprison someone for translating an article on democracy."). Finally, see Son AI 2003, *supra* note 8, and see Exhibit 2: "What is Democracy?"

emailed his translation to colleagues and several senior government officials.³¹ Dr. Son also wrote an article, “Hopeful Signs for Democracy in Vietnam,” which he also transmitted to senior government officials.³²

On 24 March 2002, Dr. Pham Hong Son’s house was searched by members of the special police unit P4-A25, and his computer and personal papers were seized.³³ Dr. Son was summoned for questioning, and the following day Dr. Son went to the same police station to claim his personal belongings but was refused.³⁴ Immediately following the incident, Dr. Son published an open letter on the Internet protesting the search of his home and confiscation of his property.³⁵

The security police arrested Dr. Pham Hong Son on 27 March 2002, three days after his initial police interview.³⁶ Dr. Son’s wife, Vu Thuy Ha, was not present at the time of his arrest, and it is uncertain as to whether an arrest order or warrant was present to Dr. Son.³⁷ Two days later, Dr. Son’s family announced that he had “disappeared.”³⁸

Despite Ms. Vu’s many requests, neither she nor any member of Dr. Son’s family ever received a copy of any arrest order.³⁹ On 6 April 2002, Dr. Son’s wife received a report number 215/ANDT signed by Nguyen Ngoc Thuan, Deputy Commander of the Security Investigation Bureau of the Public Security Ministry, stating that Dr. Son was under temporary custody (not temporary arrest) at the Detention Center B-14, Thanh Liet, Thanh Tri, Hanoi.⁴⁰

From the date of his arrest on 27 March 2003 to his first trial on 18 June 2003, Dr. Son was not allowed any contact with his family or legal counsel.⁴¹

³¹ *Id.* See also Human Rights Watch, *Vietnam’s Crackdown on Cyber-Dissidents*, June 17, 2003, at <http://www.hrw.org/press/2003/06/vietnam061703.htm>.

³² *Id.* See also .R. Con. Res. 320, *supra* note 4.

³³ Son AI 2003, *supra* note 8. See also “Third Web Dissident Arrested,” 18 April 2002, International Freedom of Expression and Exchange, available at <http://www.ifex.org/en/content/view/full/16235?PHPSESSID=8ff05a0bfe0b14b75f5ed845bcd19394>.

³⁴ *Id.* See also *PHR Urges Release of Democracy Activist*, Physicians for Human Rights, available at http://www.phrusa.org/campaigns/colleagues/vietnam_son.html.

³⁵ *Id.* See also “Rep. Smith Resolution Calls for Release of Political Prisoners in Vietnam,” *US Fed News*, 6 April 2006 (“Dr. Son had also written an open letter published on the Internet, protesting the fact that his house had been searched illegally and his computer and documents confiscated.”).

³⁶ See unofficial indictment, *supra* note 9. For the most thorough accounts of Dr. Son’s arrest, see Son AI 2003, *supra* note 8, and *Internet Dissidents: Dr. Pham Hong Son*, Human Rights Watch, at <http://hrw.org/advocacy/internet/dissidents/6.htm>. See also “Journalist Group Calls for Release of Vietnamese who Distributed Internet Democracy Article,” *Associated Press*, 16, April 2002.

³⁷ Son AI 2003, *supra* note 8. See also Vu Affidavit, *supra* note 3.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* See also Shravanti Reddy, *Vietnamese Dissident Pham Hong Son Receives Harsh Sentence*, June 19, 2003, at <http://www.bobsonwong.com/dfn/news/vietnam/son-sentenced.htm>.

4. Dr. Pham Hong Son's Trial on 18 June 2003

The Supreme People's Prosecution Office formally indicted Dr. Pham Hong Son on 10 April 2003 based upon the Decision to Prosecute by the Security and Investigation Bureau of the Ministry of Public Security, dated 2 April 2002.⁴²

Although Dr. Son did not have any contact with his wife and family, he was allowed to choose a lawyer for his defense at trial.⁴³ However, Dr. Son was not allowed to contact any lawyers, and he had to rely on his wife to select a lawyer on his behalf.⁴⁴ Dr. Son's wife petitioned the investigative and prison authorities to allow Dr. Son to meet with his lawyers in jail before the trial but her request was initially refused.⁴⁵ Only one week before the trial did Dr. Son meet with his lawyers Tran Lam and Dam Van Hieu – nearly fifteen months following his arrest.⁴⁶

Dr. Son was tried in a closed trial on 18 June 2003 at the People's Court in Hanoi.⁴⁷ The Vietnamese Government failed to respond to a formal request by foreign diplomats to attend Dr. Son's trial, and both foreign diplomats and journalists were not allowed to enter the court.⁴⁸ At the trial, Dr. Son refused the defense prepared by the lawyers Tran Lam and Dam Van Hieu and he defended himself without the assistance of legal counsel. Although Dr. Son's wife was called as a witness by the prosecution, she was not allowed to remain in the courtroom while Dr. Son was present.⁴⁹ The trial lasted a half day, and Dr. Pham Hong Son was convicted of espionage under Article 80 of the Vietnamese Criminal Code.⁵⁰ The Court sentenced Dr. Son to thirteen years of imprisonment, to be followed by three years of house arrest upon Dr. Son's release from prison.⁵¹

⁴² See unofficial indictment, *supra* note 9.

⁴³ See Son AI 2003, *supra* note 8.

⁴⁴ "Media Watchdog RSF Urges Vietnam to Release Dissident," *BBC News*, July 25, 2002 ("Since his arrest was officially confirmed on 8 April, Pham, who is marketing director of a pharmaceutical company, has not been allowed visits from his wife, his two sons or his lawyer and is being held in a secret place"). Affidavit, *supra* note 3.

⁴⁵ *Id.*

⁴⁶ Son AI 2003, *supra* note 8.

⁴⁷ "Vietnamese Court Jails Internet Dissident for 13 Years," *BBC News*, June 18, 2003.

⁴⁸ Numerous articles detail the closed nature of the trial. For example, see *US, Rights Groups Condemn Harsh Sentence for Vietnamese Cyber-Dissident*, *Agence Presse France*, June 18, 2003. See also Son AI 2003, *supra* note 8.

⁴⁹ "Wife of Jailed Vietnamese Cyber-Dissident Protests Conviction," *Agence Presse France*, June 20, 2003.

⁵⁰ *Id.*

⁵¹ *Vietnamese Net Dissident Jailed*, *BBC News*, June 18, 2003, available at http://news.bbc.co.uk/2/hi/in_depth/3000278.stm

5. Dr. Pham Hong Son's Appeal on 26 August 2003

Dr. Pham Hong Son appealed the trial court decision.⁵² He was permitted to meet with his lawyers Tran Lam and Dam Van Hieu in the Detention Center B-14 in Hanoi to prepare for his appeal.⁵³ However, Dr. Son was still not allowed any contact with his wife and family.⁵⁴

Closed proceedings were held on 26 August 2003 at the People's Supreme Court in Hanoi.⁵⁵ Similar to Dr. Son's first trial, the Government refused to permit foreign diplomats, foreign journalists, and Dr. Son's supporters to attend the proceedings.⁵⁶ Dr. Son was present with his lawyers Tran Lam and Dam Van Hieu, along with his wife, Vu Thuy Ha, who again was called as a witness.⁵⁷ In protest of the lack of transparency of the proceedings and violations of his due process, Dr. Pham Hong Son and Dam Van Hieu walked out and boycotted the proceedings.⁵⁸ Despite Dr. Son refusal to participate in the appeal, the Court appointed Tran Lam to defend Dr. Son without his consent.⁵⁹

At the conclusion of the appeal, the Court reduced Dr. Pham Hong Son's sentence to five years of imprisonment, to be followed by three years of house arrest upon his release from prison.⁶⁰ A few days after the appeal, Dr. Son's wife was allowed to visit him and to bring him some sundries.⁶¹

6. Dr. Pham Hong Son's Current Detention

After the appeal, Dr. Son was held at the Prison Nam Ha in Ba Sao Village, Phu Ly Province from 18 September 2003 to 27 August 2004. Since August 2004, Dr. Son has been detained at Prison No. 5, Camp 3 in Yen Giang Village, Yen Dinh District, Thanh Hoa Province. Although his wife, children, brothers and sisters are allowed to visit him, the prison is very remote making family visits difficult.⁶²

Dr. Son is held in a small windowless concrete cell in completed isolation. He is not permitted contact with any other inmates. Due to these conditions, Dr. Son is exposed to

⁵² Ben Rowse, "Vietnamese Cyber-Dissident's Sentence Reduced from 13 Years to Five Years on Appeal," *Agence Presse France*, August 26, 2003.

⁵³ Vietnamese Supreme Court Reduces Dissident's Jail Term, *BBC News Service*, August 28, 2003. See also Vu Affidavit, *supra* note 3.

⁵⁴ See Vu Affidavit, *supra* note 3.

⁵⁵ Rowse, *supra* note 52.

⁵⁶ *Id.* See also Son AI 2003, *supra* note 8.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Ben Rowse, "Human Rights Groups Blast Vietnam over Jailed Cyber-Dissident," *Agence France-Presse*, 26 August 2003. See also Minky Worden, "Vietnam's Road Show," *New York Sun*, June 23, 2005.

⁶¹ Vu Affidavit, *supra* note 3.

⁶² Amnesty International, *Medical Action: Dr. Pham Hong Son*, *supra* note 2.

extreme temperatures, which in the summer can exceed 40 degrees Celsius. Dr. Son has attempted to alleviate the extreme heat by dousing water on the walls of his cell and on his body. Last summer Dr. Son hung a piece of cloth to create some shade, but a guard required him to take it down. In the winter, Dr. Son suffers from freezing conditions in his cell. Due to the extreme fluctuations of temperature, Dr. Son's health condition has deteriorated greatly.⁶³

B. Analysis

The Government's detention of Dr. Son constitutes an arbitrary deprivation of liberty, under Categories II and III of the classification of cases defined by the United Nations Working Group on Arbitrary Detention ("Working Group").⁶⁴

Dr. Son's case falls within Category II for two reasons.⁶⁵ First, the Government of Vietnam ("the Government") detained Dr. Son based upon his exercise of his fundamental right to freedom of opinion and expression. Article 19 of the International Covenant on Civil and Political Rights ("ICCPR") to which Vietnam is a signatory⁶⁶, and Article 19 of the Universal Declaration of Human Rights ("UDHR") both protect Dr. Son's actions. Second, the Government convicted Dr. Son for exercising his fundamental right to freedom of assembly, guaranteed by Article 21 of the ICCPR and Article 20 of the UDHR. And third, the Government convicted Dr. Son for exercising his right to take part in the conduct of public affairs, guaranteed by Article 25 of the ICCPR.

Dr. Son's case also falls within Category III. The Government violated Dr. Son's right to a fair trial guaranteed by Article 14 of the ICCPR, Article 10 of the UDHR, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("Body of Principles").⁶⁷ Dr. Son's case further implicates Category III because of the conditions surrounding Dr. Son's ongoing detention.

⁶³ *Id.*

⁶⁴ "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law." International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976, at art. 9 (1) [hereinafter ICCPR]. "No one shall be subjected to arbitrary arrest, detention or exile." Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art. 9 (1948) [hereinafter UDHR].

⁶⁵ The Human Rights Commission has already received written statements regarding Dr. Son's plight. See *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World*, U.N. Commission on Human Rights, 61st Session, provisional agenda item 9 at 3, U.N. Doc. E/CN.4/2005/NGO/164 (2005). See also *Civil and Political Rights, Including the Question of Freedom of Expression*, U.N. Human Rights Commission, U.N. Commission on Human Rights, 60th Session, Provisional agenda item 11(c) at 3, U.N. Doc. E/CN.4/2004/NGO/42 (2004).

⁶⁶ Vietnam ratified the ICCPR on 24 December 1982.

⁶⁷ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter Body of Principles].

Category II

The Government of Vietnam Arbitrarily Detained Dr. Son Based on His Exercise of His Right to Freedom of Opinion

The Government's conviction of Dr. Son is arbitrary. While the Government charged Dr. Son under Article 80 of the Vietnamese Penal Code, such action violates Article 19 of the ICCPR and Article 19 of the UDHR, which guarantee freedom of opinion and expression. Furthermore, Article 80 of the Penal Code fundamentally conflicts with Article 69 of the Vietnamese Constitution, which similarly guarantees citizens' basic rights to freedom of opinion and speech.⁶⁸

1. The Vietnamese Government Violated Dr. Son's Right to Freedom of Opinion and Expression Guaranteed by Article 69 of the Vietnamese Constitution

Article 69 of the Vietnamese Constitution provides that all citizens "shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law."⁶⁹ Dr. Son exercised the rights that Article 69 guarantees when he sent an article from the U.S. Embassy website entitled "What is Democracy" to friends and senior officials of the Vietnamese Communist party.⁷⁰ Shortly after learning that Dr. Son had posted the article and exchanged emails with colleagues abroad, the Government arrested Dr. Son, searched his house, and seized his laptop and hardcopies of written essays.⁷¹

The Government alleged that Dr. Son "collected documents of false information against the party and state policies," and emailed those documents to overseas reactionaries. According to the Government, these documents provided the foundation for the "reactionaries' allegations

⁶⁸ In its 2002 Concluding Observations regarding Vietnam's compliance with its responsibilities in implementation of the ICCPR, the Human Rights Committee noted its concern "that certain constitutional provisions would appear to be incompatible with the [ICCPR] and the Vietnamese Constitution does not enumerate all [ICCPR] rights, nor the extent to which they may be limited and the criteria used." Concluding Observations of the Human Rights Committee: Viet Nam, CCPR/CO/75/VNM, 26 July 2002 (hereinafter "Concluding Observations"). While we share the concerns of the Commission in this regard, this Petition assumes an interpretation of Vietnam's Constitution that is consistent with Vietnam's obligations as a signatory to the ICCPR.

⁶⁹ Constitution of the Socialist Republic of Vietnam, at Article 69.

⁷⁰ *Third Web Dissident Arrested*, Reporters Sans Frontieres, April 17 2002. The article, "What is Democracy," is available at <http://usinfo.state.gov/products/pubs/whatsdem/whatdm2.htm>. The article provides a basic exposition of democratic principles. It includes statements such as, "[D]emocracy "is government by the people in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system." The article also highlights challenges democracies face in balancing security and liberty and assesses the relationship between democracy and rule of law. Dr. Son also wrote several other articles, such as "Hopeful Signs for Democracy in Viet Nam," which he distributed to senior Communist Party officials in Vietnam shortly prior to his arrest. See H.R. Res. 320, 109th Congress (2006) (enacted), *supra* note

⁷¹ *Id.*

of the Vietnamese government's violations of human rights."⁷² Further, Dr. Son allegedly accepted money from these "reactionaries" – \$115 – to pursue his activities of "espionage."

When we look behind its actions, the Government's accusations amount to nothing more than hyperbole. The Government's allegations speak to libel against Vietnam's repressive policies – not espionage. Dr. Son indeed provided documents to groups abroad. He translated "What is Democracy" and authored other articles. If these actions constitute espionage, then the indictment merely confirms that Dr. Son engaged in exactly the kinds of activities protected by the ICCPR and UHDR.

Similarly, it is baffling how email exchanges regarding democracy and human rights, along with receipt of \$115, constitute an attempt to commit espionage. Both the infrequency of the exchanges (thirteen according in the indictment) and the substance of the emails (democracy and human rights) challenge the Government's contention that Dr. Son committed an act of violent betrayal. The paltry funds Dr. Son received from Thong Luan further undermines the Government's case that Dr. Son's financial links to foreign organizations constituted a grave threat to national security.

In fact, Dr. Son's distribution of the article, "What is Democracy?" merely provided the Government the pretext it was looking for to charge him with espionage.⁷⁴ The Government's

⁷² For information on Thong Luan, see <http://www.thongluan.org/vn/>. See also Vietnam links in Europe, available at <http://vietfrance.com/europe.htm>.

⁷⁴ See *supra* note 30. See also H.R. Res. 320, 109th Congress (2006) (enacted) ("Whereas in March 2002, Dr. Pham Hong Son was arrested after he had translated an article entitled 'What is Democracy?' from the Web site of the United States Embassy in Vietnam and sent it to both friends and senior party officials . . ."). See also Ellen Nakashima, "Vietnamese Dissident Jailed for Downloading What is Democracy," *Washington Post Foreign Service*, September 5, 2005, available at <http://www.nysun.com/article/20836>; Voice of America News, "US Condemns Prison Sentence of Vietnamese Internet Dissident," June 19, 2003; Ben Stocking, "Activist's Posting of Democracy Article Nets 13-year Prison Term in Closed Trial," June 19, 2003.

⁷⁶ As partial justification for this type of action, the Government has alleged previously that the guarantees provided elsewhere in the Constitution are subject to Article 51 of the Constitution, which states that "[t]he citizen's rights are inseparable from his duties" and Article 4, which provides that the Communist Party of Vietnam is the "force leading the State and society." See "Civil and Political Rights, Including the Sanction of Religious Intolerance," Report submitted by Mr. Abdelfattah at ¶ 9, Special Rapporteur, in accordance with Commission of Human Rights Resolution 1998/18, Addendum, Visit for Viet Nam, E/CN.4/1999/58/Add.2, 29 Dec. 1998 [hereinafter "Amor Report"]. If the Working Group is of the view that application of Articles 4 and 51 in this manner is incompatible with Vietnam's ICCPR obligations, it certainly follows that laws enacted on the basis of these provisions, such as those under which Dr. Son was charged and convicted, are similarly incompatible. As noted above, this Petition assumes that Vietnam's Constitution and its application in this case are consistent with Vietnam's ICCPR obligations.

detention of Dr. Son based on his nonviolent advocacy of political openness contravenes the guarantees of Article 69.⁷⁶ On its face, the Government's indictment criminalized Dr. Son's opinion (a belief in democracy) and the expression of that opinion (internet posting) – precisely those rights protected by Article 69.⁷⁷ In short, Dr. Son was prosecuted for sending an article that reiterated the ideals and liberties theoretically protected by the Vietnamese Constitution.⁷⁸ When Dr. Son disseminated a statement through the Internet expressing his opinions on benefits of democracy, he acted fully within his rights. Additionally, the peaceful manner in which he expressed his views did not constitute a threat to Vietnam's national security.

2. Through Use of Article 80 of the Vietnamese Penal Code, the Government Violated Dr. Son's Right to Freedom of Opinion and Expression as Defined in Article 19 of the ICCPR

The Government's application of Article 80 to Dr. Son's case contradicts Article 19 of the ICCPR, which guarantees that "[e]veryone shall have the right to hold opinions without interference" and [e]veryone shall have the right to freedom of expression."⁷⁹ Moreover, "this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."⁸⁰

Dr. Son's activities constitute protected speech as defined by the Human Rights Committee and interpreted through the jurisprudence of the Working Group. Such speech may not be legally curtailed unless such limitations are (1) provided by law, (2) the means to a legitimate end, and (3) "necessary" to achieve a legitimate end.⁸¹ Further, the right to freedom of opinion and expression that Article 19 guarantees may only be restricted when the restriction is necessary "[f]or respect of the rights or reputations of others" and "[f]or the protection of national security or of public order (*ordre public*), or of public health or morals."⁸²

In enacting and enforcing Article 80, the Vietnamese Government created a legal structure which purports to protect national security by preventing espionage. In reality, Article 80 imposes a severe limitation on citizens' rights to freedom of opinion and expression. If an individual can be charged with espionage for merely criticizing his own government, the right to freedom of opinion and expression becomes meaningless. Dr. Son's peaceful advocacy for democracy hardly constitutes a threat to national security.

⁷⁷ See Son AI 2003, *supra* note 8

⁷⁸ See H.R. Con. Res. 320, 109th Cong. (2006) (enacted)

⁷⁹ ICCPR, *supra* note 64, at art. 19 (1)-(2).

⁸⁰ *Id.*

⁸¹ See, e.g., *Robert Faurisson v. France*, Opinion No. 550/1993, at ¶ 9.4.

⁸² ICCPR, *supra*, note 64, at art. 19 (3)(a)-(b).

According to the Human Rights Committee, laws such as Article 80 are valid only if they address a legitimate end with a means necessary to achieve that end.⁸³ As a preliminary matter, the Government's claimed end is not legitimate. While the claimed end — protecting national unity or national security — appears legitimate on its face, it is defined too vaguely for practical application. Because of this overbreadth, Article 80 is subject to manipulation for political reasons. The vagueness of this provision enables the Government arbitrarily to take action against those deemed to be political risks based on their exercise of their rights to freedom of opinion and expression.

In this specific case, the Government alleges that Dr. Son jeopardized national security, but such a claim lacks detail or specificity, and is wholly unsupported by the facts. The indictment makes no mention of involvement of a foreign government, nor does it mention “state secrets” passed to a foreign entity. Instead, the indictment focuses on Dr. Son's “translat[ing] materials and documents with content against the party and State.”⁸⁴ The article to which the indictment likely refers — “What is Democracy” — contains material found in most U.S. high school textbooks. Moreover, it remains unclear how translating and distributing this article constitutes a seditious act or could give rise to violence.⁸⁵ Even a cursory review of the article highlights the absurdity of the Government's claim. Given the article's generic content, it is not surprising that the Government's allegation of espionage and national security breach lacks any specificity.

Even assuming the Government's claimed end in the enactment of Article 80 were legitimate, the resulting restrictions on freedom of expression and opinion are not “necessary” to achieve this end. If the Government is to legitimately restrict speech, it must distinguish between the peaceful expression of opinion and the use of violence.⁸⁶ Article 80 does not make such a distinction. In the report on its 1995 mission to Vietnam, the Working Group observed that “the characterization of offences as crimes against national security . . . draw no distinction on the grounds of the use or non-use of violence or of incitement or non-incitement to violence. The Working Group notes that the present wording of [such offenses] is 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.”⁸⁷ Dr. Son has never used violence to express his opinions or advocated the use of

⁸³ See, e.g., Faurisson, *supra* note 81.

⁸⁴ See Son AI 2003, *supra* note 8.

⁸⁵ The indictment makes no reference to threats of violence or acts of sedition. Rather, it criminalizes the mere distribution of the article, “What is Democracy?”

⁸⁶ See, e.g., *Phuntsok Wangdu v. China*, Opinion No. 14/2000, at ¶ 9.4.

⁸⁷ Working Group on Arbitrary Detention: Visit to Vietnam, 18 January 1995, E/CN.4/1995/31/Add.4, at ¶ 58. While the Working Group's discussion focused on Article 73, the same analysis is applicable to other Articles in the same Chapter and elsewhere in the Vietnamese Penal Code, including in particular the similarly vague Article 80 at issue in this matter. See *Tran Van Luong*, Opinion No. 13/1999 (“Article 73 of the Penal Code, which is part of Vietnam's national security legislation, draws no distinction as to the use or other of violence or incitement to violence. Moreover, the wording of the article is so imprecise that it could result in penalties being imposed . . . on persons who have merely exercised their legitimate right to freedom of opinion or expression . . .”); see also *Do Trung Hieu and Tran Ngoc Nghiem*, Opinion No. 3/1996 (finding that Article 205 of Vietnamese Penal Code, which

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violence. In fact, Dr. Son disseminated an article that advocates creating a system of freedom to curb violence. Dr. Son is precisely the type of individual about whom the Working Group has previously expressed concern.

Dr. Son's detention should be viewed in the context of the Government of Vietnam's actions over the past five years, during which the Government detained and convicted numerous dissidents who were openly critical of Vietnamese governmental policy.⁸⁸ One case in particular – Dr. Nguyen Dan Que – mirrors that of Dr. Son.⁸⁹ Dr. Que was detained on March 17, 2003, for disseminating statements challenging the Government of Vietnam for restricting his and other Vietnamese citizens' right to freedom of information.⁹⁰ Dr. Que was convicted under Article 80 and sentenced to 30 years imprisonment for his nonviolent advocacy of political openness in Vietnam. In 2005, the Working Group on Arbitrary Detention concluded that Dr. Que was the victim of arbitrary detention. To the extent Dr. Son was convicted for committing acts that were virtually identical to those of Dr. Que, Dr. Son falls within the definition of an arbitrarily detained person.⁹¹

The Government Has Violated Dr. Son's Right to Freedom of Assembly and Freedom to Receive and Impart Information

As discussed above, Article 69 of the Vietnamese Constitution provides that all citizens "shall enjoy . . . the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law."⁹² Article 21 of the ICCPR similarly provides that the right of peaceful assembly shall be recognized, while Article 22 states that everyone shall have the right to freedom of association with others.⁹³ Finally, Article 19 of the ICCPR guarantees the right to

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punishes any person who abuses democratic freedoms to jeopardize the interests of the state and social organizations, defective and inconsistent with Article 19 of the ICCPR based on being "vague and imprecise"); *Ngoc An Phan*, Opinion No. 7/1998 (similar discussion of Article 81 of Penal Code on attempts to undermine national unity); *Thich Quang Do*, Opinion No. 11/2001 (same).

⁸⁸ See Testimony of Pham Ngoc Lam, U.S. House of Representatives, October 1, 2003, *available at* http://www.house.gov/lofgren/iss_humanrights_viettest5.shtml. Among others, Mr. Lam describes the detention of Le Chi Quang, a 32-year old dissident convicted of "conducting propaganda against the State of Vietnam" for writing articles about political prisoners. Similarly, he describes the conviction of Nguyen Khac Toan, 47, a Hanoi businessman sentenced to twelve-years imprisonment on December 2002, under charges of "espionage" for printing petitions protesting Vietnam's land reclamation policies.

⁸⁹ See *In the Matter of Nguyen Dan Que*, Opinion. No. 19/2004. See also Cindy Sui, "Asian Governments Among the Worst Enemies of Internet Freedom," *Agence France Presse*, 2 May 2006; Ellen Nakashima, "Free Speech Issues Still Problematic for Vietnam," *Washington Post Foreign Service*, 29 September, 2005

⁹⁰ Dr. Que was arrested after he emailed documents to a relative in the U.S. which called for human rights and political reform in Vietnam. See *In the Matter of Dr. Nguyen Dan Que*, *supra* note 89.

⁹¹ See *In the Matter of Dr. Nguyen Dan Que*, *supra* note 89.

⁹² Constitution of the Socialist Republic of Vietnam, at Article 69.

⁹³ ICCPR, *supra* note 64, at art. 21 and 22.

“receive and impart information and ideas through any media and regardless of frontiers.”⁹⁴ The Vietnamese Government violated these fundamental rights by detaining Dr. Son for associating with fellow dissidents.

The indictment describes how Dr. Son exchanged “13 emails” with Nguyen Gia Kieng, the head of Thong Luan, and “transmitted documents and materials contrary to the State.”⁹⁶ On its face, the Government convicted Dr. Son for those activities explicitly protected by the UDHR and ICCPR – associating with a nonviolent group. For example, the indictment accuses Dr. Son of the following activities:

- “Pham Hong Son took the initiative to communicate with Nguyen Gia Kieng via electronic mailboxes.”⁹⁷
- In emails sent to Son, Nguyen Gia Kieng accepted Pham Hong Son as an official member of a reactionary organization named “Tap Hop Dan Chu Da Nguyen” (“Rally for Democracy and Pluralism”).⁹⁸
- “Son had contacts with some other political opportunists...and these people had provided him with their materials and writings, with content distorting the orientations and policies of the Party, and denigrating the regime.”⁹⁹

Dr. Son was indicted for having contact with colleagues, sending emails, and for associating with Thong Luan. When Dr. Son “contacted” colleagues and associated with a nonviolent human rights group, he was acting legally. The Government’s prosecution for these activities violates Dr. Son’s fundamental rights.

⁹⁴ *Id.* at Article 19.

⁹⁶ See Son AI 2003, *supra* note 8. “Besides Nguyen Gia Kieng, Pham Hong Son, via electronic mail, had also contacted with some other people from abroad, including Tran Nam, Nguyen Phu Long, Bui Dinh Thang, Tran Tu Son (from the United States), Nguyen Kha Pham Thanh Chuong, Hoang The Chuong from Australia. Son regularly emailed them to report on situations of hostile elements from inside the country, translated materials and documents with content against the Party and the State, and transmitted those documents and materials to the above-mentioned people in supporting them to launch campaigns to falsely accuse our State of violating human rights.”

⁹⁷ See Son AI 2003, *supra* note 8.

⁹⁸ *Id.*

⁹⁹ *Id.*

The Government has Violated Dr. Son's right to Take Part in the Conduct of Public Affairs

Article 25 of the ICCPR provides that “[e]very citizen shall have the right and the opportunity . . . to take part in the conduct of public affairs.” To “take part in public affairs” includes the right to express one’s views nonviolently about the government, to debate issues pertaining to a country’s leadership, and to communicate nonviolently with leaders. In a system where one does not have the freedom to express views unencumbered, publishing an article is all the more critical a means of taking part in public affairs. In this case, Dr. Son engaged in all of these activities by providing public information on democracy and by sending articles to the Vietnamese leadership. The Government’s detention based on exercise of this right contravenes Article 25 of the ICCPR.

Based on the foregoing, the Government’s interference with Dr. Son’s right to freedom of expression and opinion, as well as his right to assemble, and to take part in the conduct of public affairs, contravenes the Vietnamese Constitution, Vietnamese Penal Code, and Vietnam’s obligations pursuant to Article 19 of the ICCPR and Article 19 of the UDHR. Therefore his detention is arbitrary.

CATEGORY III

1. The Government’s Detention of Dr. Son is Arbitrary Because Dr. Son has been Denied the Right to a Prompt Hearing, the Right to Access to Counsel, the Right to be Informed of the Charges Against Him, and the Right to a Fair Trial in Accordance with International Norms as Set Forth in the ICCPR, UDHR, and the Body of Principles

As explained in the preceding sections, the Government of Vietnam’s detention of Dr. Son is arbitrary because it denies him the right to exercise his fundamental freedoms of opinion and expression. The Government exacerbated these violations by failing to provide Dr. Son with a prompt hearing, access to counsel, information about the charges against him, release pending trial, and a fair trial. Once convicted, the Government of Vietnam also violated Mr. Son’s right to be free from cruel and unusual punishment.

a. By Refusing to Provide Dr. Son with a Prompt Public Hearing, the Government of Vietnam Failed to Observe Article 9 of the ICCPR, Article 10 of the UDHR, and Principle 11 of the Body of Principles

The Government of Vietnam’s unlawful detention of Dr. Son commenced within days of his initial arrest. Article 9(3) of the ICCPR mandates that a person held on criminal charges be “brought promptly before a judicial officer who rules on whether the detention will continue.”¹⁰⁰ Article 10 of the UDHR similarly provides that “[e]veryone is entitled in full equality to a fair and public hearing . . . in the determination of his rights and obligations and of any criminal

¹⁰⁰ ICCPR, *supra* note 64, at art. 14(1).

charge against him.”¹⁰¹ Furthermore, Principle 11 of the Body of Principles states that “[a] person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.”¹⁰² Finally, under Article 14(3)(a) of the ICCPR, an individual is entitled “[t]o be informed promptly and in detail...of the nature and the cause of the charge against him.”¹⁰³ To comply with Article 14(3)(a), an individual must be provided with this information “as soon as the charge is first made by competent authority.”¹⁰⁴ The Committee has explained that the right to be informed arises “when in the course of an investigation a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him as such.”¹⁰⁵

According to all available information,¹⁰⁶ neither Dr. Son nor his wife received an arrest order. Dr. Son was never brought before a judicial authority for a determination of the “lawfulness” of his detention, and the Government issued its official indictment thirteen months after Dr. Son’s detention.¹⁰⁷ During this time, the Government held Dr. Son *incommunicado*, refusing to allow him contact with his wife or a lawyer of his choosing.¹⁰⁸ In applying Article 9(3) of the ICCPR, the Human Rights Committee interprets “promptly” as no longer than “a few days.”¹⁰⁹ More specifically, judicial review should be provided “somewhere between seventy-three hours . . . and five days.”¹¹⁰ Because Dr. Son was detained for months without being brought before a judicial officer for determination of the validity of the criminal charges against him, his detention is arbitrary.

b. Dr. Son’s Trial Failed to Meet Internationally Recognized Standards and Procedures as well as Those Guaranteed by Vietnamese Law

(i) Dr. Son was Denied the Right to a Public Trial

Article 11(1) of the ICCPR provides that everyone charged with a penal offence has the right to a fair and public trial at which he has had all the guarantees necessary for his defense.¹¹¹

¹⁰¹ UDHR, *supra* note 64, at art. 10.

¹⁰² Body of Principles, *supra* note 67, at Principle 11.

¹⁰³ ICCPR, *supra* note 64, at art. 14(3)(a).

¹⁰⁴ ICCPR, *supra* note 64, Gen. Comment 13, at ¶ 8.

¹⁰⁵ *Id.*

¹⁰⁶ Because Dr. Son is being held *incommunicado*, the Government’s progress in handling his case cannot be accurately ascertained.

¹⁰⁷ See Son AI 2003, *supra* note 8. The Indictment is dated April 10, 2003. According to the indictment, Dr. Son was detained in March, 2002 – thirteen months prior to the official publication of charges.

¹⁰⁸ See “Cyber Dissident – Dr. Pham Hong Son,” Amnesty International, June 1, 2005, AI Index: ASA 41/018/2005, available at <http://web.amnesty.org/library/Index/ENGASA410182005?open&of=ENG-VNM>

¹⁰⁹ ICCPR, *supra* note 64, at art. 9(3).

¹¹⁰ See *id.* (comparing *Van Der Houwen v. The Netherlands* (583/94), where a delay of seventy-three hours did not violate Article 9(3), with *Jijon v. Ecuador* (277/88), where a delay of five days constituted a violation of Article 9(3)).

¹¹¹ Article 11(1), UCCPR.

The Vietnamese Constitution also recognizes the right to a public trial. Article 131 of the Constitution states, in relevant part, that “[t]he People’s Court shall try their hearings in public except in cases determined by law.”¹¹² In this case, Dr. Son’s trial lasted little more than one-half of a day and was conducted in total secrecy.¹¹³ No journalists or independent observers were permitted to witness the trial, and the trial excluded foreign diplomats who had sent formal requests to attend ahead of time.¹¹⁴ Dr. Son’s wife was the only witness called by the prosecution and she was only allowed to answer “yes” or “no” in reply to two questions.¹¹⁵ Dr. Son’s wife was then asked to leave the courtroom immediately. Such a proceeding is completely incompatible with the accused’s rights to a “fair and public trial” as provided by Article 10 of the Universal Declaration and Article 14(1) of the Covenant.¹¹⁶

While the right to a public trial may be limited in certain circumstances, the Government did not close the trial to safeguard a legitimate end. The subject matter did not implicate issues offensive to morals or public order, nor were state secrets or other sensitive national security information likely to be compromised.¹¹⁷ Quite the contrary, the Government’s closure of the trial was an attempt to avoid public condemnation and scrutiny of its prosecution and imprisonment of Dr. Son, an internationally known figure.

(ii) Dr. Son’s Right to Counsel and to Prepare a Defense Has Been Violated.

The Government detained Dr. Son *incommunicado* after his arrest. The Government refused Dr. Son communication with legal counsel until one week before trial.¹¹⁸ As such, the government’s actions violate Article 10 of the Universal Declaration, Article 14(3) of the Covenant, and Principles 18(1) (right to consult with counsel), 18(2) (right to be allowed time to consult with counsel), and 18(3) (right to communicate with counsel confidentially of the Body of Principles. The right to counsel of one’s choosing is also reflected in Articles 34 to 37 of the Criminal Procedure Code of the Socialist Republic of Vietnam.¹¹⁹ Moreover, the fact that the

¹¹² Constitution of the Socialist Republic of Vietnam, at Article 131.

¹¹³ Son AI 2003, *supra* note 8.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ In addition, the Working Group has condemned such “faceless” courts with minimal defense guarantees in the context of Peru, stating “[s]uch trials...constitute such a serious violation of the rules of due process as to confer on the deprivation of liberty an arbitrary character.” *Antero v. Peru*, E/CN.4/2000/4/Add.1, Opinion No. 22/1998, Adopted 3 December 1998, at ¶6(c).

¹¹⁷ The Government may exclude the press or public from a trial “for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interest of justice.” ICCPR, *supra* note 64, at Art. 14(1).

¹¹⁸ Son AI 2003, *supra* note 64.

¹¹⁹ Article 34 of the Criminal Procedure Code of the Socialist Republic of Vietnam provides that “the accused is entitled...to defend himself or ask others to defense him.” Article 35 stipulates who can qualify to be a defender. Article 36 puts forth the rights and obligations of the defender. Article 37 provides that “the defender will be selected by the accused, the defendant or their lawful representative.”

Government has held Dr. Son *incommunicado* is further evidence of a violation of Article 14(3)(b) because it obviates his ability to communicate with counsel.¹²⁰

Son's wife hired two lawyers on behalf of Dr. Son, but Dr. Son was unable to meet with counsel until only one week before trial. During his appeal, Dr. Son refused the defense of his court-appointed lawyer. The court, however, proceeded with the lawyer anyway.

Interference with the right to counsel is consistent with Vietnam's past practice with respect to trials of this nature. The Human Rights Committee has noted that the Government does not respect detainees' rights to legal counsel.¹²¹ The Working Group has previously held that the right to engage a lawyer of one's choosing is essential, and if violated, casts doubt on the fairness of the entire trial.¹²² The Working Group has strongly condemned proceedings of this nature on numerous occasions.¹²³ By failing to provide Dr. Son with access to counsel, by conducting the trial in under one day, and by denying Dr. Son a public trial, the Government violated Dr. Son's right to a fair trial.

(iii) Dr. Son was Denied an Independent and Impartial Tribunal

The right to be judged by an independent and impartial tribunal is one of the most fundamental of rights. It is specifically enshrined in Article 10 of the Universal Declaration and further described in Article 14 of the ICCPR, which provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."¹²⁴ There is no evidence that Dr. Son's half-day trial met this standard.

Generally, the Human Rights Committee has expressed deep apprehension about the quality and fairness of the Vietnamese judicial system.¹²⁵ For example, the Committee noted that the judiciary is susceptible to political pressure and the "Supreme People's Court is not independent of Government influence."¹²⁶ Furthermore, judges lack job security and are subject to discipline for "errors in judicial decision."¹²⁷ These findings were echoed by the U.S. Department of State, which concluded that judges in Vietnam are selected "at least in part, for their political reliability."¹²⁸ The State Department further found that in high-profile cases, the

¹²⁰ See *Drescher Caldas v. Uruguay*, Opinion No. 43/79 (finding that *incommunicado* detention of forty days breached Article 14(3)(b)). Dr. Son's wife confirmed that from March 27, 2002 until June 18, 2003, nobody from Dr. Son's family was allowed to see him, despite numerous requests for visits. See attached affidavit.

¹²¹ See Concluding Observations of the Human Rights Committee: Viet Nam, CCPR/CO/75/VNM, 26 July 2002, at ¶ 13 (hereinafter Concluding Observations).

¹²² See *Makhbuba Kasymova*, Op. No. 32/2000, at ¶ 10 (Government of Uzbekistan failed to provide notice of the trial. As a result, Ms. Kasymova did not engage a lawyer or otherwise prepare a defense.).

¹²³ See, e.g., *James Mawsdley v. Myanmar*, Op. No. 24/2000 at ¶ 13.

¹²⁴ ICCPR, *supra* note 64, at art. 14(3)(e).

¹²⁵ See Concluding Observations, *supra* note 121.

¹²⁶ *Id.* at ¶ 9.

¹²⁷ *Id.* at ¶ 10.

¹²⁸ U.S. Dep't of State, 2003 Country Reports on Human Rights Practices, *supra* note 11.

Government's desired outcome is made clear to judges in advance.¹²⁹ The facts in Dr. Son's case offer no evidence to suggest that Dr. Son's trial was any different. Dr. Son was a high profile dissident, and his case was highly publicized within Vietnam and internationally.¹³⁰ Also, at the time of Dr. Son's arrest and conviction, the Vietnamese Government increasingly sought to crack down on "cyber-dissidents."¹³¹ That Dr. Son's trial lasted less than a day further bolsters questions regarding the fairness of the Vietnamese judicial system. In light of these circumstances, it is unlikely that Dr. Son enjoyed an independent and impartial trial, as required by law.

c. The Government's Treatment of Dr. Son in Prison Violates Basic Standards of International Law

(i) The Government has Denied Dr. Son Adequate Medical Care

The Government of Vietnam's continued denial of medical care violates Articles 24 and 25 of the Body of Principles. Principle 24 provides that medical care and treatment shall be provided whenever necessary for a detained individual. Principle 25 states that a detained person shall, subject only to reasonable conditions to ensure security and good order in the place of imprisonment, have the right to petition a judicial or other authority for a second medical examination or opinion. Dr. Son has a tumor in his nostrils and has been coughing up blood for the past year.¹³² Dr. Son also has a hernia that hinders walking, and he must use a cord attached to his groin to prevent further rupture.¹³³ Dr. Son's wife reported recently that Dr. Pham Hong Son was weak and shaking and that he had been kept in solitary confinement for extended periods.

Despite these grave conditions, Dr. Son has been denied adequate medical treatment as well as the right to receive a second opinion. According to reports, there is a medical unit in the prison where Dr. Son is detained, but the facilities are not sufficient to treat Dr. Son's grave illnesses. Dr. Son requested that prison authorities send him to Hanoi for medical treatment, but authorities have heretofore refused.

(ii) The Government has Violated Dr. Son's Right to a Climate-Controlled Cell

The *Standard Minimum Rules for the Treatment of Prisoners* require that in all places where prisoners are required to live or work, "the windows shall be so constructed that they can

¹²⁹ *Id.*

¹³⁰ See, e.g., Ben Rowse, "Human Rights Groups Blast Vietnam over Jailed Dissidents," *supra* note 60; "Press Watchdog Group Concerned Over Vietnam's Curbs of Media Access," *AP Worldwide*, 3 July 2002.

¹³¹ See, e.g., "Vietnam's Cyber Dissidents," *New York Times*, 7 July 2003. See also *In the Matter of Dan Nguyen Que*, *supra* note 89.

¹³² Wife's affidavit. See also *Reporters Without Borders*, "Government Urged to Pardon Three Cyber-Dissidents," August 3, 2005, available at http://www.rsf.org/article.php3?id_article=14826t.

¹³³ See Human Rights Watch Report, Vietnam, *supra* note 2

allow the entrance of fresh air.”¹³⁴ According to his wife, Dr. Son has been confined to a windowless cell since August 2003.¹³⁵ The cell is very hot during the summer – temperatures apparently can rise to 40 degrees Celsius – and freezing during the winter. During the summer, there is no fan, and Dr. Son has to splash water on the wall to keep the temperature down. Last summer, Dr. Son hung a piece of cloth on the ceiling to shield himself from the heat, but a guard required him to take it down. Due to extreme changes in temperature, Dr. Son’s health has deteriorated, and he is coughing up blood frequently.

(iii) Dr. Son is the Victim of Cruel and Degrading Treatment

Article 7 of the ICCPR and Article 5 of the UDHR provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹³⁶ Although the UDHR and the ICCPR do not define “cruel treatment”, other international conventions, such as the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, define such treatment in the following terms:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.¹³⁷

Denial of medical attention arguably constitutes cruel and unusual treatment when a state deliberately withholds healthcare in order to punish a prisoner or increase suffering. Dr. Son’s treatment, when viewed collectively, amounts to cruel and degrading treatment. Dr. Son is quite ill, but the Government continues to detain Dr. Son in a poorly ventilated, low-heat cell and deny him access to medical treatment. To the extent that the government denies adequate critical medical care while incarcerating Dr. Son in unlawful, brutal conditions, the Government is treating Dr. Son in a cruel and degrading manner.

¹³⁴ See Standard Minimum Rules for the Treatment of Prisoners, Principle 11.

¹³⁵ Committee to Protect Journalists, “Imprisoned Journalist Pham Hong Son Requires Medical Attention,” September 15, 2004, available at <http://www.fva.org/2004/Sep/story03.htm>.

¹³⁶ Article 7 of the ICCPR similarly safeguards the right to not be subjected to cruel and unusual punishment.

¹³⁷ Convention Against Torture, and other Cruel, Inhuman, or Degrading Treatment or Punishment, Article 1(1). Though Vietnam is not a signatory to the Convention, parts of the Convention have been accepted as Customary International Law. See *Filartiga v. Pena-Irala*, 630 F.2d 876, 882 (2d Cir. 1980) (observing that the prohibition against torture “has become part of customary international law, as evidenced and defined by the Universal Declaration of Human Rights, General Assembly Resolution 217 (III)(A) (Dec. 10, 1948) which states, in the plainest of terms, “no one shall be subjected to torture.”)

Conclusion

For the reasons stated herein, Dr. Son's detention and arrest violate guarantees found in both Vietnamese and international law. His case qualifies for Category II and Category III consideration by the Working Group. Dr. Son should be immediately released from detention.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN

Dr. Son appealed his conviction in June 2003 and received a reduced sentence of five years, with three years of house arrest. Foreign diplomats were barred from attending the closed proceedings, and the appeal lasted no more than a few hours.¹³⁸ Dr. Son was also not allowed to choose his own counsel. Absent a transcript from the appeal, we are not aware on what grounds the Vietnamese government upheld Dr. Son's conviction, though news articles indicate that the appeal was denied based on Article 80.¹³⁹

In response to a U.S. House of Representatives resolution condemning Dr. Son's conviction, the Vietnamese Government reiterated that Dr. Son had violated Vietnamese laws. As demonstrated above, we believe Dr. Son violated no law and is a prisoner of conscience as a result of his nonviolent advocacy of democracy.¹⁴⁰

VI. FULL NAME AND ADDRESS OF THE PERSON SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

Yoonah Lee and Daniel Silverberg
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Bethesda, Maryland 20824-0155
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danielsilverberg@yahoo.com
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¹³⁸ See e.g., *Cyber Dissident Gets Five Year Sentence*, *Canada Newswire*, 27 August, 2003.

¹³⁹ "Vietnamese Supreme Court Reduces Dissident's Jail Time," *BBC Worldwide Monitoring*, 27 August, 2003 ("The decision was based on Clause 2 of Article 80 and Articles 38, 92, and 41 of the Criminal Code.").

¹⁴⁰ "Vietnam Ministry Rejects Foreign Calls for Release of Political Prisoners," *Vietnam News Agency*, 12 April 2006.

Supreme People's Procuracy
No : 06/ KSDT-AN

Socialist Republic of Viet Nam
Independence-Freedom- Happiness

Hanoi 10th April, 2003

Indictment

Chair of the Supreme People's Procuracy

- In accordance to Articles 141, 142 of the Criminal Prosecution Code;
- In accordance to the Criminal Prosecution Decision number 06/KTVA on April 2, 2002 of the Public Security Ministry, Security Investigation Bureau;
- In accordance to Prosecution Decision 34/KTBC on April 2, 2002, of the Public Security Ministry, Security Investigation Bureau involving *Pham Hong Son for the offence of spying.*

On the basis of investigation findings, the following has been established :

As per the confirmation report provided by the information management agency. On March 27, 2002, the Security Investigation Bureau of the Ministry of Public Security took the urgent decision to arrest Pham Hong Son, an employee of the Tradewind ASIA pharmaceutical company. Upon searching Son`s residence, the Security Investigation Bureau of the Ministry of Public Security further uncovered and seized many documents slandering the Party and the Government, which Son had collected and stored. Moreover, one computer was confiscated which contained a hard drive that Son had used to communicate with overseas reactionary elements. On April 2, 2002, the Security Investigation Bureau of the Ministry of Public Security decided to undertake legal proceedings to prosecute defendant Pham Hong Son following Article 80 of the Criminal Code for the acts of collecting and distributing documents abroad for the purpose of opposing the Government of the Socialist Republic of Vietnam.

The investigation and the documents uncovered showed that: from July 2000, after reading a number of articles by political opportunist Tran Khue, Pham Hong Son took the initiative to telephone and establish ties with Tran Khue and through this relationship, Son also had the opportunity to come into contact with a number of other political opportunists such as Hoang Minh Chinh, Le Chi Quang, Nguyen Dac Kinh ... and was provided by these elements with their documents and writings whose content slandered the orientations and policies of the Party, and slandered the regime. From then on, Son willingly supported the view of the mentioned political opportunists and became a follower of the action plan to take advantage of freedom and democracy to advocate pluralism and a multiparty

system in order to oppose the Government of the Socialist Republic of Vietnam (written records 72, 73, 74, 75, 76, 77, 78).

Through his reading of the book «Repenting Fatherland» by Nguyen Gia Kieng, leader of the Thong Luan group in France, a reactionary organization working against the Government of Vietnam, Pham Hong Son had taken the initiative to communicate over electronic mail with Nguyen Gia Kieng. Based on the documents obtained, between December 2001 and January 2002, Son and Nguyen Gia Kieng exchanged email messages 13 times (written records 81, 82, 1211).

By means of electronic mail sent to Son, Nguyen Gia Kieng accepted Pham Hong Son as official member of the reactionary organization «Rally for Democracy and Pluralism». Son was praised as «a model of leadership for the country» (written records 1227, 1228). Nguyen Gia Kieng also discussed with Son that the way to change the nature of the current regime was to remove the restrictions imposed by the Party leadership and Government, and to unify and organize the forces of democracy and pluralism. Son was instructed to set up an organization called « Rally for Pluralistic Democracy,» comprised of approximately one thousand people of which 80% had to be from inside the country. Kieng further instructed Son on the elements to recruit and on the principle to be cautious in his activities but that he should take chances in trusting other people in order to expand the group, and to avoid elements already under surveillance (by the authorities).

Nguyen Gia Kieng requested that Son report on the situation of democracy in Vietnam, on the means required, on plans to divide up the tasks inside and outside the country, and to provide Kieng with email addresses of young people so he could send documents directly to them. Over email to Kieng, Pham Hong Son provided his biography, information on his relatives and disclosed his leanings. Moreover, Son indicated that his objective for action was to unify the forces from inside and outside the country to conduct propaganda and educate the masses, especially the young generations to develop a pro-democracy movement in Vietnam. To accomplish this task, Son suggested that a communication centre be set up, or an electronic newspaper and at the same time, he asked Kieng for financial support and access to international media, along with documents that would form the basis to educate the masses on politics, the economy, and society. Pham Hong Son went on to carry out the tasks requested by Nguyen Gia Kieng (written records 166, 167, 168, 1222, 1223, 1224, 1225, 1227, 1228, 1234, 1235, 1236, 1238, 1239, 1240, 1241, 1242).

Other than Nguyen Gia Kieng, Pham Hong Son also entertained ties with a number of overseas elements, over electronic mail, such as : Tran Nam, Nguyen Phu Long, Bui Dinh Thang, Tran Tu Son (in the U.S.A.), Nguyen Kha Pham Thanh Chuong, Hoang The Chuong in Australia. Over email, Son regularly reported on the situation of the dissident elements in the country, translated and

sent anti-Party and anti-government documents to the above elements to open a campaign accusing our Government of human rights violations (written records 503, 504, 505, 506, 549, 550, 551, 552, 553, 554, 577, 578, 579, 580, 581, 582, 583, 584, 585, 663).

The above overseas elements instructed Son on how to move about, to engage in activities, to use special fonts to exchange email without being detected by the authorities. Son also received money from the above elements and distributed money to the following individuals : Le Chi Quang 100 USD, Nguyen Vu Binh 1 million Dongs. Son himself received 150 USD to mobilize and support the families of elements already under arrest and to cover for his activity expenses. Other than receiving money, Son further wrote a document entitled «Proposal to set up a voluntary fund for democracy in Vietnam» which aimed to gather funds from various sources to purchase documents, update information, publish documents and cover telephone and internet expenses (written records 166, 167, 168).

Throughout the investigation, Son denied having any ties with those elements with whom he had exchanged email, stated that the documents on his hard drive came from hackers, and that he had received no money from overseas elements (written records 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 114, 115, 116, 117, 118, 129, 130, 131, 132). However, statements by Pham Hong Son`s wife Vu Thu Ha indicated that Son`s home internet service had been used by him and only Son knew his own email access code. Also, Ha had noticed Son being involved in «activities» and had advised him to stop, but he did not listen (written records 135, 136, 137, 138, 139). Mrs Nguyen Thi Kim Chung, Le Chi Quang`s mother also stated to have received money transferred by Son and she has voluntarily returned 100 USD to the investigating authorities (written records 142, 143, 144, 146, 147). Nguyen Vu Binh has also disclosed to have received 1 millions Dongs from Son to support Binh`s activities (written records 148, 149, 150, 151).

Findings confirmed Son`s internet activities as registered at the post office corresponded with the documents seized at Son`s residence.

CONCLUSION

With the documents and evidence in this file, there are sufficient grounds to conclude that :

From July 2000 to March 2002, Pham Hong Son entertained ties with a number of overseas reactionary elements through electronic mail. Son received money and guidance from these reactionary elements in exile abroad to gather documents with anti-Party and anti-government contents, gathered information which he then distributed to the above elements so they could accuse the Government of human rights abuses. Under the guidance of Nguyen Gia Kieng,

Pham Hong Son actively worked to organize and expand pro-pluralism and pro-democracy forces in Vietnam, and provided email addresses to Kieng so the latter could send documents into the country.

The above acts by Pham Hong Son fell under the spying offense of Point c, Section 1, Article 80 of the Socialist Republic of Vietnam`s Criminal Code.

Elements linked to Son have been prosecuted and dealt with in other trials.

Article 80; Charge of Spying

1. Whoever has engaged in one or several of the following acts shall be punished by a 12 to 20 year sentence, a life sentence or a death sentence.
 - a) Activities of spying, sabotaging or establishing an infrastructure to spy and to sabotage against the Socialist Republic of Vietnam;
 - b) Set up an infrastructure to spy and sabotage under the guidance of other countries; engage in gathering intelligence, identification, providing shelter, providing directions, or in other activities to help individuals from abroad to spy and conduct sabotage;
 - c) Make available or gather to make available state secrets to other countries; gather and make available news and other documents to enable other countries to work against the Socialist Republic of Vietnam.

DEFENDANT`S BIOGRAPHY

Family name and first name : *Pham Hong Son*

Born in : 1968 Location : Nam Dinh

Originally from : Nam Dinh city, province of Nam Dinh

Profession : Employee of Tradewind ASIA pharmaceuticals

Education : Hanoi Medical University

Nationality : Vietnamese Ethnicity : Kinh Religion : None

Permanent Residence Registration :

P303E2 Bach Khoa Collective, Hai Ba Trung, Hanoi

Residence : 72B Thuy Khue, Tay Ho, Hanoi

Son of : Mr. Pham Van Than, 77 years old, and Mrs. Vu Thi Mui, 76 years old

Currently residing at 155 Hoang Van Thu, Nam Dinh city, Nam Dinh prov.

Wife : Vu Thu Ha, born in 1971

Currently residing at 72B Thuy Khue, Tay Ho, Hanoi

Has 2 children : Pham Vu Anh Quan, born in 1997,
and Pham Vu Duy Tan, born in 1999.

Previous Criminal Record : none

Defendant is currently in temporary detention at B14 detention camp, Public Security Ministry.

For the above reasons :

DECREE

- 1) Prosecute before the City of Hanoi's People's Court to try defendant Pham Hong Son for the offence of spying as per Point c, Section 1, Article 80 as presented above.
- 2) Authorize the City of Hanoi's People's Procuracy to carry out the prosecution before the Court.

Attached to the indictment is the complete file comprised of 5 sections, starting from number 01 to number 5.

On behalf of the Chair of
Supreme People's Procuracy
Prosecutor Nguyen Manh Hien
Signature and Stamp

Receivers :

- People's Procuracy of Hanoi
- The Security Investigation Bureau - Ministry of Public Security
- People's Court, City of Hanoi
- Defendant Son
- Office record, 2 copies

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What Is Democracy?

(Posted September 1998)

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What Is Democracy?

The First Democrats



DEFINING DEMOCRACY

Government of the People

Democracy may be a word familiar to most, but it is a concept still misunderstood and misused in a time when totalitarian regimes and military dictatorships alike have attempted to claim popular support by pinning democratic labels upon themselves. Yet the power of the democratic idea has also evoked some of history's most profound and moving expressions of human will and intellect: from Pericles in ancient Athens to Vaclav Havel in the modern Czech Republic, from Thomas Jefferson's Declaration of Independence in 1776 to Andrei Sakharov's last speeches in 1989.

In the dictionary definition, democracy "is government by the people in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system." In the phrase of Abraham Lincoln, democracy is a government "of the people, by the people, and for the people."

Freedom and democracy are often used interchangeably, but the two are not synonymous. Democracy is indeed a set of ideas and principles about freedom, but it also consists of a set of practices and procedures that have been molded through a long, often tortuous history. In short, democracy is the institutionalization of freedom. For this reason, it is possible to identify the time-tested fundamentals of constitutional government, human rights, and equality before the law that any society must possess to be properly called democratic.

Democracies fall into two basic categories, direct and representative. In a direct democracy, all citizens, without the intermediary of elected or appointed officials, can participate in making public decisions. Such a system is clearly only practical with relatively small numbers of people--in a community organization or tribal council, for example, or the local unit of a labor union, where members can meet in a single room to discuss issues and arrive at decisions by consensus or majority vote. Ancient Athens, the world's first democracy, managed to practice direct democracy with an assembly that may have numbered as many as 5,000 to 6,000 persons--perhaps the maximum number that can physically gather in one place and practice direct democracy.

Modern society, with its size and complexity, offers few opportunities for direct democracy. Even in the northeastern United States, where the New England town meeting is a hallowed tradition, most communities have

grown too large for all the residents to gather in a single location and vote directly on issues that affect their lives.

Today, the most common form of democracy, whether for a town of 50,000 or nations of 50 million, is representative democracy, in which citizens elect officials to make political decisions, formulate laws, and administer programs for the public good. In the name of the people, such officials can deliberate on complex public issues in a thoughtful and systematic manner that requires an investment of time and energy that is often impractical for the vast majority of private citizens.

How such officials are elected can vary enormously. On the national level, for example, legislators can be chosen from districts that each elect a single representative. Alternatively, under a system of proportional representation, each political party is represented in the legislature according to its percentage of the total vote nationwide. Provincial and local elections can mirror these national models, or choose their representatives more informally through group consensus instead of elections. Whatever the method used, public officials in a representative democracy hold office in the name of the people and remain accountable to the people for their actions.

Majority Rule and Minority Rights

All democracies are systems in which citizens freely make political decisions by majority rule. But rule by the majority is not necessarily democratic: No one, for example, would call a system fair or just that permitted 51 percent of the population to oppress the remaining 49 percent in the name of the majority. In a democratic society, majority rule must be coupled with guarantees of individual human rights that, in turn, serve to protect the rights of minorities--whether ethnic, religious, or political, or simply the losers in the debate over a piece of controversial legislation. The rights of minorities do not depend upon the goodwill of the majority and cannot be eliminated by majority vote. The rights of minorities are protected because democratic laws and institutions protect the rights of all citizens.

Diane Ravitch, scholar, author, and a former assistant U.S. secretary of education, wrote in a paper for an educational seminar in Poland: "When a representative democracy operates in accordance with a constitution that limits the powers of the government and guarantees fundamental rights to all citizens, this form of government is a constitutional democracy. In such a society, the majority rules, and the rights of minorities are protected by law and through the institutionalization of law."

These elements define the fundamental elements of all modern democracies, no matter how varied in history, culture, and economy. Despite their enormous differences as nations and societies, the essential elements of constitutional government--majority rule coupled with individual and minority rights, and the rule of law--can be found in Canada and Costa Rica, France and Botswana, Japan and India.

Democratic Society

Democracy is more than a set of constitutional rules and procedures that determine how a government functions. In a democracy, government is only one element coexisting in a social fabric of many and varied institutions, political parties, organizations, and associations. This diversity is called pluralism, and it assumes that the many organized groups and institutions in a democratic society do not depend upon government for their existence, legitimacy, or authority.

Thousands of private organizations operate in a democratic society, some local, some national. Many of them serve a mediating role between individuals and the complex social and governmental institutions of which they are a part, filling roles not given to the government and offering individuals opportunities to exercise their rights and responsibilities as citizens of a democracy.

These groups represent the interests of their members in a variety of ways--by supporting candidates for public office, debating issues, and trying to influence policy decisions. Through such groups, individuals have an avenue for meaningful participation both in government and in their own communities. The examples are many and varied: charitable organizations and churches, environmental and neighborhood groups, business associations and labor unions.

In an authoritarian society, virtually all such organizations would be controlled, licensed, watched, or otherwise accountable to the government. In a democracy, the powers of the government are, by law, clearly defined and sharply limited. As a result, private organizations are free of government control; on the contrary, many of them lobby the government and seek to hold it accountable for its actions. Other groups, concerned with the arts, the practice of religious faith, scholarly research, or other interests, may choose to have little or no contact with the government at all.

In this busy private realm of democratic society, citizens can explore the possibilities of freedom and the responsibilities of self-government--unpressured by the potentially heavy hand of the state.

THE PILLARS OF DEMOCRACY

- Sovereignty of the people.
- Government based upon consent of the governed.
- Majority rule.
- Minority rights.
- Guarantee of basic human rights.
- Free and fair elections.
- Equality before the law.
- Due process of law.
- Constitutional limits on government.
- Social, economic, and political pluralism.
- Values of tolerance, pragmatism, cooperation, and compromise.

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