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Via Fax, E-Mail and Post

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Working Group on Arbitrary Detention
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Please find the enclosed "Response" to the letter submitted by the Ngo Quang Xuan on behalf of the Government of Vietnam in the matter of "Father Thadeus Nguyen Van Ly v. Government of the Socialist Republic of Vietnam." Freedom Now had originally submitted a Petition on behalf of Father Ly's sister, Quy Nguyen, on 25 September 2003. As you will note, some references in our response, refer to that Petition. As such, I have enclosed another copy of this document, with its Exhibits, for convenience.

We would also note that certain other members of Father Ly's family have recently been detained, based in part on their efforts in peacefully seek the release of Father Ly from detention. Freedom Now, in coordination with other international and local Vietnamese organizations, is continuing its effort to gather facts in this case in order to submit a Petition to the Working Group on their behalf.

We are very appreciative of the opportunity to respond in this case. We are hopeful that the Working Group will issue a final "Opinion" in accordance with Resolution 1997/50, as affirmed by Resolutions 2000/36 and 2003/31, confirming the arbitrary detention of Father Ly. Please contact me at the above email address with any questions.

Best regards,

Glenn Kaminsky

Enclosures (Response, Petition)

**Response to the Government of Vietnam
in the Matter of Father Thadeus Nguyen Van Ly**

In its Reply to the Petition filed on behalf of Father Thadeus Nguyen Van Ly (“Father Ly”), the Permanent Representative of the Government of Vietnam (“Government”) broadly denies that anyone in Vietnam, including Father Ly, is being detained for “exercising his legal rights and freedoms.”¹ As described in the Petition submitted by Freedom Now on behalf of Father Ly (“Freedom Now Petition”), the facts of Father Ly’s case, as well as numerous other similar recent cases in Vietnam, including some previously adjudicated by the Working Group, provide ample basis to challenge this claim.² In addition, the general statements of the Ambassador on behalf of the Government, as well as those specifically with respect to Father Ly, are disputed by the 2002 Concluding Observations of the Human Rights Committee regarding Vietnam’s compliance with its responsibilities in implementation of the ICCPR,³ the 1998 Report of the Special Rapporteur on Religious Intolerance, Professor Abdelfattah Amor,⁴ and numerous reports of Amnesty International,⁵ Human Rights Watch,⁶ and other reputable independent observers.

I. The Government’s Treatment Of Father Ly Is Inconsistent With Its International Legal Obligations

The Government has consistently and repeatedly denied Father Ly the protections afforded to him by the Universal Declaration of Human Rights (“UDHR”) and the International Covenant on Civil and Political Rights (“ICCPR”), to which Vietnam is a signatory.⁷ Specifically, the Government’s detention of Father Ly deprived him of his

¹ 1 September 2003, Letter from Ngo Quang Zuan, Ambassador, Permanent Representative, to Mr. Louis Joinet, Chairman/Rapporteur, Working Group on Arbitrary Detention.

² See, e.g., 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 punishes any person who abuses democratic freedoms to jeopardize the interests of the state and social organizations, is 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).

³ Concluding Observations of the Human Rights Committee: Viet Nam, CCPR/CO/75/VNM, 26 July 2002 [hereinafter “Concluding Observations”].

⁴ “Civil and Political Rights, Including the Question of Religious Intolerance,” Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights Resolution 1998/18, Addendum, Visit to Viet Nam, E/CN.4/1999/58/Add.2, 29 Dec. 1998 [hereinafter “Amor Report”].

⁵ See, e.g., “Father Thadeus Nguyen Van Ly – Prisoner of Conscience”, Amnesty International, 5 July 2001, AI INDEX: ASA 41/005/2001, available at <http://web.amnesty.org/library/index/engasa410052001>; “Socialist Republic Of Viet Nam: A human rights review based on the International Covenant on Civil and Political Rights,” Amnesty International, 1 October 2002, AI INDEX: ASA 41/007/2002.

⁶ See, e.g., “Vietnam, The Silencing of Dissent”, Report of Human Rights Watch, May 2000, Vol. 12, No. 1, available at www.hrw.org/reports/2000/vietnam.

⁷ Vietnam ratified the ICCPR on 24 December 1982.

liberty as a result of his exercise of his fundamental rights to freedom of expression, guaranteed by Article 19 of the UDHR and ICCPR, and religion, guaranteed by Article 18 of the UDHR and ICCPR. Furthermore, the Government did not observe international norms relating to a fair trial, embodied 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, when it arbitrarily deprived Father Ly of his liberty. The Government's Reply offered no legally sufficient justification for its actions with respect to Father Ly.

II. Father Ly Has Been Subject To Government Harassment For Over Twenty Years

In its Reply, the Government accuses Father Ly of being a "recidivist," relying in part on their previous arrest and conviction of Father Ly in 1983 for "undermining the people unity bloc and provoking serious public disorder." As noted in the Freedom Now Petition, the circumstances of Father Ly's 1983 arrest provide necessary perspective to these allegations and are in fact another example of the Government denial of legal rights and freedoms.

In August 1982, despite having been summarily denied permission by the Government, Father Ly organized and attempted a peaceful religious pilgrimage to La Vang, a site holy to the Vietnamese Catholics dating back to 1800. Soon after, in November of 1982, he was arraigned and charged with leading the "illegal" pilgrimage. The government continued its campaign against Father Ly by expelling him from his Doc So parish and ordering him to return to his birth place in the Quang Tri province. Father Ly indicated that he would leave only upon the instructions of his superior, Archbishop Phillippe Nguyen Kim Dien. This incident culminated when the police surrounded his parish and forcibly removed him. At the time, Father Ly continued to instruct the citizens to peacefully demand religious freedom.

As a result of these actions, as noted in the Government's Reply, he was sentenced to 10 years imprisonment. Father Ly remained in prison for more than nine years. Upon his release in July 1992, Father Ly was banned from conducting religious activities and was placed under governmental surveillance. Father Ly has continued to peacefully express his views calling for full realization of human rights in Vietnam. He has been repeatedly subject to harassment by Vietnamese authorities, and has been forcibly relocated on numerous occasions.

III. Father Ly Was Subjected To A Flawed Legal Proceeding And Convicted On The Basis Of Overly-Broad National Security Legislation Subject To Government Manipulation

In its Reply, the Government indicates that Father Ly's 17 May 2001 arrest was for "crimes of undermining the national unity policy" and failing to abide by "relevant administrative decisions of competent State agencies." Furthermore, the Government suggests that a "thorough investigation process" was conducted and that a "public trial"

was held on this case. Finally, the Government asserts that “there were two procurators defending” Father Ly, and provided their names.

The facts and circumstances surrounding Father Ly’s 2001 arrest and subsequent conviction are inconsistent with the assertions of the Government in this matter. As described in the Freedom Now Petition in this matter, Father Ly’s conviction was a thinly veiled attempt to make use of overly-broad domestic security provisions of the Vietnamese Penal Code in order to silence an internationally-recognized religious leader and advocate for increased tolerance by the Government of minority religious groups. The actions of the Government were in direct response to Father Ly’s presentation of testimony to the United States Commission of International Religious Freedom (“CIRF”), in which he urged the United States to reject a recent bilateral trade agreement based on the ongoing human rights abuses in Vietnam.⁸

Prior to his arrest, and in violation of the rights guaranteed to him by the ICCPR and UDHR, Father Ly was placed under house arrest by virtue of an administrative Decree issued by the Government.⁹ In this Decree, Father Ly was summarily accused of violating Vietnamese law and threatening national security. No hearing was held and no specific provisions of the Vietnamese Penal Code were provided as basis for the detention. During the detention period, as has been the case for almost 20 years now, Father Ly and his parishioners were repeatedly harassed by the Vietnamese authorities. On 9 May 2001, the Government issued a second decree, Decree 961/QD-UB, suspending Father Ly’s ability to “carry on any religious responsibility and functions” during the term of his detention.¹⁰

When Father Ly was formally arrested in May of 2001, he was charged under Article 269 of the Penal Code for violating the detention order that he had been placed under. He was also charged under Article 87 of the Penal Code with undermining national unity. Article 87 is found in Chapter 1 of the Vietnamese Penal Code, which lists 28 “vaguely-worded offenses” including treason, espionage, and propaganda against socialism.¹¹

Father Ly’s arrest and conviction on the basis of his peaceful advocacy efforts and his submission of testimony to the CIRF regarding Vietnam’s oppression of the religious freedom of Roman Catholics and those of other faiths is contrary to the Vietnamese Constitution and the guarantees of freedom of expression and religion provided for in the ICCPR and UDHR. In presenting such testimony and otherwise practicing his religion in a peaceful manner, Father Ly posed no threat to the national security of Vietnam and he acted fully within his internationally-recognized rights.

⁸ See Exhibit F to Freedom Now Petition for the full version of Father Ly’s testimony.

⁹ See Decree 401/QD-UB, Exhibit B to Freedom Now Petition.

¹⁰ See Decree 961/QD-UB, Exhibit C of Freedom Now Petition.

¹¹ See Amor Report, *supra* Note 4, at ¶18.

IV. Father Ly's Peaceful Activities Are Precisely The Type Intended To Be Protected By International Legal Regimes To Which Vietnam Is A Signatory

As stated in the Freedom Now Petition, Father Ly's activities fall within the realm of protected speech identified by the Human Rights Commission and the Working Group that may not be legally curtailed unless a law addresses a legitimate governmental end and the means chosen are necessary for its achievement.¹² If the Government is to legitimately restrict speech, it must distinguish between the peaceful expression of opinion and the use of violence.¹³ None of the Vietnamese laws or other authorities relied upon by the Government in this matter make such a distinction. Father Ly has never advocated nor used violence as a means of expressing his opinions, political or otherwise. 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."¹⁴

Furthermore, any limitation of the exercise of religious beliefs must be narrowly tailored to accomplish a legitimate governmental end.¹⁵ The Reply provided by the Government in the matter fails to meet this burden, in that it does not provide any compelling justification for Father Ly's arrest and conviction. The Government has enacted a series of vague and over-reaching laws that can be arbitrarily used in any circumstance where the Government decides to curtail religious activities. Repeatedly over the last several years, the Working Group has recognized arbitrary deprivations of liberty based on the actions of the Government in suppressing religious activity under the pretext of laws designed to protect the national security of the State. Members of various religious faiths who have peacefully advocated for the free practice of their beliefs, without undue involvement of Vietnamese Government authorities, have been detained, placed under house arrest, and formally imprisoned on the basis of Article 87 of the Penal Code, described above, and other similar Articles related to national security and "national unity."¹⁶

The Government has tried increasingly more restrictive means for curtailing Father Ly's religious expression, including forced relocation, prohibiting him from leaving the country to testify to the CIRF, and house arrest. Suppression of religious

¹² See, e.g., Nqalula Mpandanjila v. Zaire, Opinion No. 138/1983, at 121.

¹³ See, e.g., Phuntsok Wangdu v. China, Opinion No. 14/2000, at ¶ 9.4.

¹⁴ 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 87, at issue in this matter; see also, decisions of the Working Group cited at Note 2, *supra*.

¹⁵ See ICCPR, at Art. 18(3).

¹⁶ See, e.g., Thich Quang Do, Opinion No. 11/2001, *supra* note 2.

activity of this nature, particularly in a manner as draconian as Decree 961/QD-UB, cannot be justified. The peaceful actions of religious figures such as Father Ly pose no legitimate threat to the national security of the State.

V. The Secret Trial Held On Father Ly's Case Failed To Meet The Internationally Recognized Standards

In its Reply, the Government indicates that “a public trial on [Father Ly's] case was held.” However, as noted in the Freedom Now Petition, the trial of Father Ly, held on 19 October 2001, was, at the most, one day long.¹⁷ Additionally, and contrary to the assertion of the Government in their Reply, the trial was not open to the public or media. The Working Group has condemned such “faceless” courts, holding that “such trials . . . constitute such a serious violation of the rules of due process as to confer on the deprivation of liberty an arbitrary character.”¹⁸ 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.¹⁹ Quite to the contrary, the Government's closure of the trial was an attempt to avoid public condemnation and scrutiny of its prosecution and imprisonment of Father Ly, an internationally-known figure.

The Government also indicates that there were “two procurators defending for [Father] Ly” and provides their names. Freedom Now has been unable to confirm from any source, including his closest relatives, that Father Ly was represented by counsel as alleged by the Government in their Reply. It continues to be our belief that Father Ly's conviction, even if he was minimally represented by Government-appointed counsel, denied Father Ly any real protections associated with legal representation and the opportunity to present a defense.

This type of treatment 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 the right of detainees to legal counsel.²⁰ 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.²¹ The Government's entire denial of the right to

¹⁷ Sources differ regarding the precise length of the trial, but it was certainly not longer than one day. Some sources assert that the trial lasted “two hours” or a “half-day.”

¹⁸ See, e.g., Antero Oliva v. Peru, Opinion No. 22/1998, at ¶ 6 (c).

¹⁹ 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 interests of justice.” ICCPR, at Art. 14 (1).

²⁰ See Concluding Observations, *supra* note 3, at ¶ 13.

²¹ See Makhbuba Kasymova, Opinion 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).

counsel is an even more grave offense.²² Proceedings of this nature have been strongly condemned by the Working Group in the past on numerous occasions.²³

While the Government claims in its Reply that the trial was conducted “in strict accordance with the law,” the Human Rights Committee has also expressed deep apprehension about the quality and fairness of the judicial system in its consideration of the Government’s periodic report regarding the issue of fundamental rights in Vietnam.²⁴ 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.”²⁵ Furthermore, judges lack job security and are subject to discipline for “errors in judicial decision.”²⁶ The Government’s Reply in this matter offers no evidence on which basis to believe that Father Ly’s trial was any different.

VI. Conclusion

The Government’s Reply supports further the belief, recognized in the past by the Working Group and the Human Rights Committee, that the Government has not complied appropriately with its responsibilities as a signatory to the ICCPR, namely providing its citizens with the protection to which they are entitled on the basis of international law. Father Ly was yet another case of these protections being denied.

For the reasons stated herein and in the Freedom Now Petition, Father Ly’s detention and arrest violate guarantees found in both Vietnamese and international law. Father Ly should be immediately released from detention. Pending this result, Father Ly’s conviction should be expunged and a new trial should be conducted in a manner that conforms to the internationally-recognized rights and fundamental freedoms discussed above and embodied in the ICCPR, UDHR, and Body of Principles.

²² See Youssef Al-Rai and Ashaher Al-Rai v. Palestine, Opinion No. 14/1999, at ¶ 9.

²³ See James Mawdsley v. Myanmar, Opinion No. 24/2000, at ¶ 13.

²⁴ See Concluding Observations, *supra* note 3.

²⁵ *Id.*, at ¶ 9.

²⁶ *Id.*, at ¶ 10.