



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14–23 November 2012****No. 42/2012 (Viet Nam)****Communication addressed to the Government on 2 August 2012****Concerning Nguyen Hoang Quoc Hung, Do Thi Minh Hanh and Doan Huy Chuong****The Government replied to the communication on 28 September 2012.****The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

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

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Nguyen Hoang Quoc Hung, born in 1981, a citizen of Viet Nam, is a computer technician and member of the Victims of Injustice Movement. Do Thi Minh Hanh, born in 1985, is a citizen of Viet Nam and member of the Victims of Injustice Movement. Doan Huy Chuong, born in 1985, a citizen of Viet Nam, is a founding member of the United Workers-Farmers Organization. All three petitioners are worker-rights activists.

4. The petitioners were arrested by the Security Forces of Viet Nam in February 2010. They were not presented with an arrest warrant.

5. Mr. Nguyen was placed in Trai A1 prison and later transferred to Trai giam Phuoc Hoa, Huyen Tan Phuc and Tinh Tien Giang. Ms. Do was taken to Trai giam Thu Duc Z30D and later transferred to Doi 20, Trai 6, Xa Tan Duc, Huyen Ham Tan and Tinh Binh Thuan. Mr. Duan was taken to Trai A1 and then transferred to Trai giam Phuoc Hoa, Huyen Tan Phuc and Tinh Tien Giang.

6. The petitioners were subsequently charged with disrupting security under article 89 of the Penal Code of Viet Nam. They are said to have received money from Tran Ngoc Thanh, chairman of the Warsaw-based Committee to Protect Vietnamese Workers, to print and distribute anti-Government leaflets and foment labour strikes. In particular, Mr. Nguyen, Ms. Do and Mr. Doan are accused of distributing leaflets and helping organize a strike of 10,000 workers at the My Phong shoe factory.

7. The Vietnamese authorities further accused the petitioners of being reactionary and trying to overthrow the Government. They are said to be members of a United States-based political party which advocates democracy. The source reports that the authorities have claimed that the “offender[s] crimes are very serious, operated and organized with the intention to destroy the country’s security, and need punishing”.

8. The petitioners were kept in pretrial detention for eight months in alleged contravention of article 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights. During the period in pretrial detention, they were not allowed any visitations or legal assistance.

9. On 26 October 2010, in a one-day trial, Mr. Nguyen, Ms. Do and Mr. Doan were convicted of “disrupting security and order against the people’s administration” under article 89 of the Penal Code of Viet Nam. Mr. Nguyen was sentenced to nine years’ imprisonment. Ms. Do and Mr. Doan were each sentenced to seven years’ imprisonment. None of the petitioners had defence lawyers present at the trial, nor were they allowed to speak in their defence, in alleged violation of article 10 of the Universal Declaration of Human Rights and article 14, paragraph 3 (b) and (d), of the International Covenant on Civil and Political Rights.

10. According to the source, their sentence was posted on the Internet, by the State-run Cong An Nhan Dan, one day prior to the actual sentencing. In the source’s view, this

highlights the political nature of the trial that lacked independence and impartiality in alleged breach of articles 10 and 11 of the Universal Declaration and article 14, paragraphs 1 and 2, of the International Covenant.

11. The petitioners' families succeeded in hiring defence lawyers. However, as of 17 January 2011, the lawyers had not been granted access to the defendants, despite the fact that the appeal court was to hear the cases on 24 January 2011. On 18 January 2011, the families of the defendants submitted a joint complaint to various authorities, including the Minister of Public Affairs and the People's Procuracy of Tra Vinh province, asking the court to respect the defendants' right to legal representation and to postpone the appeal hearing. The court changed the appeal hearing date to 18 March 2011.

12. On 18 March 2011, the Appeal Court in Tra Vinh province upheld the sentences given in February 2010 to Mr. Nguyen, Ms. Do and Mr. Doan.

13. The source claims that the petitioners were simply trying to assert the rights of Vietnamese workers to peacefully organize, assembly and strike asking for improved pay and working conditions. The source further contests the conformity of the Vietnamese law with international standards, in that it prohibits workers to form independent unions of their own choosing. All unions are required to be registered and affiliated with the Viet Nam General Confederation of Labour, an official labour confederation controlled by the Communist Party. As the Special Rapporteur on the rights to freedom of peaceful assembly and of association noted in his most recent report to the Human Rights Council, "associations should be free to choose their members and whether to be open to any membership. This aspect is particularly relevant for unions or political parties since a direct interference in their membership may jeopardize their independence" (A/HRC/20/27, para. 55).

14. The source points that Mr. Doan had been imprisoned on past occasions, namely in 2006 for 18 months on charges of "abusing democratic freedoms" relating to his activities as the founder of the United Workers-Farmers Organization (Hiep Hoi Doan Ket Cong Nong). The source submits that his ongoing detention is similarly linked to his peaceful exercise of the rights and freedoms guaranteed under international law.

15. It is the source's contention that Mr. Nguyen and Ms. Do were also detained directly as a result of their active participation in the activities of the Victims of Injustice Movement, which helps impoverished workers and landless farmers seek redress from the Government. Mr. Nguyen is also a member of Bloc 8406, an organization calling for democratic reforms in the country.

16. In the light of the foregoing, the source alleges that, by detaining the petitioners on charges directly linked to their peaceful exercise of the rights and freedoms guaranteed under international law, the Vietnamese authorities breached articles 19, 21 and 25 of the International Covenant on Civil and Political Rights and articles 19, 20 and 21 of the Universal Declaration of Human Rights.

17. The source recalls that, in its previous findings, the Working Group found that broad criminal law provisions, which make "taking advantage of democratic freedoms and rights to abuse the interests of the State" are inherently inconsistent with any of the rights and freedoms guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Viet Nam is a party (opinions Nos. 1/2009 and No. 24/2011).¹

¹ Available from www.unwgadatabase.org/un/.

Response from the Government

18. In its response, the Government argues that the allegations came from “unofficial sources and lacks sound evidences”, are “incorrect, biased and misleading” and “carry ill political motivations aimed to defaming the judicial system of Viet Nam”.

19. According to the Government’s response, Viet Nam “has adopted and pursued consistent policy of respect, promotion and protection of human rights and freedoms, including the rights to freedom of association, expression and of opinion, as well as the rights to equal justice access”.

20. The Government reiterates the accusations that the petitioners “were founders and members of the illegal organisation - the “United Workers-Farmers Organisation. They were in collaboration and collusion with hostile forces and exile organizations and groups, both in Viet Nam and abroad, to instigate strikes and riots which caused social instability and public disorder. They prepared, printed and distributed anti-government leaflets with fabricated information on laws and policies of Viet Nam, aiming at inciting workers’ illegal strikes, vandalism and destruction of properties of My Phong Shoes Factory in Tra Vinh Province, with possible consequences leading to insecurity and social disorder.” The Government stressed that the petitioners’ activities “violated the current laws of Viet Nam and must therefore be met with justice to ensure the respect of the law and guarantee the rights of other people, common interests of the community, as well as peace, security and development of the society”.

21. As to the criminal proceedings against the petitioners, the Government merely states that “the proceedings against them was initiated under the accusation of disrupting social security” and the length of sentences imposed on them for “opposing the people’s administration by inciting, involving and gathering people to disrupt security, according to the Article 89 of the 2009 Penal Code”.

22. The Government asserts that “the custody, arrest, investigation, detention and proceedings were carried out in strict compliance with sequences and procedures stipulated in the current laws of Viet Nam and in conformity to international norms and practices on human rights”.

Further comments from the source

23. In its further comments, the source emphasised that “the whole dreadful story” began with the publication of a leaflet about worker’s right. This leaflet contains the reason why the strike started in the first place.

24. Mr. Doan, Ms. Doh and Mr. Nguyen were kept in detention for too long between their arrest and their trial, contrary to article 176 of the Vietnamese Criminal Procedure Code. The code provides that the maximum period during which a person may be detained before trial should be of 45 days for minor offences and 90 days for serious offences. In the present case, the workers were detained for approximately 300 days, which exceeds by far the aforementioned delays. This obvious violation of the Vietnamese Penal Code and international agreements on detention is admitted by the Government of Viet Nam in the last three paragraphs of its letter.

25. The source also enclosed information which describes the harsh and inhuman conditions in which the workers are held. In particular, according to the source, workers are forced to sleep next to prisoners infected with contagious diseases, which represents a serious threat to their health. One of the workers became deaf in one of her ears because she has been beaten repeatedly around the head by prison guards.

26. Finally, the source underlines the relevant dispositions of international law and standards that are directly violated by the above mentioned acts by the Government of Viet

Nam, namely articles 7, 9, 14, 19, and 22 of the International Covenant on Civil and Political Rights as well as article 8 of the International Covenant on Economic, Social and Cultural Rights.

Discussion

27. The Working Group recalls that the right to freedom of association and the right to take part in the conduct of public affairs are protected under articles 22 and 25 of the International Covenant on Civil and Political Rights, respectively. As the Government has not provided information on any violence involved in the petitioners' activities, the Working Group holds that their detention, based on the provisions contained in article 89 of the Vietnamese Penal Code, falls short of their rights and freedoms recognized under the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

28. Thus, the deprivation of liberty of the petitioners solely for their exercise of the right to freedom of association and the right to take part in the conduct of public affairs as provided for in 19, 21 and 25 of the International Covenant on Civil and Political Rights and articles 19, 20 and 21 of the Universal Declaration of Human Rights falls within category II of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

29. Regarding the alleged violation of national legislation referred to by the Government, namely article 89 of the Vietnamese Penal Code, the Working Group in its previous opinions No. 46/2011 (Viet Nam), No. 1/2009 (Viet Nam), and No. 1/2003 (Viet Nam),² reiterated that, in conformity with its mandate, it is required to ensure that national law is consistent with the relevant international provisions set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments to which the State concerned has acceded. Consequently, even if the detention is in conformity with national legislation, the Working Group must ensure that it is also consistent with the relevant provisions of international law.

30. In its response, the Government does not address the specific allegations of grave violations of the rights of the petitioners to effective defence as provided for in article 14, paragraph 3 (b) and (d), of the International Covenant on Civil and Political Rights and article 10 of the Universal Declaration of Human Rights. Further, the Government does not contest the allegation that petitioners were deprived of the right to communicate with counsel of their own choosing at the pretrial stage and the assigned counsel did not have access to the prosecution material to adequately prepare the defence. The Government also does not contest the allegation that the petitioners did not have defence lawyers present at the trial and were not allowed to speak in their defence.

31. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial, as provided for in article 14 of the International Covenant on Civil and Political Rights and article 10 of the Universal Declaration of Human Rights, is of such gravity as to give the petitioners' deprivation of liberty an arbitrary character.

Disposition

32. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

² Ibid.

The deprivation of liberty of Mr. Nguyen, Ms. Do and Mr. Doan is arbitrary, being in contravention of articles 9, 10, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 22 and 25 of the International Covenant on Civil and Political Rights, to which Viet Nam is a party, and falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

33. Consequent upon the opinion rendered, the Working Group requests the Government of Viet Nam to take the necessary steps to remedy the situation of Mr. Nguyen, Ms. Do and Mr. Doan, and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

34. The Working Group is of the opinion that, taking into account all the circumstances of the case, the adequate remedy would be to release the above-mentioned individuals and to accord them an enforceable right to compensation, in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

35. In accordance with article 33 (a) of its methods of work, the Working Group considers it appropriate to refer the allegations of torture or cruel, inhuman treatment to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 14 November 2012]
