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Palais des Nations  
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15 January 2004

Dear Mr. Kaminsky,

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

In accordance with the Working Group's methods of work, I am sending to you, attached herewith, the text of Opinion N° 20/2003 (Viet Nam) regarding a case submitted by you (Father Thadeus Nguyen Van Ly). This Opinion will be reproduced in the Working Group's report to the Commission on Human Rights at its sixty-first session.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Miguel de la Lema".

Miguel de la Lema  
Secretary

Working Group on Arbitrary Detention

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**OPINION No 20/2003 (VIET NAM)**

Communication addressed to the Government on 28 May 2002.

Concerning: Thadeus Nguyen Van Ly, a Catholic priest

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

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified by resolution 1997/50 and extended by resolution 2003/31. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having submitted information concerning the case.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
  - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group welcomes the co-operation of the Government. It has transmitted the reply provided by the Government to the source, which provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. According to the information received, Thadeus Nguyen Van Ly a Vietnamese citizen, Catholic priest, professor at the Christian Seminary of Hue and former secretary of the Bishop of Hue, was arrested on 17 May 2001 in central Thua Thien-Hue Province, by police officers under order of the provincial People's Executive Committee, for his alleged "failure to abide by the decisions on his probation issued by authorized State agencies". It was alleged that at the moment of his arrest the police made an excessive use of the force, beating some parishioners. Police officers were armed with electric whips, rifles and pistols. Thadeus Nguyen Van Ly had just published on the Internet a testimony on the situation of human

rights and religious freedom in Viet Nam. It was said that this document was widely available internationally but unlikely to be read by the majority of Vietnamese people.

6. Thadeus Nguyen Van Ly had been sentenced in December 1983 to 10 years' imprisonment for "opposing the revolution and destroying the people's unity". He had previously spent one year in prison from 1977 to 1978, without charge or trial. He spent nine more years in prison, deportation and forced-labour camps, between May 1983 and July 1992. Released, he was kept under strict police surveillance.

7. Authorities first detained Father Ly in 1977, after he distributed copies of a bishop's letter criticizing arrests of Buddhist monks and alleged religious intolerance in Viet Nam. In November 1994, he published a "ten points statement on the state of the Catholic Church in the Hue Diocese", criticizing the alleged State's appropriation of church property, the interference of the State in Church teaching and the lack of places in seminaries for men to train for the priesthood. In 1999, he organized relief distributions to people who had lost basic necessities in the heavy flooding that affected Vietnam during that year, and established various relief projects after the flooding. According to the source, these activities, financed with aid from abroad, were regarded with suspicion by the authorities.

8. In December 2000, Father Ly became involved in a stand-off with the authorities over the right of villagers to cultivate Church land, which the authorities reportedly wished to confiscate, he then issued several appeals calling for more religious freedom; for the return of Church properties; for the end of the State interference in religious affairs and for the release of all prisoners detained for their religious beliefs.

9. The official media in Viet Nam has on several occasions waged a public denunciation campaign against Thadeus Nguyen Van Ly. On 26 March 2001, an article was published in Quan Doi Nhan Dan, the army newspaper, accusing him of being "a puppet for the reactionary and hostile forces in foreign countries", and asking why, in spite of the surveillance order imposed on him, he continued to display provocative behaviour and spreading words against the party and the State, with the intention to incite and cause rifts among Catholic followers.

10. On 19 October 2001, Father Ly was sentenced to 15 years in prison and five years in probationary detention by a People's Court in Hue in application of articles 87 and 269 of the Penal Code. He was found guilty of undermining the national unity, sabotaging the national solidarity police and refusing to obey his house arrest order. Father Ly was then transferred to Thua Phu Prison at Hue. In November 2001, he was taken to Ba Sao Nam Ha Camp in Phu Ly District, Ha Nam Province, in North Vietnam, a forced-labour camp under the authority of the Ministry of Interior.

11. It was alleged that Father Ly's last trial took only four hours and was held in closed session. He was not allowed to be assisted by a defence lawyer nor allowed to call witnesses in his favour. According to the source, his trial did not conform to international minimum standards for a fair trial.

12. Father Thadeus Nguyen Van Ly has spent much of the last 27 years attempting to exercise peacefully his rights to freedom of expression, freedom of belief and worship. He has never used or advocated violence. He has been detained and sentenced solely for his non-violent religious and political views.

13. In its reply the Government stated that it is totally untrue that Nguyen Van Ly's detention and sentence are a punishment for peacefully exercising his rights and freedoms, that in Vietnam no one shall be detained or punished for exercising his legal rights and freedoms and that only those who are charged with having violated the law, shall be tried in strict compliance with the law.

14. According to the Government, Nguyen Van Ly is a recidivist. In 1983 he was convicted by the provincial People's Court of Binh Tri Thien province to 10 years of imprisonment for having violated the law by committing crimes of undermining the people unity bloc and provoking serious public disorder. On 17 May 2001, Ly was arrested for repeating acts in violation of the law as such. After a thorough investigation process, a public trial on his case was held on 19 October 2001 by the People's Court of Thua Thien – Hue province. The trial was conducted in strict accordance with the law. There were two procurators defending for Ly, whose names are: Hoang Minh Duc and Tran Dinh Chau. The Court convicted Nguyen Van Ly for having committed crimes of undermining the national unity policy (article 87, 1 of the Penal Code of the Socialist Republic of Viet Nam) and rejected to abiding to relevant administrative decisions of competent State agencies (article 269 of the Penal Code of Viet Nam.)

15. Acting in accordance with its methods of work, the Working Group forwarded the information supplied by the Government to the source, so that it could make additional comments, which it has done. The source stated that the Government response failed to supply facts or additional information to support allegations regarding compliance with Vietnamese laws and procedures, and also failed to provide any documentation and information to support their assertions. The source concluded that the Government detained Nguyen Van Ly in connection with the peaceful expression of their beliefs and has failed to afford him the procedural protections guaranteed by domestic law and international treaties.

16. It results that the Government has declared that Thadeus Nguyen Van Ly has been condemned for endangering national unity and disrupting public order and that the national law has been applied accordingly, without giving any specific details on the nature of the charges against him and without invalidating any argument submitted by the source, in which the detention and sentence of Nguyen Van Ly followed his peaceful exercise of religious, trade union and political activities.

17. The Government has not presented convincing arguments to invalidate the allegations from the source who argues that Nguyen Van Ly was sentenced to 13 years of detention because he had published articles critical of the Government and of the Communist Party and had not benefited from the norms of a fair trial.

18. Consequently, the Working Group is led to conclude that Father Nguyen Van Ly was arrested and sentenced to jail for having peacefully exercised his right of freedom of opinion and expression guaranteed in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

19. As the Working Group has indicated in several opinions concerning Viet Nam and in the report following its visit to this country, vague and imprecise charges as those mentioned in articles 87 and 269 of the Penal Code carry the disadvantage not to allow distinction between armed and violent acts that endanger national security and the peaceful exercise of the rights of freedom of opinion and expression. This is why the Group is convinced that Thadeus Nguyen Van Ly has been arrested and detained only for his opinions, in violation of

article 19 of the Universal Declaration of Human Rights and of article 19 of the International Covenant on Civil and Political Rights, to which Viet Nam is a party.

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

The deprivation of liberty of Father Thadeus Nguyen Van Ly is arbitrary, as being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and falls within category II of the applicable categories to the consideration of the cases submitted to the Working Group.

21. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 27 November 2003.