

OPINION No. 14/2010 (SOCIALIST REPUBLIC OF VIETNAM)

Communication addressed to the Government on 29 May 2009.

Concerning Father Thadeus Nguyen Van Ly.

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

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended by Commission's resolution 1997/50. The Human Rights Council assumed the Working Group's mandate by its decision 2006/102, and extended it for a further three-year period by resolution 6/4 of 28 September 2007. According to its Methods of Work, the Working Group forwarded a communication addressed to the Government on 21 January 2010. A reminder was sent on 30 April 2010. The Government has not requested any extension of the time limit.

2. The Working Group regrets that the Government has not replied within the 90-days deadline.

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

I. 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 sentence or despite an amnesty law applicable to him) (category I);

II. 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);

III. 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).

The case summarized concerns Father Thadeus Nguyen Van Ly, and was reported by the source to the Working Group on Arbitrary Detention as follows:

4. Father Thadeus Nguyen Van Ly, born 14 May 1946, is a citizen of Vietnam, and a Roman Catholic priest. He was arrested at his home on 18 February 2007, by police forces of the city of Hue who came to his home for the purpose of what was communicated to him as an "administrative check." They authorities confiscated a

significant number of computers, printers, cell phones, cell phone SIM cards and documents. Father Ly was effectively placed under strict house arrest.

5. On 24 February 2007, upon a decision of the Chairman of the Thua Thien-Hue Provincial People's Committee, he was transferred to the rural town of Ben Cui, Phong Dien District, Thua Thien-Hue Province. The Hue Police concluded that there was evidence of criminal activity and transferred Father Ly's file and material evidence to the Office of Security and Investigation of the Thua Thien-Hue Province Police to investigate and prosecute the case. The authorities also transferred Father Ly to a small church in Ben Cui, approximately 20 km from Hue, where he was held in administrative detention until his trial on 30 March 2007.

6. On 15 March 2007, the President of the People's Procuracy of Thua Thien-Hue Province formally charged and indicted Father Ly with disseminating propaganda against the Government, in particular "[m]aking, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Vietnam," in violation of Article 88, para. 1 c), of the Vietnamese Penal Code.

7. Four other pro-democracy activists who had helped Father Ly prepare and disseminate information about the "Vietnam Progression Party" and "Bloc 8406" were indicted at the same time as Father Ly. However, the conclusions of the Police Investigation referred to Father Ly as the "ringleader," noting that "it is necessary to prosecute the ringleader (Nguyen Van Ly) strictly and clearly in the eyes of the law." They contain only a conclusory statement that Father Ly's actions "have caused serious detrimental effects to the local political and social stability and have caused harm to national security."

8. On March 30, 2007, five weeks after his arrest and a mere two weeks after being formally charged, Father Ly was put on trial in the Thua Thien-Hue Provincial People's Court, which lasted four hours. After twenty minutes of deliberation, Chief Judge Bui Quoc Hiep sentenced Father Ly to prison for eight years pursuant to article 88 of the Vietnamese Penal Code for "carrying out propaganda against the Socialist Republic of Vietnam," followed by five years of house arrest. Article 88, para. 1, of the Penal Code provides:

Those who commit one of the following acts against the Socialist Republic of Vietnam shall be sentenced to between three and twelve years of imprisonment:

- a) Propagating against, distorting and/or defaming the people's administration;
- b) Propagating psychological warfare and spreading fabricated news in order to foment confusion among people;
- c) Making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Vietnam.

9. Father Ly was convicted of the following acts:

a) answering interviews by overseas anticommunist radio stations and newspapers, in which he maligned the Government of Vietnam and distorted the truth about the policies of the CPV and the Government;

b) purchasing equipment and tools to collect, compose, edit, and disseminate propaganda against the Government of Vietnam;

c) collecting, composing, printing, storing, and disseminating materials and articles maligning the leadership and Government of Vietnam, misrepresenting the state of religious freedom in Vietnam, and distorting the policies and laws of the Government, with the intent to undermine the Government of Vietnam;

d) inducing others to join "Bloc 8406," form the "Vietnam Progression Party," and form the "Lac Hong Coalition" in order to amass a political force opposing the Government of Vietnam;

e) inducing others to assist him in collecting, composing, editing, and disseminating propaganda maligning the Government of Vietnam; and

f) encouraging others to boycott the 2007 National Assembly elections of the Government of Vietnam.

10. Father Ly was refused access to counsel, both before and during his trial, and he was precluded from presenting any form of defence. He was not permitted to make any statements in his own defence or examine adverse witnesses. The police led Father Ly into the courtroom in handcuffs and kept him handcuffed throughout the trial. At one point during his trial, Father Ly shouted "Down with the Communist Party of Vietnam!" A police officer immediately turned off Father Ly's microphone, covered his mouth, and hustled him out of the courtroom. Father Ly was removed to a separate room where he listened to the trial over a loudspeaker. Later, he was brought back into the courtroom but he was only permitted to answer "Yes." or "No." to questions. When he shouted "Vietnam practices the law of the jungle," he was once again removed from the courtroom.

11. The authorities allowed a few diplomats and international journalists to observe the trial. However, they were permitted inside the courtroom only during the prosecutor's opening statement and the judge's verdict; for the rest of the trial, they were taken to a separate room to watch the trial via closed-circuit television. Moreover, neither Father Ly's family nor any religious representatives were permitted to be present in the courtroom. When Father Ly's sentence was handed down and announced he was not present in the courtroom.

12. According to the source, since his conviction and sentencing on 30 March 2007, Father Ly has been imprisoned in solitary confinement in a small cell at Ba Sao Prison in Phu Ly District, Ha Nam Province, which is in Northern Vietnam, approximately 600 miles from his home in the Hue province. While he is provided with enough food to survive, he does not have a bed or separate bathroom. He does

not have books, television, or radio, and he has been denied access to a Bible because prison officials fear he would convert other inmates to Christianity.

13. The Government allows, according to the source, Father Ly's family to visit once every two months for between thirty minutes to one hour. It takes his family six days to travel from their home to his prison. During a visit on 14 November 2008, when his relatives gave Father Ly a pamphlet written by the President of the Council of Vietnamese Bishops, the prison guard overseeing the visit took the document and made a copy of it.

14. On 12 July 2009, Father Ly suffered a stroke, possibly due to inadequate medical attention, which left the right side of his body completely paralyzed. On 12 May 2009, Father Ly experienced acute abdominal pain and bleeding. Three days later, Father Ly fell and hit his head on the floor, unable to call out for help. He lay on the floor of his prison cell for a period of time before a guard noticed him and took him to the prison clinic where they gave him some medicine of an unknown kind and sent him back to solitary confinement. On 14 July 2009, Father Ly wrote a letter to his family informing them of his medical emergency, writing with his left hand. The prison officials delivered the letter to his family only on 21 August 2009. In the letter, Father Ly asked his family to send him medication to alleviate his high blood pressure. The source raises grave concerns that he might not receive the level of care his conditions requires.

15. The source, argues that the deprivation of liberty of Father Ly is in violation of international human rights protection and also violates article 69 of the Vietnamese Constitution, which guarantees the right to freedom of opinion and speech and association.

16. The source also argues that article 88 of the Vietnamese Penal Code fails to meet the limitation requirements of the aforementioned articles as being too broad and vague and not distinguishing between armed and violent acts, therefore being subject to manipulation for political reasons.

17. The manner in which his trial was conducted also violates Article 132 of the Vietnamese Constitution, which provides that "the right of the defendant to be defended is guaranteed; ...the defendant can either conduct his own defense or ask someone else to do it."

18. The source reports that Father Ly is a peaceful advocate for democracy and religious freedom. As an adult, Father Ly committed himself to the Roman Catholic faith and became an ordained priest in 1974. In attempting to practice his religion, Father Ly discovered many legal and political barriers to free worship in Vietnam. The Government of Vietnam has repeatedly arrested, harassed, and jailed Father Ly for his advocacy of religious freedom. From 1977 to 1978 he was detained without charge or trial for distributing statements critical of the Government's treatment of Catholics. He subsequently spent nine more years in prison, deportation, and forced-labour camps between May 1983 and July 1992 as punishment for his advocacy on behalf of religious groups. He was imprisoned once again from October 2001 to February 2005 for advocating religious freedom in Vietnam.

19. On 1 February 2005, Father Ly was released from prison and his prison sentence was commuted. However, he was still required to complete his sentence of five years administrative probation at his parish in Hue. In 2006, Father Ly became a founding member and representative of a prodemocracy organization called "Bloc 8406", named after the date (8 April 2006) on which the group released its mission statement. At its inception in April 2006, "Bloc 8406" consisted of 116 Vietnamese citizens who supported a multi-party political system, freedom of religion, freedom of association, and respect for basic human rights in Vietnam. After only one month, the group had grown to 424 citizens. "Bloc 8406" implored people both inside and outside Vietnam for support and assistance in bringing democracy to Vietnam. As an Interim Representative of "Bloc 8406", Father Ly signed his own name to several public documents that the group released. Father Ly also founded and served as editor of two underground publications, "*Tu Do Ngon Luan*" ("Freedom of Expression") and "*Tu Do Dan Chu*" ("Freedom and Democracy"), whose goal was to advocate democracy and change in Vietnam. Furthermore, Father Ly was a founding member of the "Vietnam Progression Party", an alternative, non-communist party that seeks ties with foreign democracy activists and began to operate publicly in Vietnam on 8 September 2006.

20. **The Working Group** wishes to express its regrets over the Government's omission to reply within the 90-days deadline, and to note that the Government did not use the opportunity to request an extension of the time limit under section 16 of the Working Group's Methods of Work. The Working Group stated in its two communications that it would appreciate if the Government could provide information about the current situation of Father Ly and provide clarification about the legal provisions justifying their continued detention.

21. **The Working Group** is in a position to issue an Opinion, on the basis of all the information it has obtained, on the detention of Father Ly, according to paragraph 17 of its Methods of Work.

22. The Working Group recalls that Father Ly has previously been the subject of its Opinion 20/2001 (Vietnam) and of urgent appeals concerning his health and conditions in prison. The Working Group reminds the Government that under the United Nations Standard Minimum Rules for the Treatment of Prisoners, the authorities have a duty to provide the services of a qualified medical officer within the prison facilities; to transfer prisoners and detainees who require specialist treatment to specialized institutions or to civil hospitals; and to provide prisoners and detainees with adequate food of nutritional value adequate for health and strength.

23. In the present case, the Working Group holds that Father Ly was denied a fair trial by being refused access to legal counsel, both before and during his trial, and precluded from presenting any form of defence, which constitutes a clear breach of Viet Nam's international human rights obligations (see Art 14 (3) (d) of the International Covenant on Civil and Political Rights (ICCPR) and Principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In addition, he was not permitted to make any

statements in his own defence or examine adverse witnesses.

24. The Working Group notes that neither Father Ly's family nor any religious representative were permitted to be present in the courtroom. When the sentence was handed down and announced Father Ly was not present in the courtroom.

25. The Working Group wishes also point out that the detention and conviction of Father Ly was in response to the peaceful exercise of his freedom of religion and freedom of expression and political speech. According to the source, he is a peaceful advocate for democracy and religious freedom, which has not been denied by the Government. Given the reasons for his arrest and detention, a particular correct observance of fair trial guarantees he should have during his judicial process was necessary, and even more, attending to the compliance and concordance of the domestic legal system with the international human rights law principles, standards and rules.

26. The Working Group will also point out that the requirement of proportionality on the restrictions of fundamental freedoms gives the States an obligation to provide clear and precise reasons for such restrictions, and to show that due and balanced consideration of the relevant interests took place. I

The Working Group renders the following Opinion:

(a) The detention of Father Thadeus Nguyen Van Ly is arbitrary, as being in violation of articles 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, and articles 14, 18, 19 and 22 of the International Covenant of Civil and Political Rights. The detention falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

(b) The Working Group requests the Government of the Socialist Republic of Viet Nam to take the necessary steps to immediately remedy the situation, which are the immediate release of, and to provide adequate reparation to, Father Thadeus Nguyen Van Ly.

(c) The Working Group wishes to emphasise that the duty to immediately release Father Ly will not allow any further detention for the same reasons, even if that eventual further actions taken against him should satisfy the international human rights obligations of the Socialist Republic of Vietnam.

(d) Furthermore, the duty to provide adequate reparation under article 8 of the Universal Declaration of Human Rights, in relation to article 9 (5) of the International Covenant on Civil and Political Rights, is based on the arbitrary detention that has taken place. Consequently, any subsequent proceedings or findings in this case and concerning this person can not limit the State's responsibility.

Adopted on 3 September 2010.