



FREEDOM NOW

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VIA FAX AND POST

3 June 2004

Ms. Leïla Zerrougui
Chairperson-Rapporteur
Working Group on Arbitrary Detention
Office of the High Commissioner for Human Rights
United Nations, Geneva
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

Dear Ms. Zerrougui:

Please find the enclosed petition to the Working Group on Arbitrary Detention entitled "In the matter of Dr. Nguyen Dan Que, Citizen of the Socialist Republic of Vietnam v. Government of the Socialist Republic of Vietnam." We hereby request that the Working Group examine this petition pursuant to Resolution 1997/50, as affirmed by Resolutions 2000/36 and 2003/31, and under its "Urgent Action" Procedure.

This petition is submitted on behalf of Dr. Quan Nguyen, Dr. Que's brother, who has been seeking the release of Dr. Que since his detention. A consent form signed by Dr. Nguyen is attached to the petition as Appendix A.

We look forward to working with you and the Working Group in attempts to quickly resolve this troubling matter. Thank you for your prompt attention to the attached petition and the accompanying materials.

If you need any further information with respect to this matter, please contact us at jgenser@freedom-now.org or laurenkrandall@yahoo.com.

With warm regards,

Jared Genser

Lauren K. Randall

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PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Ms. Leïla Zerrougui (Algeria), Chairperson-Rapporteur
Mr. Tamás Bán (Hungary), Vice-Chairperson
Ms. Soledad Villagra de Biedermann (Paraguay)
Mr. Seyed Mohammad Hachemi (Iran)
Ms. Manuela Carmena Castrillo (Spain)

**COMMISSION ON HUMAN RIGHTS
ECONOMIC AND SOCIAL COUNCIL**

In the Matter of
Dr. Nguyen Dan Que,
Citizen of Vietnam

v.

Government of the Socialist Republic of Vietnam

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, and 2003/31

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3 June 2004

BASIS FOR “URGENT ACTION” REQUEST

Dr. Nguyen Dan Que, a peaceful advocate for democracy and human rights in Vietnam, was arrested for transmitting a statement over the Internet criticizing the Government of Vietnam (“Government”) for denying citizens their right to freedom of information. It is reported that the Government plans to charge Dr. Que under Article 80 (spying) of the Vietnamese Penal Code.¹

Dr. Que has been detained *incommunicado* since his arrest on 17 March 2003 and is currently being held in Ho Chi Minh City, Vietnam. Dr. Que, who is sixty-two years old, suffers from peptic ulcers, kidney stones, and high blood pressure.² As Dr. Que has been denied contact with his family, they have not been able to provide him with the proper medication to treat his conditions. Due to our lack of access to Dr. Que, whether he has received medical treatment during his detention cannot be determined. Because of Dr. Que’s age and medical conditions, his family is exceedingly worried about his health.

Thus, the Petitioner hereby requests that the Working Group consider this Petition pursuant to the Working Group’s “Urgent Action” procedure. Furthermore, the Petitioner requests that this Petition be considered a formal request for an opinion of the Working Group pursuant to 1997/50, 2000/36, and 2000/31 of the Commission on Human Rights.

MODEL QUESTIONNAIRE³

I. IDENTITY OF THE PERSON ARRESTED OR DETAINED

1. **Family Name:** Nguyen
2. **First Name:** Que
3. **Sex:** Male
4. **Birth date or age (at time of detention):** 61
5. **Nationality/Nationalities:** Citizen of Vietnam

¹ Vietnam: Imprisoned Journalist Offered Exile as Condition for Release, BBC Monitoring Int’l Rep., 17 July 2003.

² Lou Marano, Powell Asked to Push for Viet Dissident, United Press Int’l (D.C.), 30 Sept. 2003.

³ As Dr. Que is being held *incommunicado*, some of the information requested in the Working Group’s model questionnaire could not be obtained 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.

6. **Identity documents (if any):**

The authorities seized all of his personal documents (birth certificate, ID card, diplomas) during his first arrest in 1978. These documents were never returned to Dr. Que.

7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**

Dr. Que is the founder of the Non-Violent Movement for Human Rights and a peaceful advocate for democracy and human rights.

8. **Address of usual residence:**

104/20 Nguyen Trai Street, District 5, Ho Chi Minh City.

II. ARREST

1. **Date of arrest:** 17 March 2003

2. **Place of arrest:**

Dr. Que was arrested outside of his home in Ho Chi Minh City.

3. **Forces who carried out the arrest or are believed to have carried it out:** Ho Chi Minh City Public Security Office

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

Not to our knowledge.

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

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

III. DETENTION

1. **Date of detention:**

Dr. Que has been detained since his arrest on 17 March 2003.

2. **Duration of detention:**

The Government has detained Dr. Que for over one year.

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

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

When Dr. Que was arrested on 17 March 2003, he was detained at a local security station in Ho Chi Minh City. He was transferred to and remains at Municipal Prison, 237 Nguyen Van Cu Street, Room B 34, District 1, Ho Chi Minh City, Socialist Republic of Vietnam

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

Internal Security Office, Ho Chi Minh City.

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

Dr. Que is charged with espionage for issuing a statement criticizing the Government's restrictions on freedom of information. The sentence for this crime ranges from twelve years to the death penalty.

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

Dr. Que has not been tried, but it is reported that Vietnamese authorities plan to prosecute him under Article 80 of the Vietnamese Penal 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. Nguyen Dan Que. The analysis set forth in Part B of this section explains the specific basis upon which Dr. Nguyen Dan Que 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.⁴ In particular, during 2003, the Government prohibited free speech that promoted multiparty democracy or criticized the Government's human rights policies.⁵ In

⁴ U.S. Dep't of State, 2003 Country Reports on Human Rights Practices: Vietnam (2004) [hereinafter 2003 Report].

⁵ Id.

enforcing this ban, the Government arbitrarily decided whether statements constituted permissible private speech on these matters or impermissible public speech.⁶

The Government began a wide-ranging crackdown last year against intellectuals and dissidents who use the Internet to disseminate statements criticizing the government.⁷ The Government owns and oversees Vietnam Data Communications (“VDC”), which is the sole Internet access provider in Vietnam.⁸ VDC was given permission to monitor sites that subscribers visit.⁹ 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.¹⁰ Further, the Government implemented firewalls to block sites containing “politically or culturally inappropriate” materials, including sites maintained by exile groups in other countries.¹¹ The government has tried to require Internet cafe owners to monitor customers to prevent them from visiting sites containing anti-government material.¹²

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.¹³ He was sentenced to four years imprisonment for “disseminating propaganda against the state.”¹⁴ Pham Hong Son was arrested in March 2002 for translating, posting, and subsequently disseminating an article on democracy from the United States (“U.S.”) State Department website to friends and senior Vietnamese officials.¹⁵ He was charged with espionage under Article 80 of the Penal Code.¹⁶

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

⁶ Id.

⁷ Ben Rowse, Vietnamese Cyber-Dissident to Face Trial Next Week, Agence France Presse, 12 June 2003.

⁸ Ben Rowse, Vietnam Attack US Over Internet Rights Accusations, Agence France Presse, 23 Apr. 2003.

⁹ 2003 Report, supra note 4.

¹⁰ Didier Lauras, Vietnam Moves to Counter Internet “Cyber-Dissidents,” Agence France Presse, 24 Mar. 2003.

¹¹ 2003 Report, supra note 4.

¹² Id.

¹³ 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>.

¹⁴ Id.

¹⁵ Editorial: Dissident Sentenced in Vietnam, (Voice of Am. News radio broadcast, 5 Jan. 2004).

¹⁶ Human Rights Watch, Vietnam: U.N. Delegates Should Condemn Internet Arrests, supra note 13.

2. Background Information on Dr. Nguyen Dan Que

Dr. Nguyen Dan Que was born in Hanoi, Vietnam in 1942. He received a medical doctor degree from Saigon Medical School at the age of twenty-four and became a teacher at the University's medical school shortly after graduation.¹⁷ Subsequently, the United Nations awarded Dr. Que with training scholarships to work in Belgium, France, and the United Kingdom in 1968, 1969, and 1972, respectively.¹⁸ He returned to Vietnam in 1974 to serve on the Faculty of Medicine at Saigon (Ho Chi Minh City) University.¹⁹ The following year, Dr. Que became Director of the Medical Department of Cho-Ray Hospital in Ho Chi Minh City.²⁰ He was fired from this position sometime between 1976 and 1978 when he questioned the “[G]overnment’s medical policies for giving party officials priority over the poor.”²¹

The long history of Dr. Que’s arrests for criticizing the Government began in 1978, when he formed the National Front for Progress, which “explicitly embraced nonviolence in its efforts to get the government ‘to cut down military spending, invest in the welfare of the people,’ and hold free and fair elections.”²² In response, the Government arrested Dr. Que on 18 February 1978 for “rebellious against the regime” and forming a “reactionary” organization.²³ Dr. Que was detained without trial until his release in 1988.²⁴

Upon his release from prison, Dr. Que created the Non-Violent Movement for Human Rights on May 11, 1990,²⁵ issuing a “manifesto that appealed for support of his moderate, non-violent struggle to establish human rights for all Vietnamese people.”²⁶ He insisted that the Government respect the human rights of its citizens, establish a multi-party system, and decrease

¹⁷ Memorandum from the Amnesty International Medical Team/Asia Program, to the Amnesty International Health Professional Members (28 Mar. 2003), at <http://web.amnesty.org/library/index/engasa410082003> [hereinafter Amnesty Memo].

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Quan Nguyen, Freedom for Vietnam, Freedom for My Brother, Nat’l. R. Online, 17 Mar. 2004, at <http://www.nationalreview.com>.

²² See id. (noting that the National Front for Progress also published two underground newspapers, which were popular with students and intellectuals).

²³ Amnesty Memo, supra note 17.

²⁴ See id. (indicating that Amnesty International adopted Dr. Que as a prisoner of conscience).

²⁵ The Non-Violent Movement for Human Rights was initially known as the High Tide Humanist Movement.

²⁶ Human Rights Watch, Internet Dissidents, Vietnam, Dr. Nguyen Dan Que, at <http://www.hrw.org/advocacy/internet/dissidents/3.htm>.

the size of the military.²⁷ During this time, Dr. Que also became the first member of Amnesty International in Vietnam.²⁸ Due to his involvement in the Non-Violent Movement for Human Rights, Dr. Que was arrested on 14 June 1990 and sentenced to twenty years in prison for “attempting to overthrow the government.”²⁹

Dr. Que was one of over 5,000 prisoners released under a general amnesty in 1998.³⁰ Even though leaving Vietnam was a condition of Dr. Que’s release and although the U.S. offered to accept him, he decided to stay in Vietnam to continue to press for human rights reform.³¹

After his release, security officials placed Dr. Que under twenty-four-hour surveillance.³² The authorities confiscated his personal papers, including his identity papers, diplomas, and medical license.³³ He was not allowed to leave his home without written permission from security forces, his visitors were forced to undergo police interrogation, and his mail was intercepted.³⁴

Despite constant police surveillance, Dr. Que persisted with his advocacy efforts. He founded a review called “The Future” in September 2000, which was circulated secretly in Vietnam (and abroad).³⁵ When excerpts from the review were discovered on the Internet, Dr. Que’s home was searched and his telephone, fax machine, and Internet were disconnected.³⁶

Because of Dr. Que’s commitment to improving human rights and freedom of expression in Vietnam, he has been given several prominent human rights awards to recognize his commitment to improving human rights and freedom of expression in Vietnam. In 2002, Human Rights Watch selected him for a Hellman-Hammett Grant, which is awarded to journalists “in

²⁷ Id.

²⁸ Vietnam Defends its Human Rights Record, Agence France Press, 2 July 1997.

²⁹ Nguyen Minh, Rights-Vietnam: Hanoi Frees Dissidents but Keeps Mum on Details, Inter Press Service, 15 Oct. 1998.

³⁰ Jonathan Birchall, Hanoi Dissident Likely to Leave for US Today, Financial Times (London), 1 Sept. 1998, at 6.

³¹ Id.; Free Nguyen Dan Que, (Voice of Am. News radio broadcast, 23 May 2003).

³² Erica Tuttle, Albright Asked to Visit Hanoi Dissident, Wash. Times, 4 Sept. 1999, at A2.

³³ E-mail from Nguyen Dan Que, Vietnamese medical doctor, to the Committee on Human Rights, National Academies (22 July 2001), at http://www7.nationalacademies.org/humanrights/Letter_from_Nguyen_Dan_Que.html.

³⁴ Human Rights Watch, Writers from 19 Countries Receive Hellman/Hammett Grant, Africa News, 24 July 2002.

³⁵ Id.

³⁶ Id.

recognition of their courage against ‘political persecution.’”³⁷ He was previously awarded the Raoul Wallenberg Human Rights Award in 1994³⁸ and the Robert F. Kennedy Human Rights Award in 1995, which “honor[s] those who fight for human rights in the face of oppression and injustice.”³⁹ Dr. Que has been nominated for the Nobel Peace Prize on four occasions.⁴⁰

3. Dr. Que’s Arrest and Detention on 17 March 2003

On 13 March 2003, Dr. Que emailed a statement from an Internet cafe criticizing Vietnam’s claims that it respects freedom of expression and declaring his support for the Freedom of Information in Vietnam Act of 2003, a bill introduced in the U.S. Congress.⁴¹ In Dr. Que’s powerful statement, titled “Communiqué on Freedom of Information in Vietnam,” he forcefully argued, “The state hopes to cling to power by brain-washing the Vietnamese people through stringent censorship and through its absolutist control over what information the public can receive.”⁴² The statement was emailed to his brother, Dr. Nguyen Quoc Quan, who lives in the U.S., and to members of the Non-Violent Movement for Human Rights.⁴³

Security officers arrested Dr. Que outside of his home in Ho Chi Minh City on 17 March 2003. According to Vietnam’s official party newspaper, Nhan Dan, Dr. Que was arrested for trying “to transmit documents that contain[ed] information critical of the State of Socialist Republic of Vietnam.”⁴⁴ After arresting Dr. Que, security officials searched his home and seized a computer and a laptop containing his essays.⁴⁵ Nhan Dan asserted that the essays found during this search, which “contained anti-Vietnam information that Que compiled and sent to the ‘High Tide Humanity Movement’ . . . are eviden[ce] that Nguyen Dan Que violated Article 80 of the

³⁷ 10 African Journalists Win 2002 Hellman-Hammett Grants, Panafrican News Agency Daily Newswire, 25 July 2002 (explaining that the grant, which amounted to 175,000 US dollars in 2002, is given annually to writers around the world).

³⁸ See Four Hurt in Jerusalem Shootout, Balt. Sun, 12 Aug. 1994, at 3A (noting that the president of the Congressional Human Rights Foundation, which provides the Raoul Wallenberg Human Rights Award, was denied entry to Vietnam “because he planned to commit ‘a provocative act’ by presenting an award a jailed dissident”).

³⁹ Tim Haggerty, Dalai Lama Addresses Human Rights at Georgetown U., U. Wire (Hoya), 10 Nov. 1998.

⁴⁰ Pamela Constable, For a Faithful Brother, Success in U.S. is Only Bittersweet, Wash. Post, 30 Aug. 1998, at A21.

⁴¹ 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.

⁴² Vietnam: Imprisoned Journalist Offered Exile as Condition for Release, *supra* note 1.

⁴³ Human Rights Watch, *supra* note 26.

⁴⁴ Vietnamese Dissident Arrested for Sending Anti-State Material from Internet Café, BBC Monitoring Asia Pacific—Political, 24 Mar. 2003.

⁴⁵ Vietnam: U.N. Delegates Should Condemn Internet Arrests, *supra* note 13.

Penal Code of the Socialist Republic of Vietnam.”⁴⁶ Under Article 80, Dr. Que could face “twelve years imprisonment to the death penalty if he is found guilty of spying or performing intelligence activities for foreign countries.”⁴⁷

Dr. Que was initially detained at a local security station in Ho Chi Minh City.⁴⁸ After the search of his house, he was moved to a municipal jail on 237 Nguyen Van Cu Street, District 1, Ho Chi Minh City, where he remains to this day.⁴⁹ Dr. Que has been held *incommunicado* since his arrest.⁵⁰ He has been denied access to his family and they have been prohibited from providing him proper medication for his peptic ulcers, kidney stones, and high blood pressure.⁵¹

The Hanoi government has not officially charged Dr. Que and a trial date has not been set.⁵²

B. Analysis

The Government’s detention of Dr. Que constitutes an arbitrary deprivation of liberty, falling within Categories II and III of the classification of cases as defined by the United Nations Working Group on Arbitrary Detention (“Working Group”).⁵³

Dr. Que’s case satisfies the requirements of Category II based on the Government’s arbitrary deprivation of his liberty following his exercise of his fundamental right to freedom of opinion and expression guaranteed by Article 19 of the International Covenant on Civil and

⁴⁶ Vietnam: Imprisoned Journalist Offered Exile as Condition for Release, *supra* note 1.

⁴⁷ Social and Cultural Issues: Internet Human Rights Activist Arrested in Vietnam, Global News Wire – Asia Africa Intelligence Wire, 24 Mar. 2003.

⁴⁸ Letter from Edward M. Kennedy, Senator, United States Senate, to H.E Tran Duc Luong, President, Socialist Republic of Vietnam (24 Mar. 2003) (on file with the Robert F. Kennedy Memorial).

⁴⁹ Id.

⁵⁰ Marano, *supra* note 2.

⁵¹ Id.

⁵² Letter from Todd Howland, Director, Center for Human Rights, Robert F. Kennedy Memorial, to Ambeyi Ligado, Special Rapporteur, Commission on Human Rights and the Promotion and Protection of the Right to Freedom of Opinion and Expression, Office of the High Commissioner for Human Rights, United Nations (15 July 2003) (on file with the Robert F. Kennedy Memorial).

⁵³ “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].

Political Rights (“ICCPR”), to which Vietnam is a signatory,⁵⁴ and embodied in Article 19 of the Universal Declaration of Human Rights (“UDHR”).

This case falls within Category III because the Government did not observe international norms relating to Dr. Que’s rights 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 (“Body of Principles”), when it arbitrarily⁵⁵ deprived Dr. Que of his liberty.

1. The Government of Vietnam has Arbitrarily Detained Dr. Que Based on His Exercise of His Fundamental Right to Freedom of Opinion and Freedom of Expression

The Government’s arrest and detention of Dr. Que pursuant to Article 80 of the Vietnamese Penal Code is arbitrary because it 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, which may be applied by the Government in this case, is incompatible with Article 69 of the Vietnamese Constitution, which similarly guarantees freedom of opinion and speech.⁵⁶

a. Through Prospective Use of Article 80 of the Vietnamese Penal Code, the Vietnamese Government Violated Dr. Que’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.”⁵⁷ Dr. Que was exercising the rights that Article 69 guarantees when he issued his “Communique on Freedom of Information in Vietnam,” along with a statement of his support for U.S. legislation known as the Freedom of Information in Vietnam Act of 2003 on 17 March 2003.⁵⁸

⁵⁴ Vietnam ratified the ICCPR on 24 December 1982.

⁵⁵ 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].

⁵⁶ In its 2002 Concluding Observations regarding Vietnam’s compliance with its responsibilities in implementation of the ICCPR, the Human Rights Committee noted that 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.

⁵⁷ Constitution of the Socialist Republic of Vietnam, at Article 69.

⁵⁸ Vietnam: Imprisoned Journalist Offered Exile as a Condition for Release, *supra* note 42.

Immediately after learning that Dr. Que had disseminated statements over the Internet challenging the Government's restrictions on freedom of information, the Government arrested Dr. Que, searched his house, and seized a computer and a laptop containing his essays.⁵⁹ Arresting and detaining Dr. Que for issuing these statements violates his right to freedom of speech provided by Article 69. It has been reported that Dr. Que will most likely be charged with espionage under Article 80 of the Vietnamese Penal Code.⁶⁰

The Government's detention of Dr. Que based on his nonviolent human rights advocacy and his statements challenging the Government for restricting his and other Vietnamese citizens' right to freedom of information directly contravenes the guarantees that Article 69 of the Vietnamese Constitution provides.⁶¹ When Dr. Que disseminated a statement through the Internet expressing his opinions on the lack of freedom of information in Vietnam, 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. His fundamental right to freedom of opinion and expression was completely denied by the Government's actions in this case. The Government's arrest and detention of Dr. Que in response to his nonviolent expression of his opinions violates the protections set forth in Article 69.

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

Dr. Que's arrest and detention under Article 80 of the Vietnamese Penal Code 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."⁶²

⁵⁹ Vietnamese Dissident Arrested for Sending Anti-State Material from Internet Café, *supra* note 44.

⁶⁰ Article 80 of the Vietnamese Penal Code (Spying) provides that: "Those who commit one of the following acts shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment: a) Conducting intelligence and/or sabotage activities or building up bases for intelligence and/or sabotage activities against the Socialist Republic of Vietnam; b) Building up bases for intelligence and/or sabotage activities at the direction of foreign countries; conducting scouting, informing, concealing, guiding activities or other acts to help foreigners conduct intelligence and/or sabotage activities; c) Supplying or collecting for the purpose of supplying State secrets to foreign countries; gathering or supplying information and other materials for use by foreign countries against the Socialist Republic of Viet Nam."

⁶¹ 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 Question 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. Que 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.

⁶² ICCPR, *supra* note 53, at art. 19 (1)-(2).

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.”⁶³

Dr. Que’s activities fall within the realm of protected speech previously articulated by the Human Rights Committee and the Working Group. Such speech may not be legally curtailed unless such limitations are (1) provided by law, (2) the means address a legitimate end, and (3) are “necessary” to achieve a legitimate end.⁶⁴ Further, the right to freedom of opinion and expression that Article 19 guarantees may only be restricted when the restriction is provided by law and 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.”⁶⁵

In enacting and enforcing Article 80, the Government has created a legal structure, which purports to protect national security by preventing espionage. In reality, it imposes a severe limitation on citizens’ exercise of freedom of opinion and expression. If an individual can be charged with espionage for criticizing his own government, the right to freedom of opinion and expression is meaningless. Dr. Que’s peaceful criticism of the Government’s censorship and restrictions on freedom of information did not threaten national security.

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.⁶⁶ 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 to arbitrarily 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. Que jeopardized national security, but such a claim lacks detail or specificity, and is wholly unsupported by the facts of this case.

In addition, even assuming that the Government’s claimed end in the enactment of Article 80 is legitimate as applied in this case, 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.⁶⁷ Article 80 does not make such a distinction. In the report on its 1995 mission to Vietnam, the

⁶³ Id.

⁶⁴ See, e.g., Robert Faurisson v. France, Op. No. 550/1993, at ¶ 9.4.

⁶⁵ ICCPR, supra, note 53, at art. 19 (3)(a)-(b).

⁶⁶ See, e.g., Faurisson, Op. No. 550/1993, at ¶ 9.4.

⁶⁷ See, e.g., Phuntsok Wangdu v. China, Op. No. 14/2000, at ¶ 9.4.

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.”⁶⁸ Dr. Que has never used or advocated violence to express his opinions. He is precisely the type of individual about whom the Working Group has previously expressed concern.

Based on the foregoing, the Government’s interference with Dr. Que’s right to freedom of expression and opinion is not consistent with the Vietnamese Constitution, Vietnamese Penal Code, nor with Vietnam’s obligations pursuant to Article 19 of the ICCPR and Article 19 of the UDHR. Therefore, his detention and arrest are arbitrary.

2. The Government’s Detention of Dr. Que is Arbitrary Because He 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 be Release Pending 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. Que 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. Que with his right to a prompt hearing, his right to access to counsel, his right to be informed of the charges against him, and his right to release pending trial. Although the Government initially claimed that it would charge Dr. Que under Article 80 and set a trial date for his case when its investigation was complete, the Government has held Dr. Que for over one year without a charge, hearing, or trial date.

⁶⁸ 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, Op. 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, Op. 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, defective and inconsistent with Article 19 of the ICCPR based on being “vague and imprecise”); Ngoc An Phan, Op. No. 7/1998 (similar discussion of Article 81 of Penal Code on attempts to undermine national unity); Thich Quang Do, Op. No. 11/2001 (same).

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

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.”⁶⁹ 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 charge against him.”⁷⁰ 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.”⁷¹

According to all available information,⁷² Dr. Que was never brought before a judicial authority for a determination of the “lawfulness” of his detention. In applying Article 9(3) of the ICCPR, the Human Rights Committee has consistently interpreted “promptly” to mean no longer than “a few days.”⁷³ More specifically, judicial review should be provided “somewhere between seventy-three hours . . . and five days.”⁷⁴ Because Dr. Que has been detained for longer than one year without being brought before a judicial officer for determination of the validity of the criminal charges against him, his detention is arbitrary.

b. By Failing to Provide Dr. Que with Access to Counsel of His Own Choosing, the Government of Vietnam has Failed to Observe Article 14(3)(b) of the ICCPR and Principle 11 of the Body of Principles

Article 14(3)(b) of the ICCPR guarantees a prisoner’s right to “communicate with counsel of his own choosing.”⁷⁵ Principle 11 of the Body of Principles provides further that, “[a] detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.”⁷⁶

⁶⁹ ICCPR, *supra* note 53, at art. 14(1).

⁷⁰ UDHR, *supra* note 53, at art. 10.

⁷¹ Body of Principles, *supra* note 55, at Principle 11.

⁷² Because Dr. Que is being held *incommunicado*, the Government’s progress in handling his case cannot be accurately ascertained.

⁷³ ICCPR, *supra* note 53, at art. 9(3).

⁷⁴ See *id.* (comparing *Van Der Houwen v. The Netherlands*, Op. No. 583/94, where a delay of seventy-three hours did not violate Article 9(3), with *Jijon v. Ecuador*, Op. No. 277/88, where a delay of five days constituted a violation of Article 9(3)).

⁷⁵ ICCPR, *supra* note 53, at art. 14(3)(b).

⁷⁶ Body of Principles, *supra* note 55, at Principle 11.

The Human Rights Committee held in Kelly v. Jamaica that disregarding a prisoner's request to communicate with his lawyer for five days was a breach of Article 14(3)(b).⁷⁷ Thus, the Government's failure to provide Dr. Que with access to counsel during his detention, which has lasted far longer than five days, similarly constitutes a violation of Article 14(3)(b). Moreover, the fact that the Government has held Dr. Que *incommunicado* is further evidence of a violation of Article 14(3)(b) because it obviates his ability to communicate with counsel.⁷⁸

c. Because the Government has Not Informed Dr. Que of the Charges Against Him, the Government has Failed to Observe Article 14(3)(a) of the ICCPR

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."⁷⁹ 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."⁸⁰ 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."⁸¹

To our knowledge, although the Government has indicated that it plans to prosecute Dr. Que under Article 80 of the Penal Code, Dr. Que has never been formally informed of the charges against him. Moreover, under the explanation set forth by the Committee, the Government has breached Article 14(3)(a) because it has publicly named Dr. Que of being suspected of espionage without subsequently observing its obligation to inform him of the charges against him.⁸²

d. By Continuing to Detain Dr. Que Pending Trial, the Government of Vietnam has Failed to Observe Article 9(3) of the ICCPR and Principle 37 of the Body of Principles

Although the Government initially stated that a trial date would be determined after it finished investigating Dr. Que's case, such date has not been set.⁸³ Continuing to detain Dr. Que

⁷⁷ Op. No. 537/93, at ¶ 9.2.

⁷⁸ See Drescher Caldas v. Uruguay, Op. No. 43/79 (finding that *incommunicado* detention of forty days breached Article 14(3)(b)).

⁷⁹ ICCPR, supra note 53, at art. 14(3)(a).

⁸⁰ ICCPR, supra note 53, Gen. Comment 13, at ¶ 8.

⁸¹ Id.

⁸² See Vietnamese Dissident Arrested for Sending Anti-State Material from Internet Café, supra note 44 (providing information from Vietnam's official party newspaper, Nhan Dan, which states that "Que was caught red handed while he tried to transmit documents that contain information critical of the State of Socialist Republic of Vietnam . . . These documents are eviden[ce] that Nguyen Dan Que violated Article 80 of the Penal Code.").

⁸³ Article 14(3)(c) guarantees an accused's right to trial without undue delay. ICCPR, supra note 53, at art. 14(3)(c). The Human Rights Committee has asserted that "a delay of twenty-three months or more between arrest and

(footnote continued to next page)

during the investigation of his case is a direct violation of Article 9(3) of the ICCPR, which provides that, “persons shall be entitled to trial within a reasonable time or release.”⁸⁴ Article 9(3) further stipulates that “‘the general rule’ for persons awaiting trial is that they should not be detained in custody.”⁸⁵ This general rule, however, does not apply where the accused might interfere with witnesses or evidence, leave the territory, or pose a danger to society.⁸⁶ Where the general rule does apply, the amount of bail should be determined in accordance with the “economic consequences of the crime” allegedly committed and should not be “excessively high.”⁸⁷

The general rule of releasing an individual pending trial should apply to Dr. Que’s case because the exceptions to the rule are not applicable to his circumstances. First, the likelihood is very low that he will interfere with witnesses or evidence because the Government has already searched his house and seized all pertinent evidence. Second, Dr. Que does not pose a flight risk; this is evident from the many occasions when he refused to leave Vietnam, including an instance where the Government offered to release him from jail on the condition that he leave.⁸⁸ Lastly, as a nonviolent advocate for democracy and human rights, Dr. Que poses no danger to society.

Continuing to detain Dr. Que before trial also breaches Principle 37 of the Body of Principles, which states that “No person may be kept under detention pending investigation or trial except upon the written order of such an authority.”⁸⁹ Because Dr. Que was never brought before a judicial authority for a determination of the lawfulness of his detention, such judicial

(footnote continued from previous page)

conviction at first instance . . . prima facie breaches article 14(3)(c).” *Id.* Thus, until Dr. Que’s trial has been delayed for twenty-three months, the Government has not clearly violated Article 14(3)(c).

⁸⁴ See ICCPR, *supra* note 53, at art. 9(3) (stating that pre-trial detention should be an exception and that the duration of such detention should be “as short as possible”).

⁸⁵ ICCPR, *supra* note 53, Gen. Comment 8, at ¶ 3.

⁸⁶ See *Thomas v. Jamaica*, Op. No. 614/95 (finding that the Government did not violate Article 9(3) when it detained the accused for fourteen months pending trial for capital murder because the accused posed a danger to society); *Hill v. Spain*, Opinion No. 526/93, at ¶ 12.3 (upholding the general rule that pre-trial detention should be an exception and bail should be granted even though the State party had a “well-founded concern” that the accused posed a flight risk); *W.B.E. v. The Netherlands*, Op. No. 432/90, at ¶ 6.3 (holding that pre-trial detention of an individual accused of drug smuggling was permissible where there was a high risk that he would destroy evidence against him if released).

⁸⁷ ICCPR, *supra* note 53, at ¶ 11.39; *Hill*, Op. No. 529/93, at ¶ 14.

⁸⁸ See Clare Arthurs, *Dissident Vietnam Priest’s Prison Term Cut*, S. China Morning Post, July 18, 2003, at 10 (announcing that officials offered to release Dr. Que if he agreed to leave Vietnam and relaying Dr. Nguyen Quoc Quan’s statement that his brother did not accept a similar offer in 1998 because “‘exile is not freedom’”).

⁸⁹ See *id.* at Principle 37 (providing that individuals subject to arrest must be brought before an authority to allow the authority to “decide without delay upon the lawfulness and necessity of detention”).

authority could not have provided the written order required to allow the Government to continue to detain Dr. Que pending investigation or trial.

3. Conclusion

For the reasons stated herein, Dr. Que'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. Que 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

As indicated in the preceding section, Dr. Que has not been provided with a hearing before a judicial authority or a trial during his detention. We cannot describe any internal steps Dr. Que might have already attempted because he has been held *incommunicado*.

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

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Appendix A

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DR QUAN NGUYEN

PAGE 01

From: Dr. Quan D. Nguyen
To: Mr. Jared Genser

AUTHORIZATION OF REPRESENTATION

I, QUAN D. NGUYEN hereby authorize Freedom Now to represent Dr. Nguyen Dan Que to pursue legal, political, and public relations efforts on his behalf. I am the brother of Dr. Nguyen Dan Que.

Quang D. Nguyen
Signature

5-14-04
Date