

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 218/2
VNM 1/2013

14 January 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **sentencing of pro-democracy activists on charges of 'carrying out activities aimed at overthrowing the people's administration' and the reported continued detention of another on charges of 'tax evasion'**. The group of 14 activists, one of whom received a suspended sentence, includes bloggers, citizen journalists, students, community workers, environmental and anti-corruption activists and supporters of prisoner of conscience Cu Huy Ha Vu. All have advocated for social justice, including by organizing peaceful demonstrations. The majority of them are Catholic, from the Catholic Diocese of Vinh City.

Hu Doc Hua is a community organizer and a contributing writer for Vietnam Redemptionist News.

Dang Xuan Dieu is an engineer and community organizer, active in mobilizing access to education for poor students and assistance for victims of typhoons and disabled persons. He is also a contributing citizen journalist for Vietnam Redemptionist News.

Paulus Le Son is a blogger and writer for Vietnam Redemptionist News. He is also an active community organizer, focusing on issues of HIV prevention and public education.

Nguyen Van Duyet is the president of the Association of Catholic Workers of Vinh in Hanoi. He regularly writes for Vietnam Redemptionist News and attended citizen journalism courses.

Nguyen Van Oai has contributed reporting on the anti-China protests in 2011 for the Vietnam Redemptionist News.

Ho Van Oanh was previously detained in April 2011 when he tried to attend the trial of legal scholar Cu Huy Ha Vu.

Nguyen Dinh Cuong is an activist with the John Paul II Group for Pro-Life. He also participated in peaceful protests against local government seizure of church lands.

Nguyen Xuan Anh is a martial arts instructor from Vinh city.

Thai Van Dung was arrested while attending citizen journalism courses organized by the Vietnam Redemptionist News.

Tran Minh Nhat is a writer for the Vietnam Redemptionist News.

Nong Hung Anh is a student at Hanoi University and a prominent blogger with www.boxitvn.net founded by environmental activists.

Nguyen Dang Vinh Phuc was allegedly arrested in connection with participating in training workshops.

Nguyen Dang Minh Man was also arrested in connection with participating in training workshops.

Dang Ngoc Minh is the mother of Nguyen Dang Minh Man and Nguyen Dang Vinh Phuc, and was also arrested in connection with participating in training workshops.

Le Quoc Quan, who reportedly remains in detention, is a human rights lawyer and the author of a widely read blog on issues of human rights, democracy and social justice. In 2007 he reportedly spent 100 days in detention on suspicion of engaging in “activities to overthrow the regime” closely following his publication of a report on democracy in Viet Nam.

Messrs Dang Xuan Dieu, Hu Doc Hua, Nguyen Van Oai, Paulus Le Son, Nguyen Van Duyet and Ho Van Oanh were the subject of a joint urgent appeal sent to your Excellency’s Government on 1 December 2011 by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of assembly and of association and the Special Rapporteur on the situation of human rights defenders. We acknowledge the receipt of a response to this communication dated 16 April 2012.

According to the information received:

On 9 January 2013, human rights defenders and pro-democracy activists Messrs Ho Duc Hoa, Dang Xuan Dieu, Paulus Le Son, Nguyen Van Duyet, Nguyen Van Oai, Ho Van Oanh, Nguyen Dinh Cuong, Nguyen Xuan Anh, Thai Van Dung, Tran Minh Nhat, Nong Hung Anh, Nguyen Dang Vinh Phuc, Ms. Nguyen Dang Minh Man and Ms. Dang Ngoc Minh were convicted and sentenced to prison terms ranging from 3 to 13 years by the People's Court of Nghe An on charges of 'carrying out activities aimed at overthrowing the people's administration' under Section 79 of the Penal Code. Hu Doc Hua, Paulus Le Son and Dang Xuan Dieu were sentenced to 13 years of imprisonment, with 5 years house arrest; and Nguyen Dang Minh Man was sentenced to 9 years of imprisonment, with 5 years of house arrest. The remaining activists received sentences ranging from 3 to 6 years, while Nguyen Dang Vinh Phuc received a 3 year suspended sentence.

The activists have been arrested and detained since their arrests took place between August and December 2011. Their alleged activities reportedly included writing commentary that is critical of the Government and distributing it on the internet, and participating in and encouraging peaceful protests. They are said to have been arrested on suspicion of ties to the US-based political party Viet Tan, a group calling for peaceful political reform in the country, which has been labelled as a terrorist organization by the Government.

Mr. Le Quoc Quan was reportedly arrested at approximately 08:00 on 27 December 2012 in Hanoi. Police officers reportedly read out a warrant, but did not provide his family with a written copy, although according to sources his family was told he would be charged with tax evasion under Article 161 of the Criminal Code. To protest his arrest, he allegedly started a hunger strike immediately following his arrest. He terminated the hunger strike on 4 January 2013 due to ill health, according to sources. It has been reported that he is currently being held in Hoa Lo Prison no. 1 and has not been granted access to his family or lawyer.

Concern is expressed that the detention and sentencing of the above-mentioned activists is related to their peaceful exercise of their right to freedom of opinion and expression and their right to freedom of assembly. Further concerns are expressed at what appears to be a pattern of increased crackdown on Government critics, peaceful political activists and human rights defenders in the country.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Without prejudging the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in

association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

We would also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which your Excellency’s Government ratified on 24 September 1982, which provides that “Everyone shall have the right to freedom of expression; 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.”

We also wish to reiterate the principle enunciated in Human Rights Council resolution 12/16 which calls on States, while noting that article 19, paragraph 3, of the ICCPR provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would further like to refer your Excellency's Government to article 21 of the ICCPR, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests

of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by the above-mentioned activists or on their behalf?
3. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned persons and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
4. Please provide information concerning the national legislation related to freedom of opinion and expression, including freedom of the press, its conformity with article 19 of the International Covenant on Civil and Political Rights and with other relevant provisions included in international treaties.
5. Please provide the details of the prosecution against the above-mentioned persons and how it is compatible with the international norms and standards of the right to freedom of opinion and expression and the related right to freedom of peaceful assembly.
6. Please explain what measures have been taken to ensure that human rights defenders in Vietnam are able to carry out their legitimate and peaceful work in defense of human rights without fear of judicial harassment or other restrictions.

We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekagya
Special Rapporteur on the situation of human rights defenders