

**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 cooperation 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 to 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 time of his arrest the police used excessive force, beating some parishioners. Police officers were armed with electric whips, rifles and pistols. Father Ly had just published on the Internet a statement

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. Father 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-point statement on the state of the Catholic Church in the Hue diocese", criticizing alleged State appropriation of Church propriety, 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 the distribution of relief supplies to people who had lost basic necessities in the heavy flooding that affected Viet Nam 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 have on several occasions waged a public vilification campaign against Father 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 to spread lies about the party and the State, with the intention of inciting and causing rifts among Catholics.

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 national unity, sabotaging the national solidarity police and refusing to obey his house arrest order. Father Ly was then taken to Thua Phu prison at Hue. In November 2001, he was transferred to Ba Sao Nam Ha camp in Phu Ly district, Ha Nam province in north Viet Nam, a forced-labour camp under the authority of the Ministry of the 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 on his behalf. According to the source, his trial did not conform to international minimum standards for a fair trial.

12. Father Ly has spent much of the last 27 years attempting to peacefully exercise his rights to freedom of expression, 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 Viet Nam 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's unity 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 of 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. Two procurators defended Ly: Hoang Minh Duc and Tran Dinh Chau. The court convicted Ly for the crimes of undermining the national unity policy (article 87, 1 of the Penal Code of Viet Nam) and refusing to abide by the 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's 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 his beliefs and has failed to afford him the procedural protections guaranteed by domestic law and international treaties.

16. 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 of the nature of the charges against him and without invalidating the argument submitted by the source, that the detention and sentencing of Nguyen Van Ly followed the 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 his trial had not respected international norms.

18. Consequently, the Working Group is led to conclude that Father Nguyen Van Ly was arrested and sentenced to prison for having peacefully exercised his right to 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 that country, vague and imprecise charges such as those mentioned in articles 87 and 269 of the Penal Code do not allow a distinction between armed and violent acts that endanger national security and the peaceful exercise of the right to freedom of opinion and expression. For this reason, the Working 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, 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 categories applicable 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 into 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