

**Opinion No. 1/2009 (Viet Nam)**

**Communication addressed to the Government on 14 October 2008**

**Concerning: Mr. Nguyen Hoang Hai (also known as Dieu Cay); Mr. Nguyen Van Ha; Mr. Nguyen Viet Chien; Mr. Truong Minh Duc; Mr. Pham Van Troi; Mr. Nguyen Xuan Nghia; Ms. Pham Thanh Nghien; Mr. Vu Hung; Ms. Ngo Quynh and Mr. Nguyen Van Tuc**

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

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source in due course and much in advance of the fifty-fourth session, when this Opinion was adopted. The Working Group transmitted the reply provided by the Government to the source; however, has not received any comments from it.
3. (Same text as paragraph 3 of Opinion No. 17/2008.)

4. The cases summarized hereinafter have been reported to the Working Group on Arbitrary Detention as follows:

5. Mr. Nguyen Hoang Hai (also known as Dieu Cay), one of the founding members of the Club of Free Journalists (Can Lac Bo Nha Bao Tu Do), was arrested by police officers on 19 April 2008 in the city of Dalat. Prior to his arrest, the police had summoned Mr. Hoang Hai for interrogation 15 times.

6. Mr. Hoang Hai, who is an Internet writer and “blogger”, posted a number of articles on the Internet calling for human rights and democratic reforms, including articles contesting claims by China to the Spratly (Truong Sa) and Paracel (Hoang Sa) Archipelagos, over which both Viet Nam and China claim sovereignty. In January 2008, Mr. Hoang Hai and other activists unfurled banners in front of the Opera House in Ho Chi Minh City denouncing China’s claims to the disputed islands. Mr. Hoang Hai’s arrest occurred shortly before the arrival of the Beijing Olympic Games torch relay in Ho Chi Minh City, an event the Vietnamese authorities were determined to ensure was protest-free.

7. On 10 September 2008, Mr. Hoang Hai was sentenced to 30 months in prison by a court in Ho Chi Minh City after a closed trial. He was accused of tax evasion on a rental property that he owns. Mr. Hoang Hai’s lawyers argued that the renter, not Mr. Hoang Hai, was liable for back taxes owed on the property, because the rental contract provided for the renter to assume payment of all property taxes, which is permitted under Vietnamese law.

8. The source further informed that police officers from the Internal Security and Counter-Espionage Departments (Cue An Ninh Noi Chinh and Cue Phan Gian) of the Ministry of Public Security in Ho Chi Minh City were the officers who arrested Mr. Hoang Hai. According to the source, this department is primarily responsible for monitoring and intervening in political cases. The source alleges that the tax evasion charges were an unfounded pretext to punish Mr. Hoang Hai for his political activism.

9. The source considers that Mr. Nguyen Hoang Hai has been deprived of his liberty for the exercise of the rights or freedoms guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

10. According to the source, Mr. Nguyen Van Hai, a journalist who worked at *Tuoi Tre* (Youth Magazine), and Mr. Nguyen Viet Chien, a journalist who worked at *Thanh Men* (Young People), were arrested for their coverage of a major corruption scandal which involved several high-ranking officials. It was reported that both journalists were arrested on 13 May 2008, accused of “inaccurate reporting and abuse of power”. Their arrests were carried out just two months after one of the principal suspect of the corruption scandal, Deputy Transport Minister Nguyen Viet Tien, was suddenly cleared of all charges and released due to lack of evidence.

11. The two journalists were placed in custody under investigation for two months. In July 2008, the Government prolonged their detention for another two months. Messrs. Van Hai and Viet Chien have not been released and are at risk of continued detention. Under the Vietnamese Criminal Procedures Code, investigative detention must not exceed four months, beyond which defendants must either be charged or be released. However, this four-month period may be extended four times for national security offenders (i.e. for a total of 20 months), after which the People’s Procurator is entitled to apply “other deterrent measures” (article 120 of the Criminal Procedure Code).

12. Mr. Truong Minh Duc, a freelance journalist, was arrested in May 2007 and sentenced to five years in prison on 18 July 2008 following his trial in the Southern Province of Kien Giang. It was reported that Mr. Minh Duc was charged with “taking advantage of democratic freedoms and rights to abuse the interests of the State” (article 258 of the Criminal Code). Mr. Duc’s lawyer said he was “writing about the plight of the rural

population, about corruption, lack of government honesty and the constraints imposed on peasants in Kien Giang”, and added that his client was forced to sign confessions. Mr. Minh Duc is in poor health due to harsh detention conditions.

13. The source considers that Messrs. Nguyen Van Hai, Nguyen Viet Chien, and Truong Minh Duc have been deprived of their liberties for the exercise of their rights and freedoms guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

14. Mr. Pham Van Troi, a member of the Committee for Human Rights in Viet Nam, was arrested in Hanoi on 10 September 2008. Mr. Nguyen Xuan Nghia was arrested at his home in Haiphong on 11 September 2008. Ms. Pham Thanh Nghien was arrested at her home in Haiphong by ten police officers on 11 September 2008 and taken to Hanoi for interrogation.

15. In June 2008, municipal authorities in Hanoi rejected an application submitted by these three persons to conduct a demonstration protesting against China’s presence on Paracel and Spratly Islands. Ms. Pham Thanh Nghien was temporarily released after interrogations, but was arrested again at her home in Haiphong on 18 September 2008. She is being detained with other activists at B14 Prison (Thanh Liet) near Hanoi, charged with “conducting propaganda against the Socialist Republic of Viet Nam” (article 88 of the Criminal Code).

16. Mr. Vu Hung was arrested at his home in Ha Tay Province on 11 September 2008. He was temporarily released after interrogation, but re-arrested at his home on 18 September 2008. He was dismissed from his job as a high school physics teacher allegedly due to his contact with Vietnamese pro-democracy activists.

17. Ms. Ngo Quynh was arrested in Hanoi on 10 September 2008, on her way to Thai ha parish, where a mass rally by demonstrators of Catholic faith protesting against Government policies was taking place.

18. Mr. Nguyen Van Tuc was arrested on 11 September 2008 at his home in Thai Binh Province in a midnight raid by police officers.

19. According to the source, the arrests of Mr. Pham Van Troi; Mr. Nguyen Xuan Nghia; Ms. Pham Nghien Thanh; Mr. Vu Hung; Ms. Ngo Quynh and Mr. Nguyen Van Tuc are reportedly connected to a demonstration that was planned for 14 September 2008 outside the Embassy of the People’s Republic of China in Hanoi. This date marked the 50th Anniversary of a Diplomatic Note signed by former North Vietnamese Prime Minister Pham Van Dong recognizing China’s sovereignty over the islands of Paracel and Spratly. It was reported that tight Security Police controls were set up in Hanoi, pre-empting any gatherings.

20. The source considers that Mr. Pham Van Troi, Mr. Nguyen Xuan Nghia, Ms. Pham Nghien Thanh, Mr. Vu Hung, Ms. Ngo Quynh and Mr. Nguyen Van Tuc have been deprived of their liberties for the exercise of the rights or freedoms guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

21. On 12 January 2009, the Government transmitted its reply providing the Working Group with the information that is set out below.

22. Nguyen Hoang Hai, also known as blogger Dieu Cay, was born in 1952, residing in Ho Chi Minh City. He was sentenced to 30 months in prison by the People’s Court of District 3, Ho Chi Minh City on 10 September 2008. He was found guilty of tax evasion in accordance with article 161 of the Penal Code. The trial was open, not closed as mentioned.

23. Nguyen Van Hai was born in 1975, residing in Hanoi. He was an ex-journalist of the *Tuoi Tre* magazine.

24. Nguyen Viet Chien was born in 1952, residing in Hanoi. He was an ex-journalist of the *Thanh Nien* newspaper.

25. Introductions of instance were made against these two ex-journalists on the charge of “abusing job title and power while carrying out official mission” in accordance with article 281 of the Penal Code. They were arrested and provisionally detained on 12 May 2008. From 14 to 15 October 2008, the People’s Court of Hanoi openly tried them. In accordance with paragraph 2 of article 258 of the Penal Code, Nguyen Van Hai was sentenced to 24 months of re-education without detention and Nguyen Viet Chien was sentenced to two years in prison.

26. Truong Minh Duc was born in 1960, residing in Kien Giang Province. On 5 May 2007, he was arrested and provisionally detained. On 28 March 2008, the People’s Court of Kien Giang Province tried Truong Minh Duc in the first instance and sentenced him to five years in prison. On 18 July 2008, the People’s Court of Kien Giang Province retried him and decided to retain the verdict of the first trial. Truong Minh Duc, as well as Nguyen Van Hai and Nguyen Viet Chien had intentionally abused their job title, power and the rights of freedom to carry out activities infringing the legitimate interests of the State, organizations and other citizens. Their activities violated provisions of the Penal Code.

27. With regard to the cases concerning Mr. Pham Van Troi (born in 1972, residing in Hanoi); Mr. Nguyen Xuan Nghia (born in 1949, residing in Hai Phong City); Ms. Pham Thanh Nghien (born in 1977, residing in Hai Phong City); Mr. Vu Hung (born in 1966, residing in Hanoi); Ms. Ngo Quynh (born in 1984 in Bac Giang Province, provisionally residing in Hanoi) and Mr. Nguyen Van Tuc (born in 1964, residing in the Thai Binh Province), they are provisionally detained and the professional agencies are carrying out investigations to identify activities of law violation of each of these persons.

28. All the above-mentioned persons are suspected of violating the existing laws of Viet Nam. The arrest, provisional detention and investigation have been carried out in the due course of laws of Viet Nam and in conformity with international practice. The Government strongly affirms that there are no cases of arbitrary detention in Viet Nam. Only an individual who violates laws is arrested, detained and tried in the due course of laws.

29. The Working Group regrets that the source has not commented on the information submitted by the Government despite an invitation to do so. Nonetheless, the Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the cases, taking into consideration all the information it has at its disposal.

30. The source informed that Mr. Nguyen Hoang Hai was arrested on 19 April 2008 and has been sentenced to 30 months in prison on 10 September 2008. In its reply, the Government confirmed the conviction of Mr. Nguyen Hoang Hai to 30 months in prison and the date of the sentence, but there is no confirmation of his arrest on 19 April 2008 and no explanation is offered for Mr. Nguyen Hoang Hai’s detention for almost five months before his trial. The question why Mr. Nguyen Hoang Hai was summoned by the police for interrogation 15 times prior his arrest, still remains open. If the accusations against Mr. Nguyen Hoang Hai were related to tax evasion on a rental property, the arresting officers from the Internal Security and Counter-Espionage Department of the Ministry of Public Security should not have become involved in the case.

31. In the context of the source’s account of the timing of his arrest and Mr. Hoang Hai’s journalistic and political activities prior to his arrest, the peacefulness and legitimacy of which not having been disputed by the Government, and the lack of valid reasons given by the Government for his arrest, the Working Group concludes that Mr. Nguyen Hoang

Hai's detention is arbitrary. It falls within Category II of the categories applicable to the consideration of cases by the Working Group, as representing an attempt to stifle the exercise of his rights to freedom of opinion and expression and of peaceful assembly.

32. In its reply, the Government confirmed that Mr. Nguyen Van Hai and Mr. Nguyen Viet Chien were arrested on 12 May 2008 (the source reported that it was 13 May 2008) and were sentenced on 15 October 2008. Under the Criminal Procedures Code, investigative detention must not exceed four months, when the pretrial detainee must be either charged or released, unless the accusations relate to a crime against national security.

33. The Working Group regrets that it has not had the benefit of a Government's explanation as to whether the two journalists were charged after the expiry of the general maximum period of four months of detention on remand, or whether crime in terms of article 281 of the Penal Code falls within the category of national security offences, which would allow for a further extension of the pretrial detention period in terms of Vietnamese law, as the source informed. The Government further fails to provide the Working Group with any information about the actual reasons for the sentencing of Mr. Van Hai and Mr. Viet Chien for the crime of "abusing job title and power while carrying out official mission". The Working Group is left in the dark about in what way the defendants had abused their job titles or their powers; what official mission they were carrying out and whether the charges of "inaccurate reporting", as reported by the source, were dropped.

34. Furthermore, with a view to article 19, paragraph 3, of the International Covenant on Civil and Political Rights, the Government does not provide any justification for the investigative detention related to, and the subsequent criminal punishment of, actions, which fall squarely within the scope of the right to freedom of opinion and expression, i.e. reporting on a case of corruption within the Government in Mr. Van Hai's and Mr. Viet Chien's professional capacities as journalists. The Government satisfies itself with a general reference that the measures taken were carried out in conformity with national laws and international practice.

35. The Working Group therefore concludes that the detention of Mr. Nguyen Viet Chien is arbitrary, resulting from the legitimate exercise of his right entrenched in articles 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, and falling within Category II of the categories applicable to the consideration of cases submitted to the Working Group. The same applies as to the period of arbitrary detention of Mr. Nguyen Van Hai from the moment of his arrest on 12 May 2008 until his release into "re-education without detention", which presumably took place on or shortly after 15 October 2008, when the verdict was rendered.

36. The Working Group recalls its Deliberation No. 4 on "rehabilitation through labour",<sup>10</sup> in which it, *inter alia*, held that coercive administrative measures in the form of forced labour whose purpose is not only occupational rehabilitation, but mainly political and cultural rehabilitation through self-criticism renders inherently arbitrary the deprivation of liberty. However, if, as in the present case, "re-education" is not done in connection with detention, the Working Group cannot express an opinion, although the coercive character of the measure imposed upon Mr. Van Hai raises serious doubts as to its conformity with the right to freedom of opinion and expression.

37. Based on the information before it, the Working Group concludes that the case of Mr. Truong Minh Duc is a particularly grave case of arbitrary detention in terms of Category II of the categories applicable to the consideration of cases by the Working Group. In its Opinion No. 1/2003 (Viet Nam) the Working Group reiterated that "[o]n the

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<sup>10</sup> E/CN.4/1993/24, p. 16.

question of the violation of national legislation mentioned by the Government, the Working Group recalls that, in conformity with its mandate, it must ensure that national law is consistent with the relevant international provisions set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments to which the State concerned has acceded. Consequently, even if the detention is in conformity with national legislation, the Working Group must ensure that it is also consistent with the relevant provisions of international law”.<sup>11</sup>

38. Broad criminal law provisions, which make “taking advantage of democratic freedoms and rights to abuse the interests of the State” a crime, such as article 258 of the Criminal Code, are inherently inconsistent with any of the rights and liberties guaranteed by the Universal Declaration of Human Rights and by the International Covenant on Civil and Political Rights, to which Viet Nam is a State party. In its reply, the Government neither attempts to reconcile article 258 of the Criminal Code with the right to freedom of opinion and expression, applicable in the case of Mr. Minh Duc, nor does it contest the allegations of the source that Mr. Minh Duc, who is a journalist, was merely reporting about public affairs in the Southern province of Kien Giang. His criminal conviction resulting from such activities amount to arbitrary detention in terms of Category II.

39. The length of Mr. Minh Duc’s provisional detention for more than one year, for which no explanation was provided by the Government, and the harsh sentence of five years in prison further add to the seriousness of the arbitrary character of his detention. As the source did not substantiate its allegation that Mr. Minh Duc was forced to sign confessions, the Working Group cannot conclude that there were also grave violations of the right to fair trial which, in addition, would render his detention to be arbitrary pursuant to Category III of the categories applicable to the consideration of cases submitted to it.

40. There is no confirmation in the Government’s reply about the dates or the reasons for the arrests of Mr. Pham Van Troi, Mr. Nguyen Xuan Nghia, Ms. Pham Thanh Nghien, Mr. Vu Hung, Ms. Ngo Quynh and Mr. Nguyen Van Tuc. The source informed that these individuals were arrested on 10 and 11 September 2008 (or re-arrested after initial release on 18 September), all in connection with a demonstration planned for 14 September 2008. In accordance with the Government’s reply this means, firstly, that all these persons have been detained without trial for approximately four months at the time of the Government’s response.

41. Secondly, it would also appear that all six detainees might be provisionally held without suspicion of having committed any crime in terms of Vietnamese criminal legislation as the authorities, on the Government’s own account, were still in the process of identifying violations of the law of each of these individuals, which would bring their detention close to arbitrary detention pursuant to Category I as being without any legal basis. The Government’s reply does not explain which provisions of “the existing laws of Viet Nam” were infringed and how the arrests, detention and investigations could have been carried out in “conformity with international practice”. The Working Group would have expected a more detailed account in view of the allegations of the source transmitted to the Government that Ms. Pham Thanh Nghien had in fact been charged pursuant to article 88 of the Criminal Code for “conducting propaganda against the Socialist Republic of Viet Nam”.

42. Since the Government does not specify the nature of the charges, if any, provided for under article 88 and possibly other criminal provisions, and what acts might give rise to such charges, the Working Group, accordingly, considers that the acts for which the six

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<sup>11</sup> E/CN.4/2004/3/Add.1, para. 17.

women and men are being held in detention were indeed those described in the communication of the source, namely, organizing and attempting to participate in a demonstration. The Working Group concludes that these actions merely represent the peaceful exercise of the right to freedom of assembly and of opinion and expression, which are guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights.

43. Based on the available information, which has not been contested by the Government, the Working Group concludes that the detention of Mr. Van Troi; Mr. Xuan Nghia; Ms. Thanh Nghien; Mr. Vu Hung; Ms. Ngo Quynh and Mr. Van Tuc is arbitrary, falling within Category II. The consequences of the Government's measures are especially grave for Mr. Vu Hung as he was reportedly dismissed from his post as a high school teacher.

44. In the light of the foregoing, the Working Group renders the following Opinion:

(a) The detention of Mr. Nguyen Hoang Hai, Mr. Pham Van Troi, Mr. Nguyen Xuan Nghia, Ms. Pham Thanh Nghien, Mr. Vu Hung, Ms. Ngo Quynh and Mr. Nguyen Van Tuc is arbitrary, being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 19 and 21 of the International Covenant on Civil and Political Rights and falling within Category II of the categories applicable to the consideration of cases submitted to the Working Group on Arbitrary Detention;

(b) The detention of Mr. Nguyen Viet Chien and Mr. Truong Minh Duc is arbitrary being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights and articles 9 and 19 of the International Covenant on Civil and Political Rights and falling within Category II of the categories applicable to the consideration of cases submitted to the Working Group;

(c) The detention of Mr. Nguyen Van Hai was arbitrary between the date of his arrest on 12 May 2008 until his release following his criminal sentence to "re-education without detention" on 15 October 2008, being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights and articles 9 and 19 of the International Covenant on Civil and Political Rights and falling within Category II of the categories applicable to the consideration of cases submitted to the Working Group.

45. Consequent upon the Opinion rendered, the Government of Viet Nam is requested to take the necessary steps to remedy the situation of Mr. Nguyen Hoang Hai; Mr. Nguyen Viet Chien; Mr. Truong Minh Duc; Mr. Pham Van Troi; Mr. Nguyen Xuan Nghia; Ms. Pham Thanh Nghien; Mr. Vu Hung; Ms. Ngo Quynh and Mr. Nguyen Van, in order to bring it into conformity with the norms and principles enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

46. Given his reported poor status of health due to harsh detention conditions, a fact that was not contested by the Government, and the particularly serious case of arbitrary detention, the appropriate remedy for Mr. Truong Minh Duc, according to the Working Group, would be his immediate release.

Adopted on 5 May 2009