

OPINION No. 13/1999 (VIET NAM)

Communication addressed to the Government on 24 November 1998

Concerning Tran Van Luong (born Truong Van Lân)

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

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regrets that the Government has not transmitted its observations and information as requested.

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 attention 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 related to 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, or, where States Parties are concerned, 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 international standards relating to the right to a fair trial 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 would have welcomed the Government's cooperation. The Working Group believes, however, that it is in a position to give an opinion on the case, based on the following facts.

5. Mr. Tran Van Luong (born Truong Van Lân), former deputy of the Republic of Viet Nam (South), born in 1940 and normally resident in Cam Ranh, was arrested on 9 December 1985 on the road between the district of Go Váp (Ho Chi Minh Ville) and the church of Notre Dame de Ho Chi Minh Ville by agents of the Công An (Public Security). He was allegedly arrested without being shown an arrest warrant or any other decision issued by a public authority.

6. Mr. Tran Van Luong was sentenced to death, together with two bonzes of the Unified Buddhist Church of Viet Nam, Thich Tue Sy and Thich Tri Sieu, at a trial on 21 and 22 September 1988, by virtue of article 73 of the Vietnamese Penal Code ("attempt to overthrow the power of the people"). His death sentence having been commuted to life imprisonment, he is currently detained in Camp T5, Thanh Cam, Province of Thanh Hoa.

7. Mr. Tran Van Luong had written pamphlets calling for the respect for human rights and had been distributing them on the road between the district of Ho Chi Minh Ville and the church of Notre Dame of Ho Chi Minh Ville. He was arrested on the spot for that activity and his pamphlets were confiscated. According to the source, Mr. Tran Van Luong's arrest and detention are arbitrary, since he was merely exercising his right to freedom of expression, as enshrined in article 19 of the International Covenant on Civil and Political Rights, to which Viet Nam is a party.

8. The source comments that Mr. Tran Van Luong's trial took place almost three years after his arrest, which is not in conformity with the "promptly" rule specified in article 9, paragraph 3, of the International Covenant on Civil and Political Rights. The three-year delay also infringed article 71 of the Vietnamese Code of Criminal Procedure, which allows for a delay of four months, renewable once or twice, between the time of arrest and the time of judgement in the case of "serious offences". The source further states that the trial itself was unfair and did not comply with the guarantees in article 14 of the Covenant: Mr. Tran Van Luong was unable to choose legal assistance; the trial was held in camera and the judges did not offer sufficient guarantees of impartiality, especially in a trial described as political which involved matters of "national security".

9. The source further recalls that the charge brought against Mr. Tran Van Luong, which led to his being sentenced to death, was that of "attempting to overthrow the power of the people". Mr. Tran Van Luong has always denied having committed such a crime and the only evidence supporting the charge was the pamphlets he had distributed. Those pamphlets, however, did no more than call for the respect of human rights and democratic freedoms and were in no way an incitement to any form of violence.

10. In the light of the allegations, which have not been denied by the Government although it had the opportunity to do so, the Working Group finds that Mr. Tran Van Luong was arrested and detained solely on the grounds that he had written and distributed pamphlets calling for the respect for human rights, whereas in so doing he was merely exercising his right to freedom of expression, as enshrined in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

11. The Working Group points out that article 73 of the Penal Code invoked in the charges against Mr. Tran Van Luong, who was sentenced to death for "attempting to overthrow the power of the people", has already given rise to several comments on the part of the Working Group, both in its report on its visit to Viet Nam (see E/CN.4/1995/31/Add.4, para. 35) and in the opinions issued following allegations of arbitrary detention brought against the country.

12. In the Working Group's opinion, article 73 of the Penal Code, which is part of Viet Nam's national security legislation, draws no distinction as to the use or otherwise of violence or incitement to violence. Moreover, the wording of the article is so imprecise 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, as in the case of Mr. Tran Van Luong (see paragraph 35 of the above-mentioned report).

13. In the Working Group's opinion, as stated in previous opinions (see opinion No. 1/1998), in a case where the final judgement of a country's court of last resort is in conformity with national legislation but not with international human rights instruments, that judgement must be considered arbitrary within the terms of Commission on Human Rights resolution 1997/50.

14. In the light of the foregoing, the Working Group expresses the following opinion:

The detention of Tran Van Luong is arbitrary, since it is contrary to 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 in the consideration of cases submitted to the Working Group.

15. Having stated this opinion, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation, in accordance with the standards set forth in the International Covenant on Civil and Political Rights; and

(b) To consider the possibility of amending its legislation to bring it into line with the relevant international standards it has accepted.

Adopted on 14 September 1999