

FOLLOW-UP PROCEDURE
UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION
Mr Sètondji Adjovi (Benin)
Ms Leigh Toomey (Australia)
Mr José Guevara (Mexico)
Mr Seong-Phil Hong (Republic of Korea)
Ms Elina Steinerte (Latvia)

HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY

In the matter of
NGUYỄN VĂN ĐÀI

v.

Government of the Socialist Republic of Viet Nam

29 November 2017

Petition for Relief Pursuant to Commission on Human Rights Resolutions 1997/50,
2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/1.

Submitted by:

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On behalf of:

Lawyers for Lawyers
Lawyer's Rights Watch Canada
Media Legal Defence Initiative
PEN International
Viet Tan

To the UN Working Group:

The Working Group published its Opinion in *Nguyễn Văn Đài v. Government of the Socialist Republic of Viet Nam* on 8 June 2017,¹ having transmitted the Opinion to counsel for the Petitioner on 29 May 2017. Further to the Opinion, and in order to assist the Working Group in keeping the Human Rights Council informed of the progress made and of any difficulties encountered in implementing the recommendations set out in its Opinion, counsel for the Petitioner submits the following update in the case within the six-month time limit prescribed by the Working Group.²

(a) *Mr. Nguyen Van Đài has not been released, and no action has been taken to implement the Opinion*

Following the Opinion of the Working Group, the Government of Viet Nam has failed to take any action to implement the recommendations contained therein. The Working Group requested the Government of Viet Nam “to take the steps necessary to remedy the situation of Mr. Đài without delay and bring it into conformity with the relevant international norms”. Taking into account the circumstances of the case and the risk of irreparable harm to Mr. Đài’s health and physical integrity, the Working Group further opined that “the appropriate remedy would be to release Mr. Đài immediately, and accord him an enforceable right to compensation and other reparations, in accordance with international law.”³ Mr. Đài has not been released to date and he remains detained in B14 Detention Center in Hanoi, where he has been held since December 2015. The Government of Viet Nam has not provided compensation or other reparations to Mr. Đài for the violations to his human rights under the Universal Declaration of Human Rights (the UDHR)⁴ and the International Covenant on Civil and Political Rights (the ICCPR).⁵ Furthermore, there has been no investigation conducted into the violations of these rights.

Despite the Working Group’s requests, the charges against Mr Đài have been expanded. Mr Đài is now charged with "attempting to overthrow the government" under Article 79 of the Penal Code while the initial charge of "propaganda against state" under Article 88 is still maintained. With this additional charge, Mr Đài could be held in detention for 20 more months before trial.

The deleterious effect of Mr Đài’s detention on his health and physical integrity on which the Working Group expressed its concerns remain the same since his arrest in 2015.⁶ In addition, visitation remains seriously restricted for Mr Đài's family. His wife has not been allowed to visit him since

¹ See UNWGAD, *Nguyễn Văn Đài v. Government of the Socialist Republic of Viet Nam*, Opinion No. 26/2017, http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_26.pdf.

² *Id.* paras. 72-75.

³ *Id.* paras. 70-71.

⁴ Articles 9, 10, 11, 19, 20 and 21 of the UDHR.

⁵ Articles 9, 10, 14, 19, 22 and 25 of the ICCPR.

⁶ See *supra* note 1, par. 66.

May 2017, another fact aggravating concerns about Mr Đai's health and well-being.

The continued violation of Mr Đai's rights is consistent with the treatment of human rights defenders, journalists and bloggers in Viet Nam more generally. In its 2016/17 report, Amnesty International observed that;

“[t]orture and other ill-treatment, including incommunicado detention, prolonged solitary confinement, beatings, withholding of medical treatment, and punitive transfers between facilities were practised on prisoners of conscience throughout the country. At least 88 prisoners of conscience were held in harsh conditions after unfair trials, some of whom were subjected to beatings, prolonged solitary confinement, deprivation of medical treatment and electric shocks. They included bloggers, labour and land rights activists, political activists, religious followers, members of ethnic groups and advocates for human rights and social justice.”⁷

In a report dated 18 June 2017, Human Rights Watch listed 36 cases which human rights defenders were arbitrarily arrested, beaten and harassed.⁸ In a call jointly made by 10 human rights organisations it was stated that;

“Vietnam is in the midst of an unprecedented political crackdown against peaceful expression. So far this year, the Vietnamese authorities have arrested or exiled at least 25 peaceful activists and bloggers. In a series of sham trials, the government has orchestrated the wrongful convictions and sentencing of human rights defenders and bloggers including Tran Thi Nga, Nguyen Van Oai, and Nguyen Ngoc Nhu Quynh to long prison sentences.”⁹

Mr. Đai has been held in detention in violation of his human rights for almost two years, and the Government of Viet Nam has made no attempt to remedy this situation in line with the Working Group's recommendations. Counsel for the Petitioner remains extremely concerned for his health and well-being as his detention continues.

(b) The Revised Penal Code adopted on 20 June 2017 has not harmonised the Government's laws and practices with its international obligations

In its Opinion, the Working Group urged the Government of Viet Nam to “work with international human rights mechanisms to bring its laws and practices into conformity with the Universal Declaration of Human Rights and the Covenant”.¹⁰ To date, the Government of Viet Nam has failed to take steps to work together with the international human rights mechanisms and make legislative amendments to harmonise its laws and practices with its international obligations.

⁷ Amnesty International, *Vietnam 2016/2017*, available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>.

⁸ Human Rights Watch, *No Country for Human Rights Activists*, available at: <https://www.hrw.org/report/2017/06/18/no-country-human-rights-activists/assaults-bloggers-and-democracy-campaigners>

⁹ English Pen jointly with 9 other NGOs, *Stop the Crackdown in Viet Nam*, available at: <https://www.englishpen.org/campaigns/stop-the-crackdown-in-vietnam/>

¹⁰ See supra note 1, par. 68.

On 20 June 2017, the National Assembly of Viet Nam enacted a Revised Penal Code that is to come into force on 1 January 2018.¹¹ The new legislation maintains problematic articles of the current Penal Code. Article 79 of the Penal Code which criminalises activities carried out with intent to “overthrow the people’s administration” is re-introduced under Article 109 of the Revised Penal Code. Article 88 of the Penal Code penalising the act of “conducting propaganda against the State of the Socialist Republic of Vietnam” is another problematic article which remains in Article 117 of the Revised Penal Code.

Further to this, through new clauses introduced with the Revised Penal Code, Viet Nam has enabled a wider application of the national security laws.¹² Particular concerns have been expressed in relation to Article 19 of the Revised Penal Code attributing criminal responsibility to the lawyers not reporting their clients “on national security crimes or other especially serious crimes which the person he/she is defending is preparing to carry out, is carrying out, or has carried out and the defender clearly knows about it while carrying out his/her defense duty.” If not repealed, this provision will cause further harm on people who are charged under national security laws.

As described above, the Government of Viet Nam has not taken steps to collaborate with international human rights mechanisms and to make legislative amendments to Viet Nam’s Penal Code in order to harmonise its laws and practices with its international obligations. Instead, it has passed a new Penal Code which contains provisions, such as Article 109, 117 and 19, that are incompatible with the ICCPR and UDHR.

(c) The situation for human rights defenders, journalists and bloggers has not improved

In 2016 and 2017, Viet Nam continued to demonstrate a persistent pattern of arrests, harassment, physical assaults, surveillance and detention of human rights defenders, bloggers and those who are critical of the Government of Viet Nam.¹³ The Working Group recognised this systemic practice in the Opinion when it stated that “[t]his case is one of several cases that have been brought before the Working Group in recent years concerning the arbitrary deprivation of liberty of persons in Viet Nam. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.”¹⁴

¹¹ See <http://www.vietnamhumanrightsdefenders.net/2017/06/21/vietnam-parliament-adopts-revised-penal-code-controversial-articles-remain/>.

¹² Human Rights Watch, *New Law Threatens Right to Defence*, available at: <https://www.hrw.org/news/2017/06/21/vietnam-new-law-threatens-right-defense>.

¹³ See Parliament of the European Union, *European Parliament resolution on Vietnam* (7 June 2016), 2016/2755(RSP). Since the beginning of 2017, the Vietnamese authorities have arrested and detained human rights activist Nguyen Van Oai, videographer Nguyen Van Hoa and bloggers Tran Thi Nga, Phan Kim Khanh, and Bui Hieu Vo under vaguely worded national security laws. See Committee to Protect Journalists, *Two bloggers detained for 'propagandizing against the state' in Vietnam* (23 March 2017), available at: <https://cpj.org/2017/03/two-bloggers-detained-for-propagandizing-against-t.php>; Committee to Protect Journalists, *Videographer and blogger detained in Vietnam* (26 January 2017), available at: <https://cpj.org/2017/01/videographer-and-blogger-detained-in-vietnam.php>.

¹⁴ See supra note 1, par. 67.

English Pen and 9 other organisations have estimated that Vietnamese officials have arrested or exiled at least 25 peaceful activists and bloggers in 2017.¹⁵ It has also been reported that as of April 2017 at least 112 bloggers and activists were serving prison sentences in Viet Nam for exercising their rights to freedom of expression, assembly, association and religion.¹⁶ Viet Nam is currently ranked 175th out of 180 countries in the Reporters Without Borders World Press Freedom Index.¹⁷

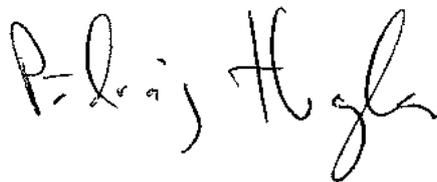
Despite the Opinion of the Working Group recommending otherwise, the Vietnamese authorities have demonstrated a willingness to continue to rely on Articles 79 and 88 of the Penal Code to detain individuals exercising their rights to freedom of expression, association and assembly.

The situation for human rights defenders, journalists and bloggers has not improved over the past six months, and remains an issue of serious concern.

As stated above, Mr. Đai remains in arbitrary detention and the Government of Viet Nam has not taken action to implement the recommendations provided by the Working Group in its Opinion. Under these circumstances, counsels for the Petitioner urge the Working Group to take appropriate action to secure implementation of the Opinion.

Please do not hesitate to let us know if any additional information would be helpful for the Working Group in its follow-up to Mr. Đai's case.

Yours faithfully,



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¹⁵ See supra note 9.

¹⁶ Human Rights Watch, *Vietnam: New Wave of Arrests of Critics* (27 January 2017), available at: <https://www.hrw.org/news/2017/01/27/vietnam-new-wave-arrests-critics>.

¹⁷ Reporters Without Borders, *2016 World Press Freedom Index*, available at: <https://rsf.org/en/ranking>.