

OPINION No. 11/2201 (VIET NAM)

Communication addressed to the Government on 5 June 2001

Concerning a Buddhist monk, Mr. Thich Quang Do

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 and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.
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. The Working Group transmitted the reply provided by the Government to the source, which has not provided it 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 source, on 31 May 2001, Thich Quang Do, a monk of the banned Unified Buddhist Church of Viet Nam, was condemned to two years' administrative detention under the provisions of Government Decree 31/CP and forbidden to leave his pagoda. This decree reportedly empowers the police to order the detention of citizens suspected of threatening national security without formal charges or trial.

6. On 1 June 2001, the police blocked the entry to the Thanh Minh Zen monastery in Ho Chi Minh City and members of the Unified Buddhist Church of Viet Nam trying to visit Thich Quang Do were turned away. Police officers cut the monastery's telephone lines and seized Thich Quang Do's mobile phone. Ten security police officers were placed inside the monastery and others were stationed outside. They have intensified controls around the monastery residence and are closely searching visitors and blocking communications. Two officers keep permanent guard outside Thich Quang Do's room on the third floor, blocking all access. Currently he is under house arrest and cannot leave the monastery.
7. The detention of Thich Quang Do is believed to be related to a letter to the Government in which he called on it to release Patriarch Thich Huyen Quang and allow him to return to An Quang pagoda in Ho Chi Minh City, where he lived before his arrest in 1982. Thich Quang Do reportedly wrote to the authorities that he would personally travel to Quang Ngai province with a delegation to escort Thich Huyen Quang back home.
8. According to the source, the detention of Thich Quang Do is contrary to articles 9, 10, 13 and 18 of the Universal Declaration of Human Rights and articles 9, 12 and 18 of the International Covenant on Civil and Political Rights. He has never used or threatened or advocated violence, but has only advocated the use of peaceful actions permissible under the freedoms protected under international law.
9. In its reply, dated 20 August 2001, the Government of Viet Nam explains that in 1995, Thich Quang Do was sentenced by the People's Court of Ho Chi Minh City to five years' imprisonment, and another five years of administrative surveillance, which will take effect as of the end of his prison term, for acts in violation of articles 81 and 205a of the Penal Code of Viet Nam (the Penal Code was amended on 21 December, 1999).
10. On 28 August 1998, Thich Quang Do was granted special amnesty and released from prison before his term ended and he returned to Ho Chi Minh City. However, according to the Government's reply, Thich Quang Do is still under the administrative surveillance in accordance with the decision of the court. The duration of the administrative surveillance, as the court decided, is from 3 September 1998 to 3 September 2003. On 31 May 2001, the People's Committee of Phu Nhuan District issued an implementing decision which specifies the place of administrative surveillance for Thich Quang Do as 90, Tran Huy Lieu Road, Ward 15, Phu Nhuan District, Ho Chi Minh City.
11. From the foregoing, it appears that the communication before the Working Group relates to a case of house arrest. In this regard, the Working Group will have to consider, in the light of its deliberation 01 (E/CN.4/1993/24, para. 20), whether, in the case in question, such a measure constitutes deprivation of liberty and, if so, whether it is of an arbitrary character.
12. With regard to the first point, the Working Group recalls that, in accordance with its deliberation 01, house arrest constitutes a measure of deprivation of liberty when it is carried out in closed premises which the person is not allowed to leave. In the case in question, the Working Party notes that, according to the information transmitted to it by the source and not contested by the Government in its reply, Thich Quang Do has been under house arrest in his monastery

since 1 June 2001 and has been unable to leave, that police officers are permanently stationed inside the monastery and at its entrance to prevent access by visitors, that the monastery's telephone line has been cut and that Thich Quang Do's mobile telephone has been confiscated.

13. The Working Group therefore considers that the house arrest of Thich Quang Do is indeed a measure of deprivation of liberty within the meaning of the aforementioned deliberation 01.

14. According to the source, the measure depriving Thich Quang Do of liberty in the form of house arrest was put into effect just when he was preparing to lead a demonstration in support of the Patriarch of the Unified Buddhist Church of Viet Nam, while the Government, in its reply, maintains that the house arrest was the result of a court order.

15. The Working Group notes that the Government admits that, in 1998, Thich Quang Do benefited from an amnesty when he still had two years' imprisonment to serve. As a result, his house arrest should have been put into effect on the day of his release, i.e. in 1998. That was not the case, which supports the source's theory that it was Thich Quang Do's intention to take part in a peaceful demonstration that gave rise to his house arrest.

16. Thich Quang Do merely peacefully exercised the rights guaranteed by articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights.

17. In the light of the foregoing, the Working Group renders the following opinion:

The house arrest of Thich Quang Do is an arbitrary deprivation of liberty, being in contravention of articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and recommends that the authorities should terminate the aforementioned measure of house arrest.

Adopted on 12 September 2001