

SOCIALIST REPUBLIC OF VIET NAM

The case of Le Hong Ha and Ha Si Phu

On 22 August 1996, three men were brought to trial in Ha Noi, the capital of Viet Nam, on charges of “divulging state secrets”. The trial lasted only one day, and two of the men - Le Hong Ha and Ha Si Phu - were sentenced to prison terms. The third defendant, Nguyen Kien Giang was given a suspended sentence. Amnesty International believes that both Ha Si Phu and Le Hong Ha were detained for exercising their rights to freedom of expression, through their peaceful political activities. While Ha Si Phu was released on 4 December 1996 after completion of his sentence, Amnesty International believes that Le Hong Ha is a prisoner of conscience and calls for his immediate and unconditional release.

Background

On 4 December scientist and writer Nguyen Xuan Tu, better known by his pen name Ha Si Phu, was arrested in Ha Noi, on charges of having secret state documents in his possession. Ha Si Phu, who was born in 1940, had been visiting friends in Ha Noi at the time of his arrest. Trained as a biologist in former Czechoslovakia, Ha Si Phu is a widely respected intellectual, who in addition to his scientific work frequently contributed essays and articles to official Communist Party journals, although he was never a member of the party. In 1993 Ha Si Phu circulated a number of essays in which he argued that the Communist Party of Viet Nam should adapt to the economic changes taking place across the world. He lost his scientific job in Da Lat, and was criticised in the official press. In 1995, Ha Si Phu wrote an essay called *Farewell to Ideology*, arguing that the ideas of Marxism-Leninism are outdated and inappropriate for economic progress in Viet Nam. In the last five years, Ha Si Phu has spoken to a number of foreign journalists about his ideas and in 1995 he gave several interviews to US-based radio stations in which he confirmed his critical stance on official Communist Party policy in Viet Nam. Police searched Ha Si Phu’s house in Da Lat after his arrest and reportedly confiscated a quantity of papers and video cassettes.

Shortly after the arrest of Ha Si Phu, a second prominent government critic, Le Hong Ha was arrested on 6 December. Le Hong Ha was a senior member of the Communist Party of Viet Nam until June 1995, when he was expelled from the party, apparently at the request of Vietnamese President Le Duc Anh. Le Hong Ha had previously held a number of important positions, including Chief of Cabinet of the Interior Ministry. His expulsion from the party appears to be linked to his attempts to have the Politburo recognise the party’s error in imprisoning Hoang Minh Chinh, who was one of a number of Communist Party members imprisoned as “revisionists” in the late 1960s. Hoang Minh Chinh, who was detained again for six years in the 1980s, was rearrested in June 1995 and sentenced to one year’s imprisonment in November 1995, along with a fourth prominent critic Do Trung Hieu.

The apparent reason for the arrest and detention of Le Hong Ha and Ha Si Phu was that they allegedly had in their possession copies of a letter written by Prime Minister Vo Van Kiet to members of the Politburo in 1995, in which he called for both political and economic reforms and changes to the Vietnamese legal system. The document - which was regarded as highly sensitive by people within the government and Communist Party of Viet Nam who were anxious to slow down rather than accelerate the reform process in the country - was leaked in 1995 and widely circulated among overseas Vietnamese communities in Western countries. Prior to the Eighth

Party Congress of the Communist Party of Viet Nam, held in June 1996, tensions were running high within the upper echelons of the party between those who favoured more radical reform and those who favoured a period of consolidation of party rule.

The trial

When Ha Si Phu and Le Hong Ha were detained, soon after the trial of Hoang Minh Chinh and Do Trung Hieu, it appeared that their arrest and detention was part of a crackdown on open dissent by the Vietnamese authorities, in the run up to the Eighth Party Congress. However, the two men spent eight months in prison without charge or trial, while the Party Congress came and went. They were not tried until 22 August 1996. The announcement that the men were to face trial came only two days before the trial took place. The men were charged under Article 92 of Viet Nam's Criminal Code with "the crime of intentionally divulging state secrets". It was not known that Nguyen Kien Giang was also a defendant until the day of the trial.

Foreign journalists who attempted to gain access to the court during the trial of Le Hong Ha and Ha Si Phu were denied permission to enter. While Amnesty International did not have an observer present either, reports of the trial have reached the organization which confirm that it followed the usual procedures for such cases in Viet Nam. These fall far short of international standards for fair trial.

According to reports received on other cases, the normal procedure appears to run along the following lines. There is a panel of people who function as judge and jury. This consists of a Presiding Judge or Chairman, a magistrate and two or three "representatives of the people" who are often members of a local People's Committee, or representatives from a Fatherland Front organization, such as a Women's Association. These people sit at the front of the courtroom, while the accused typically sit on a bench facing the panel. The representative of the Procurator's office, who functions as Prosecutor sits at the front to the side of the judges' bench. The defence lawyer, often appointed just before the trial, is seated behind or to the side of the panel. The Procurator describes the charges, and the accused are then asked to stand and make a plea. The Presiding Judge then questions them. In some cases the accused have been allowed to respond fully, but according to reports received in some cases, they are cut off by the judges if they try to speak for too long. They are not in proximity of their defence lawyer(s) during questioning, and they do not have access to any documentation. After the Presiding Judge has questioned the accused, the Procurator asks questions. This constitutes a significant proportion of the trial. Once the Procurator has finished, the defence lawyer can speak. S/he is usually allowed only to make a statement, not to call or question witnesses. Following the defence lawyer's statement, there is usually the opportunity for the accused to make a final statement before the verdict is announced. The procedure typically takes one day, and the verdict follows very soon afterwards, sometimes on the same day, sometimes on the following day.

Fair trial standards

Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR) sets out minimum standards safeguarding the fairness of criminal trials. Viet Nam as a state party to the ICCPR is

bound to comply with these standards, yet available information indicates that the following safeguards are not being upheld in criminal trials, including the trial of Le Hong Ha and Ha Si Phu:

- the right to be informed promptly and in detail of the nature and cause of charges against [the accused]: **Article 14(3)(a)**
- the right to be represented by counsel: **Article 14(3)(d)**
- the right to have adequate time and facilities to prepare a defence: **Article 14(3)(b)**
- the right to be tried without undue delay: **Article 14(3)(c)**
- the right to examine or have examined witnesses against the accused: **Article 14 (3)(e)**
- the right not to be compelled to testify against oneself or confess guilt: **Article 14 (3)(g)**
- the right to have the opportunity to summons and question witnesses on behalf of the accused under the same conditions as the prosecution: **Article 14 (3)(e)**

In addition, Article 14(1) of the ICCPR states that all persons charged with a criminal offence have the right to a fair and public hearing by an independent and impartial tribunal; and that the judgement should be made public except in cases of juvenile persons or matrimonial disputes of guardianship.

According to a report on the trial of Le Hong Ha and Ha Si Phu received by Amnesty International, when the Presiding Judge asked Ha Si Phu his opinion on the charge that he was guilty of “deliberately disclosing state secrets”, Ha Si Phu attempted to reply at length. He told the court that while riding his bicycle by one of the lakes in Ha Noi, he had been struck down by two men on a motorcycle who had snatched his bag. He said that public security cadres escorted him and the two bag-snatchers to their district building, where the bag-snatchers were allegedly left alone. A public security cadre then took Ha Si Phu’s bag and searched it, then started filing charges that he had commandeered secret state documents. Ha Si Phu apparently told the court: “This is nonsense. This charge sounds like I was a commando spy being caught red-handed while unlocking the national archive store.” At this point, the Presiding Judge stopped the proceedings and told Ha Si Phu that he must not speak at length, and must simply say whether he agreed or disagreed with the charge.

The account of the trial states that the three defence lawyers all argued that no evidence had been presented in support of the charge that the men were guilty of deliberately disclosing state secrets, and that the state official who declared that the letter by Prime Minister Vo Van Kiet was a secret document did not appear in court to give evidence. The copies of the letter were taken by Public Security officials and returned to the government, and there was reportedly no attempt by the court to assess what, if any damage had been done to national security. All three defendants stated that they had no intention of divulging state secrets. The letter had circulated widely amongst the overseas Vietnamese community and was easily obtainable. Amnesty International has no information as to whether the letter was clearly identifiable as an official secret document. The Procurator apparently made no attempt to answer the points raised by the three defence lawyers.

The trial lasted less than one day, and the verdict was delivered in the afternoon of 22 August 1996. All three men were found guilty of violating Viet Nam’s national security laws through the deliberate divulging of state secrets. Le Hong Ha was sentenced to two years’ imprisonment, Ha Si Phu to one year, and Nguyen Kien Giang - who unlike the other two men had not been in detention before the trial - to a 15 month suspended sentence. The full court judgement was not published. Le Hong Ha appealed against his sentence, but this was upheld by the Supreme People’s Court on 22

November. Ha Si Phu was released on 4 December 1996 and Le Hong Ha is due to be released in December 1997.

Le Hong Ha and Ha Si Phu are prominent dissidents in Viet Nam, renowned for their independent thinking and their willingness to challenge official party policy. Their arrest, detention and conviction on charges of intentionally divulging state secrets appears to be a politically-motivated decision by the authorities in Viet Nam, in order to send a signal to the Vietnamese people that public dissent will not be tolerated. On the basis of the information received, the evidence presented against them at their trial did not appear to prove that they were guilty as charged and yet they were convicted and sent to prison. Amnesty International is concerned that the real reason for the men's detention is their peaceful political activities in support of their views that political change is necessary in Viet Nam.

While the organization welcomes the release of Ha Si Phu, it believes Le Hong Ha is a prisoner of conscience, imprisoned after an unfair trial because of his writing and broadcasting activities in support of his peaceful political beliefs. Amnesty International believes he should be immediately and unconditionally released.