

1 December 1998

Further information on UA 292/98 (AMR 51/93/98, 10 November 1998) - Death Penalty / Prison Conditions

**USA (Oklahoma) Tuan Anh NGUYEN, aged 38, former refugee from Vietnam
John Wayne DUVALL, aged 47
John Walter CASTRO, Native American**

Amnesty International has received further information on Tuan Anh Nguyen, the former child refugee from Vietnam scheduled to be executed in Oklahoma on 10 December 1998, the 50th anniversary of the adoption of the Universal Declaration of Human Rights.

In the seven years that Tuan Nguyen has been held in H-Unit of Oklahoma State Penitentiary, his mental health is reported to have deteriorated to the point that there is now serious doubt over whether he understands his punishment.

In recent years he is reported to have had repeated psychotic-like episodes in his cell where he would scream for extended periods.

International standards prohibit the use of the death penalty against "persons who have become insane" (Safeguard 6, UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted 1984), and recommend that it not be used against people of "extremely limited mental competence, whether at the stage of sentence or execution" (UN Economic and Social Council, resolution 1989/64, adopted 24 May 1989).

Whereas Tuan Nguyen used to show active interest in his own case, he has been unable to assist his lawyers in any meaningful way for several years. For many years he has refused to leave his cell for anything apart from to shower.

The last time he agreed to leave his cell to meet with his lawyer was for a 10-minute meeting in early 1994, during which he said nothing for the majority of the time. During the meeting Tuan Nguyen's mouth constantly worked in a back and forward motion. On a recent visit on 20 August 1998, his attorney spoke to Tuan Nguyen through the "bean hole" (the hole through which the food tray is passed) in the bottom of the cell door. His answers to the lawyer's questions were restricted to "yes" or "no" or silence, would take an unusually long time to emerge, and his lips and mouth moved in an "odd repetitive pattern".

On 30 September 1998, a psychiatrist hired by the defence team went to H-Unit to see Tuan Nguyen, but again the prisoner refused to leave his cell. The psychiatrist observed Tuan Nguyen through the bean hole. Very little communication was possible. Tuan Nguyen paused for long periods with an involuntary mouth movement and throat contractions which caused him to choke and cough. The psychiatrist believes that Tuan Nguyen could be suffering from degenerative neurological disease with cognitive impairment. He noted that a conclusive finding was not possible without proper neurological testing in a hospital setting.

Tuan Nguyen's execution date was set on 8 October. At the request of his lawyers, prison officials took a mobile telephone to Tuan Nguyen's cell door.

Because he was incapable of dialling the number, an official did so for him and placed the telephone in his hands. Tuan Nguyen gave no response to the news of his impending execution.

On 23 October, Tuan Nguyen's lawyer wrote to the prison warden indicating that there was "good reason to believe" that Tuan Nguyen was insane as defined by Oklahoma law (that is, he does not understand the nature of his punishment).

Two weeks later, the warden responded that Tuan Nguyen was not insane. It is not known what other person or persons the warden relied upon to make this determination of sanity. Tuan Nguyen's lawyers were not present to cross-examine any such person, and they are appealing that a proper hearing be conducted into their client's mental health.

On 17 November, the Pardon and Parole Board tied 2-2 on the case of John Wayne Duvall, scheduled for execution on 17 December. It was the first time that an inmate has received two votes for clemency since Oklahoma resumed executions in 1990. Two board members voted for life without parole, and two voted against clemency. The fifth board member abstained because he had worked as a clerk for a court when it had heard one of John Duvall's earlier appeals. This effectively denied John Duvall the opportunity to gain a majority vote in favour of clemency. The 2-2 result was recorded as clemency denied.

John Walter Castro, who is a Native American, remains scheduled for execution on 7 January 1999. He is said to have been a model prisoner, and to have become an accomplished artist.

All three prisoners remain in high-max solitary punishment cells.

PLEASE CONTINUE APPEALS as specified in original UA (including on 60-day lockdown policy to James L. Saffle). Appeals for John Duvall should go to Governor only (noting the Board's tied vote after an abstention as a reason for the Governor to seriously consider clemency) and those for John Castro to both Governor and Parole Board.

Also please send as many additional appeals as possible for Tuan Nguyen to the Governor, expressing deep concern at reports that Tuan Nguyen may be insane under Oklahoma law, and calling for clemency and a full hearing into his sanity.

Governor Frank Keating, 212 State Capitol, Oklahoma City, OK 73105, USA
Fax: +1 405 521 3353
E-mail: governor@oklaosf.state.ok.us
Telegrams: Governor Keating, Oklahoma City, OK, USA
Salutation: Dear Governor

Please send as many faxes as possible to the following two newspapers on the case of Tuan Nguyen, expressing in your own words concern that Oklahoma is planning to execute a mentally ill man on the day when the world will be marking 50 years of the Universal Declaration of Human Rights.

Letters to the Editor, *Daily Oklahoman*, 9000 North Broadway, PO Box 25125, Oklahoma City, OK 73125, USA. **Fax: +1 405 475 3183 or +1 405 231 3513**

Letters to the Editor, *Tulsa World*, 315 South Boulder Avenue, Tulsa, OK 74103, USA. **Fax: +1 918 581 8353**

COPIES to diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.