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Viet Nam: Imprisonment of asylum seeker forcibly returned by Australia would be unlawful and could be disastrous for her four young children

The imminent imprisonment of Trần Thị Thanh Loan, an asylum seeker forcibly returned by Australia with her husband and four children in March 2015, would be a callous and perverse punishment for the exercise of her right to seek asylum, Amnesty International has said. Additionally, it would have dire consequences for her four young children, aged between four and twelve. Loan's imprisonment for attempting to flee the country to seek asylum in Australia would follow the equally unacceptable imprisonment of her husband earlier this year for the same offence.

Loan and her husband, Hồ Trung Lợi, together with their four children, were among 46 people who fled Viet Nam by boat in March 2015, trying to seek asylum in Australia. The boat the group was travelling in was intercepted by the Australian authorities who forcibly returned the 46 passengers to Viet Nam in April 2015.

Despite assurances to the passengers from the Australian and Vietnamese authorities that they would not be sent to prison after being returned to Viet Nam, the couple were among four handed jail sentences after being convicted under Article 275 of the Penal Code, of 'Organizing and/or coercing other persons to flee abroad or to stay abroad illegally', in April 2016. Loan was sentenced to three years in prison, whereas Hồ received a two year prison sentence. The two others, Nguyễn Thị Liên and Nguyễn Văn Hải, were sentenced to three and two years' imprisonment respectively.

While Hồ Trung Lợi has been in prison since July 2015, Trần Thị Thanh Loan remained on bail pending her appeal. On Monday 8 August, Loan received notification that her appeal, which was considered in June, had been denied and that she had seven days to report to her local police station in La Gi village, Bình Thuận Province, to be taken to prison. The seven day period expires on 15 August 2016.

Loan and Hồ, together with Nguyễn Thị Liên and Nguyễn Văn Hải, were convicted for exercising an internationally protected human right; they should be released from detention and cleared of their conviction immediately. The Universal Declaration of Human Rights and other international law instruments provides for the right to seek asylum outside one's country. Rather than penalising the exercise of the right to seek asylum, Vietnam is obliged to respect and protect this right, as it is a norm of customary international law binding on all nations.

In addition to being unlawful, the imprisonment of Loan and Hồ will leave their four young children without their parents and legal guardians. Under the Convention on the Rights of the Child, to which Viet Nam is a state party, the Vietnamese authorities are obliged to make the best interest of children a primary consideration in all actions concerning children, including those taken by administrative authorities and courts of law.

In a separate but almost identical case, four others from La Gi village, Bình Thuận Province, were convicted under Article 275 after a boat they were traveling in was intercepted by Australian authorities and they were forcibly returned to Viet Nam in July 2015. Two men, Nguyễn Đình Quý and Nguyễn Minh Quyết, were detained after the group was returned. They were both given two year sentences after their trial in May 2016 whereas two women in the same case, Trần Thị Lụa and Huỳnh Thị Kiều, received three year sentences. Lụa and Kiều are on bail pending the outcome of their appeal. Nguyễn Đình Quý and Huỳnh Thị Kiều are married with three children between the ages of five and 20 years old. Should Kiều also be sent to jail, their children will also be arbitrarily deprived of both their parents by the criminal justice system.

Nguyễn Minh Quyết was released from prison in April 2016 as a result of a medical problem which has left him unable to walk. He is serving the remainder of his sentence under house arrest. While the authorities have stated that his incapacity is due to a medical condition brought about by other factors, it has been reported that he was beaten while in custody in La Gi police station.

The detention and imprisonment of an individual for exercising his/her right to seek asylum are arbitrary and unlawful. The Vietnamese authorities must immediately and unconditionally release the four individuals currently in prison and under house arrest and vacate the convictions of all eight.

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