

DONG TAM INCIDENT



REPORT

Analyzing the Dong Tam case in Human rights context and under
International conventions on Human rights



2020

Human Rights Information Center 

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Preface

Land is a valuable resource for any nation. For developing countries like Vietnam, it is also a great resource for development. However, in the transition to the market economy, land issues have gradually become “out of control” due to outdated laws and policies, which are heavily political-oriented. As a result, land becomes a “fertile realm” for officials and leaders corrupting in power, and profiting in many forms, from blatant to sophisticated.

The 1987 Land Law, which was issued in 1988 and enforced in the *Doi Moi* period, regulated that "Land is the property of the peoples and uniformly managed by the State". In 2003, the National Assembly of Vietnam issued the new Land Law which revised to: "Land belongs to the entire people and the State is the owner's representative." This regulation was extended by the National Assembly a little longer in the revised Land Law, enacted at the end of 2013: “Land belongs to the entire people with the State acting as the owner's representative and uniformly managed land. The State shall hand over land use rights to land users in accordance with this Law”.

"All people's ownership" is not a concept from the classics of Marxism-Leninism, it was introduced from the centralized economic model of the Soviet Union in the 1930s. The Constitution 1946 of Vietnam did not mention this concept. The new Constitution 1959 stated that "all mineral resources and waters and all forests, undeveloped land, and other resources defined by law as belonging to the state are the property of the whole people", which meant that all people's ownership was the state's ownership. It was not until the 1980 Constitution that land was declared to belong to the people.

In the process of transforming to the market economy, private property rights appeared more frequently, hiding behind the increasingly vague concept of 'ownership of all people'. The State is the sole representative of the owner, but could not directly use and exploit hundreds of millions of land-plots in the whole nation. Therefore, since 1993, the Vietnam government has been forced to give more rights to individuals and organizations that were currently using these “all people's” plots. These legal entities

do not hold absolute private ownership on paper, but through each amendment to the Land Law, they are grabbing more and more property rights attached to land.

This conflict is deepened when the state shows discriminations on land-use rights, when allocating or leasing land to different entities. State intervenes forcefully on the land-use rights of farmers and individuals, while decentralizing its rights over land-plots granted to legal entities... These are legal “defects” that create an “environment” for policy corruption and de facto appropriation, which build up the institutional uncertainty as outlined above.

Over the years, there have been many land disputes between people and enterprises, and the state is always on the side of enterprises, like what happened in the disputes in Van Giang, Duong Noi, Thu Thiem, Hung Loc garden. Recently, a land dispute burst out at the beginning of 2020 in Dong Tam commune and resulted in 4 deaths (one Dong Tam resident and three police officers). The dispute shocked the public; the investigation, prosecution and adjudication of the case are closely monitored by domestic and foreign observers.

Dong Tam is a very complicated case, but during the trial process, the tribunal repeatedly rejected many recommendations and requests of the defense lawyer to clarify the nature of the case and avoid causing injustice and wrong conviction. Even during the investigation, there were also signs of harassment, torture, violation of due process and the rights of detainees. The Dong Tam case is one of the tragedies about land rights disputes between farmers and enterprises, it is also a typical case in which the state turns a civil case into criminal.

In the light of human rights law and international conventions to which Vietnam is a party, Dong Tam is a case worth deeply analyzed. Therefore, the Human Rights Information Center would like to represent a report on the Dong Tam case that we conducted.

I - Background of the Dong Tam issue

1. Causes

In the general context of Vietnam, the underlying reason for the event rooted in the land policy, which generated conflicts of interests between the government and its people. In the case of Dong Tam issue, villagers have been frustrated and repeatedly complained and reported to competent authorities about the corruption of local officials. Land-use dispute was also the direct cause of a range of issues in Dong Tam from 2014. Indeed, the dispute came from the differences of opinion of villagers and the authority about the land area for national defense purposes and for agricultural purposes.

On **14/04/1980**, Vietnam's Prime Minister issued Decision no. 113/TTg on granting 208 hectares of land for the construction of Mieu Mon military airport, acquiring all agricultural land in Senh Field area for this project. On **10/11/1981**, the People's Committee of Ha Son Binh province (now is Hanoi city) issued Decision no. 386 QD/UB on the first phase of land acquiring. According to this decision, 47.36ha of land in the east area of Send Field was taken for national defense purposes, and Dong Tam Co-operative was compensated 150,312 VND. This area was then marked with numbered milestones and was put under the management of Brigade 28 of the Military Air Force.

However, the Mieu Mon airport project was not implemented as planned. The People's Committee of Dong Tam commune, therefore, tactically approved to change the land-use purpose of the remaining area by letting the villagers cultivate and habitat on it. Brigade 28 also leased the 47.36ha area which was handed over for national defense purposes to farmers to cultivate.

In 2014, the People's Committee of Hanoi re-measured the land area in the Mieu Mon airport project and made a decision to hand over 236.7 hectares of land to the Air Force for stationing, the land area increased 28.7 ha compared to the area stated in Decision No. 113 / TTg 1980. Disputes arose because villagers thought that the increased area was agricultural land. When information about the land acquisition leaked in 2014, residents of Dong Tam commune filed a complaint with the unit in charge of the construction of Mieu Mon airport, the Air Force. This unit proposed the

villagers to settle the dispute with the civil agencies of Hanoi city. This response showed that the military has recognized Senh Field as "civilian land".

On **27/03/2015**, the Ministry of Defense issued a decision, which withdrew 50.03 hectares under the management of the Air Force and assigned it to the Military Telecom Corporation (Viettel) for constructing national defense infrastructure A1. The villagers believed that 46ha of the acquired land was agricultural land of Dong Tam commune and that people should be compensated satisfactorily at the market price. The authority disagreed with this opinion and insisted that this was state-own land.

Land dispute between the villagers and the government has escalated from **November 2016** when the People's Committee of My Duc District marked the land outside the area 47, 36ha acquired since 1981 by reflective cord and a signboard "Prohibited Area - Military Area". When Viettel started constructing on this land at the beginning of 2017, villagers prevented it by pulling up the "military area" signboard and bringing in agricultural machinery and materials for farming.

The conflict reached its peak on **15/04/2017**, when the authority arrested 4 villagers to investigate the case of Disrupting public order related to land clearance in Dong Tam commune. Mr. Le Dinh Kinh, an elderly man with a voice in the community, was also arrested and had his leg broken in this arrest.¹ The people of Dong Tam were outraged at the arrest and, in return, arrested 38 officials and policemen who were dispatched in the case, detaining them at the village cultural house for 7 days. This action was to put pressure on the authority in order to release the 4 arrested people, engage in dialogue, and resolve urgent land issues.

On **22/04/2017**, Mayor of Hanoi Nguyen Duc Chung went to Dong Tam for a dialogue with the people. Mr. Chung hand wrote a pledge, making 3 promises:

- Investigating and clarifying the origin and zone of the Mieu Mon airport land area
- No criminal prosecution against any people in Dong Tam commune in this incident

¹ Mr. Le Dinh Kinh was born in 1936, was a member of the Communist Party, used to hold the position of Chairman of the People's Committee in Dong Tam Commune. At the time of arbitrary arrest and injury, Mr. Kinh was 81 years old.

- Investigating, verifying, and holding to account those who were responsible for the arbitrary arrest and injury of Mr. Le Dinh Kinh.

The view of villagers

In many years, villagers in Dong Tam commune were frustrated with the wrongdoing in land-use management committed by local officials and sent many denunciations to the competent authorities. By 2013, some people in Dong Tam commune formed a group to fight for land rights of all people in the commune, the group was called the Consensus team with Mr. Le Dinh Kinh (Former Chairman of Dong Tam Commune People's Committee) as the representative. The establishment of such a group was consistent with the right of association recognized in the 2013 Constitution.² The work of the Consensus team has also achieved some results when bringing local corrupting officials to the court.³

Arguments of Dong Tam villagers about the land dispute:

- Only the first phase of the land acquisition for the Mieu Mon airport project was just implemented, the people already handed over 47.36ha and received compensation in 1981. Villagers called this acquired area as the Eastern part of Senh Field and recognized as a land of national defense. From 1981 up till now, the government has not issued any decisions to take the remaining area with a compensation plan for people, so the disputed 46 ha area (the west of Senh Field) is still agricultural land, despite being part of the national defense project. Hence this area must be compensated at market prices.

- 28.7ha increased area between the measuring in 1981 and 2014 is agricultural land.

- In 2014, when preparing to clear the area, the local government had a plan to compensate and resettle 14 households living in the 47.36 ha area (the area has been

² Art. 25 Vietnam Constitution 2013

³ The Government Inspectorate admitted that land-use disputes were long-term and frustrated issues in Dong Tam (see more at: <https://thanhtra.com.vn/thanh-tra/hoat-dong-nganh/Thanh-tra-Chinh-phu-va-TP-Ha-Noi-doi-thoai-voi-cong-dan-xa-Dong-Tam-157101.html>)

handed over to the army units since 1981). This indirectly acknowledges the status of the land is not land of defense.

- The military units did not have any action to resolve land disputes with the people. When villagers complained to the Air Force (in charge of Mieu Mon airport project), this unit suggested they contact the city authority. If the disputed area is state-owned land for national defense, military units must be the party settling the dispute with the people.

Regarding the event on 15/04/2017, the authority is accused of arbitrary arrest when inviting representatives of the complainings to the disputed land area for jointly measuring and defining the boundary between defense land and agricultural land, and then arresting these four agents without any arrest warrants. The arbitrary arrest led to violence and injuries for Mr. Le Dinh Kinh. People in Dong Tam commune then detained 38 people, including officials and police officers, to put pressure on the authorities to release those arrested.



Picture 1. Senh Field area from Google map. The Mieu Mon airport is on the top – right of the field. (Source: BBC News Vietnamese)



Picture 2.. Senh Field map and the dispute area. (Source: BBC News Vietnamese)

The view of the authority

Under pressure from the people of Dong Tam, the council of Hanoi organized an inspection on the land-use at Mieu Mon airport. Hanoi Inspectorate conclusions made in **July 2017**⁴ confirmed:

- The entire land area of Mieu Mon airport in the administrative border of Dong Tam commune is state-own land for national defense purposes. There is no area of Senh Field that is agricultural land as Mr. Le Dinh Kinh or some of the people claimed in the complaint and denunciation letter.

- The difference of 28.7 ha between 1980 and 2014 measuring data is part of the planning phase II and was handed over at that time to a military unit that was in charge of constructing infrastructure.

⁴ Conclusion no. 2346/KL-TTTP-P5 issued on 19/07/2017 of Hanoi Inspectorate on the management, using Mieu Mon airport's land, see more at: <https://nhandan.com.vn/thoi-su-phap-luat/ha-noi-cong-bo-ket-luan-thanh-tra-toan-dien-khu-dat-san-bay-mieu-mon-299107/>

- After receiving the handover of 28.7ha of land, the military units failed to report to the Ministry of Defense and the Government, these military units are also accounted for loose management of the land, allowing people to live and claim land tenure on state-own areas.

- The compensation plan for 14 households living in the site clearance area approved by the government is legally according to the authority's competent and due process but lacks examining and is not suitable. This compensation plan has been withdrawn at the time of inspection.

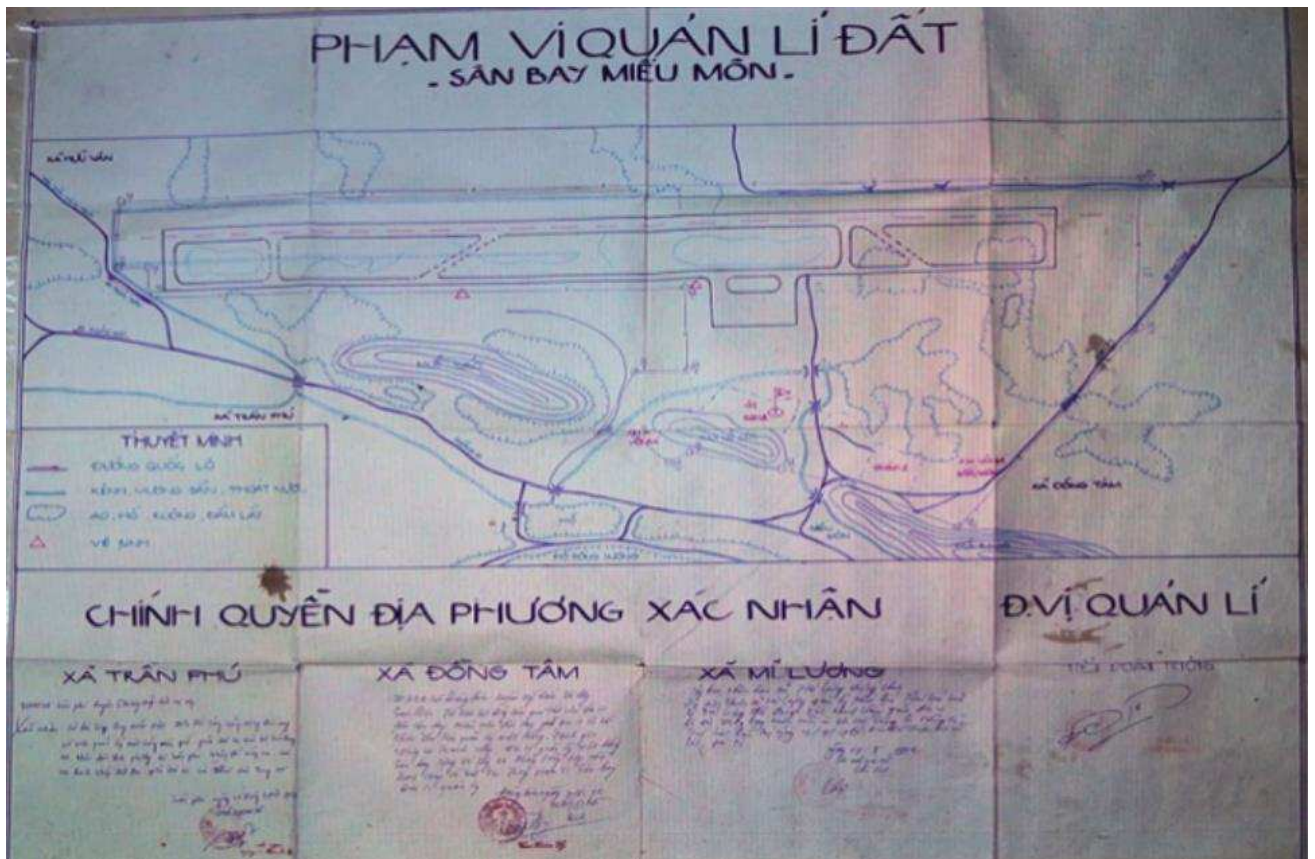
The Government Inspectorate agreed and reaffirmed the above opinion on 25/04/2017 in Notice no. 611/TB-TTCP⁵ on the review and verification of the accuracy and legality of Conclusion 2346 of Hanoi Inspectorate. This announcement concludes "the petition of Mr. Le Dinh Kinh is not grounded, there is no basis" and the government's issuance of decisions to allocate land in this area to the military unit for continuing stationing is "competent, in accordance with the provisions of the law".

On 27/08/2019, the authorities released a map during a conference with press agencies on the inspectorate's conclusions about the Mieu Mon airport land.⁶ This map shows the scope of Mieu Mon airport land management, which was created in 1992, with the signature of the leaders of the People's Committees of the communes allocating land to the military unit. When being asked why only now the authority publicly announced the map, the Mayor of Hanoi said it was necessary to display it so that people could understand the map in this area. However, the authenticity of this map is still questioned.⁷

⁵ Notice no. 611/TB-TTCP of the Government Inspectorate, see at: http://www.thanhtra.gov.vn/ct/news/Lists/KetLuanThanhTra/View_Detail.aspx?ItemID=112

⁶ Vietnam Finance, Hanoi suddenly releases map of Mieu Mon airport in Dong Tam, see at: <https://vietnamfinance.vn/ha-noi-bat-ngo-cong-bo-ban-do-san-bay-mieu-mon-o-dong-tam-20180504224228127.htm>

⁷ RFA, The map of Dong Tam commune: "Questioned the authenticity", see at: https://www.rfa.org/vietnamese/in_depth/hanoi-suddenly-published-a-map-of-mieu-mon-airport-in-dong-tam-08282019140830.html



Picture 3. The map indicates the land management in Mieu Mon airport project with signatures of representatives of allocating communes from 1992.

(Source: Vietnam Finance)

Efforts to resolve disagreements:

On **13/06/2017**, the Hanoi police decided to prosecute the investigation of the arrest of 38 hostages in Hoanh village, Dong Tam commune, My Duc district, Hanoi on 15/04/2017, to clarify acts of illegally arresting people under Article 123 and acts of destroying or intentionally damaging property under Article 143 of the Vietnamese Penal Code. This prosecution is against the promise made by the Mayor of Hanoi on 22/04/2017. It should be noted that the arrest of 38 hostages in Hoanh village, Dong Tam commune took place while people were frustrated by the arbitrary beatings and arrest of Mr. Le Dinh Kinh by some officials, and feared that the police force would suppress them in the same way. During 7 days of detention at the village cultural house, 38 hostages were not subjected to any torture, inhumane treatment, and were provided adequate food, water, and other essential needs.

On **07/07/2017**, the Hanoi authority held a meeting to announce a draft conclusion of the Hanoi Inspectorate on the Mieu Mon airport land issue. During this announcement, Dong Tam people opposed the inspection's conclusion that there was no agricultural land in Senh Field area. The people believe that their land at Senh Field is a legacy inherited from their ancestors. Mr. Nguyen Van Tuan Dung, Chief Inspector of Hanoi, argued that land was owned by all people, and all Vietnamese people shared the same ancestral origins, so there was no concept of private land or ancestor's land. Hanoi Mayor Nguyen Duc Chung also stated that a part of Dong Tam people did not fully understand the land issue, so some others took advantage of it, provoking greed to make a profit, villagers needed to be awake. According to Mr. Chung, defense land is a national top-secret issue. It is up to each level of government to access a certain amount of information, so there is no obligation to provide information to anyone else.

On **17/08/2017**, the Investigation Department of the Ministry of Defense sent a summons to Mr. Le Dinh Kinh to summon him to its headquarter on 23/08/2017. Mr. Kinh was unable to go because his injured leg was not recovered.

On **15/04/2019**, Dong Tam people sent a letter to the 7th Conference of the Central Communist Party of Vietnam (Session XII) . This letter did not receive any response. In an interview with the BBC Vietnamese in May 2019, Mr. Le Dinh Cong, Dong Tam residents, shared that they had sent a total of 15 complaint letters to the President of Vietnam, the Prime Minister, and the President of the National Assembly, but had not received any replies.

On **31/05/2019** at a National Assembly meeting, National Assembly member Duong Trung Quoc urged the authorities to discuss and settle the dispute satisfactorily.

On **25/11/2019**, the government held a dialogue conference with people in the areas adjacent to Mieu Mon airport area to announce the conclusion of the Government Inspectorate. Mr. Le Dinh Kinh did not attend this meeting.

During this time, Dong Tam land issue also received a lot of attention from the public. Some lawyers also set up a support group, giving legal advice to people in drafting complaint letters. The case also received the attention of some members of the National Assembly such as Mr. Duong Trung Quoc, who urged the government for peaceful dialogue and resolution with questions and frustrations of Dong Tam people.

In spite of all the efforts listed above, the dialogue between the people and the authority has never ever really happened.

2. The 09/01/2020 attack

Around 1:00 am - 5:00 am on 09/01/2020, the police force carried out a coercive campaign with the participation of thousands of armed police into Hoanh village, Dong Tam commune, My Duc district, Hanoi. The attack took place on the Full Moon day of December in the lunar calendar, approaching the Lunar New Year.

Immediately after the attack, the electronic page of the Ministry of Public Security (MPS) announced the incident as below:

“From December 31th 2016, a number of units of the Ministry of Defense coordinated with the other forces to build a barrier protecting Mieu Mon airport, Hanoi as planned. During the construction, on the morning of January 9th 2020, there were acts of protest, the attackers used grenades, petrol bombs, knives, etc. against the functional forces, resisted against those on public duties, disturbed public order, resulting in the deaths of 3 police officers, 1 death of the protestor, and 1 injured. The functional units have controlled and arrested serious law-violators, prosecuted the case, prosecuted the accused, and handled in accordance with the law. Currently, relating units are building the fence of Mieu Mon airport as planned.”⁸

According to the above announcement, the enforcement of the arrest on 09/01/2020 was an unforeseen event, in which the competent forces were forced to suppress the attack and harassment of some citizens.

However, before the attack happened, several human rights activists had shared warnings allegedly leaked from an official at the Government Office that there would be an attack on Dong Tam before the Lunar New Year. The Conclusion of the investigation and prosecution by Hanoi police also mentioned the agreement between the Hanoi police and other forces to ensure security and order in Dong Tam commune was deployed in the morning of January 9th.⁹

⁸ Tuoi Tre online paper cited the announcement of the Ministry of Public Security on 09/01/2020, see at: : <https://tuoitre.vn/bo-cong-an-thong-tin-ve-tinh-hinh-o-xa-dong-tam-20200109083527395.htm>

⁹ The Investigation conclusion no. 210/KLĐT-PC01(Đ3), page 7.

The attack as told by "an anonymous resident" in Dong Tam commune to the BBC News Vietnamese was as follows¹⁰:

- At 3:00 am January 9th, officials in police uniform brought sticks, clubs, guns, and shields to the village. They threw flares, fired tear gas bullets, blocked all the alleys into Mr. Kinh's house, then broke in and beat women and the elderly in bruises.

- Some villagers resisted against the police force with bricks and petrol bombs, but "pointless" because "they are too crowded and armed".

- The house of Mr. Le Dinh Kinh and Mr. Le Dinh Cong was blasted, causing the wall to collapse, damaging the house. Mr. Le Dinh Cong's son was shot and broke his arm, and Mr. Cong's son and his wife were later arrested with their two kids. The witness also said that the electricity was not cut, but the internet was completely cut off.

Lawyer Ngo Anh Tuan, who defended the rights of Dong Tam people, said he could not enter the Dong Tam residential area because he was stopped by the police, who demanded permission from the Director of Hanoi police force for entering.¹¹

3. The aftermaths and victims

The authority:

The Ministry of Public Security reported that 3 policemen killed in the clash were:

- Nguyen Huy Thinh (1972): Deputy Commander of the Regiment, Mobilizing Police Regiment of Hanoi.

- Pham Cong Huy (1993): Officer of the Fire and Rescue Team No. 3 of Hanoi police

- Duong Duc Hoang Quan (1992): Platoon Commander, Mobilizing Police Regiment of Hanoi.

The bodies of 3 officials were found with many parts burned unrecognizably. Investigators and prosecutors concluded that these three soldiers were burned alive by petrol by the opposing group.

¹⁰ See the interview at <https://www.bbc.com/vietnamese/vietnam-51043856>

¹¹ See more at: https://www.rfa.org/vietnamese/in_depth/forceful-eviction-at-night-is-law-violation-01092020100909.html

The villagers:

Fatality and injury:

Mr. Le Dinh Kinh (1936) was shot and killed at his home. The police argued that Mr. Dinh was about to throw grenades to attack the functional forces, this was a dangerous act and should be destroyed. When collapsing, Mr. Kinh's hand was still holding a grenade. However, according to the testimony of Ms. Du Thi Thanh – Mr. Kinh's wife, and Mr. Bui Viet Hieu, when Mr. Kinh was shot, he did not take any acts of protest and he was shot directly at a close range. Mr. Kinh's body was taken for autopsy right after.

Mr. Bui Viet Hieu (1943) injured his leg and suffered from 3 holes in the duodenum, 2 holes in the colon. The police did not give conclusions about where Mr. Hieu's wound came from, but Mr. Hieu told the lawyer that the injuries were caused by bullets and that he was shot after Mr. Kinh.

Mr. Le Dinh Chuc (1980, son of Mr. Le Dinh Kinh) was shot and injured in the head.

Those arrested and charged:

The Hanoi Procuracy proposed to prosecute 6 defendants with murdering, of which Le Dinh Cong and Le Dinh Chuc were proposed to death, the other 4 were proposed from 14 to 18 years in prison or life sentences. The remaining 23 defendants were accused of resisting those on public duty and proposed, ranging from suspended sentences to 4-5 years in prison.

On 14/09 2020, the People Court of Hanoi issued the verdict on 29 defendants. The court stated that Le Dinh Cong and Le Dinh Chuc were the masterminds and held main responsibility for the murder case, four other defendants were also sentenced for murder. To be specific:

1. Le Dinh Cong (male, 56 years old, son of Mr. Kinh): Death penalty for murdering
2. Le Dinh Chuc (male, 40 years old, son of Mr. Kinh): Death penalty for murdering
3. Le Dinh Doanh (male, 32 years old, grandson of Mr. Kinh): Life sentence for murdering

4. Bui Viet Hieu (male, 77 years old,): 16 years in prison for murdering
 5. Nguyen Van Tuyen (male, 46 years old,): 12 years imprisonment for murdering
 6. Nguyen Quoc Tien (male, 40 years old): 13 years imprisonment for murdering
- The remaining 23 defendants received sentences, ranging from 15 months of probation to 6 years imprisonment on charges resisting officers on duty.

4. The follow-up after the incident

- 09/01** Investigation agency of Hanoi Police issued a decision on prosecuting a criminal case of Murder; Illegally storing, using and selling military weapons; Resisting those on public duty happened in Hoanh village. State-run media simultaneously reported about the Dong Tam incident based on the information of the Ministry of Public Security
- 10/01** The President of Vietnam signed the decision to entitle First Class Victory medal and Martyrs title to the three officers killed in the attack
- 11/01** Luat Khoa, an independent journal, sent a letter to interrogate Minister of Public Security To Lam about the attack in Dong Tam.
- 13/01** Hanoi Police issued a decision to prosecute "a particularly serious crime that happened in Dong Tam commune", and at the same time decided to prosecute and detain people involved in the case.
VTV's News Program at 7 p.m. broadcasted clips of some arrested with bruises and scratches on their faces confessing their crimes.
- 14/01** Press conference of the Ministry of Public Security about Dong Tam event on January 9.¹²

¹² See more at: <https://plo.vn/thoi-su/bo-cong-an-thong-tin-chi-tiet-ve-vu-dong-tam-883694.html>

- 16/01** Mr. Chris Hayes, Representative of Australia, condemned the Vietnamese government in the Dong Tam case while calling the Australian government - as a member of the United Nations Human Rights Council - to request an urgent and transparent investigation about this incident.¹³
- 21/01** Mr. Nguyen Quang A and a number of others filed a criminal denunciation related to the attack in Hoanh village, Dong Tam commune to the Hanoi Procuracy. The denunciation petition requires prosecution of the murder case of Mr. Le Dinh Kinh.
- January 2020** Human Rights Watch called on the European Union to speak up about the Dong Tam incident in a submission to the EU in preparation for the EU-Vietnam Human Rights Dialogue ¹⁴
- 03/03** Ms. Du Thi Thanh filed a criminal denunciation to the MPS investigation agency and Minister of MPS To Lam, about the murder case of her husband, Mr. Le Dinh Kinh on January 9th 2020.
- 05/06** The police investigation agency announced the Investigating conclusion no. 210/KLĐT-PC01 (Đ3) of the criminal case and proposes prosecution the case with murder and Resisting those on public duty, which happened on January 9th, 2020
- 24/06** The Hanoi People's Procuracy issued Indictment of Prosecution No. 241/CT-VKS-P2 which prosecuted 29 suspects for Murder and Resisting those on public duty
- 07/09** The first instance court on the murder and resisting those on public duty began.

¹³BBC Vietnamese article: <https://www.bbc.com/vietnamese/vietnam-51145237>

¹⁴ See the Report at: <https://www.hrw.org/vi/news/2020/02/10/338757>

- 09/09** During the session, the defense lawyers requested to investigate, clarify the death of Mr. Le Dinh Kinh and prosecute those who accounted for the death of Mr. Le Dinh Kinh.¹⁵
- 14/09** The People's Court of Hanoi sentenced 6 defendants for murder, with 2 death penalties, 1 life sentence, 3 imprisonment sentences ranging from 12 to 16 years. The rest 23 defendants received sentences for Resisting those on public duty, which ranged from 15 months' probation to 6 years in prison.

¹⁵ The defense of Lawyer Nguyen Van Mieng at the hearing session on 09/09 according to the note of Lawyer Ngo Tuan Anh:

https://www.facebook.com/permalink.php?story_fbid=10217450437044071&id=1569759542

The defense of Lawyer Le Van Hoa

<https://www.facebook.com/levanhua256/posts/2718819101696474>

II - Case analysis in accordance with domestic and international human rights law

1. Relevant legal issues

To evaluate the incident in a relatively comprehensive and objective way, this report is conducted according to the progress of the case and relevant legal aspects, and in accordance with domestic regulations and international human rights framework.

1.1. Domestic regulations

The domestic legal framework is the first basis to be considered and analyzed in any case. In the Dong Tam case, these domestic legal regulations played a similarly important role.

- Constitution 2013: Specifically: Articles 14, 19, 20, 22, 31
- Land Law 2013
 - Article 4. Land ownership
 - Article 5. Land users
 - Article 69. Order and procedures for land recovery for defense and security purposes; socio-economic development for the national and public interests
- Law on The use of Weapons, Explosive and Supporting Tools 2017
 - Article 22. Principles of using military weapons
- Criminal Code
 - Article 22. Justified defense
 - Article 23. Urgent situation
- Criminal Procedure Code
 - Article 10. Sustainment of bodily integrity
 - Article 12. Alimentation of inviolability of residence, privacy, personal secrecy, family secrets, safety and confidentiality of personal mail, telephone and telegraph
 - Article 25. Timely, just and public trial
 - Article 26. Assurance of oral arguments in adjudication process
 - Article 59. Temporary detainees

- Article 60. Suspects
- Article 61. Defendants

1.2 International human rights regulations

- Universal Declaration of Human Rights: Article 5, Article 6, Article 7, Article 8, Article 9, Article 10
- International Covenant on Political and Civil Rights: Article 7, Article 10
- Convention Against Torture, and Other Cruel, Inhuman or Degrading Punishments or Treatment: Article 1, Article 12, Article 15
- Human rights in the Administration of justice
- UN Standard minimum rules for the treatment of prisoners: Article 31, Article 32, Article 37, Article 39, Article 44
- Principles of effective investigation and documentation of torture and other cruel, inhuman, or degrading treatment or punishment: Article 3, Article 4
- Basic principles of the use of force and firearms by law enforcement officers: Article 4, Article 5, Article 10
- Basic principles on the independence of the Judiciary (1985): Article 2, Article 4, Article 5
- Basic principles on the role of lawyers (1990): Article 1, Article 6, Article 7, Article 8, Article 16
- Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights and serious violations of international humanitarian law (2006): Article 15

2. Human rights violations

2.1. *Right to life*

- The Universal Declaration of Human Rights 1948 (UDHR)
Art. 3: “Everyone has the right to life, liberty and security of person”.
- International Covenant on Political and Civil rights (ICCPR)
Art. 6 para 1: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”
- Vietnam Constitution 2013:
Art. 19: “Everyone has the right to live. Human life is protected by the law. No one shall be illegally deprived of his or her life ...”

The right to life is one of the most important rights of every single person. The scope of this right also contains many other specific rights, such as the right not to be subjected to brutal torture, punishment, or inhumane treatment, the right to be protected from arbitrary arrest. Vietnamese law also recognizes this right and has specific provisions on ensuring the right to live in the Constitution and related laws. However, the authority seemed to have forgotten while resolving the Dong Tam case.

Up till when the first instance court issued the verdict on this case, there is still a question mark on the death of Mr. Le Dinh Kinh. Although the causes and situation of when Mr. Kinh was killed were described quite clearly in the Indictment of Prosecution, there are too many contradictions that raise doubts about the hidden truth. According to the indictment, the police force on duty was attacked by Dong Tam villagers, and they have no other choice but to take control over the violent group and arrest Mr. Kinh family members. The investigation conclusion of Hanoi police and the indictment both stated that the police shot intentionally since Mr. Kinh had dangerous resisting action. Those conclusions do not clearly clarify why Mr. Kinh’s behavior was considered to be severely dangerous and why shooting Mr. Kinh was an appropriate action in that situation. A citizen, being in his own house, not committing any act of crime, was seized and attacked by armed police from 1 a.m to 6 a.m. This is clearly a grave violation of human rights. Even if Mr. Kinh had committed any crimes, he could only have been arrested in the morning in compliance with the legal process. The

incident in Dong Tam, however, happened in another way; thousands of armed police officers burst into the small village, broke into Mr. Kinh's house, and shot him to death.

The indictment showed that Mr. Kinh was shot two times from the behind and from the distance of about 2 to 2.5 meters. Mr. Bui Viet Hieu (also a convicted in this case) gave testimony that Mr. Kinh had been shot from the front. Mr. Hieu is considered to be the only resident on the scene who witnessed Mr. Kinh's death at a close distance – around 1 meter. The autopsy descriptions showed that there were 2 small, clear and round-shaped wounds on the frontal of Mr. Kinh's body, the wounds at the back were also round-shaped but larger, and the edge of the wounds was ragged. It can be drawn from the autopsy that bullets were shot at the frontal, from front to the back and the bullets were an explosive type since the bullet holes at the back were larger than at the front. The assumption that the bullets were explosive ones also coincided with the testimony of Mr. Hieu about his wounds that he was shot and the bullet exploded after hitting his side, causing him 5 holes in the duodenum and colon. Mr. Hieu's testimony has a basis to confirm its trustworthiness. And this raised even more doubts about the death of Mr. Kinh.

According to the police, before being shot, Mr. Kinh was holding a grenade and threatening to throw it at the police. Setting aside the questions about the origin of the grenade, it is unconvincing that an 84-year old man with difficulty in moving (since one of his legs was broken in a clash with the authority from April 2017) could use any type of arms, especially a grenade, to threaten full-armed police force. This is a remarkable point. Let's assume that every detail announced by the police is true, there will be an over-reacting and discrimination between Mr. Kinh and other villagers involved in the incident. Mr. Kinh was not the only one who had and used grenades. The prosecutors convicted that at least 2 other people threw grenades toward the policemen. These 2 men were said to have aggressive actions such as using grenades, petrol, knives, etc.; and they were caught alive and arrested, while a much older man, with definitely lower risk, was treated in a more brutal manner.

According to Ms. Du Thi Thanh (Mr. Kinh's wife), her children and grandchildren were taken away in front of her, she was then also taken away. Before

being taken away, Ms. Thanh confirmed that her husband was still alive. Thus, Mr. Hieu was the only resident being at the time and place where Mr. Kinh was shot and killed, apart from professionally trained and fully-equipped police officers. In such a situation, killing Mr. Kinh was unjust and unnecessary. His right to life was violated brutally and grossly on 09/01/2020.

Another person who was shot after Mr. Kinh was Mr. Hui Viet Hieu, which not mentioned in the indictment. In a meeting with lawyers at the detention center, Mr. Hieu said that he was shot 2 times after Mr. Kinh, 1 in the leg and the other hit his chest. The bullets were aimed at the heart but actually deviated from the side, causing him 3 holes in the duodenum, 2 in the colon. After being shot, Mr. Hieu was left alone until noon of 09/01/2020. That he was still alive was unexpected by the shooter. Mr. Hieu also stated that he was hiding when being shot. There was no sign that Mr. Hieu was dangerous and needed to be eliminated as what the police claimed about Mr. Kinh. If Mr. Hieu was considered to be severely dangerous and needed to be eliminated, the police should have taken his body away as what they did to Mr. Kinh's body. In case Mr. Hieu was hit by a stray bullet, the police should have provided first aid immediately. Mr. Hieu did not receive any medical treatment until 11 a.m. that day, when he fell into a coma and his heart stopped, though the conflict ended 5 hours early (according to the information from the Ministry of Public Security). Mr. Hieu's life was not taken, but the fact that he did not receive appropriate medical treatment also violates the right to life. Moreover, abandon a man with serious injuries only for 5 hours constitutes an act of cruel torture, inhumane treatment

2.2. Inviolability of residence

- Vietnam Constitution 2013

Art. 22 paras. 2 and 3: “Everyone is entitled to the inviolability of his or her domicile. No one is allowed to enter the domicile of another person without his or her consent. Domiciliary searches shall be provided by the statute”.

- Criminal code 2015

Article 158. Home infringement

“1. Any person who commits any of the following acts shall face a penalty of up to 02 years' community sentence or 03 - 24 months' imprisonment: a

d) Breaking in another person's home without the consent of its owner or manager.

2. This offence committed in any of the following cases shall carry a penalty of 01 - 05 years' imprisonment:

a) The offence is committed by an organized group;

b) The offence involves abuse of the offender's her position or power”

- Criminal procedure code 2015

Article 12. Alimentation of inviolability of residence, privacy, personal secrecy, family secrets, safety and confidentiality of personal mail, telephone and telegraph

“No person can illegally violate others’ residence, privacy, personal secrecy, family secrets, safety and confidentiality of mail, telephone, telegraph and other forms of personal communication.”

Citizens have the right to be protected from any type of intrusion into their accommodation without having their consent. The inviolable right of residence of Mr. Kinh’s family and other people at Dong Tam should also be respected as prescribed by law. On the contrary, thousands of policemen from Hanoi police force and other forces from the Ministry of Public Security burst into Hoanh village and broke in civilian houses before the dawn of 09/01/2020.

According to the indictment, the police forces came to Hoanh village to carry out duty and plan to ensure security and public order in Dong Tam commune. Any plans from the authority must be conducted in a way that minimizes effects on the daily activities of citizens, which at a minimum level should avoid disturbing sleeping and resting time. In fact, the place where the construction group was building walls for Mieu Mon project was outside Hoanh village, and the location of the attack was inside Hoanh village, at Mr. Kinh’s and his relative’s house in specific. The locations of these two

places are completely different and distant. As described in the indictment, the villagers did not go outside the village but sounded the alarm when they saw the police force approaching. Hence, it can be affirmed that the police force, with thousands of armed officers, approached Hoanh village intentionally. Ms. Thanh recalled that the police surrounded her house at about 3 a.m., used tear gas and guns, then broke into the house, beat her family member, and took them all away. She claimed that her husband, Mr. Kinh, was still alive before she was taken away, although Mr. Kinh had difficulty breathing due to tear gas.

The two sides of the clash were clearly unbalanced: a group of normal villagers, on one hand, and professionally trained and fully-equipped policemen on the other hand. Terrifying and fear from the citizens is easy to understand. The police gravely violated the inviolable right of residence without any grounds, making villagers extremely fearful, resulted in violent resisting actions.

When looking at the 09/01 attack in relation to the events that took place before, the defendants' actions implied they had lived in fear of being violated for a long time. In April 2017, Mr. Kinh had his leg broken, and was arrested without an arrest warrant. For a long time, shrimp paste and rotten eggs were continuously thrown into Mr. Hieu's house. Mr. le Dinh Cong (Mr. Kinh' son) and other villagers were constantly harassed and threatened directly and through SMS. Mr. Kinh also received a paper with a threat to arrest him a few days before the 09/01 incident. Living in constant fear about their lives and accommodations, without receiving any protection or help, made Dong Tam villagers skeptical and more alerted. During the attack, the whole village was isolated, no one could go in or out, the Internet was cut off; the villagers considered these are unusual signs and their lives were at great risk. Numerous policemen illegally broke into Mr. Kinh's and some other households with guns, so it was necessary for the people to protect Mr. Kinh from the dreadful danger. In fact, the defendants stated in their testimony and in front of court many times that they just wanted to "protect their father" (Mr. Kinh) from the sudden attack.

Despite all the efforts of the defense lawyers, the Plan 419A (the attacking plan on Dong Tam) is still undisclosed. Explaining the plan as confidential was not

convincing enough to be the ground for violating the fundamental human rights of Dong Tam people on 09/01.

2.3. Freedom from torture or cruel, inhuman or degrading treatment or punishment

2.3.1. The right not to be tortured

- ICCPR

Art. 7. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

- Vietnam Constitution 2013

Art. 20 para. 1: “Everyone shall enjoy the inviolability of the individual and the legal protection of his or her life, health, honor and dignity and is protected against torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health and offence against honor and dignity.”.

- Criminal procedure code 2015

Article 10. Sustainment of bodily integrity

Every person is entitled to inviolability of the physical body. No person is arrested without a Court’s warrant or Procuracy’s decision or approval, except for acts in flagrante. Emergency custody, arrest, temporary detainment or detention must abide by this Law. Torture, extortion of deposition, corporal punishment or any treatments violating a person’s body, life and health are inhibited.

- Law on Enforcement of Custody and Temporary Detention 2015¹

Art. 4. Principles of custody and temporary detention management and enforcement

3. To guarantee humanity; not to torture and use coercion or corporal punishment against or any other forms of treatment that infringe upon lawful rights and interests of, persons held in custody or temporary detention.

Art. 8. Prohibited acts

1. Torturing and using coercion and corporal punishment; applying cruel, inhuman or degrading forms of treatment or punishment or any other forms that infringe upon lawful

The right not to be tortured is one of the rare absolute rights that is specified in the ICCPR and is internalized in many legal documents in Vietnam. Accordingly, the basic factors that constitute torture include:

- The severity of pain and suffering, physically or mentally
- Acts caused or endorsed by public authorities

- Subjective intent (intentional fault) of the subject causing the act with specific purposes (to obtain victims' confession, information ...)
- Pain or suffering which does not come from legal sanctions or sanctions.

In this case, there are clear signs of brutal torture from the authorities. In an interview clip about the testimony process, Mr. Du Thi Thanh (1953) said she was beaten, slapped, and forced to testify that her husband was holding a grenade when dying.¹⁶ Suffering from the testimony for many days, facing threats from investigators right after the death of her husband was unbearable for the 68-year old woman. This is clearly torture, causing physical pain and severe psychological trauma to Ms. Thanh.

Not only Ms. Thanh but the appearance of the arrested from Dong Tam on television also raises suspicions that they were tortured and forced to confess what was contrary to the facts. These people appeared on the 7 p.m. news program with scratches and bruises on the face, confessing and blaming Mr. Kinh for “inciting” them to fight and kill police officers. All the accused who had “fiercely opposed” according to the indictment of the procuracy appeared with bruised faces and wounds and "bowed to confess" in the news clip.¹⁷

Ms. Bui Thi Noi also testified on the trial on 8th Sep 2020 that though she was having an injury, she was still brutally beaten in the leg at the Mieu Mon Police station after being arrested. Apparently, the investigators had carried out torture to bend the truth and have testimony suitable for conviction.

At the trial on 9th Sep 2020, defense lawyer Dang Dinh Manh asked all 29 defendants to raised their hands if they were not tortured during the investigation. 10 people raised their hands while 19 others sat still. There are still many things worth mentioning and should have been analyzed further with the remaining 19 people who did not raise their hands. It is enough to prove doubts about the violence and torture that defendants of Dong Tam case have suffered.

¹⁶ Ms. Thanh shared about being tortured on 09/01/2020 (with English subtitle):
<https://www.facebook.com/thao.gao/videos/vb.100000244510380/3735604353124345/?type=3>

¹⁷ The confession clip of the accused broadcasted on VTV:
<https://www.youtube.com/watch?v=L57sir1VD>

The torture not only appears in form of beating physically or mentally abusing but also in isolating detention. In some cases against Uruguay, HRC concluded incommunicado detention in “a few months” constituted violations to Article 10(1) ICCPR. Detention which lasted 8 months and was unknown to other people was concluded by HRC to violate Article 7 ICCPR and constituted act of torture, inhumane and degrading punishment or treatment. The shortest period among those cases was in the case *Arzuaga Gilboa v. Uruguay*¹⁸, HRC concluded that there was a violation in terms of incommunicado detention for 15 days. In Dong Tam case, the defendants were arrested on 09/01/2020, and not until 08/08/2020 were the lawyers allowed to contact their clients. Relatives were not allowed to meet from the arrest day until when the first instance court ended. That means during the past 8 months, the detainees were isolated. No one knew about the health conditions and information of the detainees. Everyone knew that the accused were arrested and taken away, but none of them knew where the defendants were detained, how to contact and visit.

2.3.2. The right to humane treatment of those deprived of their liberty

“Person deprived of liberty” is a term commonly used to refer to ones who have been subjected to preventative measures or administrative or criminal sanctions (e.g. arrest, detention, imprisonment, rehabilitation concentration, etc.) with restricted freedom of movement, residence and some other freedoms. The 29 villagers arrested and prosecuted in the Dong Tam case were those who were deprived of freedom; and they needed to be treated with humanity and respect for the inherent human dignity.

Nevertheless, this right was violated in the Dong Tam case. Mr. Le Dinh Cong testified at the court that officers Pham Viet Anh beat him with a rubber baton ten days continuously. This both shows brutal torture in physical and the humiliation of dignity of the person being detained.

¹⁸ Lucía Arzuaga Gilboa v. Uruguay, Communication No. 147/1983, U.N. Doc. CCPR/C/OP/2 at 176 (1990).

2.4. Right to fair trial

- ICCPR:

Article 14. 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

The right to a fair trial is a set of proceeding rules aimed at ensuring fair trials, including aspects such as being equal before the courts and tribunals, presumption of innocence, guarantees the right to defense, etc.

2.4.1. Right to be equal before the courts and tribunals

- Criminal Procedure Code 2015

Article 26. Assurance of oral arguments in adjudication process

During the charges, investigation, prosecution, adjudication, investigators, prosecutors, persons authorized to institute proceedings, defendants, defense counsels and other persons participating in proceedings are equally entitled to present and evaluate evidences and make requests for clarification of objective truths of the lawsuit.

This right is acknowledged in Art. 10 and 11 UDHR, Art. 12 ICCPR and several other articles. The right to be equal before the courts and tribunals can be construed as a concrete manifestation of the principle of non-discrimination, aimed at ensuring that parties to proceedings are treated without any discriminations.

The defendants and the defense lawyers in the Dong Tam case are constantly facing obstacles. The group of defense lawyers filed a complaint to the Chief Justice of the Hanoi People's Court on 07/09/2020, which clearly stated the difficulties that they had encountered in every justice process from the investigation stage, prosecution and pretrial stage. These difficulties, unfortunately, were created by the judicial bodies and competent officials. Documents confirmed the role of defense lawyers was undue delay in sending to some lawyers, which negatively affected the detainees' right to have adequate time for the preparation of defense. The detainees also had difficulties in private consulting with their lawyers without proper reasons. Lawyers were also limited in accessing investigation documents despite many times requesting.

Even in the pretrial stage, the People's Court of Hanoi undue delayed in allowing the defense lawyers to copy case files. This request was only accepted after many attempts and still very limited. Lawyers were not able to copy 2 USB containing photos and clips taken during the 09/01 incident, even when the trial was processing.

In the first instance court, the defense lawyers faced prevention from the security forces when approaching their clients at break time. The Judge also dismissed their requests on the grounds that «lawyers had time to discuss with the defendants before», so contacting at the court was “unnecessary”. In the whole judicial process, the lawyers and their clients did not have any chance to meet and discuss properly; their meetings in privacy were interrupted and prohibited. Even the chance to have direct contact at

the court was interfered. Apparently, 29 defendants in Dong Tam case were separated from their defense lawyers in an unreasonable manner.

None of the defendants' relatives could be at the court, their requests to attend as relatives, as witnesses or a party involved in the case were all refused. Except from the tribunals, lawyers, prosecutors, defendants, the security force and some other people with permissions, there were no normal citizens.

From the above, it is clear that the principle of equality before the court was seriously violated. The court should be an impartial arbitrator to listen to both sides of the dispute and give a just decision. What happened at the first instance court of Dong Tam case have shown that the trial did not guarantee the equality of the parties before the courts.

2.4.2. The right to have legal assistance

The right to have legal assistance is considered to be an important aspect that guarantees the right to be equal before the courts. In practice, a person may or may not have access to or participate in legal proceedings in an effective manner.

This right was violated in Dong Tam case, which is clearly shown through the prevention in contact between the accused and their defense lawyers. Even when being at the trial, the discussion between lawyers and clients was also restricted since the judge considered it unnecessary.

Nearly all of 29 defendants did not receive any legal assistance during their detention. The detaining center justified by stating that the detainees had signed documents, refusing help from the lawyers. However, Mr. Ha Huy Son, one of the defense lawyers, argued that those refusal documents were invalid since the detainees had signed them before the lawyers were officially invited to take part in this case. This detail implies that the detainees were not fully aware of their own rights. There are possibilities that they signed papers under undue influence, coercion, and duress or due to lack of information.

2.4.3. The right to be heard by a competent, independent and impartial court

Article 10 of UDHR states: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 14(1) of ICCPR

outlines essential factors of a judicial body, which are competence, independence, impartiality and by-law establishment.

There is still a lot of controversy regarding the court's jurisdiction in the Dong Tam case. Because, the conflict arises from whether the land in the Senh field is for defense purposes or not. If the land is state-own for national defense purposes, the case may need to be heard at a military court, or it is necessary to have a representative of the Ministry of Defense taking part in the trial.

Regarding the characteristics of independence and by-law establishment, the tribunal and other parties related to the hearing basically meet the requirement on by-law establishment. Nevertheless, the independence of the court is indeed in the need of reconsideration. Article 301 of the Vietnamese Criminal Procedure Code 2015 stipulates clearly on how a trial should be started, but the trial on Dong Tam saw an unprecedented proceeding when presenting a long clip describing the incident, which was “clearly and truthfully” in the opinion of the tribunal, right at the beginning of the trial. Before the questioning session, the court repeatedly asked whether the defendants saw and heard the clip clearly. That such a prejudiced clip about how aggressive the defendants resisted against the authority was presented before all participants of the trial indicated that the independence and impartiality of the court were not guaranteed. Although some of the defendants (Mr. Bui Viet Hieu, Mr. Le Dinh Doanh, etc.) stated that the clip had been cut and edited, and they had been forced to confess untrue things, the tribunal still insisted that the clip was important evidence and repeatedly asked each defendant about what the clip had shown.

2.4.4. A fair and public hearing

Fairness and justice is hardly guaranteed when there is a relatively clear prejudice. The court justified the case based solely on the edited clip, the indictment from the Procuracy, the conclusion, evidence and testimony gathered by the police and completely ignored confessions and testimony given at the hearing.

In paragraph 28 General comment 32, HRC explained clearly about a public hearing, which requests “courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the

attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing”.

The disclosure of the information about the court may be limited if it relates to national security, public order or public pressure may negatively affect justice. The Dong Tam case started as a land dispute at first, then turned into a criminal case after the 09/01 incident; it is not related to national security or political aspects. The indictment from the Hanoi Procuracy only mentioned two common criminal crimes that were Murdering and Resisting those on duty. Moreover, the 09/01 incident still has controversial details, it was necessary and normal to disclose information about the case and grant public access to the hearings.

However, according to defense lawyers, about half of the participants were judicial and security police, none of the defendants’ family members nor ordinary people could enter the courtroom. The press and media informed droplets about the trial proceeding, the public could only have an overview of the case and the trial through posts on social networking sites from defense lawyers and other unofficial sources of information. In a video interview with Luat khoa – an independent journal, Ms. Nguyen Thi Duyen, the wife of a defendant, said that she was prevented by the security policemen at the court to attend the court due to irrelevant reasons based on some “legal provisions”.¹⁹ There was only one state-own newspaper (Vietnam News Agency) allowed to take pictures at the hearings. Therefore, the objectivity and concreteness of the press in informing about the hearings was not guaranteed in this case.

¹⁹ Video interview by Luat Khoa journal with Ms. Nguyen Thi Duyen:
<https://www.youtube.com/watch?v=jzKojjaMmOc>

2.4.5. *Presumption of innocence*

- UDHR

Art. 11 para 1: Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

- ICCPR

Art 14 para 2: Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

- Vietnam Constitution 2013

Art. 31 para. 1: A defendant shall be regarded as innocent until the crime is proved in accordance with legal procedure and the sentence of the Court has acquired full legal effect

- Criminal Procedure Code 2013

Art. 13. Presumption of Innocence: “A accused person is deemed innocent until his guilt is evidenced according to the procedures and formalities as defined in this Law and a Court passes a valid conviction. If grounds for conviction, as per the procedures and formalities in this Law, do not suffice, competent procedural authorities and persons shall adjudge the accused person to be not guilty.

In the light of the above legal regulations, the 29 accused must have been presumed as innocent until being convicted by the court. Before and during the trial, it was necessary to ensure that the defendants were not received any unfair treatment due to their accusations. However, a 5-minute clip, describing the preparation of Dong Tam villagers to fight back the police, their confession on the wrong and regret of their actions, was entitled “The incident in Dong Tam: The testimony of Le Dinh Cong and others” and broadcasted on state media and the national news program. The clip was edited and used red cross sign on scenes of Dong Tam villagers with the commentary about the “violent, opposing-the-law nature of this group”.²⁰ The confession clip was also posted publicly on social networking sites and other official channels of state bodies, which can be considered as an attempt to direct the public opinion towards convicting these people carelessly and extra-judicially.

This also infringed on the reputation, honor and dignity of those who were being detained and accused. Before the official conviction of the court, the government should

²⁰ VTV24 news clip about Dong Tam case: https://www.youtube.com/watch?v=L57sir1VD_o

have limited any prior judgments about the outcome of the trial, but in contrast, the authority had imprinted a prior judgment in the public opinion before the court gave the final sentence. The principle of presumption of innocence continued to be violated at the hearing when that confession clip was presented. The tribunal continuously gave questions based on the testimony in the clip. The proceeding of this criminal trial was inconsistent with the legal regulations, showing the prejudice of the tribunal against the defendants.

2.4.6. The right of those who charged with criminal offences

- Art. 14 of ICCPR:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt

- Criminal Procedure Code

Article 61. Defendants

1. Defendants are physical persons or juridical persons tried as per a Court's decision. The rights and duties of defendants as suspects are executed by their legal representatives according to this Law.

2. Defendants are entitled to:

- c) Be informed and explained about their rights and duties as per this Article;
- d) Petition for expert examinations, valuation, change of authorized procedural persons, expert witnesses, valuers, interpreters, translators, summoning of witness testifiers, crime victims, individuals having duties and interests from the lawsuit, expert witnesses, valuers, other participants in legal proceedings and authorized procedural persons to the Court;
- d) Present evidences, documents, items and requests;
- e) Confer on relevant evidences, documents, items and request authorized procedural persons to inspect and assess such;
- g) Defend themselves or be defended;
- h) Give statements and opinions, bear no obligation to testify against themselves or admit

It is important that the person under arrest and detention should have enough time and facilities to prepare for his defense and contact an advocate of his choice. The Dong Tam villagers were restricted in contacting lawyers. They did not have enough

time and facilities to consult their lawyers confidentially. Moreover, these detainees had signed pledges to refuse to have defense lawyers even before any lawyers were assigned in this case. This raised questions on whether they were informed about their rights in advance or were forced to sign papers without full explanation since they were all farmers and lacked legal knowledge. During the trial, some defendants expressed their disagreements with the investigation conclusion of the police and the indictment from the procuracy, which also further implied the unusual refusals on legal assistance at the investigation stage. Even if there were any grounds on restricting the meeting of lawyers and their clients in this case, the control and surveillance should only be “in the sight, out of hearing”, and respect totally the right of the lawyers to advise and represent their clients “without restrictions, influence, pressure or undue interference from any quarter”, as emphasized in paragraph 34 General Comment 32 of HRC.

- *The right to examine or have examined witnesses against the accused and to obtain the attendance and examination of witnesses on his behalf*

The principle of being equal before the courts also expresses in the appearance and testimony of witnesses against the accused and those on his behalf at the trial. In such a controversial case like Dong Tam case, the testimony of witnesses from both parties was of great importance to shed light on the nature of the case. Nevertheless, apart from the defense lawyers who showed great efforts in protecting the rights of the defendants, other participants (the prosecutors and the representatives of the victim) and attendees at the trial were all on the accusation side. In fact, neither of the parties had their witnesses testified before the court, the lawyers’ requests to summon witnesses were not granted; that showed inequality in the hearing and also implied the prejudgment against the accused from the most neutral actor in any hearing – the tribunal.

- *The right not to be compelled to testify against oneself or to confess guilt*

Paragraph 3(g) of article 14 of ICCPR guarantees the right of the accused not to be forced to testify against himself or to confess guilt. Accordingly, the accused does not have to answer or proactively confess information that is against him. The provision also implies the passive obligation of the state to minimize its direct or indirect pressure physically or mentally on the accused to obtain their guilt confession. Showing an edited

clip recording the confession of defendants in the court, where should be the most independent, transparent and objective place, and that the judge repeatedly mentioned about the clip appeared to be a warning from the authority that the defendants had confessed guilt and been convicted. The miserably and outraged from other parties in the courtroom after watching the clip created great pressure on the defendants' emotions. The defendants were more likely to feel tormented, guilty and isolated. Without proper legal assistance and consultation, they would easily fall into the psychological trap and testify against themselves.

Article 14 of ICCPR prohibited testimony obtained by torturing or other cruel punishment or treatment, except when this testimony is considered as evidence against torture and other illegal punishment. Turning back to when a lawyer asked how many of the defendants were not suffered from torture, 19 people did not raise hands. The testimony of these 19 people was obtained by torture and there were possibilities that the confess clip was recorded in the same method. In a proper proceeding as prescribed by law, the court should examine the legality of evidence and testimony when signs of torture are found. According to paragraph 41 of General Comment no. 32 of HRC, the burden is on the authority to prove that statements made by the accused have been given of their own free will. However, the tribunal in Dong Tam ignored all claims about torture, justifying that the defendants had no evidence to prove they had been tortured.

2.5. The right to a remedy and reparation

Acts of violence and torture often happened during the land dispute. In the arbitrary arrest on 15/04/2017, Mr. Kinh had one leg broken. After being released, Mr. Kinh immediately filed a denunciation against an officer for breaking his leg. The police objected and stated that the injury was a pity and was due to the struggle between the duty enforcement officers and Mr. Kinh's family. Apparently, the police themselves admitted that the above incident was due to the "struggle" between the two parties. In the comparison of power and strength, the group of 4 normal citizens, one of which was an over-80-year old man, was weaker and more vulnerable than the group of trained and prepared officers; hence there should have been a reparation from the authority for avoidable injury and damages to the citizens. In fact, there was no attempt from the authority to repair and compensate, except for a wheelchair given by the Mayor of

Hanoi Nguyen Duc Chung. During a meeting of the National Assembly, the representative of the MPS was questioned about this incident and their effort in reparation, but did not respond.

Conclusion

The land dispute in Dong Tam area has lasted for many years, accompanied by serious human rights violations, especially what happened in the 09/01/2020 attack. The authority violates not only the rights of one person but also the rights of many people at the same time. The fundamental rights such as the right to life, the inviolable right to home, body, the right not to be tortured were disrespected, leading to the violation of a range of other human rights. There cannot be any reason to justify the intentional ignorance of competent bodies and officials.

In resolving disputes with citizens, the authority should maintain a positive approach and settle the issue in the most peaceful manner. The participation of armed forces should only be the last resort. The 09/01/2020 incident, however, occurred before any actual attempt to resolve disagreement had been carried out and resulted in the death of 4 people. Violations of human rights have persisted for years since the land dispute broke out. Even when 29 people were arrested, detained and brought before the court, there were still gross human rights violations against those who should have been protected by an effective judicial body. The first instance trial, expected to last for 10 days, was reduced to only a week, despite many questions and suspicions left unsolved. There is no judicial proceeding that claims to respect and follow human rights standards, while hastily sentencing anyone to death. There is no moral and just trial when the court ignores reasonable doubts about the case, dismisses requests on further investigation and convicts the defendants based on improper evidence. The developments of the trial have made public opinion more skeptical about the independence, impartiality and nature of the court. All efforts in building a transparent, independent and impartial judicial system seemed to be devastated after the trial on Dong Tam incident.

The research team focused on the Vietnamese legal regulation in comparison with international human rights standards when briefly describing the Senh field land dispute and focusing on the 09/01/2020 attack. To ensure the most impartial and fairest judgments, events are consistently evaluated in accordance with domestic and international human rights regulations. Facts that are difficult to confirm by specific

sources were not included in the study. The evaluations are focused on human rights violations, without deeply analyzing the nature of the dispute.

Vietnamese domestic laws have been more and more compatible with the international legal framework on human rights. Nevertheless, these standards have not been fully respected and implemented in practice, especially in the recently Dong Tam case. And once again, the obligations of the state in protecting and implementing human rights standards are demanded urgently.

Appendix

Sources of documents and video clips:

1. Documents issued by the authority:

Mayor of Hanoi Nguyen Duc Chung, The compromise with Dong Tam people on 22/04/2017: <https://vov.vn/xa-hoi/ong-nguyen-duc-chung-cam-ket-khong-truy-cuu-hinh-su-toan-dan-dong-tam-616409.vov>

Governmental Inspectorate, Document no. 611/TB-TTCP, Notice about the examination of the accuracy and legality of Inspectorate conclusion no. 2346/KL-TTTP-P5 issued on 19/07/2017 by Hanoi Inspectorate:

http://www.thanhtra.gov.vn/ct/news/Lists/KetLuanThanhTra/View_Detail.aspx?ItemID=112)

Investigation agency of Hanoi Police, Investigation conclusion no. 210/KLĐT-PC01(Đ3) on Murdering, Resisting officials on duty on 09/02/2020 at Hoanh village, Dong Tam Commune, My Duc district, Hanoi:

<https://danluat.thuvienphapluat.vn/toan-bo-dien-bien-phien-xet-xu-vu-an-gay-roi-tai-dong-tam-188823.aspx>

The People's Procuracy of Hanoi, Indictment no. 241/CT-VKS-P2 prosecuting 29 people for Murdering and Resisting officials on duty:

<https://danluat.thuvienphapluat.vn/toan-bo-dien-bien-phien-xet-xu-vu-an-gay-roi-tai-dong-tam-188823.aspx>

2. Documents and posts from the villagers and defense lawyers:

Letter of Dong Tam villagers to the 7th Conference of the Central Communist Party of Vietnam (XII Session): <https://baotiengdan.com/2018/04/19/nguoi-dan-dong-tam-gui-tam-thu-toi-hoi-nghi-trung-uong-7/>

Ms. Du Thi Thanh's criminal denunciation sent to Ministry of Public Security on 03/03/2020:

https://www.facebook.com/permalink.php?story_fbid=133684984833585&id=107429177459166

Petition before the trial of the group of defense lawyers in Dong Tam case:

<https://www.facebook.com/levanhua256/posts/2713962145515503>

The defense for 4 defendants in the hearing session on 09/09/2020:
<https://www.facebook.com/levanhua256/posts/2718819101696474>

3. Videos:

Mr. Le Dinh Kinh explained the origin of the land area in dispute, posted on 16/04/2017:

<https://www.youtube.com/watch?v=INB5LiLpYPE&fbclid=IwAR2tGeoFWvI1GHIQN0p59PekrjxWKWRkljxGx7dkCz4SVERMswErBjf-Mb0>

VTC1, News clip about the disagreement of the villagers in the Conference announcing the Draft conclusion of Inspectorate about Dong Tam land dispute, posted on 07/07/2017:

https://www.youtube.com/watch?v=DgoSUz7S__o&fbclid=IwAR2tGeoFWvI1GHIQN0p59PekrjxWKWRkljxGx7dkCz4SVERMswErBjf-Mb0

VT24, News clip about Dong Tam incident:

https://www.youtube.com/watch?v=L57sir1VD_o

Ms. Du Thi Thanh shared about her being tortured to obtain testimony:

<https://www.facebook.com/thao.gao/videos/vb.100000244510380/3735604353124345/?type=3>

Luat Khoa journal, Video interview with Ms. Nguyen Thi Duyen:

<https://www.youtube.com/watch?v=jzKojjaMmOc>