

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Ms. Leigh Toomey (Australia)
Vice-Chair: Ms. Elina Steinerte (Latvia)
Mr. Seong-Phil Hong (Republic of Korea)
Ms. Miriam Estrada-Castillo (Ecuador)
Mr. Mumba Malila (Zambia)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Đinh Thị Thu Thủy
Citizen of the Socialist Republic of Vietnam
v.
Government of the Socialist Republic of Vietnam

Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4, 15/18, 24/7 and 42/22.¹

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¹ Resolutions 1991/42, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, March 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, 24/7 and 42/22.

**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING
ARBITRARY ARREST OR DETENTION**

I. PETITIONER

A. Identity

1. **Family name:** Đinh
2. **First name:** Thị Thu Thủy
3. **Sex:** Female
4. **Birth date or age (at the time of detention):** 39 years of age
5. **Nationality:** Vietnamese
6.
 - (a) **Identity document (if any):** Vietnamese passport
 - (b) **Issued by:** Bureau for Immigration and Foreign Travel Management
 - (c) **On (date):** October 5, 2017
 - (d) **No.:** C3958973
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**
Environmental activist with a master's degree in aquatic pathology.
8. **Address of usual residence:** 399 Area 1, Lái Hiếu Ward, Ngã Bảy City, Hậu Giang Province, Vietnam.

B. Arrest

1. **Date of arrest:** April 18, 2020
2. **Place of arrest (as detailed as possible):** Đinh Thị Thu Thủy was arrested at her home, located at 399 Area 1, Lái Hiếu Ward, Ngã Bảy City, Hậu Giang Province, Vietnam.
3. **Forces who carried out the arrest or are believed to have carried it out:** Approximately 50 police officers from Hậu Giang.
4. **Did they show a warrant or other decision by a public authority?** No
5. **Authority who issued the warrant or decision:**
6. **Reason for the arrest imputed by the authorities:** Charged with violating Article 117

of the 2015 Vietnamese Penal Code (previously Article 88 (c) of the 1999 Vietnamese Penal Code) which punishes the “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Vietnam.”

7. **Legal basis for the arrest including relevant legislation applied (if known):** No valid basis.

C. Detention

1. **Dates of detention:** April 18, 2020 to the present.
2. **Duration of detention (if not known, probable duration):** From April 18, 2020 to the date of the communication.
3. **Forces holding the detainee under custody:** Procuracy of Hậu Giang Province and Security Investigations Office of the Police, Department of Hậu Giang Province.
4. **Places of detention (indicate any transfer and present place of detention):** Currently detained in An Phước Prison, Phú Giáo district, Bình Dương Province. Previously held in Hậu Giang Police Detention Center, Hậu Giang Province.
5. **Authorities that ordered the detention:** Police Department of Hậu Giang Province.
6. **Reasons for the detention imputed by the authorities:** Charged with violating Article 117 of the 2015 Vietnamese Penal Code (previously Article 88 (c) of the 1999 Vietnamese Penal Code) which punishes the “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Vietnam.”
7. **Legal basis for the detention including relevant legislation applied (if known):** No valid basis.

II. DESCRIBE THE CIRCUMSTANCES OF THE ARREST

Approximately 50 police officers from Hậu Giang Province surrounded Đinh Thị Thu Thủy’s home, entered, searched all the rooms, seized a number of items, and ordered her elder sister to sign a police report regarding the search and seizure, without regard to the family’s state of shock. One of the traumatized victims was Ms. Đinh’s child, who was not quite 10 years old at the time. Relatives of Ms. Đinh received notification of her detention from the police two days later. Ms. Đinh was held *incommunicado* for nearly eight months after her arrest and she was not permitted to consult with an attorney until one month before her court date on January 20, 2021. After a short trial, which lasted just four hours, Ms. Đinh was sentenced to seven years in prison.

For the reasons set forth below, the arrest and detention of Đinh Thị Thu Thủy by the Government of the Socialist Republic of Vietnam (the “Government”) is a violation of international law and is thus illegal.

III. CONTEXTUAL BACKGROUND

Đinh Thị Thu Thuỷ is one of many Facebook users and bloggers in Vietnam who have recently been detained and sentenced to lengthy prison terms after being convicted of anti-state propaganda for their social media posts.² For example, on March 30, 2021, Vu Tien Chi was sentenced to 10 years in prison on charges of anti-state propaganda for his Facebook posts calling for the establishment of a National Congress.³ A week earlier, on March 22, 2021, Nguyen Duy Huong, a 34-year-old medical doctor, was charged with anti-state propaganda for his Facebook posts which criticized the ruling Communist Party general secretary, now serving his third term in office;⁴ and the same week, an appeals court upheld a 12-year prison sentence imposed on Tran Duc Thach for his Facebook posts exposing government corruption and human rights abuses.⁵

IV. INDICATE THE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY.

The arrest and detention of Đinh Thị Thu Thuỷ is arbitrary⁶ under Categories I, II and III as established by the UN Working Group on Arbitrary Detention (the “Working Group”). Ms. Đinh’s detention is arbitrary under Category I because it is impossible to invoke any legal basis justifying her deprivation of liberty and continued detention. Ms. Đinh’s detention is arbitrary under Category II because it resulted from the peaceful exercise of her rights to freedom of expression, opinion and association. Finally, Ms. Đinh’s detention is arbitrary under Category III because her detention and prosecution failed to meet the minimum international standards of due process.

A. Deprivation of liberty under Category I

A detention violates Category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.⁷ The Working Group has found detentions arbitrary under Category I when any of the following conditions are present: (1) when the government has held an individual *incommunicado* for a period of time; and (2) when vague laws are used to prosecute an individual.⁸

² *Woman Human Rights Defender Dinh Thi Thu Thuy Charged and Sentenced*, FRONTLINE DEFENDERS (Jan. 20, 2021), <https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-%C4%91inh-th%E1%BB%8B-thu-th%E1%BB%A7y-charged-and-sentenced>.

³ *Vietnamese Facebook Users Draw Prison terms for Postings Criticizing Government, State Officials*, RADIO FREE ASIA (March 31, 2021), <https://www.rfa.org/english/news/vietnam/postings-03312021194842.html>.

⁴ *Vietnamese Doctor Charged With ‘Harming People’s Trust in the Party’*, RADIO FREE ASIA (March 23, 2021), <https://www.rfa.org/english/news/vietnam/charged-03232021173135.html>.

⁵ *Vietnamese Dissident Writer Sent Back to Serve 12-Year Term After Losing Appeal*, RADIO FREE ASIA (March 24, 2021), <https://www.rfa.org/english/news/vietnam/writer-03242021165252.html>.

⁶ An arbitrary deprivation of liberty is defined as any “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” *International Covenant on Civil and Political Rights*, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 UNT.S. 171, entered into force on March 23, 1976, at art. 9(1). Such a deprivation of liberty is specifically prohibited by international law. *Id.*

⁷ HUMAN RIGHTS COUNCIL, *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/36/38, para. 8(a) (July 13, 2017) (*hereinafter* “Methods”).

⁸ *See, e.g., Bettar v. Morocco*, Working Grp. on Arbitrary Detention, Commc’n No. 3/2013, paras. 30-314 (April 30, 2013); *61 Individuals v. United Arab Emirates*, Working Grp. on Arbitrary Detention, Commc’n No. 60/2013, para. 22 (Nov. 22, 2013).

Đinh Thị Thu Thủy was held *incommunicado* for many months after her arrest.⁹ In addition, Ms. Đinh's was convicted under Article 117 of the 2015 Vietnamese Penal Code,¹⁰ legislation which is too vague to provide a legal basis for detention.

1. **Đinh Thị Thu Thủy was held *incommunicado* for a period of many months**

The Human Rights Committee has determined that *incommunicado* detention inherently violates Article 9(3) of the ICCPR.¹¹ This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights, such as freedom from torture. The prohibition against *incommunicado* detention is also articulated by Principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the “Body of Principles”), which prohibits the denial of communication between a detainee and his or her family or counsel for more than a few days.¹² Ms. Đinh was not permitted to see her family for seven months,¹³ or to consult with an attorney for eight months after her arrest,¹⁴ resulting in *incommunicado* detention that clearly constitutes a violation of Category 1.

2. **Vietnam's criminal code is vague and overly broad**

Article 15(1) of the ICCPR¹⁵ and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”)¹⁶ both guarantee individuals the right to know what the law is and what conduct violates the law. These Articles protect citizens from prosecution for any criminal offense “which did not constitute a[n] [] offense, under national or international law, at the time when it was committed.” The Human Rights Committee has stated that “[a]ny substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.”¹⁷ In addition, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering

⁹ *Woman Human Rights Defender Dinh Thi Thu Thuy Charged and Sentenced*, FRONTLINE DEFENDERS (Jan. 20, 2021), <https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-%C4%91inh-th%E1%BB%8B-thu-th%E1%BB%A7y-charged-and-sentenced>.

¹⁰ *Id.*

¹¹ HUMAN RIGHTS COMMITTEE, *General Comment No. 35: Article 9 (Liberty and Security of Person)*, U.N. Doc. CCPR/C/GC/35, (Dec. 16, 2014) at para. 35 (*hereinafter* “General Comment No. 35”).

¹² *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, UN Doc. A/43/49 (*hereinafter* “Body of Principles”), at Principle 15.

¹³ *Woman Human Rights Defender Dinh Thi Thu Thuy Charged and Sentenced*, FRONTLINE DEFENDERS (Jan. 20, 2021), <https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-%C4%91inh-th%E1%BB%8B-thu-th%E1%BB%A7y-charged-and-sentenced>.

¹⁴ *Id.*

¹⁵ *International Covenant on Civil and Political Rights*, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), UN Doc. A/6316 (1966), 999 UNT.S. 171 (March 23, 1976) at art. 15(1) (*hereinafter* “ICCPR”) (“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.”).

¹⁶ United Nations General Assembly, *Universal Declaration of Human Rights* 73, Res 217 A (III), 3rd session, A/RES/217 A (Dec. 10 1948) at art. 11(2), available at <http://www.un-documents.net/a3r217a.htm> (“No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”).

¹⁷ General Comment No. 35, *supra note* 11, at para. 35.

Terrorism has explained that the standard for legal certainty requires framing laws “in such a way that [...] the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and [that] the law [be] formulated with sufficient precision so that the individual can regulate his or her conduct.”¹⁸

Article 117 of the 2015 Vietnamese Penal Code defines the crime of “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Vietnam” so vaguely as to make it impossible for any individual to reasonably foresee and anticipate what behavior is criminal:

Article 117. Making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam

1. Any person who, for the purpose of opposing the State of Socialist Republic of Viet Nam, commits any of the following acts shall face a penalty of five to twelve years of imprisonment:
 - a) Making, storing, or spreading information, materials, or items that contain distorted information about the people's government;
 - b) Making, storing, or spreading information, materials, or items that contain fabricated information to cause dismay among the people;
 - c) Making, storing, or spreading information, materials, or items to cause psychological warfare.
2. An extremely serious case of this offence shall carry a penalty of ten to twenty years of imprisonment.
3. Any person who makes preparation for the commitment of this criminal offence shall face a penalty of one to five years of imprisonment.

No instruction or clarification is provided as to what constitutes “distorted information,” “fabricated information,” or “psychological warfare.” Article 117 lacks any plain meaning and it gives individuals no fair notice of what conduct is prohibited. Đinh Thị Thu Thủy was arbitrarily prosecuted under Article 117¹⁹ for acts that are both unforeseeable as criminal and protected under the ICCPR, the UDHR, and other international norms and standards. Because the crime of “making, storing, or spreading information, materials or items for the purpose of opposing the

¹⁸ Scheinin, M, Commission on Human Rights, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, 62nd session (Dec. 28, 2005) at para. 46, available at <http://www.refworld.org/docid/441181f10.html>; Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, 28th session, A/HRC/28/28 (Dec. 19, 2014), available at <http://www.refworld.org/docid/54f86a2e4.html>, para 48.

¹⁹ *Woman Human Rights Defender Dinh Thị Thu Thủy Charged and Sentenced*, FRONTLINE DEFENDERS (Jan. 20, 2021), <https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-%C4%91inh-th%E1%BB%8B-thu-th%E1%BB%A7y-charged-and-sentenced>.

State of the Socialist Republic of Vietnam” is so vague as to be meaningless, such a law cannot support the basis for Ms. Đinh’s detention resulting from her conviction on such a charge.

B. Deprivation of liberty under Category II

Deprivation of liberty is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20, and 21 of the UDHR and Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR.²⁰ This case meets the requirements of Category II because Đinh Thị Thu Thủy’s detention is a direct result of the exercise of her fundamental freedoms of opinion, expression and association guaranteed by the UDHR and the ICCPR.

1. Đinh Thị Thu Thủy was convicted for exercising her freedoms of opinion and expression

The freedoms of opinion and expression are protected by international instruments and include the freedom to seek, receive, and impart information of all kinds, either orally or in writing. Article 19(2) of the ICCPR provides that “everyone shall have the right to freedom of expression.”²¹ Article 19 of the UDHR provides an analogous guarantee of freedom of opinion and expression.²² The Human Rights Committee has clarified that Article 19 of the ICCPR “protects all forms of expression and the means of their dissemination.”²³ This includes “all forms of audio-visual as well as electronic and internet-based modes of expression.”²⁴

Article 19 of the ICCPR is of special importance for human rights defenders, and international law explicitly recognizes that those who seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights, including environmental rights, are to be treated as human rights defenders.²⁵ The Working Group has confirmed the right of human rights defenders “to investigate, gather information regarding and report on human rights violations.”²⁶ The Human Rights Committee has also specifically recognized that Article 19(2) protects the work of activists and “includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.”²⁷ In fact, the imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny; the Working Group has recognized the necessity to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review.”²⁸ This “heightened standard of review” by international bodies is especially appropriate

²⁰ Methods, *supra* note 7, at para. 8(b).

²¹ ICCPR at art. 19(2).

²² UDHR at art. 19.

²³ Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/G/34 at para. 12 (Sept. 12, 2011) (*hereinafter* “General Comment No. 34”).

²⁴ *Id.*

²⁵ See, e.g., UNITED NATIONS SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, Who is a Defender, available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

²⁶ *Hassan Ahmed Hassan Al-Diqqi v. United Arab Emirates*, United Nations Working Group on Arbitrary Detention, Opinion No. 8/2009, UN Doc. A/HRC/13/30/Add.1, para. 18 (2010).

²⁷ *De Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, para. 6.7 (March 29, 2005).

²⁸ *Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 62/2012, U.N. Doc. A/HRC/WGAD/2012/62, para. 39 (Nov. 21, 2012); see also, *Sotoudeh v. Islamic Republic of Iran*, UN Working

where there is a “pattern of harassment” by national authorities targeting such individuals.²⁹

In the present case, the Government arbitrarily harassed, detained and prosecuted Đinh Thị Thu Thủy under Article 117 as a direct result of her speech as an environmental activist and a human rights defender.³⁰ Thus, the Government has deprived Ms. Đinh of her liberty under a law that is itself incompatible with the rights to freedom of opinion and expression guaranteed under the UDHR and ICCPR.

Furthermore, Đinh Thị Thu Thủy was imprisoned for criticizing the Government, violating her rights to freedom of opinion and expression both *de jure* and *de facto*. Ms. Đinh’s arrest, conviction and lengthy sentence was an attempt by the Government to silence her and to punish her for sharing her views, an activity that is expressly protected by international law.

2. Đinh Thị Thu Thủy was convicted for exercising her freedom of association

Article 20(1) of the UDHR provides that “[e]veryone has the right to freedom of peaceful assembly and association.” Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others . . .” The Human Rights Council has specifically called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views and human rights defenders.³¹ In General Comment No. 25 to the ICCPR, the Human Rights Committee noted that “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25 [right to participate in public affairs].”³² The Special Rapporteur on the rights to freedom of peaceful assembly and association has clearly stated that “the rights to freedom of peaceful assembly and of association can be exercised through new technologies, including through the Internet.”³³

Contrary to these international standards, Vietnam has criminalized and imprisoned individuals for associating with others who are critical of the Government.³⁴ By punishing Đinh Thị Thu Thủy for associating with others using an online platform such as Facebook,³⁵ the Government has violated her right to freedom of association in contravention of Article 20(1) of the UDHR, Article

Group on Arbitrary Detention, Opinion No. 21/2011, U.N. Doc. A/HRC/WGAD/2011/21, para. 29 (Jan. 27, 2011).

²⁹ *Bialiatski v. Belarus*, United Nations Working Group on Arbitrary Detention, Opinion No. 39/2012, para. 43, (Nov. 23, 2012).

³⁰ *Woman Human Rights Defender Dinh Thi Thu Thuy Charged and Sentenced*, FRONTLINE DEFENDERS (Jan. 20, 2021), <https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-%C4%91inh-th%E1%BB%A7y-charged-and-sentenced>.

³¹ G.A Res. 15/21, ¶ 1, U.N. Doc. A/HRC/RES/15/21 (Oct. 6, 2010), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>

³² *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, ¶ 26, Human Rights Committee, 57th Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 27, 1996), (*hereinafter* “General Comment No. 25”).

³³ Kiai, M., *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Human Rights Council, 21 May 2012, A/HRC/20/27 para 4, www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf.

³⁴ See, e.g., *Vietnamese Facebook User Gets Seven-Year Term for Ridiculing Leaders*, RADIO FREE ASIA (Jan. 21, 2021), <https://www.rfa.org/english/news/vietnam/leaders-01212021184919.html>.

³⁵ *Id.*

22(1) of the ICCPR, and Article 25 of the Vietnamese Constitution.³⁶

3. None of the restrictions to freedom of expression and association enumerated under articles 19(3) and 22(2) of the ICCPR apply to the prosecution and detention of Đinh Thị Thu Thủy

Article 20 of the ICCPR requires states to prohibit “propaganda for war” and “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”³⁷ However, the Human Rights Committee has confirmed that limitations on expression that a state attempts to justify on the basis of Article 20 must also comply with Article 19(3) of the ICCPR.³⁸ Pursuant to Article 19(3) of the ICCPR, freedoms of expression and opinion may be restricted only as necessary for the protection of national security or public order, health, or morals. The Human Rights Committee has emphasized the narrowness of the limitations set forth in Article 19(3) of the ICCPR by noting that “when a State party imposes [a limitation] on the exercise of freedom of expression, [it] may not put in jeopardy the right itself.”³⁹

Article 22(2) of the ICCPR provides that: “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.” Any limitation on the freedoms of expression and association “must meet a strict test of justification.”⁴⁰ As guidance, the Human Rights Committee has established three requirements for any limitation on the right to freedom of expression and association. A permissible limitation must be (1) “provided by law,” (2) for the protection of national security, public order, or public health and morals, and (3) “necessary” to achieve one of these enumerated purposes.⁴¹

In this case, the limitation on Đinh Thị Thu Thủy’s freedom of expression and association fails to meet the second requirement; the Government’s restrictions on their right to freedom of expression and association was not for a proper purpose. None of Ms. Đinh’s articles called directly or indirectly for violence or could reasonably be considered to threaten national security, public order, public health or morals. Rather, the Government was merely using the veil of “conducting propaganda” as a pretext to silence her criticism, which is not an acceptable purpose under Article 19(3) of the ICCPR. To the contrary, political discourse and discussion of human rights have all been explicitly recognized as protected speech.⁴²

³⁶ Article 25 of the Vietnamese Constitution specifically affirms that citizens have the right to “assemble, form associations and hold demonstrations. See THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM, 2013, translation available at International Institute for Democracy and Electoral Assistance, http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf.

³⁷ ICCPR, at art. 20.

³⁸ General Comment No. 34, *supra* note 23, at para. 50.

³⁹ *Id.* at para. 21.

⁴⁰ *Park v. Republic Korea*, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, para. 10.3 (*adopted* Oct. 20, 1998).

⁴¹ *Shin v. Republic of Korea*, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000, para. 7.3 (*adopted* March 16, 2004).

⁴² General Comment No. 34, *supra* note 23, at para. 11.

Despite such international guarantees of the right to free expression, the Government arbitrarily detained and prosecuted Ms. Đinh as a direct result of her speech. Ms. Đinh’s advocacy was political and fell within the protections of Articles 19 of the ICCPR and UDHR. Because Ms. Đinh’s advocacy is protected expression under Article 19(2), and because the limitation on these do not fall within the exceptions contained in Articles 19(3), Ms. Đinh’s continued detention is arbitrary under Category II.

C. Deprivation of liberty under Category III

Finally, Đinh Thị Thu Thủy’s arrest and detention is arbitrary under Category III. A deprivation of liberty is arbitrary under Category III where “the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the UDHR and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”⁴³ The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, the Body of Principles, and the UN Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”).⁴⁴

1. Vietnam violated Đinh Thị Thu Thủy’s right to *habeas corpus* and her right to release pending trial

Under Article 9(3) of the ICCPR, a detainee shall “be brought promptly before a judge or other officer authorized by law to exercise judicial power” to challenge the legality of his continued detention (right to *habeas corpus*, also incorporated in Article 9(4) for non-criminal defendants).⁴⁵ The Human Rights Committee has interpreted the term “promptly” to be within about 48 hours, except in exceptional circumstances, and has noted that this right shall be observed “even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”⁴⁶ Moreover, *incommunicado* detention inherently violates Article 9(3) of the ICCPR.⁴⁷ The right to *habeas corpus* is reiterated in Principles 4, 11, 32(1) and 37 of the Body of Principles.⁴⁸ Aside from acting as a check on arbitrary detention, these provisions also safeguard other related rights, such as freedom from torture.⁴⁹

In addition to the right to *habeas corpus*, Article 9(3) of the ICCPR also enshrines the right to an individual’s release pending trial, providing that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody.” The Human Rights Committee has found that “[d]etention pending trial must be based on an individualized determination that [such detention] is reasonable and necessary taking into account all the circumstances, for such purposes as to

⁴³ Methods, *supra* note 7, at para. 8(c).

⁴⁴ *Id.* at paras. 7(a), (b). The Vietnamese Constitution also guarantees certain due process rights, including the right not to be arrested without a prior authorization (Article 20), the right to a presumption of innocence (Article 31(1)), the right to a prompt, impartial and public trial for anyone charged with a criminal offense (Article 31(2)), and the right to the assistance of counsel (Article 31(4)).

⁴⁵ ICCPR, art. 9(4) (“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”).

⁴⁶ General Comment No. 35, *supra* note 17, at para. 32.

⁴⁷ *Id.* at para. 35.

⁴⁸ Body of Principles, *supra* note 12.

⁴⁹ General Comment No. 35, *supra* note 17, at para. 34.

prevent flight, interference with evidence or the recurrence of crime . . . Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”⁵⁰ Principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.⁵¹

Đinh Thị Thu Thủy was never brought before a judge to determine the legality of her arrest and continuing detention. There was never a bail hearing or any publicly-released individualized determination made about why such extended pre-trial detention was necessary. In short, Ms. Đinh’s entire pre-trial detention period was completely unauthorized by any judicial officer. By refusing to bring Ms. Đinh promptly before a judge to challenge the legality of her detention, and by denying her release pending trial, the Government violated Article 9(3) and 9(4) of the ICCPR, and Principles 11, 32, 37, 38 and 39 of the Body of Principles.

2. Vietnam violated Đinh Thị Thu Thủy’s right to family visits

Principle 19 of the Body of Principles provides that “detained or imprisoned persons shall have the right to be visited by and to correspond with, in particular, members of his family . . . subject to reasonable conditions and restrictions as specified by law or lawful regulations.” Similarly, this right is protected by the Mandela Rules, notably Rule 43 stating that “[d]isciplinary sanctions or restrictive measures shall not include the prohibition of family contact,” Rule 58 stating that “[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals,” and Rule 106 stating that “[s]pecial attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.”

Đinh Thị Thu Thủy was held *incommunicado* for many months after her arrest, during which time she was prohibited from meeting with her family members, including her young child. By detaining Ms. Đinh *incommunicado* prior to trial, and by prohibiting visits from her family members, the Government violated Principle 19 of the Body of Principles as well as Rules 43, 58, and 106 of the Mandela Rules.

3. Vietnam violated Đinh Thị Thu Thủy’s right to be tried without undue delay

Article 14(3)(c) of the ICCPR guarantees that every defendant shall have the right to “be tried without undue delay.” “An important aspect of the fairness of a hearing is its expeditiousness,”⁵² and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”⁵³ In addition, this right “relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal.”⁵⁴ The right to be tried without undue delay is reiterated by the Body of

⁵⁰ *Id.* at para. 38.

⁵¹ Body of Principles, *supra* note 12.

⁵² HUMAN RIGHTS COMMITTEE, *General Comment No. 32: Article 14 (Right to Equality Before Courts and Tribunals and to Fair Trial)*, U.N. Doc. CCPR/C/GC/32, para. 27 (Aug. 23, 2007) (*hereinafter* “General Comment No. 32”).

⁵³ *Id.* at para. 35.

⁵⁴ *Id.*

Principles,⁵⁵ and the same is guaranteed in Article 31 of the Vietnamese Constitution.

The reasonable amount of time in which a trial must be held must be “assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities.”⁵⁶ Further, “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”⁵⁷

More than nine months elapsed before Đinh Thị Thu Thủy was tried. During this entire time, Ms. Đinh was held in custody. Vietnam never provided any explanation why Ms. Đinh’s trial necessitated such a delay. The need for trial without undue delay was exacerbated by the fact that, as mentioned above, Ms. Đinh was never given a bail hearing and was forced to remain in detention for the entire time before trial, much of which was *incommunicado*. By refusing to provide Ms. Đinh a bail hearing, and by unnecessarily delaying her trial, the Government violated Article 14(3)(c) of the ICCPR, Principle 38 of the Body of Principles, and Article 31 of the Vietnamese Constitution.

4. Vietnam violated Đinh Thị Thu Thủy’s right to communicate with counsel

Articles 14(3)(d) and 14(3)(b) of the ICCPR guarantee that an individual may “defend himself in person or through legal assistance of his own choosing” and “have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.” Such a guarantee “requires that the accused is granted prompt access to counsel,”⁵⁸ and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”⁵⁹ Principle 18 of the Body of Principles further provides for the right of a detainee to communicate and consult with his legal counsel, and Rule 119 of the Mandela Rules also provides for the right to access legal advice. Likewise, the Vietnamese Constitution guarantees a detained or criminally charged individual’s right to choose a defense counsel.

As noted above, Đinh Thị Thu Thủy was held *incommunicado* and deprived of her right to prompt access to counsel. Consequently, the Government violated Articles 14(3)(b) and 14(3)(d) of the ICCPR, Principle 18 of the Body of Principles, Rule 119 of the Mandela Rules, and Article 31 of the Vietnamese Constitution.

5. Vietnam violated Đinh Thị Thu Thủy’s right to a fair hearing

Article 14 of the ICCPR guarantees the right “to a fair and public hearing.” This is an “absolute requirement . . . not capable of limitation.” One of the key tenets of a fair hearing is the principle that “each side be given the opportunity to contest all the arguments and evidence adduced by the other party.”⁶⁰ Notably, Article 14(3)(e) of the ICCPR provides that every defendant shall have

⁵⁵ Body of Principles, *supra* note 12, at Principle 38.

⁵⁶ General Comment No. 32, *supra* note 52, at para. 30.

⁵⁷ *Id.* at para 35.

⁵⁸ *Id.* at para 32.

⁵⁹ *Id.* at para 34.

⁶⁰ General Comment No. 32, *supra* note 52, at para. 13.

the right “[t]o 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.” Articles 7 and 10 of the UDHR guarantee these same rights. In the present case, Ms. Đinh’s attorneys were not permitted to examine witnesses who had concluded that her writings constituted propaganda.⁶¹ Moreover, the duration of Ms. Đinh’s trial was very short, lasting only four hours,⁶² clearly establishing that her guilt had been determined prior to the hearing, and thus denying her the right to the presumption of innocence guaranteed under Article 14(2) of the ICCRP.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

Đinh Thị Thu Thủy’s arrest, trial and pre-trial confinement have been characterized by flagrant violations of her due process rights. It is extremely unlikely that any appeal of Ms. Đinh’s conviction would result in her release or a lighter sentence.

VI. FULL NAME, POSTAL AND ELECTRONIC ADDRESSES OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

BPSOS provides assistance to victims of human rights violations in Vietnam, protects Vietnamese asylum seekers in neighboring countries, and aids immigrants, refugees, victims of trafficking, disadvantaged students, and survivors of violence in the United States. BPSOS, in collaboration with NextGen, Vietnamese Women for Human Rights, and the U.N. Special Procedures Clinic of the University of Notre Dame Washington Program, has been retained by Đinh Thị Thu Thủy to represent her before the Special Procedures of the Human Rights Council.

⁶¹ *Vietnamese Facebook User Gets Seven-Year Term for Ridiculing Leaders*, RADIO FREE ASIA (Jan. 21, 2021), <https://www.rfa.org/english/news/vietnam/leaders-01212021184919.html>.

⁶² *Vietnam jails environmental activist for seven years*, UCA NEWS (Jan. 21, 2021), <https://www.ucanews.com/news/vietnam-jails-environmental-activist-for-seven-years/91097#>.

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