

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Ms. Leigh Toomey (Australia)
Vice-Chair: Ms. Elina Steinerte (Latvia)
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**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Pham Chi Dung, Nguyen Tuong Thuy and Le Huu Minh Tuan
Citizens 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 42/22¹

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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.

INTRODUCTION

On January 8, 2021, the Spokesperson for the UN High Commissioner for Human Rights issued the following statement² regarding the cases of Pham Chi Dung, Nguyen Tuong Thuy and Le Huu Minh Tuan who were sentenced to lengthy prison sentences in Vietnam for exercising their rights to freedom of expression, opinion and association:

On Tuesday, 5 January, three independent journalists in Viet Nam received severe sentences of between 11 and 15 years' imprisonment after being found guilty of national security offences – a disturbing development that appears to be part of an increasing clampdown on the freedom of expression in the country.

Pham Chi Dung, Nguyen Tuong Thuy and Le Huu Minh Tuan, respectively chairperson, the vice chairperson and a young member of the Independent Journalists Association of Viet Nam, were convicted by the People's Court in Ho Chi Minh City of "making, storing, spreading information, materials, items for the purpose of opposing the State" under Article 117 of the Criminal Code. Pham Chi Dung was sentenced to 15 years in prison and three years on probation. Nguyen Tuong Thuy and Le Huu Minh Tuan were each sentenced to 11 years in prison and three years on probation. All three individuals were held in lengthy pre-trial detention, and despite assurances given by the Government that due process was followed, there are serious concerns about whether their rights to a fair trial were fully respected.

We are deeply concerned by the use of vaguely-defined laws to arbitrarily detain an increasing number of independent journalists, bloggers, online commentators and human rights defenders – in violation of Article 19 of the International Covenant on Civil and Political Rights (ICCPR). They are then frequently held incommunicado for long periods in pre-trial detention, with regular reports of violations of the right to a fair trial and concerns about their treatment in detention. Several of them have received lengthy sentences following their conviction for crimes against national security.

The High Commissioner for Human Rights and a number of UN human rights mechanisms, including the UN Human Rights Committee which oversees implementation of the ICCPR, have repeatedly called on Viet Nam to refrain from using restrictive legislation to curtail fundamental freedoms and to uphold its international human rights obligations. We also have serious concerns that individuals who try to cooperate with the UN's human rights bodies are subjected to intimidation and reprisals, potentially inhibiting others from sharing information about human rights issues with the UN.

We continue to raise these cases with the Government of Viet Nam, to call on them to stop the repeated use of such serious criminal charges against individuals for exercising their fundamental rights, especially to freedom of expression – and to unconditionally release all those who have been detained in such cases.

We also urge them to revise and amend the relevant provisions of the Criminal Code to bring them in line with Viet Nam's obligations under Article 19 of the ICCPR relating to the freedom of expression. People should be able to exercise these rights without fear of reprisals.

² *Press briefing notes on Viet-Nam*, SPOKESPERSON FOR THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS (Jan. 8 2021) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26644&LangID=E>.

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

I. PETITIONER 1

A. Identity

1. Family name: Pham

2. First name: Dung

Middle Name: Chi

3. Sex: Male

4. Birth date or age (at the time of detention): 54 years of age

5. Nationality: Vietnamese

6. (a) Identity document (if any): National ID card

(b) Issued by: Police of Ho Chi Minh City

(c) On (date): February 20, 2014

(d) No.: 022970120

7. Profession and/or activity (if believed to be relevant to the arrest/detention): Chairman of the Independent Journalists Association of Vietnam (IJAVN) and a human rights defender.

8. Address of usual residence: 298/4 Nguyễn Trọng Tuyển Street, Ward 1, Tân Bình District, Ho Chi Minh City, Vietnam.

B. Arrest

1. Date of arrest: November 21, 2019

2. Place of arrest (as detailed as possible): 298/4 Nguyễn Trọng Tuyển Street, Ward 1, Tân Bình District, Ho Chi Minh City, Vietnam.

3. Forces who carried out the arrest or are believed to have carried it out: Approximately 20 plainclothes police officers (likely Security Branch officers of the police department of Ho Chi Minh City).

4. **Did they show a warrant or other decision by a public authority?** Yes
5. **Authority who issued the warrant or decision:** Security Investigations Office, Ho Chi Minh City Police.
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 reason for the charges.

C. **Detention**

1. **Dates of detention:** November 21, 2019 to the present.
2. **Duration of detention (if not known, probable duration):** From November 21, 2019 to the date of the communication.
3. **Forces holding the detainee under custody:** Police of Ho Chi Minh City.
4. **Places of detention (indicate any transfer and present place of detention:** Initially in Hanoi, but he has been moved to the police detention center, No. 4 Phan Đăng Lưu Street, Bình Thạnh District, Ho Chi Minh City, Vietnam.
5. **Authorities that ordered the detention:** Upon information and belief, the Ministry of Public Security in Hanoi ordered the detention and the Security Investigations Office, police department of Ho Chi Minh City, implemented the order.
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 reason.

II. **PETITIONER 2**

A. **Identity**

1. **Family name:** Nguyen
2. **First name:** Thuy

Middle Name: Tuong

3. **Sex:** Male
4. **Birth date or age (at the time of detention):** 69 years of age
5. **Nationality:** Vietnamese
6.
 - (a) **Identity document (if any):** National ID card
 - (b) **Issued by:** Police of Hanoi City
 - (c) **On (date):** August 3, 2012
 - (d) **No.:** 012424536
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):** Vice Chairman of the Independent Journalists Association of Vietnam (IJAVN) and a human rights defender.
8. **Address of usual residence:** Household No. 0507, Apartment A2, Thanh Xuân Trung Ward, Thanh Xuân District, Hanoi City, Vietnam.

B. Arrest

1. **Date of arrest:** May 23, 2020
2. **Place of arrest (as detailed as possible):** Household No. 0507, Apartment A2, Thanh Xuân Trung Ward, Thanh Xuân District, Hanoi City, Vietnam.
3. **Forces who carried out the arrest or are believed to have carried it out:** Approximately 20 plainclothes police officers (likely Security Branch officers of the police department of Hanoi) - no names given – as well as several uniformed police officers whose names and police ID numbers are: Hồ Sỹ Hải 284 935, Lưu Quang Vũ 284 912, Nguyễn Mạnh Cường 260 879, Nguyễn Quốc Quý 179 068 (police officer dedicated to Ward 2 of Từ Liêm District in Hanoi).
4. **Did they show a warrant or other decision by a public authority?** Yes
5. **Authority who issued the warrant or decision:** Security Investigations Office, Hanoi Police.
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 reason for the charges.

C. Detention

1. **Dates of detention:** May 23, 2020 to the present.

2. **Duration of detention (if not known, probable duration):** From May 23, 2020 to the date of the communication.

3. **Forces holding the detainee under custody:** Police of Ho Chi Minh City.

4. **Places of detention (indicate any transfer and present place of detention:** Initially in Hanoi, but he has been moved to the police detention center, No. 4 Phan Đăng Lưu Street, Bình Thạnh District, Ho Chi Minh City, Vietnam.

5. **Authorities that ordered the detention:** Upon information and belief, the Ministry of Public Security in Hanoi ordered the detention and the Security Investigations Office, police department of Ho Chi Minh City, implemented the order.

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 reason.

III. PETITIONER 3

A. Identity

1. **Family name:** Le

2. **First name:** Tuan

Middle Name: Huu Minh

3. **Sex:** Male

4. **Birth date or age (at the time of detention):** 31 years of age

5. **Nationality:** Vietnamese

6. **(a) Identity document (if any):**

(b) **Issued by:**

(c) **On (date):**

(d) **No.:**

7. **Profession and/or activity (if believed to be relevant to the arrest/detention):** Member of the Independent Journalists Association of Vietnam (IJAVN) and a human rights defender.

8. **Address of usual residence:**

B. Arrest

1. **Date of arrest:** June 12, 2020

2. **Place of arrest (as detailed as possible):** Quang Nam province

3. **Forces who carried out the arrest or are believed to have carried it out:** Approximately 30 plainclothes police officers and 10 uniformed police officers.

4. **Did they show a warrant or other decision by a public authority?** Yes

5. **Authority who issued the warrant or decision:** Security Investigations Office, Hanoi Police.

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 reason for the charges.

C. Detention

1. **Dates of detention:** June 12, 2020 to the present.

2. **Duration of detention (if not known, probable duration):** From June 12, 2020 to the date of the communication.

3. **Forces holding the detainee under custody:** Police of Ho Chi Minh City.

4. **Places of detention (indicate any transfer and present place of detention):** Initially in Hanoi, but he has been moved to the police detention center, No. 4 Phan Đăng Lưu Street, Bình Thạnh District, Ho Chi Minh City, Vietnam.

5. **Authorities that ordered the detention:** Upon information and belief, the Ministry of Public Security in Hanoi ordered the detention and the Security Investigations Office, police department of Ho Chi Minh City, implemented the order.
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 reason.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST

A. Pham Chi Dung (Petitioner 1)

On July 4, 2014, Pham Chi Dung established the Independent Journalists Association of Vietnam (IJAVN), which advocates for freedom of the press, protected in Article 25 of the Vietnamese Constitution. Pham Chi Dung was arrested on November 21, 2019,³ shortly after denouncing Vietnam’s human rights abuses to the European Parliament in a November 13, 2019 petition criticizing ratification of the European Union-Vietnam Free Trade Agreement (EVFTA) and meeting with representatives from various European nongovernmental organizations (NGOs) on November 19, 2019.⁴

On the day of his arrest, Pham Chi Dung took his son to school at approximately 7:00 a.m., which is a five minute walk from his house. Pham Chi Dung’s father waited for Pham Chi Dung to return and take him to a health clinic for his scheduled medical checkup. When he did not return by 8:20 a.m., Pham Chi Dung’s father left for the health clinic with an aide. School personnel later reported that Pham Chi Dung was taken into custody by the police as soon as he dropped his son at school. The police blocked traffic so that no one could drive by the school during the arrest, including a period of time after they placed Pham Chi Dung into a police vehicle.

When Pham Chi Dung’s father and the aide were ready to leave for the clinic, the Health Protection Committee sent a car to pick them up. After the Health Protection Committee car left the house, the police vehicle with Pham Chi Dung arrived and the police escorted Pham Chi Dung into his own house and then locked the door from the inside. Approximately 20 uniformed and plainclothes police officers stood in the alley leading to his house. It was later learned that the police officer whose duty station was in the neighborhood had been notified of Pham Chi Dung’s imminent arrest shortly before the police vehicle brought Pham Chi Dung back to his house at 8:30 a.m.

The police search warrant, arrest warrant, and charges were dated November 18, 2019, five days after Pham Chi Dung sent his petition to the European Parliament, and in direct retaliation for that advocacy. On January 5, 2021, after a trial lasting fewer than four hours, Pham Chi Dung was convicted of “making, storing, spreading information, materials, items for the purpose of opposing

³ *Vietnamese Authorities Arrest Journalist Pham Chi Dung for Writings Critical of the State*, RADIO FREE ASIA (Nov. 21, 2019), <https://www.rfa.org/english/news/vietnam/pham-chi-dung-arrest-11212019154738.html>.

⁴ *Jailed journalist Urges EU Not to Ratify FTA With Vietnam*, RADIO FREE ASIA (Dec. 3, 2019), <https://www.rfa.org/english/news/vietnam/vietnam-pham-chi-dung-eu-parliament-12032019151213.html>.

the State” and sentenced to 15 years in prison and three years of probation.

On September 17, 2020, the Working Group on Arbitrary Detention, together with the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders sent a joint communication (Reference: AL VNM 3/2020) to the Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office in Geneva regarding the arbitrary detention of four journalists affiliated with the IJAVN, including Pham Chi Dung. In pertinent part, that joint communication reads as follows:

Situation of Mr. Pham Chi Dung

As highlighted in joint communication VNM 5/2019, Mr. Pham Chi Dung was arrested on 21 November 2019, eleven days after having sent a public appeal addressed to the President and key Members of the European Parliament, in which he explicitly laid out some human rights concerns in the country, and called on the European Parliament to postpone the ratification of the EU-Viet Nam Free Trade Agreement (EUVFTA) until concrete human rights benchmarks had been met by the Government of Viet Nam. Special Rapporteurs expressed their concern that he might have been detained in retaliation for this public appeal and his other human rights work, and further raised their concern that he was allegedly denied access to legal representation and contact with his family following his arrest.

According to the new information received, neither his family nor his lawyer have been allowed to meet or communicate with him to date. According to the information we received, the authorities justified this decision on the basis of Article 74 of the Criminal Procedure Code, which provides that visitation may be prohibited during the investigation phase, which can last up to two years. Vietnamese authorities have since his November 2019 arrest refused to accept the lawyer chosen by Pham Chi Dung’s family, despite Vietnamese Criminal Procedure Code (Articles 73-78) requiring that within 24 hours of receiving the lawyers’ registration, authorities are to promptly approve or reject it.

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

B. Nguyen Tuong Thuy (Petitioner 2)

Mr. Nguyen Tuong Thuy, the Vice Chairman of the Independent Journalists Association of Vietnam (IJAVN) and a human rights defender, was arrested on May 23, 2020⁵ and charged with

⁵ *Vietnamese Blogger Nguyen Tuong Thuy Arrested For Holding ‘Anti-State’ Documents*, RADIO FREE ASIA (May 23, 2020), <https://www.rfa.org/english/news/vietnam/blogger-arrest-05232020112257.html>; *see also Vietnamese Dissident Blogger Seriously Ill Ahead of Jan 5 Trial*, RADIO FREE ASIA (Dec. 31, 2020), <https://www.rfa.org/english/news/vietnam/ill-12312020145900.html>.

violating Article 117 of the 2015 Vietnamese Penal Code,⁶ 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

Nguyen Tuong Thuy, aged 69, and a 22-year military veteran, had been summoned by Hanoi police three times in connection with the arrest on November 21, 2019 of Pham Chi Dung.⁸ On May 23, 2020, the police surprised Nguyen Tuong Thuy by forcing open the door to his apartment when his wife returned from her morning walk. The police then searched the apartment and physically attempted to compel Nguyen Tuong Thuy to unlock his cell phone, injuring him in the process. On January 5, 2021, after a trial lasting fewer than four hours, Nguyen Tuong Thuy was sentenced to 11 years in prison and three years on probation for writing pro-democracy articles and advocating for freedom of expression.⁹

As noted above, on September 17, 2020, the Working Group on Arbitrary Detention, together with the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders sent a joint communication (Reference: AL VNM 3/2020) to the Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office in Geneva regarding the arbitrary detention of four journalists affiliated with the IJAVN, including Nguyen Tuong Thuy. In pertinent part, that joint communication reads as follows:

Situation of Mr. Nguyen Tuong Thuy

On 11 and 16 March 2020, police attempted to summon Mr. Nguyen Tuong Thuy, and on 18 March 2020 police arrived at his home at 6:10am where they interrogated him for 30 minutes before leaving. Two months later, on 23 May 2020, Nguyen Tuong Thuy was arrested from his family home in Hanoi on suspicion of “making, storing, and disseminating documents and materials for anti-state purposes,” under Article 117 of the Penal Code, after he had written weblog commentaries on democracy and advocated for freedom of expression. The officers confiscated all mobile phones belonging to Nguyen Tuong Thuy and family members, despite his family members not being charged. Police also confiscated Thuy’s computer and USB memory sticks. If found guilty, he will face up to 20 years in prison.

On 1 June 2020, Thuy’s wife petitioned the authorities to allow her to visit her husband. Neither the lawyer nor Thuy’s wife have been allowed to visit him to date. He is alleged to be at risk of prolonged incommunicado detention. He is believed to be held at Chi Hoa temporary detention center in Ho Chi Minh City, but neither his lawyer nor his wife have been allowed to visit him to independently verify his whereabouts. The charge under which Thuy is currently held, Article 117 of the Penal Code, is listed under Offenses Against National Security. As for Mr. Pham

⁶ See generally *Viet Nam: Let Us Breathe! Censorship and Criminalization of Online Expression in Viet Nam*, AMNESTY INTERNATIONAL (Nov. 30, 2020), <https://www.amnesty.org/en/documents/asa41/3243/2020/en/>.

⁷ *Vietnam Journalists Arrests a ‘Chilling Message’ From Nervous Ruling Party-RSF*, RADIO FREE ASIA (May 26, 2020), <https://www.rfa.org/english/news/vietnam/vietnam-journalists-05262020160037.html>.

⁸ *Id.*

⁹ *Vietnamese RFA Blogger Jailed for 11 Years on Anti-State Charge*, RADIO FREE ASIA (Jan. 5, 2021), <https://www.rfa.org/english/news/vietnam/jailed-01052021123254.html>.

Chi Dung, he is subjected to Article 74 of the Criminal Procedure Code, which allows access to legal counsel to be denied until the investigation concludes, which can last up to two years.

Previously, on 7 March 2018, Nguyen Tuong Thuy had allegedly been shortly detained by approximately twenty police officers at his residence in order to prevent him from meeting with a delegation of the OHCHR at the UN Representative Office in Hanoi.

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

C. Le Huu Minh Tuan (Petitioner 3)

Le Huu Minh Tuan was arrested on the morning of June 12, 2020¹⁰ at a coffee shop owned by his sister in Quang Nam province. Between 8:30 a.m. and 9:00 a.m., around 30 plain-clothes police officers and 10 uniformed police officers reportedly forced the coffee shop to close, used black nylon bags to cover all the internal security cameras, and shut off the Wi-Fi. Following the raid, police escorted Le Huu Minh Tuan to his residence, which was also searched. Police confiscated Le Huu Minh Tuan’s phone, along with his mother’s phone. The police officer in charge, Ho Si Hai, is reported to be the same officer in charge of Pham Chi Dung and Nguyen Tuong Thuy’s arrests. The police did not leave copies of the warrants with the family after arresting Le Huu Minh Tuan. Prior to this, Le Huu Minh Tuan had been summoned at least four times by the police to answer questions relating to Pham Chi Dung but had refused to cooperate. On January 5, 2021, after a trial lasting fewer than four hours, Le Huu Minh Tuan was convicted of “making, storing, spreading information, materials, items for the purpose of opposing the State” and sentenced to 11 years in prison and three years of probation.

As noted above, on September 17, 2020, the Working Group on Arbitrary Detention, together with the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders sent a joint communication (Reference: AL VNM 3/2020) to the Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office in Geneva regarding the arbitrary detention of four journalists affiliated with the IJAVN, including Le Huu Minh Tuan. In pertinent part, that joint communication reads as follows:

Situation of Mr. Le Huu Minh Tuan

On 8 June 2020, the investigating agency of the Ho Chi Minh City police recommended to prosecute Mr. Le Huu Minh Tuan on violation of Article 117 of the Penal Code, relating to “making, storing, and disseminating documents and materials for anti-state purposes.”

¹⁰ *Journalist Le Huu Minh Tuan arrested on anti-state charge in Vietnam*, COMMITTEE TO PROTECT JOURNALISTS (June 15, 2020), <https://cpj.org/2020/06/journalist-le-huu-minh-tuan-arrested-on-anti-state-charge-in-vietnam/>.

On 12 June 2020, Mr. Le Huu Minh Tuan was arrested. Police confiscated his belongings at his home, including books and papers. The officer in charge of the case, Mr Ho Sy Hai, is reportedly the same officer in charge of Pham Chi Dung and Nguyen Tuong Thuy's cases. Prior to this, he had been summoned at least three times by the police previously to answer questions relating to Pham Chi Dung. Mr. Le Huu Minh Tuan is believed to be held in Chi Hoa detention facility along with other IJAVN members, Thuy and Dung

For the reasons set forth below, the arrest and detention of Le Huu Minh Tuan by the Government of the Socialist Republic of Vietnam (the "Government") is a violation of international law and is thus illegal.

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

The arrest and detention of Pham Chi Dung, Nguyen Tuong Thuy and Le Huu Minh Tuan (jointly the "Petitioners") is arbitrary¹¹ under Categories I, II and III as established by the UN Working Group on Arbitrary Detention (the "Working Group"). Their detention is arbitrary under Category I because it is impossible to invoke any legal basis justifying their deprivation of liberty and continued detention. Their detention is arbitrary under Category II because it resulted from the peaceful exercise of their rights to freedom of expression, opinion and association. Finally, their detention is arbitrary under Category III because their detention and prosecution failed to meet the minimum international standards of due process.

A. Deprivation of liberty under Category 1

A detention violates Category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.¹² 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.¹³

Petitioners were held *incommunicado* for a period of many months after their arrest. In addition, they were convicted under Article 117 of the 2015 Vietnamese Penal Code, legislation which is too vague to properly provide a legal basis for detention.

¹¹ 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.*

¹² 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").

¹³ *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).

1. Petitioners were 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.¹⁴ 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 family or counsel for more than a few days.¹⁵ Petitioners were not permitted to see their families or to consult with an attorney for many months after their respective arrests,¹⁶ resulting in *incommunicado* detention which clearly constitutes a violation of Category 1.

2. Vietnam’s criminal code is vague and overly broad

Article 15(1) of the ICCPR¹⁷ and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”)¹⁸ 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.”¹⁹ In addition, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering 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.”²⁰

¹⁴ 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”).

¹⁵ *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.

¹⁶ *Vietnamese jails pro-democracy journalists for ‘propaganda’*, DEUTSCHE WELLE (Jan. 5, 2021), <https://www.dw.com/en/vietnam-jails-3-journalists-for-state-critical-propaganda/a-56132070>.

¹⁷ *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.”).

¹⁸ 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.”).

¹⁹ HUMAN RIGHTS COMMITTEE, *General Comment No. 35: Article 9 (Liberty and Security of Person)*, U.N. Doc. CCPR/C/GC/35, (December 16, 2014) at para. 35 (*hereinafter* “General Comment No. 35”).

²⁰ 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

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 gives individuals no fair notice of what conduct is prohibited. Petitioners were arbitrarily prosecuted under Article 117 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 State of the Socialist Republic of Vietnam” is so vague as to be meaningless, such a law cannot support the basis for Petitioners’ detention resulting from 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.²¹ This case meets the requirements of Category II because the Petitioners’ detention is a direct result of the exercise of their fundamental freedoms of opinion, expression and association guaranteed by the UDHR and the ICCPR.

<http://www.refworld.org/docid/54f86a2e4.html>, para 48.

²¹ Methods, *supra* note 12, at para. 8(b).

1. Petitioners were convicted for exercising their 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.”²² Article 19 of the UDHR provides an analogous guarantee of freedom of opinion and expression.²³ The Human Rights Committee has clarified that Article 19 of the ICCPR “protects all forms of expression and the means of their dissemination.”²⁴ This includes “all forms of audio-visual as well as electronic and internet-based modes of expression.”²⁵

Article 19 of the ICCPR is of special importance for human rights defenders, and international law explicitly recognizes that citizen journalists who report on human rights abuses are to be treated as human rights defenders.²⁶ The Working Group has confirmed the right of human rights defenders “to investigate, gather information regarding and report on human rights violations.”²⁷ The Human Rights Committee has also specifically recognized that Article 19(2) protects the work of journalists and “includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.”²⁸ 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.”²⁹ This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.³⁰

In the present case, the Government arbitrarily detained and prosecuted Petitioners under Article 117 as a direct result of their speech as citizen journalists. Thus, the Government has deprived Petitioners of their liberty under a law which is itself incompatible with the rights to freedom of opinion and expression guaranteed under the UDHR and ICCPR.

Furthermore, Petitioners were imprisoned for their independent reporting, violating their rights to freedom of opinion and expression both *de jure* and *de facto*. Petitioners’ arrest, conviction and lengthy sentences were an attempt by the Government to silence them and to punish them for

²² ICCPR at art. 19(2).

²³ UDHR at art. 19.

²⁴ 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”).

²⁵ *Id.*

²⁶ *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>.

²⁷ *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).

²⁸ *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).

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

³⁰ *Bialitski v. Belarus*, United Nations Working Group on Arbitrary Detention, Opinion No. 39/2012, para. 43, (Nov. 23, 2012).

sharing their pro-democracy views, an activity which is expressly protected by international law.

2. Petitioners were convicted for exercising their 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 Similarly, Vietnamese law ensures the right to freedom of association. Article 25 of the Vietnamese Constitution specifically affirms that citizens have the right to “assemble, form associations and hold demonstrations.”³³

Contrary to these international standards, Vietnam has criminalized and imprisoned individuals for associating with other journalists who are critical of the Government, as evidenced by the joint trial and sentencing of Petitioners, all of whom were members of the IJAVN.³⁴ By punishing Petitioners for associating with other IJAVN journalists, and with each other, the Government has violated their right to freedom of association in contravention of Article 20(1) of the UDHR, Article 22(1) of the ICCPR, and Article 25 of the Vietnamese Constitution.

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 Petitioners

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.”³⁵ 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.³⁶ Pursuant to Article 19(3) of the ICCPR, freedoms of expression and opinion may be restricted only as necessary for either the respect of the rights and reputations of others or 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

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 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.

³⁴ *Vietnamese RFA Blogger Jailed for 11 Years on Anti-State Charge*, RADIO FREE ASIA (Jan. 5, 2021), <https://www.rfa.org/english/news/vietnam/jailed-01052021123254.html>.

³⁵ ICCPR, at art. 20.

³⁶ General Comment No. 34, *supra note* 24, at para. 50.

not put in jeopardy the right itself.”³⁷

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.”³⁸ 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.³⁹

In this case, the limitation on Petitioners’ 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 Petitioners’ reporting called directly or indirectly for violence or could reasonably be considered to threaten national security, public order, public health or morals, or the rights or reputations of others. Rather, the Government was merely using the veil of “conducting propaganda” as a pretext to silence 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.⁴⁰

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

C. Deprivation of liberty under Category III

Finally, Petitioners’ 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.”⁴¹ 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

³⁷ *Id.* at para. 21.

³⁸ *Park v. Republic Korea*, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, para. 10.3 (*adopted* Oct. 20, 1998).

³⁹ *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).

⁴⁰ General Comment No. 34, *supra* note 24, at para. 11.

⁴¹ Methods, *supra* note 12, at para. 8(c).

Minimum Rules for the Treatment of Prisoners (“Mandela Rules”).⁴²

1. Vietnam violated Petitioners’ right to *habeas corpus* and their 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).⁴³ 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.”⁴⁴ Moreover, *incommunicado* detention inherently violates Article 9(3) of the ICCPR.⁴⁵ The right to *habeas corpus* is reiterated in Principles 4, 11, 32(1) and 37 of the Body of Principles.⁴⁶ Aside from acting as a check on arbitrary detention, these provisions also safeguard other related rights, such as freedom from torture.⁴⁷

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 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.”⁴⁸ 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.⁴⁹

Petitioners were never brought before a judge to determine the legality of their 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, Petitioners’ entire pre-trial detention period was completely unauthorized by any judicial officer. By refusing to bring Petitioners promptly before a judge to challenge the legality of their detention, and by denying them 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.

⁴² *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)).

⁴³ 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”).

⁴⁴ 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. 32 (*hereinafter* “General Comment No. 35”).

⁴⁵ *Id.* at para. 35.

⁴⁶ Body of Principles, *supra* note 15.

⁴⁷ General Comment No. 35, *supra* note 44, at para. 34.

⁴⁸ *Id.* at para. 38.

⁴⁹ Body of Principles, *supra* note 15.

2. Vietnam violated Petitioners' 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.”

Petitioners were held *incommunicado* for many months after their arrest, during which time they were prohibited from meeting with their families. By detaining Petitioners *incommunicado* prior to trial, and by prohibiting visits from Petitioners' families, 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 Petitioners' 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,”⁵⁰ and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”⁵¹ 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.”⁵² The right to be tried without undue delay is reiterated by the Body of Principles,⁵³ 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.”⁵⁴ Further, “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”⁵⁵

More than one year elapsed before Pham Chi Dung was tried; more than seven months elapsed before Nguyen Tuong Thuy was tried; and more than six months elapsed before Le Huu Minh Tuan was tried. During this entire time, Petitioners were held in custody. Vietnam never provided any explanation why Petitioners' trial necessitated such a delay. The need for trial without undue delay was exacerbated by the fact that, as mentioned above, Petitioners were never given a bail hearing and were forced to remain in detention for the entire time before trial, much of which was

⁵⁰ 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”).

⁵¹ *Id.* at para. 35.

⁵² *Id.*

⁵³ Body of Principles, *supra* note 15, at Principle 38.

⁵⁴ General Comment No. 32, *supra* note 50, at para. 30.

⁵⁵ *Id.* at para 35.

incommunicado. By refusing to provide Petitioners a bail hearing, and by unnecessarily delaying Petitioners' 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 Petitioners' 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,”⁵⁶ and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”⁵⁷ 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, Petitioners were held *incommunicado* and deprived of their right to prompt access to counsel.⁵⁸ 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 Petitioners' 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.”⁵⁹ Notably, Article 14(3)(e) of the ICCPR provides that every defendant shall have 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.

The duration of Petitioners' trial was very short, lasting fewer than four hours,⁶⁰ clearly establishing that Petitioners' guilt had been determined prior to the hearing, and thus denying Petitioners the right to the presumption of innocence guaranteed under Article 14(2) of the ICCPR. By denying Petitioners a fair hearing, the Government violated Petitioners' rights under Article 14 of the ICCPR, and Articles 7 and 10 of the UDHR.

⁵⁶ *Id.* at para 32.

⁵⁷ *Id.* at para 34.

⁵⁸ *Vietnamese jails pro-democracy journalists for 'propaganda'*, DEUTSCHE WELLE (Jan. 5, 2021), <https://www.dw.com/en/vietnam-jails-3-journalists-for-state-critical-propaganda/a-56132070>.

⁵⁹ General Comment No. 32, *supra* note 50, at para. 13.

⁶⁰ *Vietnam: three IJAVN journalists given a total of 37 years in prison*, REPORTERS WITHOUT BORDERS (Jan. 5, 2021), <https://rsf.org/en/news/vietnam-three-ijavn-journalists-given-total-37-years-prison>.

VI. 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.

Petitioners' arrest, trial and pre-trial confinement have been characterized by flagrant violations of their due process rights. It is extremely unlikely that any appeal of their conviction will result in their release or a lighter sentence.

VII. 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 International Human Rights Advocates, has been retained by Petitioners to represent them before the Special Procedures of the Human Rights Council.

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