

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Ms. Elina Steinerte (Latvia)
Vice-Chair: Ms. Miriam Estrada-Castillo (Ecuador)
Ms. Leigh Toomey (Australia)
Mr. Mumba Malila (Zambia)
Ms. Priya Gopalan (Malaysia)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Tran Duc Thach
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 42/22¹

Submitted by:

Nguyen Dinh Thang, PhD
Tien Nguyen
BPSOS
6066 Leesburg Pike
Suite 100
Falls Church, VA 22041
United States of America
+1 (703) 538-2190
Thang.Nguyen@bpsos.org

Shireen Hormozdi Bowman
Attorney at Law
Norcross Law Firm
1770 Indian Trail Lilburn Road
Suite 175
Norcross, GA 30093
United State of America
+1 (678) 395-7795
shireen@norcrosslawfirm.com

June 7, 2021

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: Thach

2. First name: Tran

Middle Name: Duc

3. Sex: Male

4. Birth date or age (at the time of detention): 69 years of age as of June 19, 2021.

5. Nationality: Vietnamese

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

(b) Issued by: Police of Nghe An Province

(c) On (date): November 28, 2011

(d) No.: 181853598

7. Profession and/or activity (if believed to be relevant to the arrest/detention): Poet, author, and human rights advocate.

8. Address of usual residence: Dien Tan Commune, Dien Chau District, Nghe An Province, Vietnam

B. Arrest

1. Date of arrest: April 23, 2020

2. Place of arrest (as detailed as possible): The arrest occurred at Mr. Thach’s primary residence, which is Dien Tan Commune, Dien Chau District, Nghe An Province, 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 the Nghe An Province).

4. Did they show a warrant or other decision by a public authority? A warrant was read aloud upon Mr. Thach’s arrest but Mr. Thach’s wife was unable to view the details of the warrant.

5. Authority who issued the warrant or decision: It is unknown what authority issued the warrant.

6. Reason for the arrest imputed by the authorities: Charged with violating Article 109 of the 2015 Vietnamese Penal Code which punishes “carrying out activities aimed at overthrowing the people’s administration .”

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

C. Detention

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

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

3. Forces holding the detainee under custody: Police of Nghe An province.

4. Places of detention (indicate any transfer and present place of detention): Mr. Thach has been detained at the Nghi Kim, Nghe An detention center since his arrest on April 23, 2020.

5. Authorities that ordered the detention: It is unknown what specific authority ordered the detention. It is likely that the police department of Nghe An province implemented the order from the unknown authority.

6. Reasons for the detention imputed by the authorities: Charged with violating Article 109 of the 2015 Vietnamese Penal Code which punishes “carrying out activities aimed at overthrowing the people’s administration .”

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

II. DESCRIBE THE CIRCUMSTANCES OF THE ARREST

Mr. Tran Duc Thach, a Vietnam War veteran, co-founder of the Brotherhood for Democracy¹, and former member of the People’s Army of Vietnam, was arrested on April 23, 2020 and charged with violating Article 109 of the 2015 Criminal Code, which punishes “carrying out activities aimed at overthrowing the people’s administration.”²

Tran Duc Thach, age 69, had reportedly been continuously harassed by the Nghe An provincial police leading up to his arrest on April 23.³ On April 23, 2020, the Nghe An provincial police arrived in plainclothes at Tran Duc Thach’s home around 9:00 am with a search warrant for Thach’s arrest. Upon arrival, the police searched Thach’s home, confiscating several of his personal belongings, including a laptop, satellite phone, a cell phone, what appears to be an unopened package, and personal documents.⁴ On December 15, 2020, after a trial lasting no more than 3 hours, Tran Duc Thach was sentenced to 12 years in prison and 3 years on probation for his Facebook posts condemning the corruption and human rights violations perpetrated by the Vietnamese government.⁵

On December 15, 2020, Radio Free Asia, a news broadcasting organization, released an article detailing Mr. Thach’s case, including statements made by Mr. Thach’s attorney, Ha Huy Son. Ha Huy Son’s statement to Radio Free Asia reads as follows:

¹ See PEN America, *Poet and writer Tran Duc Thach sentenced to 12 years in Vietnamese prison*, ifex (December 21, 2020), <https://ifex.org/poet-and-writer-tran-duc-thach-sentenced-to-12-years-in-vietnamese-prison/>.

² See The 88 Project, *Profile: Tran Duc Thach*, The 88 Project (2021), <https://the88project.org/profile/489/tran-duc-thach/>.

³ *Id.* Note 2. *Profile: Tran Duc Thach*.

⁴ *Id.* Note 2. *Profile: Tran Duc Thach*.

⁵ *Id.* Note 1. *Poet and writer Tran Duc Thach sentenced to 12 years in Vietnamese prison*.

The prosecution of this case was aimed only at preventing political pluralism and multiparty ideologies [in Vietnam], because Tran’s behavior was not dangerous and did not contradict the Constitution. Tran Duc Thach admitted to the activities that were described in the indictment, but said they were not done with the aim of overthrowing the government. Rather, he had only wanted to help build a better society according to his own understanding.

See Radio Free Asia, *Dissident Vietnamese Poet Jailed For 12 Years on ‘Subversion’ Charge*, Radio Free Asia (December 15, 2020), [Dissident Vietnamese Poet Jailed For 12 Years on ‘Subversion’ Charge — Radio Free Asia \(rfa.org\)/](https://www.rfa.org/News/asia/20201215150537).

Additionally, Ha said Judge Tran Ngoc Son of the People’s Court did not allow Tran’s defense team to copy case documents used at trial, hampering his client’s defense.

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

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

The arrest and detention of Tran Duc Thach (hereinafter “Petitioner”) is arbitrary under Categories I, II and III as established by the UN Working Group on Arbitrary Detention (the “Working Group”).⁶ His detention is arbitrary under Category I because it is impossible to invoke any legal basis justifying his deprivation of liberty and continued detention. His detention is arbitrary under Category II because it resulted from the peaceful exercise of his rights to freedom of expression, opinion and association. Finally, his detention is arbitrary under Category III because his 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.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

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 *See* 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”).

incommunicado for a period of time; and (2) when vague laws are used to prosecute an individual.⁸

Petitioner was held *incommunicado* for a period of several months after his arrest from his family and lawyer. In addition, he was convicted under Article 109 of the 2015 Criminal Code, Vietnamese legislation which is too vague to properly provide a legal basis for detention.⁹

1. Petitioner was held *incommunicado* for a period of several months

The Human Rights Committee has determined that *incommunicado* detention inherently violates Article 9(3) of the ICCPR.¹⁰ 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.¹¹ Petitioner was not permitted to see his wife until three months after his detention. Additionally, he was not permitted to consult with his attorney until six months after his arrest.¹¹² Both communication restrictions resulted in *incommunicado* detention, which constitutes a violation of Category 1. Furthermore, the Petitioner's wife expressed how the petitioner looked emaciated while in detention and had problems with his blood pressure.¹³

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).

⁹ *Id.* Note 2. Profile: Tran Duc Thach.

¹⁰ See 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”).

¹¹ See *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.

¹² See *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>.

¹³ *Id.* Note 2. Profile: Tran Duc Thach.

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

Article 15(1) of the ICCPR¹⁴ and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”)¹⁵ 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.”¹⁶ 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.”¹⁷

Article 109 (originally article 79) of the 2015 Vietnamese Penal Code defines the crime of “carrying out activities aimed at overthrowing the people’s administration” so vaguely as to make it impossible for any individual to reasonably foresee and anticipate what behavior is criminal. No instruction or clarification is provided as to what constitutes “activities.” Article 109 lacks any plain meaning and doesn’t give individuals fair notice of what conduct is prohibited. The Petitioner was arbitrarily prosecuted under Article 109 for his Facebook posts condemning corruption by the Vietnamese government. The Petitioner’s postings on Facebook are acts which are both unforeseeable as criminal and protected under the ICCPR, the UDHR, and other international norms and standards. Because the crime of “carrying out activities aimed at overthrowing the

¹⁴ See *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.”).

¹⁵ See 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.”).

¹⁶ See 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”).

¹⁷ See 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.

people’s administration” is so vague as to be meaningless, such a law cannot support the basis for Petitioner’s 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.¹⁸ This case meets the requirements of Category II because Petitioner’s detention is a direct result of the exercise of his fundamental freedoms of opinion, expression and association guaranteed by the UDHR and the ICCPR.

1. Petitioner was convicted for exercising freedom of association

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.”¹⁹ Article 19 of the UDHR provides an analogous guarantee of freedom of opinion and expression.²⁰ The Human Rights Committee has clarified that Article 19 of the ICCPR “protects all forms of expression and the means of their dissemination.”²¹ This includes “all forms of audio-visual as well as electronic and internet-based modes of expression.”²²

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.²³ The Working Group confirmed the right of human rights defenders “to investigate, gather information regarding and report on human rights violations.”²⁴ The Human Rights Committee also specifically recognized that Article 19(2) protects the work of journalists and “includes the right of individuals to criticize or

¹⁸ Methods, *supra* note 7, at para. 8(b).

¹⁹ ICCPR at art. 19(2).

²⁰ UDHR at art. 19.

²¹ See 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”).

²² *Id.*

²³ 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>.

²⁴ *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).

openly and publicly evaluate their Government without fear of interference or punishment.”²⁵ In fact, the imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny; the Working Group recognized the necessity to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review.”²⁶ This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.²⁷

In the present case, the Government arbitrarily detained and prosecuted Petitioner under Article 109 as a direct result of his Facebook posts criticizing corruption in government and human rights abuses in the country. Thus, the Government has deprived Petitioner of liberty under a law which is incompatible with the rights to freedom of opinion and expression guaranteed under the UDHR and ICCPR.

Furthermore, Petitioner was imprisoned for his social media interaction, violating his rights to freedom of opinion and expression both *de jure* and *de facto*. Petitioner’s arrest, conviction and lengthy sentences were an attempt by the Government to silence them and to punish him for sharing his pro-democracy views, an activity which is expressly protected by international law and being a co-founder of the Brotherhood for Democracy, a civil society group that has been repeatedly targeted by authorities for their activism.²⁸ The Brotherhood for Democracy had a stated goal “to defend human rights recognized by the Vietnam Constitution and international conventions” and “to promote the building of a democratic, progressive, civilized, and just society for Vietnam.”²⁹

2. 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 Petitioner

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.”³⁰ However, the Human Rights Committee has confirmed that limitations on

²⁵ *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).

²⁶ *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).

²⁷ *Bialiatski v. Belarus*, United Nations Working Group on Arbitrary Detention, Opinion No. 39/2012, para. 43, (Nov. 23, 2012).

²⁸ *Id.* Note 1. Poet and writer Tran Duc Thach sentenced to 12 years in Vietnamese prison.

²⁹ *See* Human Rights Watch, *Vietnam: Release Dissident Poet*, Human Rights Watch (Nov. 25, 2020, 12:11 AM), <https://www.hrw.org/news/2020/11/25/vietnam-release-dissident-poet>.

³⁰ ICCPR, at art. 20.

expression that a state attempts to justify on the basis of Article 20 must also comply with Article 19(3) of the ICCPR.³¹ 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 not put in jeopardy the right itself.”³²

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.”³³ 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.³⁴

In this case, the limitation on Petitioner’s freedom of expression and association fails to meet the second requirement; the Government’s restrictions on his right to freedom of expression and association was not for a proper purpose. Petitioner’s social media reporting did not call 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.³⁵

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

³¹ General Comment No. 34, *supra note 21*, at para. 50.

³² *Id.* at para. 21.

³³ *Park v. Republic Korea*, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, para. 10.3 (*adopted* Oct. 20, 1998).

³⁴ *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).

³⁵ General Comment No. 34, *supra note 21*, at para. 11.

advocacy through social media can also be seen in his articles published in To Quoc magazine.³⁶ However, he was arrested in September that year, because he was deemed guilty by the court of carrying out propaganda against the state under article 88 of the penal code. His previous encounters with legal enforcement demonstrates he was wrongfully accused of **distorting the truth** even though expression of his views is protected under Article 19(2).

C. Deprivation of liberty under Category III

Finally, Petitioner’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.”³⁷ 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”).³⁸

1. Vietnam violated Petitioner’s right to *habeas corpus* and his 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).³⁹ 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.”⁴⁰ Moreover, *incommunicado* detention inherently violates Article 9(3) of the ICCPR.⁴¹ The right to *habeas corpus* is

³⁶ Human Rights Watch, *supra*.

³⁷ Methods, *supra* note 7, at para. 8(c).

³⁸ *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)).

³⁹ 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”).

⁴⁰ See 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”).

⁴¹ *Id.* at para. 35.

reiterated in Principles 4, 11, 32(1) and 37 of the Body of Principles.⁴² Aside from acting as a check on arbitrary detention, these provisions also safeguard other related rights, such as freedom from torture.⁴³

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."⁴⁴ 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.⁴⁵

Petitioner was never brought before a judge to determine the legality of his 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 Petitioner promptly before a judge to challenge the legality of his detention, and by denying him 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 Petitioner'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".⁴⁶ 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."⁴⁷ Additionally, Rule 58 states that "[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals."⁴⁸

⁴² Body of Principles.

⁴³ General Comment No. 35, *supra* note 40, at para. 34.

⁴⁴ *Id.* at para. 38.

⁴⁵ Body of Principles, *supra* note 11.

⁴⁶ Body of Principles, at 4.

⁴⁷ G.A. Res. 70/175, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (hereinafter "Mandela Rules"), at 17 (Jan. 8, 2016).

⁴⁸ Mandel Rules, at 20.

Furthermore, Rule 106 states 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.”⁴⁹

Petitioner was held *incommunicado* for many months after his arrest, during which time he was prohibited from meeting with his family, even when he was hospitalized for a week for high blood pressure. By detaining Petitioner *incommunicado* prior to trial, and by prohibiting visits from Petitioner’s family, 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 Petitioner’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,”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

First instance trial date for Petitioner was originally scheduled for November 30th but was cancelled without warning. When Petitioner’s family arrived at court on November 30th, they were told that the trial was rescheduled due to the Petitioner “not being fit to stand trial”. His wife was allowed to visit him the next day (December 1st) and Petitioner told her that he had been hospitalized for a week for high blood pressure. At the three-hour December

⁴⁹ Mandela Rules, at 30.

⁵⁰ See 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 General Comment No. 32, at para. 35.

⁵² *Id.*

⁵³ Body of Principles, *supra* note 11, at Principle 38.

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

⁵⁵ *Id.* at para 35.

15th trial, Ha Huy Son, Petitioner’s attorney, argued that “he was not allowed to review materials related to his client, that the prosecution violated trial procedures and failed to produce any incriminating evidence or witnesses, and that some of the charges predate Article 109 of the 2015 Criminal Code and therefore should be thrown out”. During this entire time, Petitioner was held in custody. Petitioner was never provided any explanation why Petitioner’s trial necessitated such a delay. The need for trial without undue delay was exacerbated by the fact that Petitioner 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 Petitioner 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 Petitioner’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,”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, Petitioner was held *incommunicado* and deprived of his right to prompt access to counsel.⁵⁸ More than six months after his arrest, Petitioner was allowed to meet with his lawyer, even though his investigation period had previously ended. The judge refused Petitioner’s lawyer’s request to copy case documents used at Petitioner’s trial. 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 Petitioner’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

⁵⁶ *Id.* at para 32.

⁵⁷ *Id.* at para 34.

⁵⁸ See *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>.

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

IV. 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.

Petitioner’s arrest, trial and pre-trial confinement have been characterized by flagrant violations of his due process rights. Any appeal of his conviction would not result in his release or a lighter sentence which can be seen when his appeal was denied.

V. 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 Shireen Hormozdi Bowman, has been retained by Petitioner to represent him before the Special Procedures of the Human Rights Council.

Nguyen Dinh Thang, PhD
Tien Nguyen
BPSOS
6066 Leesburg Pike
Suite 100
Falls Church, VA 22041
United States of America

Shireen Hormozdi Bowman
Attorney at Law
Norcross Law Firm
1770 Indian Trail Lilburn Road
Suite 175
Norcross, GA 30093
United States of America

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

⁶⁰ See *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>.

+1 (703) 538-2190 (tel)
+1 (703) 538-2191(fax)
Thang.Nguyen@bpsos.org

+1 (678) 395-7795 (tel)
+1 (866) 929-2434 (fax)
shireen@norcrosslawfirm.com