

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

Trần Thanh Phương

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:

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June 7, 2021

QUESTIONNAIRE TO BE COMPLETED BY PERSONS
ALLEGING ARBITRARY ARREST OR DETENTION

I. PETITIONER

A. Identity

1. Family name: Phuong

2. First name: Trần

Middle Name: Thanh

3. Sex: Male

4. Birth date or age (at the time of detention): May 2, 1975

5. Nationality: Vietnamese

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

(b) Issued by: Police of Nghệ An Province

(c) On (date): June 1, 2011

(d) No.: 191550686

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

8. Address of usual residence: Phong Thu Commune, Phong Điền District, Thừa Thiên Huế Province

B. Arrest

- 1. Date of arrest:** September 1, 2018
- 2. Place of arrest (as detailed as possible):** He was arrested at his Permanent residence 255/5C Highway A1, Bình Hưng Hòa ward, Bình Tân District, Hồ Chí Minh City
- 3. Forces who carried out the arrest or are believed to have carried it out:** 15 plain clothes officers and uniformed officers of Bình Hưng Hòa Ward, Bình Tân district, Hồ Chí Minh City arrested Phuong.
- 4. Did they show a warrant or other decision by a public authority?** Police detained Phuong without announcing to his family any formal reason about his arrest and did not show a warrant.
- 5. Authority who issued the warrant or decision:** On that day, the police of Bình Hưng Hòa ward collaborated with the police of Bình Tân district to arrest Phuong. According to the policeman at Bình Hưng Hoa ward, the police of Bình Tân district issued the warrant arrest.
- 6. Reason for the arrest imputed by the authorities:** Charged with violating Article 118 of the 2015 Vietnamese Penal Code which punishes “disrupting security.”
- 7. Legal basis for the arrest including relevant legislation applied (if known):** No valid reason for the charges.

C. Detention

- 1. Dates of detention:** September 1, 2018 to the present.
- 2. Duration of detention (if not known, probable duration):** From September 1, 2018 to the date of the communication.
- 3. Forces holding the detainee under custody:** Phuong has been detained by the police at the Hồ Chí Minh city police detention center.

4. Places of detention (indicate any transfer and present place of detention):

Phuong has been detained at the office for the police ward from September 1, 2018 to September 7, 2018. However, the authorities were not willing to disclose their record of Phuong being in detention before September 7, 2018. From September 7, 2018 to September 10, 2018, Phuong was placed in the district detention center. On September 10, 2018, the police took Phuong back home in order to serve him a search warrant. He was allowed to stay home for ten days. On September 20, 2018, he then was taken to No. 4 Phan Đăng Lưu Street, which is the detention center under the Hồ Chí Minh City Police Department, The Security Investigative Unit.

5. Authorities that ordered the detention: It is unknown what specific authority ordered the detention. However, it is likely the Bình Tân District public security, Hồ Chí Minh city ordered the detention.

6. Reasons for the detention imputed by the authorities: Charged with violating Article 118 of the 2015 Vietnamese Penal Code which punishes “disrupting security .”

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

II. DESCRIBE THE CIRCUMSTANCES OF THE ARREST

Trần Thanh Phương, a member of Hiến Pháp (Constitution) group, which advocates for Vietnamese citizens to have knowledge of their human rights, political rights, and civil rights as provided for in Vietnam’s Constitution¹, was arrested on September 1, 2018 and charged with violating Article 118 of the 2015 Vietnamese Penal Code which punishes “disrupting security.”² On September 1, 2018, the police of Bình Hưng Hòa Ward, Bình Tân District, Hồ Chí Minh City arrived at Phương’s home around 1 PM with no search warrant for Phương’s arrest. The police illegally searched through Phương’s personal documents.³ Additionally, the police took four cellular devices without a search warrant. Phương was detained at the office of the police ward from September 1, 2018 to September 7, 2018. Phương’s wife could bring food to him following his arrest on September 1, 2018, however, on September 7, 2018, when Phương’s wife went to bring him food, she was told by the police that he had been transferred without disclosing where. There is no record of Phương being in detention before September 7, 2018. From September 7, 2018 to September 10, 2018, Phương was placed in the district detention center. On September

¹ The 88 Project, *Profile: TRAN THANH PHUONG*, The 88 Project (2021), <https://the88project.org/profile/206/tran-thanh-phuong/>.

² *Id.* Note 1. *Profile: TRAN THANH PHUONG*.

³ *Vietnamese activist detained 'illegally' for 6 months*, Union of Catholic Asian News (February 25, 2019 05:14 AM), <https://www.ucanews.com/news/vietnamese-activist-detained-illegally-for-6-months/84579#>

10, 2018, the police returned Phuong to his home in order to formally serve him a search warrant.

On September 20, 2018, he then was taken to No. 4 Phan Đăng Lưu Street, which is the detention center under the Hồ Chí Minh City Police Department, The Security Investigative Unit. Without knowing Petitioner had been moved, Phuong's wife, Lê Thị Khanh, arrived at the district detention center on September 20, 2018 to bring Petitioner food. Lê Thị Khanh was told that she must verify their marriage with their marriage certificate to see him. Once presenting their marriage certificate, the police told her that she would not be able to see him until October 10, 2018.⁴ On October 10, 2018, Ms. Khanh came back to the district detention center, only to be told that Petitioner had been moved to the No. 4 Phan Đăng Lưu Street. The police at this new place of detention will only allow her to send food every two months.⁵ The family has not been permitted to meet with Petitioner's lawyer and Petitioner was only allowed to meet with his family for the first time on September 2, 2019.⁶ The wife asked an attorney to defend Phuong but claims the lawyer was not permitted to meet with Petitioner until after September 2019.⁷ However after visitation, the lawyer was not able to disclose any legal advice to the wife and only told her about Phuong's health.

Furthermore, Phuong is known to suffer from high blood pressure and bronchial asthma.⁸ The prison officers' had seen prescription orders for Phuong's high blood pressure and asthma.^{9,10} Additionally, the police officers took away Phuong's medical/health record book; thus, they were fully aware of his health condition and still showed no empathy for his condition.¹¹ Despite his condition, Petitioner was reportedly transferred to the criminal ward wherein cigarette smoking is rampant. After being transferred to the criminal ward, Petitioner was required to work outdoors. Officers sent Petitioner to a room for inmates suffering from various diseases. Thus, Petitioner chose to work outside, as being in close proximity to sick inmates put his health at greater risk. In March 2021, Phuong protested the unhealthy conditions of the prisoners and the police put him in solitary confinement for ten days. Additionally, they put him in the same area as the criminal prisoners instead of the political prisoners area. The cell is 5 meters by 20 meters where they place 70 to 80 prisoners, thus increasing his health risks.¹²

⁴ See *Wife of Arbitrarily Detained Facebooker: He Only Exercised His Constitutional Rights*, thevietnamese, (February 24, 2019) <https://www.thevietnamese.org/2019/02/wife-of-arbitrarily-detained-facebooker-he-only-exercised-his-constitutional-rights/>

⁵ *Id.* at Note 3. *Wife of Arbitrarily Detained Facebooker: He Only Exercised His Constitutional Rights*.

⁶ Profile: TRAN THANH PHUONG, *supra*.

⁷ Telephone Interview with Le Thi Khanh, Wife of Petitioner [*hereinafter* "Telephone Interview"] (June 15, 2021).

⁸ *Id.* Note 2. *Vietnamese activist detained 'illegally' for 6 months*.

⁹ Le Thi Khanh, Photograph of Phuong's Medical Diagnosis of High Blood Pressure and Medical Prescription for Coversyl and Nebilet, in Vietnam; See Figure 1 in Appendix [*hereinafter* Figure 1](2021).

¹⁰ Le Thi Khanh, Photograph of Phuong's Medical Diagnosis of High Blood Pressure and Asthma and Prescription for Coveram and Bambec, in Vietnam; See Figure 2 in Appendix [*hereinafter* Figure 2](2021).

¹¹ Le Thi Khanh, Photograph of Phuong's Medical and Health Record Book, in Vietnam; See Figure 3 in Appendix [*hereinafter* Figure 3](2021).

¹² Telephone Interview, *supra*.

On July 31, 2020, after several postponements of the trial from January 14 to March 10, the People’s Court of Hồ Chí Minh City sentenced eight defendants, some of whom are members of Hiến Pháp group, to prison sentences ranging from two and a half years to eight years on charges of “disrupting security.”¹³ Trần Thanh Phương was sentenced to three and a half years in prison and two years of probation for his involvement in Hiến Pháp (Constitution) group and demonstrations against two draft laws on Special Economic Zones and Cybersecurity on June 10, 2018.¹⁴ Additionally, Phương was arrested shortly before a planned march on Sept. 4, 2018.¹⁵ Family members and supporters were not allowed to attend the trial which started at 7:30 AM, and neither were US government representatives. Phương’s family members planning to attend the trial; however, they were forced by the police to leave the courthouse and remain at least one kilometer away from the premise.¹⁶ One representative of the German Embassy attended the trial until 4:30 PM while the trial ended around 6 PM.¹⁷ For the reasons set forth below, the arrest and detention of Trần Thanh Phương 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 Trần Thanh Phương (“Petitioner”) is arbitrary under Categories I, II and III as established by the UN Working Group on Arbitrary Detention (the “Working Group”).¹⁸ 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.¹⁹ 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

¹³ Profile: TRAN THANH PHUONG, *supra*.

¹⁴ *Id.*

¹⁵ Vietnamese activist detained 'illegally' for 6 months, *supra*.

¹⁶ Telephone Interview, *supra*.

¹⁷ Profile: TRAN THANH PHUONG, *supra*.

¹⁸ 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.*

¹⁹ 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”).

individual *incommunicado* for a period of time; and (2) when vague laws are used to prosecute an individual.²⁰

Petitioner has been held *incommunicado* since September 20, 2018 from his family and lawyer.²¹ In addition, he was convicted under Article 118 of the 2015 Criminal Code, Vietnamese legislation which is too vague to properly provide a legal basis for detention.²²

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.²³ 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.²⁴ Petitioner was not able to meet with his family until September 2019 and has since been allowed only sporadic access every several months.²⁵ Additionally, Petitioner was not able to meet with his attorney until September 2019.²⁶ Both communication restrictions resulted in *incommunicado* detention, which clearly constitutes a violation of Category I. Furthermore, Petitioner is known to suffer from high blood pressure and bronchial asthma.²⁷ Despite his condition, Petitioner was reportedly transferred to the criminal ward wherein cigarette smoking is rampant. After being transferred to the criminal ward, Petitioner was required to work outdoors. Petitioner requested to not work outdoors, as his high blood pressure made it difficult to work under the sun. The officers instead sent Petitioner to a room for inmates suffering from various diseases. Ultimately, Petitioner chose to work outside, as being surrounded by inmates with various diseases posed a huge risk to his health.²⁸

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

²⁰ 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).

²¹ Telephone Interview, *supra*.

²² Profile: TRAN THANH PHUONG, *supra*.

²³ 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”).

²⁴ 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.

²⁵ Vietnamese activist detained ‘illegally’ for 6 months, *supra*.

²⁶ Telephone Interview, *supra*.

²⁷ Vietnamese activist detained ‘illegally’ for 6 months, *supra*.

²⁸ Vietnamese activist detained ‘illegally’ for 6 months, *supra*.

Article 15(1) of the ICCPR²⁹ and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”)³⁰ 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.”³¹ In addition, the UN Special Rapporteur Petitioner chose to work outside, as being in close proximity to sick inmates put his health at a large risk. Additionally, as punishment for attempting to mediate a conflict between two other inmates, Petitioner was shackled in handcuffs and leg irons in an isolation cell for eleven days.³²

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.”³³ Article 118 of the 2015 Vietnamese Penal Code defines the crime of “inciting, persuading, gathering other people to disrupt security,”³⁴ 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 a “disruption”. Article 118 lacks any plain meaning and doesn’t give individuals fair notice of what conduct is prohibited. Petitioner was arbitrarily prosecuted under Article 118 for his involvement in the Hiên Pháp group and participation in the June 10, 2018 demonstrations against the Special Economic Zones and Cybersecurity draft laws.³⁵ Petitioner’s participation in

²⁹ 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.”).

³⁰ 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.”).

³¹ 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”).

³² See Radio Free Asia, *Vietnamese Facebook Users Draw Prison Terms for Posting Criticizing Government, State Officials*, Radio Free Asia (March 31, 2020), <https://www.rfa.org/english/news/vietnam/postings-03312021194842.html>.

³³ 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.

³⁴ Criminal Code [Crim. C.] [CRIMINAL CODE] art. 118, §5 (Law No. 100/2015/QH13 2015) (Viet.)

³⁵ Profile: TRAN THANH PHUONG, *supra*.

the Hiến Pháp group and peaceful demonstrations are acts both unforeseeable as criminal and protected under the ICCPR, the UDHR, and other international norms and standards. Because the crime of “disrupting security” 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.³⁶ This case meets the requirements of Category II because the 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 his freedom 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.”³⁷ Article 19 of the UDHR provides an analogous guarantee of freedom of opinion and expression.³⁸ The Human Rights Committee has clarified that Article 19 of the ICCPR “protects all forms of expression and the means of their dissemination.”³⁹ This includes “all forms of audio-visual as well as electronic and internet-based modes of expression.”⁴⁰

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.⁴¹ The Working Group has confirmed the right of human rights defenders “to investigate, gather information regarding and report on human rights violations.”⁴² 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

³⁶ Methods, *supra* note 7, at para. 8(b).

³⁷ ICCPR at art. 19(2).

³⁸ UDHR at art. 19.

³⁹ 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”).

⁴⁰ *Id.*

⁴¹ 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>.

⁴² *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).

punishment.”⁴³ 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.”⁴⁴ This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.⁴⁵

In the present case, the Government arbitrarily detained and prosecuted Petitioner under Article 118 as a direct result of his alignment with Hiến Pháp (Constitution) group and expression of dissent against the drafted Special Economic Zones and Cybersecurity laws.⁴⁶ Hiến Pháp (Constitution) group is known primarily for “advocating for people to have knowledge about human rights, political rights, and civil rights, which are provided for in Vietnam’s Constitution”.⁴⁷ Similar to the pattern of harassment that the Vietnamese government has used to systematically silence the Brotherhood for Democracy members, Hiến Pháp (Constitution) group members’ voices are being repressed in the same manner, as demonstrated by the arrests of Petitioner and several other members of Hiến Pháp (Constitution) group.⁴⁸ Petitioner was arrested after attending a peaceful demonstration against the new Special Economic Zones and Cybersecurity laws and was told he was being arrested for planning to attend another demonstration on September 4, 2018.⁴⁹ Petitioner’s arrest, conviction, and lengthy sentence were an attempt by the Government to silence dissent against government policies and civil rights violations. Thus, the Government has deprived Petitioner of his liberty under a law which is itself incompatible with the rights to freedom of opinion and expression guaranteed under the UDHR and ICCPR.

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.”⁵⁰ 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

⁴³ *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).

⁴⁴ *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).

⁴⁵ *Bialiatski v. Belarus*, United Nations Working Group on Arbitrary Detention, Opinion No. 39/2012, para. 43, (Nov. 23, 2012).

⁴⁶ Profile: TRAN THANH PHUONG, *supra*.

⁴⁷ *Id.*

⁴⁸ *See* David Hutt, *The assault on Vietnam’s Hien Phap group*, Asia Times (Sept. 9, 2020), <https://asiatimes.com/2020/09/the-assault-on-vietnams-hien-phap-group/>

⁴⁹ Profile: TRAN THANH PHUONG, *supra*.

⁵⁰ ICCPR, at art. 20.

Article 19(3) of the ICCPR.⁵¹ 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.”⁵²

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.”⁵³ 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.⁵⁴

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 affiliation with Hien Phap (Constitution) group and participation in political demonstrations 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 “disrupting security” 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.⁵⁵

Additionally, under Article 25 of the Vietnamese Constitution, domestic Vietnamese laws must protect the people’s “right to freedom of opinion and speech, freedom of the press, to access information, to assemble, form associations and hold demonstrations”.⁵⁶ Without clearly stating a valid law in congruence with these rights protected by the national constitution, the government has no right to detain Petitioner. Petitioner has the right to associate with a group of his choice, assembling with said group, and demonstrating with said group, even if they oppose the Vietnamese government. Those rights are protected in the Vietnamese Constitution and the ICCPR. Furthermore, under Article 199 (1), the Vietnamese Constitution is held in the

⁵¹ General Comment No. 34, *supra* note 21, at para. 50.

⁵² *Id.* at para. 21.

⁵³ *Park v. Republic Korea*, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, para. 10.3 (*adopted* Oct. 20, 1998).

⁵⁴ *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).

⁵⁵ General Comment No. 34, *supra* note 21, at para. 11.

⁵⁶ Constitution of the Republic of Vietnam Nov. 28, 2013, art. 25(Viet.).

highest legal respect and no law nor action taken can violate it.⁵⁷ Petitioner had a right to assemble and demonstrate against the government without worrying about being punished for practicing a right guaranteed by the Vietnamese Constitution, the highest law of the land.

Despite such international guarantees of the right to free expression, the Government arbitrarily detained and prosecuted Petitioner as a direct result of his membership in the Hiến Pháp (Constitution) group and participation in a peaceful demonstration. 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.

3. Vietnam violated Petitioner's right to health and against servitude

Rule 30(a) of the Mandela Rules established by the United Nations provides that "A physician or other qualified health-care professionals... shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to...Identifying health-care needs and taking all necessary measures for treatment."⁵⁸ Despite knowledge of Petitioner's health concerns, the prison officers repeatedly put his health at risk unchecked by any medical professional. The prison officers' knowledge can be validated through the prescription orders for Phuong's high blood pressure and asthma.⁵⁹ Additionally, the police officers took away Phuong's medical/health record book. Thus, they were fully aware of his health condition and still showed no empathy nor accommodation for his condition.⁶⁰ Petitioner was placed in a 5 meters by 20 meters cell along with 70 to 80 other prisoners, exacerbating his high blood pressure.⁶¹ Petitioner has also been placed in a cell that allowed cigarette smoking without access to his Bambec medicine prescribed for his asthma, aggravating his bronchial asthma.⁶²

Rule 30(e) of the Mandela Rules also establishes that physicians or other qualified health-care professionals shall pay particular attention in "determining the fitness of prisoners to work, to exercise and to participate in other activities, as appropriate".⁶³ In blatant disregard to Petitioner's health concerns, the prison officers forced Petitioner to work outside without approval from a health-care professional.⁶⁴ The lack of physician or health-care professional directed care for Petitioner's health within the prison is a clear violation of the Mandela Rules established as an international standard of care by the United Nations.⁶⁵

⁵⁷ *Id.*, at art. 119.

⁵⁸ Mandela Rules, at 30.

⁵⁹ Figure 2

⁶⁰ Figure 3; Telephone Interview.

⁶¹ Telephone Interview, *supra*.

⁶² Vietnamese Facebook Users Draw Prison Terms for Posting Criticizing Government, State Officials, *supra*.

⁶³ Mandela Rules, at 30.

⁶⁴ Vietnamese Facebook Users Draw Prison Terms for Posting Criticizing Government, State Officials, *supra*.

⁶⁵ Mandela Rules, at 30.

Rule 97(2) and Rule 97(3) of the Mandela Rules expresses how “Prisoners shall not be held in slavery or servitude” and “no prisoner shall be required to work for the personal or private benefit of any prison staff.”⁶⁶ Petitioner was forced to work against his will and well-being, aggravating his established health concerns, which goes against Rule 97(1).⁶⁷ He is known to suffer from high blood pressure and bronchial asthma.⁶⁸ Despite his condition, Petitioner was reportedly transferred to the criminal ward where cigarette smoking is rampant. This increases the chances of triggering an asthma attack in Petitioner. Officers sent Petitioner to a room for inmates suffering from various diseases. Petitioner chose to work outside, as being in close proximity to sick inmates would put his health at heightened risk. Additionally, Petitioner’s wife expressed in her third petition to the prison how her husband was being forced to participate in for-profit labor, which is against the personal or private benefit rules established by the United Nations.⁶⁹ When Petitioner’s wife asked for them to respond to her petition in writing, they verbally denied and refused to give her a written response.⁷⁰

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.”⁷¹ 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”).⁷²

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).⁷³ The Human Rights Committee has interpreted the term “promptly” to be within about 48 hours, except in exceptional circumstances, and has noted that this

⁶⁶ *Id.*, at 29.

⁶⁷ *Id.*

⁶⁸ Vietnamese activist detained ‘illegally’ for 6 months, *supra*.

⁶⁹ Mandela Rules, at 29.

⁷⁰ Telephone Interview, *supra*.

⁷¹ Methods, *supra* note 7, at para. 8(c).

⁷² *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)).

⁷³ 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”).

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.”⁷⁴ Moreover, *incommunicado* detention inherently violates Article 9(3) of the ICCPR.⁷⁵ The right to *habeas corpus* is reiterated in Principles 4, 11, 32(1) and 37 of the Body of Principles.⁷⁶ Aside from acting as a check on arbitrary detention, these provisions also safeguard other related rights, such as freedom from torture.⁷⁷

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.”⁷⁸ 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.⁷⁹

Furthermore, Rule 119 of the Mandela Rules encompasses the right to know the reason for one’s detention. It provides that “every untried prisoner has the right to be promptly informed about the reasons for his or her detention and about any charges against him or her”.⁸⁰ When Petitioner was arrested on September 1, 2018 by the police, he wasn’t read his constitutional rights nor provided a reason for his arrest. The policemen searched through personal documents at his residence and confiscated four phones from Petitioner and his family without a search warrant or a stated reason for said confiscation. He was detained without being told the reason for it and wasn’t charged with a crime. Petitioner was held for a week at the police ward before being transferred to the district prison where he was held for 3 days before being returned home. Additionally, there was no report of the arrest on September 1, 2018 through his stay in the ward until September 7, 2018. Petitioner was later arrested on September 20, 2018 and taken to No.4 Phan Đăng Lưu Prison in Hồ Chí Minh City. He wasn’t informed of the reason for his arrest until he met with his lawyer a year later.⁸¹

The 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, Petitioner’s entire pre-trial detention period was completely unauthorized by any judicial officer. By refusing to bring the Petitioner promptly before a judge to challenge the legality

⁷⁴ 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”).

⁷⁵ *Id.* at para. 35.

⁷⁶ Body of Principles.

⁷⁷ General Comment No. 35, *supra* note 40, at para. 34.

⁷⁸ *Id.* at para. 38.

⁷⁹ Body of Principles, *supra* note 11.

⁸⁰ Mandela Rules, at 31.

⁸¹ Telephone Interview, *supra*.

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 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”.⁸² 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.”⁸³ Additionally, Rule 58 states that “[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals.”⁸⁴ 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.”⁸⁵

Petitioner was held *incommunicado* from the time of his arrest until September 2, 2019⁸⁶, during which time he was prohibited from meeting with his family. 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,”⁸⁷ and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”⁸⁸ 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.”⁸⁹ The right to be tried without undue delay is reiterated by the Body of Principles,⁹⁰ and the same is guaranteed in Article 31 of the Vietnamese Constitution.

⁸² Body of Principles, at 4.

⁸³ 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).

⁸⁴ Mandel Rules, at 20.

⁸⁵ Mandela Rules, at 30.

⁸⁶ Telephone Interview with Le Thi Khanh, Wife of Petitioner (June 15, 2021).

⁸⁷ 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”).

⁸⁸ General Comment No. 32, at para. 35.

⁸⁹ *Id.*

⁹⁰ Body of Principles, *supra* note 17, at Principle 38.

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.”⁹¹ Further, “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”⁹²

After being arrested in September of 2018, Petitioner’s trial occurred on July 31, 2020, following several postponements. His original trial date was January 14, 2020, which was subsequently moved to March 10, 2020 and finally to July 31, 2020.⁹³ Petitioner was never provided any explanation why his trial necessitated such a delay.⁹⁴ The need for trial without undue delay was exacerbated by the fact that the 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 Petitioner’s 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,”⁹⁵ and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”⁹⁶ 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, the Petitioner was held *incommunicado* and deprived of his right to prompt access to counsel.⁹⁷ In September 2019, approximately one year after his arrest, Petitioner was allowed to meet with his lawyer for the first time.⁹⁸ Consequent of the government’s failure to provide Petitioner prompt access to counsel, 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.

⁹¹ General Comment No. 32, *supra* note 50, at para. 30.

⁹² *Id.* at para 35.

⁹³ Telephone Interview, *supra*.

⁹⁴ Profile: TRAN THANH PHUONG, *supra*.

⁹⁵ *Id.* at para 32.

⁹⁶ *Id.* at para 34.

⁹⁷ 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>.

⁹⁸ Telephone Interview, *supra*.

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 evidence adduced by the other party.”⁹⁹ 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 the Petitioner's trial was very short, beginning around 7:30 am and ending around 6:30 pm.¹⁰⁰ This period of time also included the trials and sentencing of four other defendants.¹⁰¹ Thus, the court had clearly determined Petitioner's guilt prior to the hearing, 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, HIS 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.

⁹⁹ General Comment No. 32, *supra* note 50, at para. 13.

¹⁰⁰ Telephone Interview, *supra*.

¹⁰¹ 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>.

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shireen@norcrosslawfirm.com

VI. APPENDIX

Sở Y Tế Hồ Chí Minh
Bệnh viện Quận Tân Phú

TOA THUỐC BHYT

Phóng khám
1 5 7 6 5 1 6 9

Họ và tên: **TRẦN THANH PHƯƠNG** N.Sinh: **041 tuổi** Giới: **Nam**
Thẻ BHYT: **GD479080011321279054** Hạn thẻ: **01/05/2016-30/04/2017**

Chẩn đoán: Tăng huyết áp vô căn (nguyên phát) (I10)
Mạch: 76 lần/p Nhiệt độ: 37°C Huyết áp: 100/60 mmHg Cân nặng: Kg

1 . Coversyl Plus 10mg/2.5mg (10mg+2.5mg) Số lượng: 28 viên
(Perindopril) - 28 ngày ngày.
Viên,Uống ngày 1 lần, lần 1 viên SÁNG - (28 ngày)

2 . Nebilet 5mg (Nebivolol) - 28 ngày ngày. Số lượng: 14 viên
Viên,Uống ngày 1 lần, lần 0.50 (NỬA) viên TỐI - (28 ngày)

Lời dặn của bác sĩ :

Toa cấp, ngày 20 tháng 09 năm 2016.
Bác Sĩ Điều Trị

TR 20/10. CKI. NGUYỄN THỊ TƯỜNG VY

Đã phát đủ thuốc

* Khám lại nhớ mang theo đơn thuốc này

Figure 1

Sở Y Tế Hồ Chí Minh
Bệnh viện Quận Tân Phú

TOA THUỐC BHYT

Phóng khám
1 5 7 6 5 1 6 9

Họ và tên: **TRẦN THANH PHƯƠNG** N.Sinh: **042 tuổi** Giới: **Nam**
Thẻ BHYT: **GD479080011321279054** Hạn thẻ: **01/05/2017-30/04/2018**

Chẩn đoán: Tăng huyết áp vô căn (nguyên phát); Hen [suyễn] bậc III (110; 145)
Mạch: 80 lần/p Nhiệt độ: °C Huyết áp: 140/80mmHg Cân nặng: Kg

1 . Coveram 5mg/ 5mg Mỗi viên chứa Perindopril Số lượng: 28 Viên
Arginine 5mg; Amlodipine 5mg (Perindopril).
Uống ngày 1 lần, lần 1 Viên sáng - (28 ngày)

2 . Bambec 10mg (Bambuterol). Số lượng: 28 Viên
Uống ngày 1 lần, lần 1 Viên tối - (28 ngày)

Lời dặn của bác sĩ : TAI KHAM 28/11

Toa cấp, ngày 31 tháng 10 năm 2017.
Bác Sĩ Điều Trị
[Signature]
BS. HUYNH THIEN TUNG

28/11
In lúc: 14 giờ 31 phút, ngày 31 tháng 10 năm 2017.

ĐÃ PHÁT THUỐC

* Khám lại nhớ mang tờ sơ đồ thuốc này

Figure 2


BỆNH VIỆN QUẬN TÂN THỦ
 809-811 ẤU CỐ - PHƯỜNG PHÚ TRUNG - QUẬN TÂN PHÚ
 Điện thoại: 35 65 79 46 - 54 008 924
 Đường dây tư vấn: 54 008 924 - Đường dây nóng: 0956 37 10 10
 Website: <http://benhvientanphu.vn>

SỔ KHÁM CHỮA BỆNH
(Ban hành kèm theo TT52/2017/TT-BYT ngày 29/12/2017)



- Họ tên: Trần Thanh Dũng sinh năm 1975
 - Địa chỉ:
 - Mã số thẻ BHYT:
 - Mã số bệnh nhân:

Ghi chú:
 Nhớ mang theo sổ khi đi khám bệnh

Figure 3