

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

Y Tup Knul

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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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. IDENTITY

1. Family name: Knul
2. First name: Y, Middle Name: Tup
3. Sex: Male
4. Birth date or age (at the time of detention): born on May 21, 1970
5. Nationality/Nationalities: Vietnamese
6. (a) Identity document (if any): National ID card
 (b) Issued by: Police of Dak Lak Province
 (c) On (date): June 7, 2017
 (d) No.: 240301023
7. Profession and/or activity: Self-employed.
8. Address of usual residence: Êcăm Village, Buôn Tráp Town, Krông Ana District, Dak Lak Province, Vietnam

II. ARREST

1. Date of arrest: October 6, 2020
2. Place of arrest (as detailed as possible): Êcăm Village, Buôn Tráp Town, Krông Ana District, Dak Lak Province.
3. Forces who carried out the arrest or are believed to have carried it out: Three plainclothes police officers.
4. Did they show a warrant or other decision by a public authority? They sent it to his wife later.
5. Authority who issued the warrant or decision: Security Investigations Office, Police of Dak Lak Province.
6. Reasons for the arrest imputed by the authorities: Charged with “making, storing, and disseminating documents and materials for anti-state purposes,” pursuant to Articles 41, 113, 119, and 165 of the Criminal Code of 2015.

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

III. Detention

1. Date of detention: October 6, 2020 to the present

2. Duration of detention (if not known, probable duration): not yet released

3. Forces holding the detainee under custody: Police of Dak Lak Province.

4. Places of detention (indicate any transfer and present place of detention): An unknown detention center in Dak Lak Province.

5. Authorities that ordered the detention: The Security Investigations Office, Police Department of Dak Lak Province.

6. Reasons for the detention imputed by the authorities: Charged with “activities aiming to overthrow the government”.

7. Legal basis for the detention including relevant legislation applied (if known): No valid reason. Montagnard Christians are typically disadvantaged, less literate, and have no desire or capability to fight the authorities.

IV. Describe the legal circumstances of the arrest.

At approximately 9:00 AM, three plainclothes police officers arrived on 2 motorcycles and arrested Petitioner at his home. Y Tup Knul and his wife were at home. Petitioner’s wife identified Y Jon Knul, Police of Buôn Tráp Town, but did not recognize the other two police officers. The police said that they were taking Petitioner to the police station of Krông Ana District for a short interrogation session regarding a topic about which they said they would like him to give them more information.

In 2018, Petitioner and his family left the Seventh Day Adventist Church, a registered religious organization, to join the International Degar Church. From then on, the police started to interrogate him for following a “FULRO” organization established by Pastor Y Duen Bdap. The translation of the police notification - which the police gave his wife, H’Đơ Byă - follows this narrative.

In reality, FULRO is defunct: The United Front for the Liberation of Oppressed Races (FULRO; French: Front unifié de lutte des races opprimées, Vietnamese: Mặt trận Thống nhất Đấu tranh của các Sắc tộc bị Áp bức) was an organization whose objective was autonomy for the Degar (Montagnard) tribes in Vietnam. Initially a political movement, after 1969 it evolved into a fragmented guerrilla group that carried on insurgencies against, successively, the governments of South Vietnam and the Socialist Republic of Vietnam. Opposed to all forms of Vietnamese rule, FULRO fought against the Viet Cong and Army of the Republic of Vietnam at the same time.

FULRO's primary supporter was Cambodia, with some aid sent by China. The movement effectively ceased in 1992, when the last group of 407 FULRO fighters and their families handed in their weapons to United Nations peacekeepers in Cambodia.

The reality of the situation is much plainer. For years, Montagnard people have been exploited and oppressed by the government of Vietnam.² Those most affected tend to be those belonging to one of the local Montagnard faiths, and Y Tup Knul became subject to such government surveillance after his transition of faith. With historical context, it is most probable that Y Tup Knul is being detained not for belonging to an extinct anti-government group, but rather on the basis of his ethnic group and religion.

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

Both the arrest and detention of Y Tup Knul are arbitrary under the UN's WGAD's classification under Categories I, II, and III. The detention is arbitrary under Category I because the Vietnamese Criminal Code of 2015 provides no legal basis for continued detention. The detention is arbitrary under Category II because the arrest was due in large part to subject's peaceful free exercise of religion, expression, and association. Lastly, the detention is arbitrary under Category III because several elements of due process have been and continue to be left unobserved, contrary to WGAD and precedential standard.

(A) Deprivation of liberty under category 1

A detention violates Category I when it is impossible to invoke any legal basis justifying the deprivation of liberty.³ 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 or (2) when vague laws are used to prosecute an individual.

In this case, both factors are present. Petitioner was and continues to be held incommunicado for many months since his arrest. In addition, he was convicted under Articles 41, 113, 119, and 165 of the 2015 Vietnamese penal code, legislation which is excessively vague – providing no legal basis for detention.

1) Petitioner was held incommunicado for a period of many months

The Human Rights Committee determined that incommunicado detention inherently violates Article 9(3) of the ICCPR.⁴ This rule against incommunicado detention not only serves as a check

² Tacet, Athena, *Montagnards: Escaping Vietnam, stateless in Thailand*, Aljazeera. March 24, 2017

³ 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").

⁴ 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")

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.⁵ In this case, Petitioner has been unable to communicate with an attorney or his family now for a period of several months. In fact, Petitioner’s isolation is so drastic that there is no record of his exact location, making it impossible to even attempt to establish substantial contact. Because of this high degree of isolation and the disallowance of others to establish contact, it is clear that this is a case of incommunicado detention which constitutes a violation of Category 1.

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

Article 15(1) of the ICCPR⁶ and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”)⁷ both guarantee individuals the rights 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.”⁸ 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

⁵ *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.

⁶ *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.”).

⁷ 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.”).

⁸ 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”).

his or her conduct; and [that] the law [be] formulated with sufficient precision so that the individual can regulate his or her conduct.”⁹

While the arrest warrant that was sent only to Petitioner’s wife makes note of the charges of “anti-government” behavior, the more elaborated charge accused Petitioner of violation of the Vietnamese Criminal Code of 2015’s section 117 – pursuant to other violations of Articles 41, 113, 119, and 165. While none of the articles have been violated in the first place and Articles 119 and 165 are irrelevant tacked on charges, Article’s 41, 113, and 117 are vague and overbroad according to international standards.

Article 41. Prohibition from holding certain positions or doing certain works

According to the Vietnamese Criminal Code of 2015, Article 41 prohibits subjects “from holding certain positions or doing certain works shall be imposed when the convict is deemed to cause harm to society if he/she is allowed to hold the positions or do the works.” The charge carries with it a 1-to-5-year prison sentence.

No instruction or clarification is provided as to what constitutes “certain positions,” or “certain works” beyond the latter classification that it “deemed to cause harm to society.” Article 41 does not give individuals fair notice of what conduct is prohibited. According to the UN Special Rapporteur cited above, it is exactly this prospective warning that is required by a statute for it to be applicable. “Certain positions” and “certain works” are tantamount to guess work by individuals as to what is allowed and not allowed. Additionally, this law is deliberately vague because such vagueness allows for arbitrary detention of any person simply when the government deems them to cause harm to society (another determination made entirely by the central government with no indication of what constitutes anti-societal behavior). Because the crime of “holding certain positions or doing certain works...to cause harm to society” is so vague that it provides no guidance to individuals and allows for arbitrary enforcement, such a law cannot support the basis for Petitioner’s detention resulting from conviction according to UN standards and guidance.

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

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

⁹ 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.

anticipate what behavior is criminal. Specifically, Part 1 of the Article is excessively vague and cannot be the basis for a charge. It states:

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.

Once again, many of the same issues that affected Article 41 are present in this case. Namely, there is no proactive and sufficient detail that would allow subjects to reasonably know what kind of conduct is prohibited and allowed, and there is one-sided interpretation of what constitutes “dismay among the people.” While the right to speak negatively about one’s government in a peaceful fashion is protected elsewhere, there is simply no indicator of what constitutes anti-government speech in this article. No reference is made to alternate definitions of terms included and there are no notes which provide people with guidance in their attempted compliance. Simply put, the law exists for the government to impose *ad hoc* charges onto any person they desire. This assessment process is excessively prone to allow for cases of arbitrary enforcement. Therefore, Petitioner was 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 Petitioner’s detention resulting from conviction on such a charge.

Article 113 of the Vietnamese penal code defines the “terrorism to oppose the people’s government” so vaguely as to make it impossible for any individual to reasonably foresee and anticipate what actions are considered terrorism:

Article 113 states that: “Any person who, for the purpose of opposing the people's government, infringes upon life of officials or other people..., Establishing, joining a terrorist organization or an organization sponsoring terrorism..., [and] Forcing, persuading other people to participate in terrorism; recruiting, training terrorists; manufacturing, providing weapons for terrorists.”

While this may appear to have some context that would allow for the article to be fairly applied, Vietnam has established no definitive list as to what constitutes a terrorist organization. Rather, the charge assessed an *ad hoc* judgement that the Petitioner belonged to a FULRO terrorist group. The reality is that Petitioner is simply a new member of a specific group of Montagnard Christians, who have been traditionally persecuted at the hands of the government of Vietnam.

There is no explanation of definition to what “opposes the people’s government,” and such language therefore does not provide guidance to subjects as to what groups are terrorist groups or not. Additionally, this once again allows for arbitrary enforcement based upon Vietnam’s personal choice, not the principles contained within the ICCPR, the UDHR, and other international norms which provide foreseeability and prevent arbitrary enforcement. Because the article is so vague to allow for such broad and expansive interpretation as to effectively be meaningless, such a law cannot support the basis for Petitioner’s detention resulting from conviction on such a charge.

(II) DEPRIVATION OF LIBERTY UNDER CATEGORY 2

While the charges assert that Petitioner was a part of a terrorist organization, the Government has provided no evidence of such case. While this thought will be more thoroughly discussed under Category III, even association with anti-government group, so long as they remain peaceful, are protected under Category 2. For the reasons that follow, Petitioner’s international rights to freedom of association and religion were infringed.

1. Petitioner was convicted for exercising his freedom of association.

Article 20 of the UDHR states that, “[e]veryone has the right to freedom of peaceful assembly and association.” Additionally, Article 22 (1) of the ICCPR states that “[e]veryone shall have the right to freedom of association with others...” The Human Rights Council has made notable remarks that call for all states to respect all individuals’ rights to association, particularly in fringe groups or groups that maintain views opposed to the societal norm.¹⁰ After all, there would be no need for the protection of opinion and association if everyone agreed. Therefore, it is just this protection of dissenting views and groups that is most vital to the spirit of such international protection.

Therefore, even while no evidence has been provided of the Petitioner’s inclusion in a FULRO group, such a group would still be protected. 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 supplementary to the rights protected and mentioned in Article 25 [right to participate in public affairs].”¹¹ Furthermore, the Vietnamese Constitution highlights citizens’ right to associate under Article 25, which illustrates citizens’ right to “ assemble”. Here, Petitioner is simply accused of associating with an anti-government group. These groups are protected by international law and norms and Article 25 of Vietnam’s own criminal code. Therefore, any association that the

¹⁰ G.A Res. 15/21, ¶ 1, U.N. Doc. A/HRC/RES/15/21 (Oct. 6, 2010), <https://documents-ddsny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>

¹¹ *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).

Petitioner was involved with, whether anti-government or simply his interaction with the Montagnard Christian group is protected.

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.

While freedom of association is expansive, there are several notable limitations to such protection. The Human Rights Committee has provided guidance of such limitations stating that such limitations must be accordance with Article 19 (3) of the ICCPR. Article 20 proclaims that states should prohibit “propaganda for war” and “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. Article 19 (3) of the ICCPR, contributes that those freedoms of expression and opinion can only be restricted if respect of the rights and reputations of others or the protection of national security or public order, health, or morals are threatened. The Human Rights Committee also notes that, “when a State party imposes [a limitation] on the exercise of freedom of expression, [it] may not put in jeopardy the right itself.”¹²

In this case, any organization to which Petitioner is accused of belonging does not meet the exceptions requirement to justify limiting his freedom of association. Any limitation on the freedoms of expression and association “must meet a strict test of justification.”¹³ The human rights highlight three (3) requirements: (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.¹⁴ The FURLO groups have laid down their arms and are composed of a loose collection of Montagnards who protest peacefully.¹⁵ Therefore, not only on its face discrimination against FURLO groups contrary to established principle, but also the subtle use of FURLO classification against the ethnic Montagnard people is entirely unjustified.

Any meeting or group that Petitioner associated with cannot be considered a threat to the national security, public order, public health or morals, or the rights to reputations of others. Due to the protection that international law provides for freedom of association rights, the Government of Vietnam illegally detained and prosecuted Petitioner as a result of this association. Thus, because Petitioner’s detention is in violation of his right to freely associate, as set forth in Article (20), his detention is arbitrary under Category II.

¹² Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/G/34 at para. 21 (Sept. 12, 2011).

¹³ *Park v. Republic Korea*, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, para. 10.3 (adopted Oct. 20, 1998).

¹⁴ Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/G/34, *supra* note 24, at para. 11 (Sept. 12, 2011)

¹⁵ Messer Jr., Carlos, *A DEBT TOO FAR? A CASE STUDY OF THE MONTAGNARDS IN VIETNAM*, April 2008. <http://www.mhro.org/a-debt-too-far>.

3. Petitioner was convicted based upon religious belief

Under Article 18 of the ICCPR, “everyone shall have the right to freedom of thought, conscience and religion.” Accordingly, the right to choose one’s religion and practice without criminal penalty are also protected. However, Vietnam has a long of history of documenting and requiring registration for different faith groups.¹⁶ In the situation at hand, Petitioner left a registered faith group and joined a group that has traditionally been subject to persecution and arbitrary detention.¹⁷ The timeline supports the idea that Petitioner is being detained on the basis of religion. When Petitioner belonged to a registered church that was mostly unassociated with the Montagnard people, he was left alone, However, after Petitioner left his former church and joined the International Degar Church, a church closely associated with the ostracized Montagnard people, he was subject to questioning, being observed, and eventual detention. This, in addition to Vietnam’s known treatment of fringe religious groups and people, supports the idea that Petitioner was detained in part because of his new religious preference. According to international norms and standards, such detention is arbitrary and in violation of Category II.

(III) DEPRIVATION OF LIBERTY UNDER CATEGORY 3

Throughout the process, Petitioner’s rights to due process and a fair trial have been infringed. Category 3 defines arbitrary detention as “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.”¹⁸ Additionally, the ICCPR, UDHR, the Body of Principles, and the UN Standard Minimum Rule for Treatment of Prisoners set forth the minimum guidelines whose adherence is necessary to comply with international standard.

1. Vietnam violated Petitioner’s right to *habeas corpus* and his right to release pending trial

The rule set forward in Article 9(3) of the ICCPR states that a detainee should “be brought promptly before a judge or other officer authorized by law to exercise judicial power.”¹⁹ Additional guidance is given by the Human Rights Committee, who has defined “promptly” as to mean within a 48-hour period. In the case at hand, Petitioner was detained in October of 2020. A period of

¹⁶ *2019 Report on International Religious Freedom: Vietnam*, Office of International Religious Freedom, U.S. Department of State, 2019, <https://www.state.gov/reports/2019-report-on-international-religious-freedom/vietnam/>.

¹⁷ *Id.*

¹⁸ HUMAN RIGHTS COUNCIL, *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/36/38, para. 8(c).

¹⁹ 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”).

several months has passed, and there has been no public bail hearing or any public notice as to why excessive pre-trial detention was necessary to meet one of the circumstances that allow for exception.²⁰ Without a public exception, such lengthy pre-trial detention is on its face a violation of the enumerated rights in the ICCPR.

In addition to the rights pertaining to *habeas corpus* to appear before an adjudicator, Article 9(3) states that pre-trial release is a defendant's right providing that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody." Such factors to consider are listed by the Human Right Committee such as flight risk, potential interference with evidence, etc. In general, pre-trial detention should be the exception, not mandatory.²¹ In such case, it is impossible to assess these factors because a fair hearing was never conducted. Without a proper hearing, pre-trial detention in this case is in violation of international law.

Such a denial of pre-trial release in addition to the lack of a prompt trial has rendered the petitioner *incommunicado*, which further violates the due process rights at the core of Category 3. Therefore, the Government of Vietnam has violated Petitioner's rights as afforded by Article 9 of the ICCPR, contributing to the conclusion that this detainment was arbitrary under WGAD norms.

2. Vietnam violated Petitioner's right to family visits

While *incommunicado* detention and the lack of a trial are enough to constitute a violation of Category III, the lack of family visits is another contributing factor that speaks to the illegality of this detention. Principle 19 of the Body of Principles states 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." Not only has the family of Petitioner not been able to communicate with their loved one, but they do not even know his specific location. There has been no virtual, telephone, or other form of communication offered, rendering this detention in violation of international principles and law.

3. Vietnam violated Petitioner's right to be tried without undue delay

In article 14(3)(c) of the ICCPR, every defendant is afforded the right to "be tried without undue delay." Undue delay has been classified as harmful several times by international groups. Without a speedy trial, innocent defendants may be wrongfully left in detention in addition to the possibility of abuse. Therefore, at every step of the process, the courts should take steps necessary to avoid such issues.²² This includes the pre-trial process and the process for appeals.²³ Not only is this

²⁰ 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.

²¹ *Id.* at para. 38

²² 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).

²³ *Id.* at para. 35.

right guaranteed by international law, but also the Vietnamese Constitution affords this right in Article 31.

In order to assess what amount of time is appropriate courts should consider “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.”²⁴ As of June of 2021, it has been 8 months since Petitioner’s initial detention. No bail hearing has been made and the Petitioner has been left *incommunicado*. The combination of time and these factors indicate that the delay is rather due to factors explained in Categories 1 and 2. By causing such an unnecessary delay to the Petitioner’s trial, Vietnam has violated Petitioner’s rights granted by 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

ICCPR Articles 14(3)(d) and 14(3)(b) afford a defendant the right to counsel and the ability to “defend himself in person or through legal assistance of his own choosing.” This complements the enumerated right in the same articles that affords defendants “have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.” This right must also be sufficiently prompt,²⁵ and guidance is offered later where the Comments state that, “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”²⁶ In the case at hand, Petitioner has been detained for 8 months without access to counsel. Only through the efforts of the concerned family are human rights groups even able to know about the situation – not through the efforts of a Petitioner-selected attorney. Therefore, such *incommunicado* detention deprives Petitioner of his rights to counsel in violation of Articles 14(3)(b) and 14(3)(d) of the ICCPR, Principle 18 of the Body of Principles, and Article 31 of the Vietnamese Constitution.

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.

No steps have been taken. Subject has been held without trial now for a period of many months.

²⁴ *Id.* at para. 30.

²⁵ *Id.* at para. 32

²⁶ *Id.* at para. 34

VII. Full name, postal and electronic addresses of the person (s) submitting the information (telephone and fax number, if possible)

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