

**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

**Can Thi Theu, Trinh Ba Tu, and Trinh Ba Phuong**  
Citizens of the Socialist Republic of Vietnam

v.

**Government of the Socialist Republic of Vietnam**

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Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4, 15/18, 24/7 and 42/22<sup>1</sup>

*Submitted by:*

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

Shireen Hormozdi Bowman  
1770 Indian Trail  
Liburn Road  
Suite 175  
Norcross, GA 30093  
+1 (678) 395-7795  
shireen@norcrosslawfirm.com

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<sup>1</sup> 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**

**PETITIONER 1**

**I. IDENTITY**

1. Family name: Theu
2. First name: Can, Middle Name: Thi
3. Sex: Female
4. Birth date or age (at the time of detention): August 14, 1962
5. Nationality/Nationalities: Vietnamese
6. (a) Identity document (if any): National ID Card  
(b) Issued by: Hoa Binh Province  
(c) On (date): August 16, 2006  
(d) No.: 113383329
7. Profession and/or activity: Farmer
8. Address of usual residence: Ngoc Luong Commune, Yen Thuy District, Hoa Binh Province

**II. ARREST**

1. Date of arrest: June 25, 2020
2. Place of arrest (as detailed as possible): Ngoc Luong Commune, Yen Thuy District, Hoa Binh Province
3. Forces who carried out the arrest or are believed to have carried it out: Hanoi City public security
4. Did they show a warrant or other decision by a public authority? Yes.
5. Authority who issued the warrant or decision: Hoa Binh Province Police
6. Reasons for the arrest imputed by the authorities: Violation of Article 117 of Vietnam's Criminal Code
7. Legal basis for the arrest including relevant legislation applied (if known): No valid reason

**III. Detention**

1. Date of detention: From June 24, 2020 until present day
2. Duration of detention (if not known, probable duration): Until June 24, 2028 (plus 3 years of probation)
3. Forces holding the detainee under custody: Hanoi City Public Security
4. Places of detention (indicate any transfer and present place of detention): Cham Mat Detention Center
5. Authorities that ordered the detention: Court in Hoa Binh Province

6. Reasons for the detention imputed by the authorities: Article 117 of the Vietnam Criminal Code

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

## **PETITIONER 2**

### **I. IDENTITY**

1. Family name: Tu

2. First name: Trinh, Middle Name: Ba

3. Sex: Male

4. Birth date or age (at the time of detention): April 24, 1989

5. Nationality/Nationalities: Vietnamese

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

(b) Issued by: Hoa Binh Province

(c) On (date): August 16, 2006

(d) No.: 113383331

7. Profession and/or activity: Farmer

8. Address of usual residence: Ngoc Luong Commune, Yen Thuy District, Hoa Binh Province

### **II. ARREST**

1. Date of arrest: June 24, 2020

2. Place of arrest (as detailed as possible): Field in Hoa Binh Province - Thu Phong, Cao Phong District, Hoa Binh Province, Vietnam

3. Forces who carried out the arrest or are believed to have carried it out: Multiple plain-clothed and uniformed officers

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

5. Authority who issued the warrant or decision: Hoa Binh Province Police

6. Reasons for the arrest imputed by the authorities: Violation of Article 117 of Vietnam's Criminal Code

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

### **III. Detention**

1. Date of detention: June 24, 2020 until present day

2. Duration of detention (if not known, probable duration): Until June 24, 2028 (plus 3 years of probation)

3. Forces holding the detainee under custody: Hanoi city public security

4. Places of detention (indicate any transfer and present place of detention): Originally unknown detention center. Eventually Cham Mat Detention Center in Hoa Binh
5. Authorities that ordered the detention: The People's Court of Hoa Binh Province
6. Reasons for the detention imputed by the authorities: Violation of Article 117 of the Vietnamese Criminal Code
7. Legal basis for the detention including relevant legislation applied (if known): No valid reason

### **PETITIONER 3**

#### **I. IDENTITY**

1. Family name: Phuong
2. First name: Trinh, Middle Name: Ba
3. Sex: Male
4. Birth date or age (at the time of detention): January 26, 1985
5. Nationality/Nationalities: Vietnamese
6.
  - (a) Identity document (if any): National ID Card
  - (b) Issued by: Hanoi City Police
  - (c) On (date): October 20, 2016
  - (d) No.: 001085015636
7. Profession and/or activity: Land rights activist
8. Address of usual residence: Mỹ Hưng, Thanh Oai, Hanoi, Vietnam

#### **II. ARREST**

1. Date of arrest: June 24, 2020
2. Place of arrest (as detailed as possible): His private house in Ha Noi - Mỹ Hưng, Thanh Oai, Hanoi, Vietnam
3. Forces who carried out the arrest or are believed to have carried it out: Hanoi City Security. Both plain-clothed and uniformed officers.
4. Did they show a warrant or other decision by a public authority? Yes
5. Authority who issued the warrant or decision: Hanoi City Public Security, Hanoi
6. Reasons for the arrest imputed by the authorities: Violation of Article 117 of the Vietnam Criminal Code
7. Legal basis for the arrest including relevant legislation applied (if known): No legal basis.

#### **III. Detention**

1. Date of detention: June 24, 2020

2. Duration of detention (if not known, probable duration): No trial as of submission date. However, there is a reported trial in the near future as of June 27, 2021, but the exact date is unknown. Detention indefinite/unknown.
3. Forces holding the detainee under custody: Hanoi City Public Security
4. Places of detention (indicate any transfer and present place of detention): Last known prison is Hanoi Police Detention Center No. 1, Hanoi
5. Authorities that ordered the detention: The People's Court of Hoa Binh Province
6. Reasons for the detention imputed by the authorities: Violation of Article 117 of the Vietnam Criminal Code
7. Legal basis for the detention including relevant legislation applied (if known): No legal basis

#### **IV. Describe the legal circumstances of the arrest.**

##### **Petitioner 1. Can Thi Theu**

On June 25, 2020, Can Thi Theu was arrested by a large group of officers from Hanoi City Public Security. She had been at her daughter's house and was informed about the arrests of her sons, Trinh Ba Tu and Trinh Ba Phuong, the day prior. She was presented with a warrant that had charged her with a violation of article 117 of the Vietnamese Criminal Code of 2015 for "making, storing, spreading information, materials, items for the purpose of opposing the State."

Ms. Theu has long been an advocate against Vietnam's aggressive land grab policy in her area. This activism had landed her in prison for 15 months in 2014 and 20 months in 2016. She had subsequently become a target of harassment and constant surveillance. Ms. Theu spoke out strongly against the deadly police raid on Dong Tam Village on January 9, 2020, and publicly advocated for justice for the villagers, who were victims of land grabbing.

Throughout the prosecution process, Ms. Theu was denied access to an attorney and family visits, being moved to a detention center over 80 km away from her home. The only way the family has received any information about her condition is through other prisoners, who were either released or brought to trial where they could pass on secondhand information. These secondhand reports have stated that Ms. Theu is kept in a small, cramped cell with many other prisoners and has to share the same water with the other inmates, all while having to deal with the high summer heat. In May of 2021, she was sentenced to 8 years in prison followed by three years of probation pursuant to a heavily restricted trial, where only two related members were allowed to witness the trial, no witnesses were allowed to be called by the defense, and the proceedings lasted only a day.

##### **Petitioner 2. Trinh Ba Tu**

Mr. Tu is also a long-time resident of Hoa Binh province, where his family have been farmers for generations. For several years, Mr. Tu has been an activist pertaining to Vietnam's aggressive

land grab policy, which takes privately owned land, homes, and farms and repurposes them for government function. Mr. Tu was highly active with Liberal Publishing House, which published written and electronic media showing the effects of government intervention. Due to his activism, Mr. Tu has had run-ins with the authorities for several years, most notably after the Dong Tam raids.

Government crackdown against Mr. Tu's activism escalated until June 24, 2020, when near 100 police officers, both plain-clothed and uniformed, raided his home at 5:20 in the morning. A warrant was allegedly presented, but no immediate copy was delivered as officers searched Mr. Tu's residence. They confiscated all paperwork, USBs, and other items that Mr. Tu had collected pertaining to the raids on his village and the government's land grab activity.

Mr. Tu was detained and arrested, charged with "making, storing, spreading information, materials, items for the purpose of opposing the State" violating section 117 of the Vietnamese criminal code of 2015. He was moved over 80 miles away from his home to Hoa Binh detention center. He was held without access to an attorney or family members for a period of around 11 months, when Mr. Tu was finally granted a trial in May of 2021. However, this trial was limited to the public, including Mr. Tu's family, and internet access was throttled during the trial. He and his mother, Can Thi Theu, were each sentenced to 8 years in prison, with 3 years of probation.

### **Petitioner 3. Trinh Ba Phuong**

Mr. Phuong has long been a resident of the Hoa Binh Province of Vietnam. Over almost two decades, Vietnam has adopted an aggressive land grab doctrine that has taken private land purportedly for public use but oftentimes the seized land would then be transferred to development companies for commercial purposes. Two of the main projects the government has taken land for were a new airport and a new Dương Nội – Hà Đông Urban Area. Those who had their farmland taken were rarely compensated accordingly for the loss of their homes, sometimes going back generations in ownership.

Mr. Phuong was one of the leaders in opposition to such land grabs. He had recorded many of the events, including the deadly police raid on Dong Tam Village in January 2020, and he had used his Facebook account and other media to share details of government action. Mr. Phuong had even shared information with the US Embassy. The state driven media had blamed Mr. Phuong for the tragic events of the raids on Dong Tam, but Mr. Phuong had always been careful to practice peaceful protest to avoid unlawful behavior.

Over the course of the months following the Dong Tam raids, Mr. Phuong was kept under surveillance, harassed by police officers, and even refused access to the funeral of an acquaintance who was killed by police in the raid. On June 24, 2020, at 5:20 in the morning, a number of both uniformed and plain-clothed police officers broke down the door of Mr. Phuong's private residence. While there is an arrest warrant, there is no evidence that Mr. Phuong was presented with the warrant as his house was searched. His family would be presented with the warrant afterwards. After his family was forcibly removed from the house to leave Mr. Phuong alone inside with the officers, he was forcibly detained and arrested.

He was charged with "making, storing, spreading information, materials, items for the purpose of opposing the State" according to Article 117 of the Vietnamese Criminal Code of 2015. All of the information Mr. Phuong had collected pertaining to Vietnam's land grab policy and the Dong Tam raids was confiscated, and Mr. Phuong was left in Detention Center No. 1 in Nam Từ Liêm, Hanoi. He was unable to communicate with his family, and the investigation period was extended several

times, further denying Mr. Phuong any kind of trial, bond hearing, or family visits. Mr. Phuong was also not allowed to meet with a lawyer during any of this time. While the family is reportedly able to drop off supplies and money for Mr. Phuong in prison, there is no guarantee the supplies have been delivered, with reports even detailing that Mr. Phuong has been moved to a new prison without family notice. The situation was so dire that in November of 2020, the UN Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression and on the situation of human rights defenders, as well as the UN Working Group on Arbitrary Detention and the Working Group on discrimination against women and girls sent a petition to Vietnam enquiring as to the legal basis of the arrest and safeguards in place.<sup>2</sup> As of June 2021, Mr. Phuong remains without a public appearance or communication to the outside world or his family. On June 15, the Procuracy announced the completion of its investigation and referred Mr. Phuong to the court for trial.

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

Both the arrest and detention of Can Thi Theu, Trinh Ba Tu, and Trinh Ba Phuong 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 and the Petitioners were or continue to be held *incommunicado*. The detention is arbitrary under Category II because the arrest was due in large part to subject's peaceful free exercise of opinion, 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.<sup>3</sup> 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. Petitioners were held *incommunicado* for many months, and Petitioner 3 continues to be held *incommunicado* since his arrest. In addition, they were arrested under Article 117 of the 2015 Vietnamese penal code, legislation which is excessively vague – providing no legal basis for detention.

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<sup>2</sup> U.N. Doc. AL VNM 5/2020, (Nov. 10, 2020)

<sup>3</sup> 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).

## 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.<sup>4</sup> This rule against *incommunicado* detention 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.<sup>5</sup> In this case, Petitioners 1 and 2 had been unable to communicate with an attorney until their trial in May of 2021, a period that lasted about 11 months. Additionally, they were highly limited in their ability to communicate with family, with the only information about their condition being passed on via secondhand report of other prisoners. Petitioner 3 has had the same issues, but because he has not had his trial at this point, he has not been able to communicate at all with an attorney. In fact, Petitioner 3’s isolation at some points has been so drastic that there is no substantial assurance as to his location, making it impossible to even attempt to establish contact. Because of this high degree of isolation and the disallowance of others to establish regular 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 ICCPR<sup>6</sup> and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”)<sup>7</sup> 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.”<sup>8</sup> In addition, the UN Special Rapporteur on the Promotion

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<sup>4</sup> 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”)

<sup>5</sup> *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.

<sup>6</sup> *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.”).

<sup>7</sup> 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.”).

<sup>8</sup> 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”).



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.”<sup>9</sup>

While the timeliness of the arrest warrant is unsure, the copies that eventually surfaced accuse the Petitioners with violating Article 117 of the Vietnamese Criminal Code of 2015. While it is the Petitioners’ position that the article has not been violated in the first place, Article 117 is both overly vague and broad to render it impossible for any reasonable person to foresee what behavior is criminal.

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

There are many factors that would make this law questionable under international standard. 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. In the case at hand, there is no reference to the fact that speaking out against land grabs would constitute a violation.

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<sup>9</sup> 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.

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, Petitioners were arbitrarily prosecuted under Article 117 for acts that are both unforeseeable as criminal and protected under the ICCPR, the UDHR, and other international norms and standards. Because the crime of “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Vietnam” is so vague as to be meaningless, such a law cannot support the basis for Petitioner’s detention resulting from conviction on such a charge.

## **(II) DEPRIVATION OF LIBERTY UNDER CATEGORY 2**

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 by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR.<sup>10</sup> The three Petitioner’s detentions meet the requirements of Category II because their detention is directly a result of their exercise of freedom of association and freedom of expression, which are expressly guaranteed under both the ICCPR and UDHR.

### **1. Petitioners were convicted for exercising their freedom of expression and opinions**

Article 19(2) of the ICCPR states that “everyone shall have the right to freedom of expression,” and that “this right shall include freedom to seek, receive and impart information and ideas of all kinds...either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>11</sup> Similarly, Article 19 of the UDHR provides for the right of “freedom to hold opinions without interference.”<sup>12</sup> Even Article 25 of the Vietnamese Constitution offers some similar protection stating, “The citizen shall enjoy the right to freedom of opinion and speech, freedom of the press, of access to information, to assemble, form associations and hold demonstrations.”<sup>13</sup> These categories are important because the United Nations have repeatedly held that investigators and journalist are to be treated as human rights defender.<sup>14</sup> The WGAD has also verified such protection to such defenders to “investigate, gather information regarding and report on human rights violations.”<sup>15</sup> Of course, these right have to extend to views that are contrary to norms, custom, or government standard, or they risk not being rights at all.

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<sup>10</sup> HUMAN RIGHTS COUNCIL, Methods of Work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/36/38, para. 8(b) (July 13, 2017).

<sup>11</sup> 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. 19(2)

<sup>12</sup> UDHR at art. 19.

<sup>13</sup> *The Constitution of the Socialist Republic of Vietnam*. Unofficial Translation from Vietnamese by International IDEA, (2013), [https://constitutionnet.org/sites/default/files/tranlation\\_of\\_vietnams\\_new\\_constitution\\_enuk\\_2.pdf](https://constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf)

<sup>14</sup> 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>.

<sup>15</sup> *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).

In the present case, the Government arbitrarily detained and prosecuted the Petitioners under Article 117 of the 2015 Vietnamese Criminal Code based on their activism for human and land rights in Vietnam. Petitioners' activism encompasses various forms, including blogging on the internet and directly advocating for citizens who faced land seizure of ancestral homes. The Government cites the fact that Petitioners "post[ed] many articles and videos in social networks" of the Tong Dam Raid and other human rights abuses as reasonable evidence for detention.<sup>16</sup> Moreover, Petitioners' involvement with the Liberal Publishing House (LPH), a non-profit that has faced particularly harsh crackdown by the Vietnamese government, is also cited as a violation of Article 117.

These basis for charges and detention are simply not enough under international standard to warrant detention. The petitioners' actions have remained peaceful and based upon a nature of collection information and disseminating such information to the public. The Human Rights Committee has also specifically recognized that Article 19(2) protects the work of activists and "includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment."<sup>17</sup> 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."<sup>18</sup>

In the present case, no such evidence has been presented that would overcome such a high standard for detention. The Petitioners have been subjected to detention based upon their reporting of the land grabs and advocacy for human rights. The detention is based upon a pattern of imprisonment for adverse views that Vietnam has displayed repeatedly, including over the past 6 years to the Petitioners.

Therefore, the detention under 117 is contrary to international law. Petitioners were exercising their rights to expression and opinion guaranteed by the UDHR and ICCPR. The Petitioners were arrested for their work that informed the public and rallied support against aggressive land grabs in their area, thereby meeting the requirements for this detention to count as arbitrary under Category II.

## **2. Petitioners were convicted for exercising their 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..."<sup>19</sup> The Human Rights Council has made notable remarks that call for states to respect all individuals' rights to association, especially individuals who hold

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<sup>16</sup> *Reply of Viet Nam to the Joint Communication sent by Special Procedures concerning Trinh Ba Phuong, Trinh Ba Tu, Can Thi Theu, Nguyen Thi Tam and Pham Thi Doan Trang*, AL VNM 5/2020 (Nov. 10, 2020), <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35948>.

<sup>17</sup> *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).

<sup>18</sup> *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).

<sup>19</sup> UDHR at art. 20.

minority or opposing views to the government or are human rights defenders.<sup>20</sup> In General Comment No. 25 to the ICCPR, the Human Rights Committee noted that “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25 [right to participate in public affairs].”<sup>21</sup> Additionally, Vietnamese law protects individuals’ freedom of association in Article 25 of the Vietnamese Constitution.<sup>22</sup>

Despite both international and domestic protections of an individual’s right to association, the Vietnamese government has detained the Petitioners due to their association with a group advocating for human and land rights, as well as with the Liberal Publishing House. These groups are protected under international law, and therefore Vietnam has violated Petitioners’ rights of association under Article 22(1) of the ICCPR, and Article 25 of the Vietnamese Constitution.

### **3. None of the restrictions to freedom of expression and association enumerated under articles 19 (3) and 22(2) of the ICCPR apply to the prosecution and detention of Petitioners**

Limitations to the freedom of expression and association are outlined by the Human Rights Committee in order to expand on the rights of the government in maintaining national peace and security. Article 19(3) of the ICCPR grants the freedom of opinion and expression provided that “respect of the rights or reputations of others” and “the protection of national security or of public order” are not threatened.<sup>23</sup> The Human Rights Committee further asserts that, “when a State party imposes [a limitation] on the exercise of freedom of expression, [it] may not put in jeopardy the right itself.”<sup>24</sup> On the freedom of association, ICCPR Article 22(2) states 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.”<sup>25</sup> With such a high standard, the Human Rights Committee has provided three requirements for the limitation on the freedom of expression and association. The 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.<sup>26</sup>

Petitioners’ arguments in under Category I draw into question whether their freedom of association and expression were prescribed by law, the second limitation is not present in this case. Petitioners are accused by the government of “distort[ing] the truth,” and “incit[ing]

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<sup>20</sup> 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>.

<sup>21</sup> *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).

<sup>22</sup> *The Constitution of the Socialist Republic of Vietnam*. Unofficial Translation from Vietnamese by International IDEA, (2013), [https://constitutionnet.org/sites/default/files/tranlation\\_of\\_vietnams\\_new\\_constitution\\_enuk\\_2.pdf](https://constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf)

<sup>23</sup> ICCPR at Art. 19(3).

<sup>24</sup> 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).

<sup>25</sup> *Park v. Republic Korea*, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, para. 10.3 (adopted Oct. 20, 1998).

<sup>26</sup> *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).

individuals to rise up and overthrow the State of Viet Nam” through the acts of internet blogs and social media posts.<sup>27</sup> There is no direct link between these actions and action that would threaten national security under the second factor. In fact, Petitioners’ have displayed many years’ worth of public advocacy without violence – relying on documentation, education, and the dissemination of information rather than rallying for violent opposition. In fact, Petitioners’ outspoken and public activism for human and land rights are particularly touted, rather than questioned, by the Human Rights Committee as “essential for the promotion of the protection of human rights.”<sup>28</sup>

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

### **(III) DEPRIVATION OF LIBERTY UNDER CATEGORY 3**

Throughout the process, Petitioners’ rights to due process, fair trial, and fair treatment 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.”<sup>29</sup> 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.”<sup>30</sup> 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, Petitioners were detained in June of 2020. For one of the Petitioners, no such appearance has occurred. For the other two, they were held in detention for a period of about 11 months without ever having an opportunity for release. Additionally, there has been no public bail hearing or any public notice as to why excessive pre-trial detention was necessary beyond vague notions concerning the collection of information to meet one of the

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<sup>27</sup> *Reply of Viet Nam to the Joint Communication sent by Special Procedures concerning Trinh Ba Phuong, Trinh Ba Tu, Can Thi Theu, Nguyen Thi Tam and Pham Thi Doan Trang*, AL VNM 5/2020 (Nov. 10, 2020), <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35948>.

<sup>28</sup> 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).

<sup>29</sup> HUMAN RIGHTS COUNCIL, *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/36/38, para. 8(c).

<sup>30</sup> 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”).

circumstances that allow for exception.<sup>31</sup> 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.<sup>32</sup> In such case, it is impossible to assess these factors because a fair hearing was never conducted for any of the Petitioners. They were detained without appearance for about 11 months until the sentencing trial occurred. One of them has yet to even have such a trial. Without a proper hearing, the pre-trial detention in this case was or continues to be in violation of international law.

Such a denial of pre-trial release in addition to the lack of a prompt trial rendered the petitioners *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."

The communication offered to the Petitioners family has been highly limited. Not only were there long periods where the location of the Petitioners unknown, but also when their location was known, no in-person or timely communication was allowed. They were only allowed to drop off supplies at prisons, never seeing or knowing whether the Petitioners were inside. Additionally, 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.<sup>33</sup> This includes the pre-trial process and the process for appeals.<sup>34</sup> Not only is this

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<sup>31</sup> 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.

<sup>32</sup> *Id.* at para. 38

<sup>33</sup> 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).

<sup>34</sup> *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.”<sup>35</sup> As of June of 2021, it has been 12 months since Petitioner’s initial detention. For one Petitioner, no bail hearing has been made and the Petitioner has been left *incommunicado*. The other two were left in a similar situation, only recently in May having a trial, ending their 11-month detention without trial. The combination of time and these factors indicate that the delay is rather due to factors explained in Categories 1 and 2 such as the Petitioners connection with human rights advocacy and opposing land grabs by the government of Vietnam. 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,<sup>36</sup> 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.”<sup>37</sup> In the case at hand, Petitioners had been detained for 11 months without access to counsel. One of them remains *incommunicado* and 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, either such continued *incommunicado* detention or the 11-month period without an attorney deprived Petitioners of their 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.

#### **5. Vietnam violated Petitioner’s right to a fair hearing**

Article 14 of the ICCPR grants Petitioners the right “to a fair and public hearing.” A key component of a fair hearing is that “each side be given the opportunity to contest all the arguments and evidence adduced by the other party.”<sup>38</sup> Additionally, Article 14(3)(e) of the ICCPR notes that every defendant shall be granted 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.”

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<sup>35</sup> *Id.* at para. 30.

<sup>36</sup> *Id.* at para. 32

<sup>37</sup> *Id.* at para. 34

<sup>38</sup> *Id.* at para. 13.

Petitioner 1 and 2 both had trials that were conducted within a day. They were denied early access to counsel, and they were unable to mount a suitable defense. Additionally, the trial was mostly closed to the public, and the internet was throttled further endangering the integrity of the trial. Close family members were not allowed indoors. All of these factors contribute to a violation of Petitioners' rights to both a fair and public hearing afforded to them by Article 14 of the ICCPR.

**VI. indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.**

Petitioners 1 and 2 have appealed their sentence, but there has been no indication that the appeal will be heard. Petitioner 3 remains without trial.

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

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

Shireen Hormozdi Bowman  
1770 Indian Trail  
Liburn Road  
Suite 175  
Norcross, GA 30093  
+1 (678) 395-7795  
shireen@norcrosslawfirm.com



