

**PETITION TO:**

**UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Ms. Elina Steinerte (Latvia)  
Vice-Chair: Dr. 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

**Huỳnh Minh Tâm**  
Citizen 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:*

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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**

**I. PETITIONER**

**A. Identity**

1. **Family name:** Huỳnh
  2. **First name:** Minh Tâm
  3. **Sex:** Male
  4. **Birth date or age (at the time of detention):** August 22, 1978
  5. **Nationality/Nationalities:** Vietnamese
  6. **(a) Identity document (if any):** National ID Card  
**(b) Issued by:** Police of Đồng Nai Province  
**(c) On (date):** April 17, 2018  
**(d) No.:**
  7. **Profession and/or activity (if believed to be relevant to the arrest/detention):** Facebook activist
  8. **Address of usual residence:** Hamlet 2, Tân An Commune, Vĩnh Cửu District, Đồng Nai Province, Vietnam.
- B. Arrest**
1. **Date of arrest:** January 26, 2019
  2. **Place of arrest (as detailed as possible):** Hamlet 2, Tân An Commune, Vĩnh Cửu District, Đồng Nai Province, Vietnam.
  3. **Forces who carried out the arrest or are believed to have carried it out:** Approximately 8 uniformed and 12 plainclothes officers from the district and provincial level of the Đồng Nai Province.
  4. **Did they show a warrant or other decision by a public authority?** No arrest or search warrant was provided.
  5. **Authority who issued the warrant or decision:** None
  6. **Reasons for the arrest imputed by the authorities:** Conducting “anti-state propaganda” in violation of Article 117 of the Vietnamese Criminal Code of 2015.
  7. **Legal basis for the arrest including relevant legislation applied (if known):** No valid reason.
- C. Detention**
1. **Date of detention:** January 26, 2019

2. **Duration of detention (if not known, probable duration):** From January 26, 2019 until the present.
3. **Forces holding the detainee under custody:** Gia Lai Province public security
4. **Places of detention (indicate any transfer and present place of detention):** Petitioner was detained at the B5 Detention Center of the Đồng Nai Provincial Police until approximately February 2020. Petitioner is currently detained at Team 9 K5, Gia Trung Prison, Nam Yang District, Gia Lai Province, Vietnam.
5. **Authorities that ordered the detention:** Authorities from Đồng Nai Province, Vietnam.
6. **Reasons for the detention imputed by the authorities:** Charged with “making, storing, or spreading information, materials or items for the purpose of opposing the State” in violation of Article 117 of the Vietnamese Criminal Code of 2015.
7. **Legal basis for the detention including relevant legislation applied (if known):** No valid reason

## II. DESCRIBE THE CIRCUMSTANCES OF THE ARREST

Mr. Huỳnh Minh Tâm (hereinafter “Petitioner”), a Facebook activist and a member of the Đảng Cộng Hoà group (Republic Party), was arrested on January 26, 2019 and charged with violating Article 117 of the Vietnamese Criminal Code of 2015, which punishes the “making, storing, or spreading information, materials, or items for the purpose of opposing the State of the Socialist Republic of Vietnam.”<sup>2</sup> The public security of Đồng Nai Province arrived at Petitioner’s home that day at approximately 8:00 a.m.<sup>3</sup> Petitioner was immediately arrested and taken to the Đồng Nai Province police station. Subsequently, at 12:00 p.m., the police returned to Petitioner’s residence to search his home. The police stated that they had a search warrant but didn’t show or let the family keep the warrant.<sup>4</sup>

After Petitioner’s arrest, he was not allowed to see his family. Petitioner has been allowed access to his family once a month since his trial. During the case investigation process, Petitioner’s lawyer was not allowed to meet with Petitioner or his family. Petitioner was later advised by a family member not to pursue legal representation in his case.<sup>5</sup>

On November 28, 2019, Petitioner was tried and sentenced to a term of nine years imprisonment for violating Article 117 of the Vietnamese Criminal Code of 2015.<sup>6</sup> Petitioner was tried alongside his sister, Huỳnh Thị Tố Nga, who was sentenced to a term of five years imprisonment, also under Article 117 of the Vietnamese Criminal Code of 2015.<sup>7</sup> Petitioner was accused of distributing articles and websites of “reactionaries,” a term used to describe “political opponents or critics.”<sup>8</sup> Petitioner was also accused of using Facebook as a platform to contact political opponents overseas and to post anti-state content. The authorities also alleged that Petitioner called for people on Facebook to join the Đảng Cộng Hoà group, which supposedly “encourages others to protest against the state.”<sup>9</sup> Petitioner did not have legal

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<sup>2</sup> Profile: HUYNH MINH TAM, The 88 Project (2020), <https://the88project.org/profile/336/huynh-minh-tam//>.

<sup>3</sup> *Id.*

<sup>4</sup> Telephone Interview with Mrs. Sen, wife of Petitioner [*hereinafter* “Telephone Interview”](July 23, 2021).

<sup>5</sup> *Id.*

<sup>6</sup> Profile: HUYNH MINH TAM, The 88 Project (2020), <https://the88project.org/profile/336/huynh-minh-tam//>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

representation at his trial which lasted only three hours. Only Petitioner's wife and mother were allowed to attend his trial. During the trial, Petitioner explained that his Facebook posts were merely an expression of his conscience and a desire for a better future for his children.<sup>10</sup>

Three months after his trial and sentencing, Petitioner was moved to the Gia Trung Prison.<sup>11</sup> Since his transfer to Gia Trung Prison, Petitioner has been subjected to unsanitary and inhumane living conditions. Prior to Petitioner's arrest, he did not exhibit any issues with his vision. However, since his transfer to Gia Trung Prison, Petitioner has seen a dramatic decline in his vision due to malnourishment and smoke-induced air pollution at the prison.<sup>12</sup> Additionally, since March 2020, Petitioner has been detained in isolation, with only limited access to the outside.<sup>13</sup>

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

### III. CONTEXTUAL BACKGROUND

Petitioner is one of many Facebook users and bloggers in Vietnam who have been detained and sentenced to lengthy prison terms after being convicted of anti-state propaganda for their social media posts.<sup>14</sup> For example, on March 30, 2021, Vũ Tiến Chi was sentenced to 10 years in prison on charges of anti-state propaganda for his Facebook posts calling for the establishment of a National Congress.<sup>15</sup> A week earlier, on March 22, 2021, Nguyễn Duy Hường, a 34-year-old medical doctor, was charged with anti-state propaganda for his Facebook posts which criticized the ruling Communist Party general secretary, now serving his third term in office;<sup>16</sup> and the same week, an appeals court upheld a 12-year prison sentence imposed on Trần Đức Thạch for his Facebook posts exposing government corruption and human rights abuses.<sup>17</sup>

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

The arrest and detention of Petitioner are arbitrary under Categories I, II, III and V as established by the U.N. Working Group on Arbitrary Detention (the "Working Group"). Petitioner's detention is arbitrary under Category I because it is impossible to invoke any legal basis justifying his deprivation of liberty and continued detention. Petitioner's detention is arbitrary under Category II because it resulted from the peaceful exercise of his rights to freedom of expression, opinion and association. Petitioner's detention is arbitrary under Category III because his detention and prosecution fail to meet the minimum international

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<sup>10</sup> Telephone Interview, *supra* note 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Woman Human Rights Defender Dinh Thị Thu Thuy Charged and Sentenced*, FRONTLINE DEFENDERS (Jan. 20, 2021), <https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-%C4%91inh-th%E1%BB%8B-thu-th%E1%BB%A7y-charged-and-sentenced>.

<sup>15</sup> *Vietnamese Facebook Users Draw Prison terms for Postings Criticizing Government, State Officials*, RADIO FREE ASIA (March 31, 2021), <https://www.rfa.org/english/news/vietnam/postings-03312021194842.html>.

<sup>16</sup> *Vietnamese Doctor Charged With 'Harming People's Trust in the Party'*, RADIO FREE ASIA (March 23, 2021), <https://www.rfa.org/english/news/vietnam/charged-03232021173135.html>.

<sup>17</sup> *Vietnamese Dissident Writer Sent Back to Serve 12-Year Term After Losing Appeal*, RADIO FREE ASIA (March 24, 2021), <https://www.rfa.org/english/news/vietnam/writer-03242021165252.html>.

standards of due process. Finally, Petitioner's detention is arbitrary under Category V because it is based upon his political opinion.

## **A. Deprivation of liberty under Category I**

A detention violates Category I when it is impossible to invoke any legal basis justifying the deprivation of liberty.<sup>18</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. Petitioner was held *incommunicado* and Petitioner was charged under Article 117 of the Vietnamese Criminal Code of 2015, a law which is too vague to provide a legitimate basis for detention.

### **1. Petitioner was held *incommunicado* before trial**

The Human Rights Committee has held that *incommunicado* detention inherently violates Article 9(3) of the ICCPR.<sup>19</sup> 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.<sup>20</sup>

In this case, Petitioner was held *incommunicado* from the date of his arrest until after his trial, a period of more than 10 months, which clearly constitutes a violation of Category 1.

### **2. Vietnam's criminal code is vague and overly broad**

Article 15(1) of the ICCPR<sup>21</sup> and Article 11(2) of the Universal Declaration of Human Rights ("UDHR")<sup>22</sup> 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

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<sup>18</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).

<sup>19</sup> HUMAN RIGHTS COUNCIL, *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>20</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>21</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>22</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.").

defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.”<sup>23</sup> In addition, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has explained that the standard for legal certainty requires framing laws “in such a way that [...] the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and [that] the law [be] formulated with sufficient precision so that the individual can regulate his or her conduct.”<sup>24</sup>

In this case, Petitioner was convicted of violating Article 117 of the Vietnamese Criminal Code of 2015, a law that is too vague to provide a legitimate basis for detention:

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

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.

No instruction or clarification is provided as to what constitutes “distorted information,” “fabricated information,” or “psychological warfare.” Article 117 lacks any plain meaning and it gives individuals no fair notice of what conduct is prohibited. Petitioner was arbitrarily detained and prosecuted 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.

**B. Deprivation of liberty under Category II**

A 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,

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<sup>23</sup> General Comment No. 35, *supra* note 19, at para. 35.

<sup>24</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.

22, 25, 26, and 27 of the ICCPR.<sup>25</sup> This case meets the requirements of Category II because Petitioner's detention is a direct result of the exercise of his fundamental freedoms of opinion, expression and association guaranteed by the UDHR and the ICCPR.

### **1. Petitioner was detained and prosecuted for exercising his freedoms of expression and opinion**

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>26</sup> Similarly, Article 19 of the UDHR provides for the right of “freedom to hold opinions without interference.”<sup>27</sup> The Human Rights Committee has clarified that Article 19 of the ICCPR “protects all forms of expression and the means of their dissemination.”<sup>28</sup> This includes “all forms of audio-visual as well as electronic and internet-based modes of expression.”<sup>29</sup>

In the present case, the Government arbitrarily detained and prosecuted Petitioner under Article 117 of the Vietnamese Criminal Code of 2015 for expressing his political opinions on social media, a protected activity under Article 19.<sup>30</sup> The Government has deprived Petitioner of his liberty under a law that is itself incompatible with the rights to freedom of opinion and expression guaranteed under the UDHR and ICCPR.

### **2. Petitioner was detained and prosecuted for exercising his freedom of association**

Article 20(1) of the UDHR provides that “[e]veryone has the right to freedom of peaceful assembly and association.” Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others . . .” The Human Rights Council has specifically called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views and human rights defenders.<sup>31</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>32</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and association has clearly stated that “the rights to freedom of peaceful

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<sup>25</sup> Methods, *supra* note 18, at para. 8(c).

<sup>26</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>27</sup> UDHR at art. 19.

<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. 12 (Sept. 12, 2011) (*hereinafter* “General Comment No. 34”).

<sup>29</sup> *Id.*

<sup>30</sup> *Bialatski v. Belarus*, UN Working Group on Arbitrary Detention, Opinion No. 39/2012, U.N. Doc. A/HRC/WGAD/2012/39, para. 50 (Nov. 23, 2012).

<sup>31</sup> G.A. Res. 15/21, ¶ 1, U.N. Doc. A/HRC/RES/15/21 (Oct. 6, 2010), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>

<sup>32</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), (*hereinafter* “General Comment No. 25”).

assembly and of association can be exercised through new technologies, including through the Internet.”<sup>33</sup> Additionally, Vietnamese law protects individuals’ freedom of association in Article 25 of the Vietnamese Constitution.<sup>34</sup>

By punishing Petitioner for associating with others using an online platform such as Facebook, the Government has violated his right to freedom of association in contravention of Article 20(1) of the UDHR, Article 22(1) of the ICCPR, and Article 25 of the Vietnamese Constitution.<sup>35</sup>

**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 detention and prosecution 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.”<sup>36</sup> However, the Human Rights Committee has confirmed that limitations on expression that a state attempts to justify on the basis of Article 20 must also comply with Article 19(3) of the ICCPR.<sup>37</sup>

Pursuant to Article 19(3) of the ICCPR, freedoms of expression and opinion may be restricted only as necessary for 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.”<sup>38</sup>

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.”<sup>39</sup> 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

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<sup>33</sup> Kiai, M., *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Human Rights Council, 21 May 2012, A/HRC/20/27 para 4, [www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf).

<sup>34</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>35</sup> Article 25 of the Vietnamese Constitution specifically affirms that citizens have the right to “assemble, form associations and hold demonstrations. See THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM, 2013, *translation available at* International Institute for Democracy and Electoral Assistance, [http://www.constitutionnet.org/sites/default/files/tranlation\\_of\\_vietnams\\_new\\_constitution\\_enuk\\_2.pdf](http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf).

<sup>36</sup> ICCPR, at art. 20.

<sup>37</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) (*hereinafter* “General Comment No. 34”).

<sup>38</sup> *Id.* at para. 21.

<sup>39</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).



of national security, public order, or public health and morals, and (3) “necessary” to achieve one of these enumerated purposes.<sup>40</sup>

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

### **C. Deprivation of liberty under Category III**

Petitioner’s arrest and detention is also 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.”<sup>41</sup> 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”).<sup>42</sup>

#### **1. Vietnam has 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).<sup>43</sup> The Human Rights Committee has interpreted the term “promptly” to be within approximately 48 hours, except in exceptional circumstances, and has noted that this right shall be observed “even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”<sup>44</sup> Moreover, *incommunicado* detention inherently violates Article 9(3) of the ICCPR.<sup>45</sup> The right to *habeas corpus* is reiterated in Principles 4, 11, 32(1) and 37 of the Body of Principles.<sup>46</sup> Aside from acting as a check on arbitrary detention, these provisions also safeguard other related rights, such as freedom from torture.<sup>47</sup>

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<sup>40</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).

<sup>41</sup> Methods, *supra* note 18, at para. 8(c).

<sup>42</sup> *Id.* at para. 7(a-i). 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)).

<sup>43</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”).

<sup>44</sup> General Comment No. 35, *supra* note 5, at para. 32.

<sup>45</sup> *Id.* at para. 35.

<sup>46</sup> Body of Principles, *supra* note 6.

<sup>47</sup> General Comment No. 35, *supra* note 5, at para. 34.

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."<sup>48</sup> 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.<sup>49</sup>

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 Petitioner promptly before a judge to challenge the legality of his detention, and by denying his release pending trial, the Government has 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 has violated Petitioner's right to family visits**

Principle 19 of the Body of Principles provides that "detained or imprisoned persons shall have the right to be visited by and to correspond with, in particular, members of his family . . . subject to reasonable conditions and restrictions as specified by law or lawful regulations." Similarly, this right is protected by the Mandela Rules, notably Rule 43 stating that "[d]isciplinary sanctions or restrictive measures shall not include the prohibition of family contact," Rule 58 stating that "[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals," and Rule 106 stating that "[s]pecial attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both."

Petitioner was held *incommunicado* for many months since his arrest, and prohibited from meeting with his family. By detaining Petitioner *incommunicado* prior to trial, and by prohibiting visits from his family members, the Government has violated Principle 19 of the Body of Principles as well as Rules 43, 58, and 106 of the Mandela Rules.

## **3. Vietnam has 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,"<sup>50</sup> and "in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible."<sup>51</sup> 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."<sup>52</sup> The right to be

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<sup>48</sup> *Id.* at para. 38.

<sup>49</sup> Body of Principles, *supra* note 6.

<sup>50</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) (*hereinafter* "General Comment No. 32").

<sup>51</sup> *Id.* at para. 35.

<sup>52</sup> *Id.*

tried without undue delay is reiterated by the Body of Principles,<sup>53</sup> and the same is guaranteed in Article 31 of the Vietnamese Constitution.

The reasonable amount of time in which a trial must be held must be “assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities.”<sup>54</sup> Further, “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”<sup>55</sup>

More than ten months elapsed between Petitioner’s arrest and his trial. During that entire time, Petitioner was held in custody. Vietnam has never provided any explanation why Petitioner’s trial necessitated such a delay. The need for trial without undue delay has been exacerbated by the fact that, as mentioned above, Petitioner was never given a bail hearing and remained in *incommunicado* detention for the entire time. By refusing to provide Petitioner a bail hearing, and by unnecessarily delaying his trial, the Government has violated Article 14(3)(c) of the ICCPR, Principle 38 of the Body of Principles, and Article 31 of the Vietnamese Constitution.

#### **4. Vietnam has 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,”<sup>56</sup> and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”<sup>57</sup> 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 defense counsel.

As noted above, Petitioner was held *incommunicado* and deprived of his right to communicate with counsel. Consequently, the Government has violated Articles 14(3)(b) and 14(3)(d) of the ICCPR, Principle 18 of the Body of Principles, Rule 119 of the Mandela Rules, and Article 31 of the Vietnamese Constitution.

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

Article 14 of the ICCPR guarantees the right “to a fair and public hearing.” In the present case, Petitioner’s trial was very short, lasting only three hours, clearly establishing that his guilt had been determined prior to the hearing, and thus denying him the right to the presumption of innocence guaranteed under Article 14(2) of the ICCPR.

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<sup>53</sup> Body of Principles, *supra* note 6, at Principle 38.

<sup>54</sup> General Comment No. 32, *supra* note 37, at para. 30.

<sup>55</sup> *Id.* at para 35.

<sup>56</sup> *Id.* at para 32.

<sup>57</sup> *Id.* at para 34.

**D. Deprivation of liberty under Category V**

According to Category V of the Working Group’s Revised Methods of Work, a deprivation of liberty is arbitrary when it “constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.”<sup>58</sup> There is a “strong presumption” that a deprivation of liberty based on the exercise of fundamental political rights under Category II will constitute discrimination based on political opinion under Category V.<sup>59</sup> In the present case, Petitioner was detained and prosecuted for expressing his political opinion on Facebook. Consequently, his detention is also arbitrary under Category V.

**IV. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.**

Petitioner’s arrest, trial and pre-trial confinement have been characterized by flagrant violations of his due process rights. It is extremely unlikely that any appeal of Petitioner’s conviction would have resulted in his release or a lighter sentence.

**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 from The Norcross Law Firm, has been retained by Huỳnh Minh Tâm to represent him before the Special Procedures of the Human Rights Council.

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<sup>58</sup> Methods of Work, *supra* note 4, at para. 8(e).

<sup>59</sup> *Pham Doan Trang v. Viet Nam*, United Nations Working Group on Arbitrary Detention, Opinion No. 40/2021, para. 90 (2021).