

**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

**Nguyễn Thúy Hạnh**  
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:** Nguyễn
2. **First name:** Thúy Hạnh
3. **Sex:** Female
4. **Birth date or age (at the time of detention):** May 25, 1963
5. **Nationality/Nationalities:** Vietnamese
6. **(a) Identity document (if any):** National ID Card  
**(b) Issued by:**  
**(c) On (date):** July 13, 2016  
**(d) No.:** 011996718
7. **Profession and/or activity:** Founder of the 50k Fund, which raises money for the families of political prisoners in Vietnam.
8. **Address of usual residence:** Room R6-04-12, Building R6, Royal City Apartment, 72A Nguyen Trai Street, Thanh Xuan District, Hanoi City, Vietnam.

**B. Arrest**

1. **Date of arrest:** April 7, 2021
2. **Place of arrest (as detailed as possible):** Room R6-04-12, Building R6, Royal City Apartment, 72A Nguyen Trai Street, Thanh Xuan District, Hanoi City, Vietnam.
3. **Forces who carried out the arrest or are believed to have carried it out:** Approximately 20-30 plain clothed and uniformed officers from the Security Investigations Office, Hanoi City Police.
4. **Did they show a warrant or other decision by a public authority?** A warrant was shown to Nguyễn Thúy Hạnh's family after the arrest.
5. **Authority who issued the warrant or decision:** Hanoi City Police
6. **Reasons for the arrest imputed by the authorities:** Conducting "anti-state propaganda" in violation of Article 117 of Vietnam's Criminal Code.
7. **Legal basis for the arrest including relevant legislation applied (if known):** No valid reason.

**C. Detention**

1. **Date of detention:** April 7, 2021
2. **Duration of detention (if not known, probable duration):** From April 7, 2021 until the present.
3. **Forces holding the detainee under custody:** Hanoi City Police

4. **Places of detention (indicate any transfer and present place of detention):** From April 7, 2021 until December 22, 2021 at the Pretrial Detention Center #2 in Hanoi; from December 22, 2021 until the present at the Central Psychiatric Hospital No. 1 at ĐT427B, Hoà Bình, Thường Tín, Hà Nội.
5. **Authorities that ordered the detention:** Security Investigations Office, Hanoi City Police.
6. **Reasons for the detention imputed by the authorities:** Charged with “making, storing, and disseminating propaganda against 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

Nguyễn Thúy Hạnh has a history of standing up for her beliefs. Throughout her life, she has belonged to several advocacy groups, including groups that protested against China’s aggression in the South China Sea and groups dedicated to individual freedoms. She has also managed a Facebook account where she frequently voiced her opinions on human rights issues.

In 2017, Ms. Nguyễn established the 50k Fund, which raises money for the families of political prisoners in Vietnam.<sup>2</sup> The fund was set up after several members of the Brotherhood for Democracy were arrested, and support was provided directly to those detained to help pay for prison costs, or to their families to cover lost income. Since 2018, the fund has supported approximately 160 families from donations by people around the world.

Because of her charitable activities, Ms. Nguyễn became the target of government surveillance, was harassed, and was even beaten at one point by plain clothed individuals (who were thought to be police officers). Ms. Nguyễn did not stop, however, and in 2020, she began collecting money to support the family of Le Dinh Kinh, the leader of a village who was killed during the Dong Tam Raids.<sup>3</sup>

Upon attempting to collect money from the 50k Fund’s account to give to the family of Le Dinh Kinh, Ms. Nguyễn was informed by the bank that her assets were frozen, and that she would be unable to make a withdrawal. Over a year later, in 2021, when she was still unable to withdraw funds, Ms. Nguyễn hired a lawyer. Following the demands by Ms. Nguyễn and her lawyer to allow her to use the funds to help the family of Le Dinh Kinh, she was arrested. On April 7, 2021, she was taken from her home by approximately 20-30 plain clothed and uniformed police officers. Her husband was not at home at the time, and the only reports of the arrest come from witnesses in nearby apartments. It is unclear whether Ms. Nguyễn was presented with a warrant, but one was eventually shown to her family after the arrest.

From April 7, 2021 until December 22, 2021, Ms. Nguyễn was held at the Pretrial Detention Center #2 in Hanoi. On December 22, 2021, Ms. Nguyễn was transferred to the Central Psychiatric Hospital No. 1

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<sup>2</sup> *Nguyễn Thúy Hạnh Profile*, THE 88 PROJECT (June 30, 2021) <https://the88project.org/profile/350/nguyen-thuy-hanh/>.

<sup>3</sup> *Viet Nam: Prominent human rights defender Nguyen Thuy Hanh arrested and charged*, AMNESTY INTERNATIONAL (April 8, 2021) <https://www.amnesty.org/en/latest/news/2021/04/nguyen-thuy-hanh-arrested-and-charged/>.

at ĐT427B, Hoà Bình, Thường Tín, Hà Nội, where she is currently being held. While at the psychiatric hospital, Ms. Nguyễn was able to borrow a telephone to call home. After the authorities discovered Ms. Nguyễn's telephone usage, she was monitored more closely. Currently, Ms. Nguyễn is not able to communicate with counsel or family members, and a trial date has not yet been set.

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

The arrest and detention of Nguyễn Thúy Hạnh are arbitrary under Categories I, II, III and V as established by the U.N. Working Group on Arbitrary Detention (the "Working Group"). The detention is arbitrary under Category I because it is impossible to invoke any legal basis justifying her deprivation of liberty and continued detention. Ms. Nguyễn's detention is arbitrary under Category II because it resulted from the peaceful exercise of her rights to freedom of expression, opinion and association. Ms. Nguyễn's detention is arbitrary under Category III because her detention and prosecution fail to meet the minimum international standards of due process. Finally, Ms. Nguyễn's detention is arbitrary under Category V because it is based upon her political opinion and her status as a human rights defender.

#### **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>4</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. Nguyễn Thúy Hạnh was, and continues to be, held *incommunicado*. In addition, Ms. Nguyễn 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. Nguyễn Thúy Hạnh was, and continues to be, held *incommunicado***

The Human Rights Committee has held that *incommunicado* detention inherently violates Article 9(3) of the ICCPR.<sup>5</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>6</sup>

In this case, Nguyễn Thúy Hạnh was arrested on April 7, 2021. Since then, Ms. Nguyễn has not been permitted to consult with counsel, or to speak with members of her family with the exception of her brief telephone usage using a borrowed telephone in the psychiatric hospital where she is currently detained. Little is known about her condition, and this is especially worrying considering Ms. Nguyễn's medical

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<sup>4</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>5</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>6</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.

needs.<sup>7</sup> Because of her high degree of isolation, it is clear that this is a case of *incommunicado* detention in violation of Category I.

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

Article 15(1) of the ICCPR<sup>8</sup> and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”)<sup>9</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 defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.”<sup>10</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>11</sup>

In this case, Nguyễn Thúy Hạnh has been charged with 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:

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<sup>7</sup> According to her family and friends, Nguyễn Thúy Hạnh suffers from depression that when left untreated has resulted in suicidal tendencies.

<sup>8</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>9</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>10</sup> General Comment No. 35, *supra* note 5, at para. 35.

<sup>11</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.

- 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. Ms. Nguyễn was arbitrarily detained 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 Ms. Nguyễn’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, 22, 25, 26, and 27 of the ICCPR.<sup>12</sup> This case meets the requirements of Category II because Nguyễn Thúy Hạnh’s detention is a direct result of the exercise of her fundamental freedoms of opinion, expression and association guaranteed by the UDHR and the ICCPR.

### **1. Nguyễn Thúy Hạnh was detained and prosecuted for exercising her 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>13</sup> Similarly, Article 19 of the UDHR provides for the right of “freedom to hold opinions without interference.”<sup>14</sup>

In the present case, the Government arbitrarily detained and prosecuted Nguyễn Thúy Hạnh for expressing political opinions on social media and fundraising in support of political prisoners and their families, both of which are protected under Article 19 because they involve the dissemination of ideas and the advocacy of causes.<sup>15</sup> 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

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<sup>12</sup> Methods, *supra* note 4, at para. 8(c).

<sup>13</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>14</sup> UDHR at art. 19.

<sup>15</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).

Government without fear of interference or punishment.”<sup>16</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>17</sup>

## **2. Nguyễn Thúy Hạnh was detained and prosecuted for exercising her 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>18</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>19</sup> Additionally, Vietnamese law protects individuals’ freedom of association in Article 25 of the Vietnamese Constitution.<sup>20</sup>

Despite both international and domestic protections, the Government detained Nguyễn Thúy Hạnh for associating with prisoners of conscience and their families through the 50k Fund.<sup>21</sup> Therefore, the Government has violated Ms. Nguyễn’s 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 detention and prosecution of Nguyễn Thúy Hạnh**

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>22</sup> However, the

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<sup>16</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>17</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>18</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>19</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”).

<sup>20</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>21</sup> *Bialatski v. Belarus*, *supra* note 15, at para. 34 (“The right to freedom of association, guaranteed under article 22 of the Covenant, covers not only the creation of associations, but also all their subsequent activities. There is no effective way to conduct those activities without access to funds.”).

<sup>22</sup> ICCPR, at art. 20.

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>23</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>24</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>25</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 of national security, public order, or public health and morals, and (3) “necessary” to achieve one of these enumerated purposes.<sup>26</sup>

In this case, the limitation on Nguyễn Thúy Hạnh’s freedom of expression and association fails to meet the second requirement; the Government’s restrictions on their right to freedom of expression and association was not for a proper purpose. None of Ms. Nguyễn’s activities called directly or indirectly for violence or could reasonably be considered to threaten national security, public order, public health or morals. To the contrary, political discourse and protection of human rights have all been explicitly recognized as protected speech.<sup>27</sup>

### C. Deprivation of liberty under Category III

Nguyễn Thúy Hạnh’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>28</sup> The minimum international standards of due process applicable in this case are established by the ICCPR, the

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<sup>23</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>24</sup> *Id.* at para. 21.

<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).

<sup>27</sup> General Comment No. 34, *supra* note 23, at para. 11.

<sup>28</sup> *Methods*, *supra* note 4, at para. 8(c).



UDHR, the Body of Principles, and the UN Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”).<sup>29</sup>

**1. Vietnam has violated Nguyễn Thúy Hạnh’s right to *habeas corpus* and her 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>30</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>31</sup> Moreover, *incommunicado* detention inherently violates Article 9(3) of the ICCPR.<sup>32</sup> The right to *habeas corpus* is reiterated in Principles 4, 11, 32(1) and 37 of the Body of Principles.<sup>33</sup> Aside from acting as a check on arbitrary detention, these provisions also safeguard other related rights, such as freedom from torture.<sup>34</sup>

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>35</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>36</sup>

Nguyễn Thúy Hạnh was never brought before a judge to determine the legality of her 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, Ms. Nguyễn’s entire pre-trial detention period has been completely unauthorized by any judicial officer. By refusing to bring Ms. Nguyễn promptly before a judge to challenge the legality of her detention, and by denying her 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.

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<sup>29</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>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”).

<sup>31</sup> General Comment No. 35, *supra* note 5, at para. 32.

<sup>32</sup> *Id.* at para. 35.

<sup>33</sup> Body of Principles, *supra* note 6.

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

<sup>35</sup> *Id.* at para. 38.

<sup>36</sup> Body of Principles, *supra* note 6.

## 2. Vietnam has violated Nguyễn Thúy Hạnh'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.”

Nguyễn Thúy Hạnh has been held *incommunicado* for many months since her arrest, and prohibited from meeting with her family. By detaining Ms. Nguyễn *incommunicado* prior to trial, and by prohibiting visits from her 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 Nguyễn Thúy Hạnh'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>37</sup> and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”<sup>38</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>39</sup> The right to be tried without undue delay is reiterated by the Body of Principles,<sup>40</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>41</sup> Further, “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”<sup>42</sup>

More than eight months have elapsed since Nguyễn Thúy Hạnh was arrested. During this entire time, Ms. Nguyễn has been held in custody. Vietnam has never provided any explanation why Ms. Nguyễn's trial necessitated such a delay. The need for trial without undue delay has been exacerbated by the fact that, as mentioned above, Ms. Nguyễn was never given a bail hearing and has been forced to remain in *incommunicado* detention for the entire time. By refusing to provide Ms. Nguyễn a bail hearing, and by

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<sup>37</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>38</sup> *Id.* at para. 35.

<sup>39</sup> *Id.*

<sup>40</sup> Body of Principles, *supra* note 6, at Principle 38.

<sup>41</sup> General Comment No. 32, *supra* note 37, at para. 30.

<sup>42</sup> *Id.* at para 35.

unnecessarily delaying her 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 Nguyễn Thúy Hạnh'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>43</sup> and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”<sup>44</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, Nguyễn Thúy Hạnh has been held *incommunicado* and deprived of her right to 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.

#### **C. 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>45</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>46</sup> Moreover, discrimination based upon one’s status as a human rights defender will be also sufficient for a Category V ruling.<sup>47</sup>

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<sup>43</sup> *Id.* at para 32.

<sup>44</sup> *Id.* at para 34.

<sup>45</sup> Methods of Work, *supra* note 4, at para. 8(e).

<sup>46</sup> *Thirumurugan Gandhi v. India*, United Nations Working Group on Arbitrary Detention, Opinion No. 88/2017, para. 43 (2017). See also *Pham Doan Trang v. Viet Nam*, United Nations Working Group on Arbitrary Detention, Opinion No. 40/2021, para. 90 (2021).

<sup>47</sup> *Nguyễn Năng Tĩnh v. Viet Nam*, United Nations Working Group on Arbitrary Detention, Opinion No. 36/2021, para. 94 (2021).

In the present case, Nguyễn Thúy Hạnh has been identified as a human rights defender by multiple human rights organizations including Front Line Defenders,<sup>48</sup> the 88 Project<sup>49</sup> and Amnesty International.<sup>50</sup> She has been detained and prosecuted because of her political opinions and for her support of other human rights activists and their families. Because Ms. Nguyễn has been detained as a result of her political opinions and her status as a human rights defender, her 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.**

Nguyễn Thúy Hạnh has been detained *incommunicado* now, without counsel, for a period of more than eight months, rendering any remedial action impossible.

**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 Nguyễn Thúy Hạnh to represent her before the Special Procedures of the Human Rights Council.

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<sup>48</sup> *Nguyễn Thúy Hạnh Profile*, FRONT LINE DEFENDERS (April 13, 2021)

<https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-nguyen-thuy-hanh-arrested>

<sup>49</sup> *Nguyễn Thúy Hạnh Profile*, THE 88 PROJECT (June 30, 2021) <https://the88project.org/profile/350/nguyen-thuy-hanh/>.

<sup>50</sup> *Viet Nam: Prominent human rights defender Nguyen Thuy Hanh arrested and charged*, AMNESTY INTERNATIONAL (April 8, 2021) <https://www.amnesty.org/en/latest/news/2021/04/nguyen-thuy-hanh-arrested-and-charged/>.