

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

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HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY

In the matter of

Tran Duc Thach

v.

Government of the Socialist Republic of Viet Nam

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Observations on the Government's Reply

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12 July 2022

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To the United Nations Working Group on Arbitrary Detention:

1- This petition aims to respond to your letter dated 30 June 2022, notifying the response of the Government of Viet Nam to our Petition concerning the arbitrary detention of Mr. Tran Duc Thach, which was filed with the Working Group on 7 June 2021. We appreciate the opportunity provided by the Working Group to respond to Viet Nam's reply before the Working Group's upcoming session.

2- The response from the Government of Viet Nam is only providing general denials to claims made by Mr. Thach in his petition. The arguments made by the government are not any different from stating general information that can be made by any official that has no familiarity with Mr. Thach's case. Apart from this fact, unfortunately, even the general statements by the government do not reflect the situation going on in Vietnam. First, we will address the comments of the Government of Vietnam to the extent of their relation to the exercise of Mr. Tran Duc Thach's fundamental rights. Following that, we will address the government's comments as far as they relate to the violation of Mr. Tran Duc Thach's fair trial rights.

## **I. Mr. Tran Duc Thach's arrest/detention constitutes deprivation of liberty under Category I**

### **A. *Incommunicado***

The Human Rights Committee has determined that *incommunicado* detention inherently violates Article 9(3) of the ICCPR.<sup>1</sup> 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>2</sup>

- In its reply, the Government of Viet Nam states that "during the detention period, Tran Duc Thach have [sic] been fully guaranteed by the detention center of the rights and regimes as prescribed in the Law on enforcement of custody and temporary detention; met relatives for 4 times, had regular medical check-ups and

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<sup>1</sup> See HUMAN RIGHTS COMMITTEE, *General Comment No. 35: Article 9 (Liberty and Security of Person)*, U.N. Doc. CCPR/C/GC/35, (Dec. 16, 2014) at para. 35 (*hereinafter* "General Comment No. 35").

<sup>2</sup> See *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, UN Doc. A/43/49 (*hereinafter* "Body of Principles"), at Principle 15.

been given medicines for treatment (colitis, gout and high blood pressure caused by his old age).”<sup>3</sup>

- We restate that Mr. Tran Duc Thach was held *incommunicado* from his family and lawyer for a period of several months after his arrest. Petitioner was not permitted to see his wife until three months after detention while even a few days of miscommunication between the detainee and his family was prohibited by the Body of Principles.<sup>4</sup> He was not permitted to talk with his attorney until six months after his arrest.<sup>5</sup> Both communication restrictions resulted in *incommunicado* detention, which clearly constitutes a violation of Category 1. The *incommunicado* detention by the government is not justified on any ground and therefore it constitutes violation of Petitioner’s right to communicate with his family and attorney. The government does not address when he was able to see his relatives and his attorney after his arrest, it only states how many times he communicated with them. Therefore, their argument lacks merits and should be disregarded in consideration of *incommunicado* in this case.

### **B. Vague and Overly Broad Domestic Law**

Article 109 (originally article 79) of the 2015 Vietnamese Penal Code defines the crime of “carrying out activities aimed at overthrowing the people’s administration” so vaguely as to make it almost impossible for any individual to reasonably foresee and anticipate what behavior is criminal. No instruction or clarification is provided as to what constitutes “activities.” The Petitioner has no reason to see he could have been detained by basically expressing his thoughts on his Facebook account. Furthermore, the Petitioner’s postings on Facebook are acts which are both unforeseeable as criminal and protected under the ICCPR, the UDHR, and other international norms and standards.

The WGAD found before that Category I violations for criminal charges “might allow an excessively broad interpretation of its provisions due to their vagueness, thus resulting in unjustified and arbitrary criminalization” especially in freedom of expression cases.<sup>6</sup> Here, there is freedom of expression problem considering Mr. Tran Duc Trach is now arrested for his social media posts. Therefore, Article 109 (originally article 79) of the 2015 Vietnamese Penal Code should be considered as vague and broad, and Mr. Tran Duc Thach should be released accordingly.

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<sup>3</sup> Reply of the Government of Viet Nam, p. 2.

<sup>4</sup> See *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, UN Doc. A/43/49 (*hereinafter* “Body of Principles”), at Principle 15.

<sup>5</sup> See *Vietnamese jails pro-democracy journalists for ‘propaganda’*, DEUTSCHE WELLE (Jan. 5, 2021), <https://www.dw.com/en/vietnam-jails-3-journalists-for-state-critical-propaganda/a-56132070>.

<sup>6</sup> *Musallam Mohamed Hamad al-Barak v. Kuwait*, WGAD Opinion No. 20/2017, Adopted Apr. 24, 2017, at 35.

- In its reply, the Government of Viet Nam failed to address this issue as well as other issues in the petition. The WGAD held that before “[a]gainst the detailed allegations of the source that the detention of Wang Wanxing was politically motivated... the Government did not submit any evidence or arguments to the contrary... Since the government failed to adduce convincing arguments or evidence to refute the allegations of the source...” it was found that the detention was arbitrary.<sup>7</sup>
- We reiterate that Mr. Tran Duc Trach could not foresee he would get criminally charged for his social media posting when the statute only punishes “activities”. Therefore, the government violates both Article 15(1) of the ICCPR and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”), both of which guarantee individuals the right to know what the law is and what conduct violates the law.

## II. Mr. Tran Duc Thach’s arrest/detention constitutes deprivation of liberty under Category II

### A. Freedom of Expression and Association

Article 18 of the ICCPR explicitly states that “Everyone shall have the right to freedom of thought... This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”<sup>8</sup> The freedoms of opinion and expression are protected by international instruments and include the freedom to seek, receive, and impart information of all kinds, either orally or in writing. Article 19(2) of the ICCPR provides that “everyone shall have the right to freedom of expression.”<sup>9</sup> Article 19 of the UDHR provides an analogous guarantee of freedom of opinion and expression.<sup>10</sup>

Article 19 of the ICCPR is of special importance for human rights defenders, and international law explicitly recognizes that citizen journalists who report on human rights abuses are to be treated as human rights defenders.<sup>11</sup> The Working Group confirmed the right of human rights defenders “to investigate, gather information regarding and report on human rights violations.”<sup>12</sup> The Human Rights Committee has clarified that Article 19 of the ICCPR “protects all

<sup>7</sup> *Wang Wanxing v. China*, Opinion No. 20/2001, Adopted June 18, 2002, at p. 14-16.

<sup>8</sup> ICCPR at art. 18(1).

<sup>9</sup> ICCPR at art. 19(2).

<sup>10</sup> UDHR at art. 19.

<sup>11</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>12</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).

forms of expression and the means of their dissemination.”<sup>13</sup> This includes “all forms of audio-visual as well as electronic and internet-based modes of expression.”<sup>14</sup>

Rules of International Law protect individuals who express their thoughts and do not have any kind of harmful action. In addition, these are a manifestation of a writer's creative freedom. The WGAD also specifically noted that freedom of expression extends to ideas “that offend or disturb the State or any other sector of population.”<sup>15</sup> The Working Group recognized the necessity to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review.”<sup>16</sup> This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.<sup>17</sup>

- The Government fails to indicate *how* these social media posts incited violence or an overthrow of the Government, or how Mr. Tran Duc Thach activities otherwise disclose any criminal offense. Writing cannot be punished when it is all about giving ideas from the writer’s perspective. The poems and articles belonging to Mr. Thach are only personal views and are consistent with the right to freedom of expression, again, which is protected under Articles 18 and 19 of the ICCPR and Article 25 of the 2013 Constitution of Vietnam.
- The Government of Viet Nam also fails to show how the organization “the Brotherhood do Democracy” associated with terrorists to operate with the aim of overthrowing the people's government and changing the political regime in Viet Nam. Members of the organization are aiming to uphold democracy, fundamental rights of Vietnamese people, and freedom of individuals in Viet Nam. There is no harmful conduct to any individual, let alone “terrorist attack” that was initiated by the members. In short, the argument of the Government that Mr. Tran Duc Thach is being prosecuted for an abuse of his right to freedom of expression by involving terrorist activities – rather than the legitimate exercise of this right – is entirely unfounded.
- Therefore, the Government of Viet Nam’s allegations about “the Brotherhood for Democracy” organization being associated with many anti-Vietnamese terrorists to operate with the aim of overthrowing the people's government and

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<sup>13</sup> See Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/G/34 at para. 12 (Sept. 12, 2011) (*hereinafter* “General Comment No. 34”).

<sup>14</sup> *Id.*

<sup>15</sup> *Changlan v. China*, UN Working Group on Arbitrary Detention, Opinion, 39/2015 (WGAD, Dec. 02, 2015)

<sup>16</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>17</sup> *Bialiatski v. Belarus*, United Nations Working Group on Arbitrary Detention, Opinion No. 39/2012, para. 43, (Nov. 23, 2012).

changing the political regime in Viet Nam has no merits.<sup>18</sup> The government has no clear or convincing evidence that would show Mr. Thach's intent was to "overthrow the people's administration" solely by being a member of "the Brotherhood for Democracy", when the members of the organizations define themselves as human rights activist and showed no terrorist attack or activity in any form. For this reason, the purpose of Mr. Tran Duc Thach's arrest and detention is to punish him for exercising his rights under Article 18 and 19 ICCPR, to silence him during a further period of detention, and to deter others from speaking out against the State.

**B. No restrictions to freedom of expression and association enumerated under articles 19(3) and 22(2) of the ICCPR apply to the prosecution and detention of Petitioner**

Pursuant to Article 19(3) of the ICCPR, freedoms of expression and opinion may be restricted only as necessary for either the respect of the rights and reputations of others or the protection of national security or public order, health, or morals. The Human Rights Committee has emphasized the narrowness of the limitations set forth in Article 19(3) of the ICCPR by noting that "when a State party imposes [a limitation] on the exercise of freedom of expression, [it] may not put in jeopardy the right itself."<sup>19</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 (order public), the protection of public health or morals or the protection of the rights and freedoms of others. Any limitation on the freedoms of expression and association "must meet a strict test of justification."<sup>20</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>21</sup>

In this case, the limitation on Petitioner's freedom of expression and association fails to meet the second requirement; the Government's restrictions on his right to freedom of expression and association was not for a proper purpose. Petitioner's social media reporting did not call

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<sup>18</sup> Reply of the Government of Viet Nam, p. 1.

<sup>19</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. 21 (2010).

<sup>20</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>21</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).

directly or indirectly for violence or could reasonably be considered to threaten national security, public order, public health or morals, or the rights or reputations of others.

- In its reply, the Government of Viet Nam stated that “The right to freedom of expression as enshrined in the Universal Declaration of Human Rights and the ICCPR is not an absolute right and is subject to certain limitations set forth by law (Article 19.3 of ICCPR). There is no provision of international human rights law that allows an individual to use his or her right to freedom of expression to provide false and misleading information with the aim of infringing upon the reputation, legitimate rights and interests of organizations and individuals in the society.”<sup>22</sup>
- The government’s allegations have no merits. In fact, to be able to defeat the comments from Mr. Tran Duc Thach, who criticized corruption and human rights violations in Viet Nam, the government is trying to classify them as a threat to the infringement of reputation and interest of individuals and organizations. However, they fail to explain *how* solely criticizing the government for its illegal conducts would pose a threat to individuals and organizations.
- Furthermore, Mr. Tran Duc Thach’s social media posting did not call directly or indirectly for violence or could reasonably be considered to threaten national security, public order, public health or morals, or the rights or reputations of others. Rather, the Government was merely using the veil of “conducting propaganda” as a pretext to silence criticism, which is not an acceptable purpose under Article 19(3) of the ICCPR.

### **III. Mr. Tran Duc Thach’s arrest/detention constitutes deprivation of liberty under Category III**

#### **A. Right to Habeas Corpus and Right to a Fair Trial**

Whereas the government alleges that the acts of Mr. Thach were reviewed by judicial authorities in two first instance and appellate trials with sufficient evidence; this statement does not reflect the truth. It was determined by the Working Group that they were “called upon to assess, whether or not the international norms and standards have been observed in the criminal procedure”.<sup>23</sup> As it will be explained further in the following paragraphs, Mr. Thach’s right to be judged before a fair court was not honored when neither he nor his counselor could not speak during the trial. Therefore, the verdict of arrest was not pursued within the due process of law.

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<sup>22</sup> Reply of the Government of Viet Nam, p. 3.

<sup>23</sup> *Yang Jianli v. China*, UN Working Group on Arbitrary Detention, Opinion No. 2/2003, Adopted May 5, 2013.

The Government of Viet Nam is hiding behind the sovereignty clause to conceal their illegal conducts to its members. Whereas each country has sovereignty, and the laws of countries should be honored by international agencies, it does not necessarily mean that countries are exempted from obeying the international rules of law. In fact, countries are obliged to honor the International Law concerning human rights while determining their domestic procedural and substantive law. Therefore, the Government of Viet Nam's arguments on sovereignty is neither explanatory nor convincing on the issue at hand considering the detention of Tran Duc Thach is an infringement of domestic AND international law.

Freedom of expression is under protection of Vietnamese Constitutional Law as well as International Law. This fundamental right may be restricted, or the victim may be charged, *only* when it is proven that the limits of freedom of expression or creativity have infringed upon the legitimate rights and interests of others protected by law. Over the two court sessions that determined Mr. Thach's destiny, however, there was no cross-examination of Mr. Thach and the representative of the alleged victims of Mr. Thach's action (the prosecuting party). Clearly, the "damage" could not be determined under these circumstances. Therefore, the detention of Mr. Thach is not legitimate considering there is not enough evidence to show intent to commit the crime.

- As it was stated in their answer to the petition, the Government of Viet Nam believes that "the consideration of an individual's actions should be based on the *nature* of the actions." Completely different from the government's approach to the issue, writing and freedom of expression cannot be classified as inherently threatening to the government's integrity. Therefore, by clearly emphasizing their "focus" on the nature of the acts, the government is in contradiction with its very own argument.<sup>24</sup>

## **B. Right to Family Visit**

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".<sup>25</sup> This right is also protected by the Mandela Rules, notably Rule 43 stating that "[d]isciplinary sanctions or restrictive measures shall not include the prohibition of family contact."<sup>26</sup> Additionally, Rule

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<sup>24</sup> Reply of the Government of Viet Nam, p. 1.

<sup>25</sup> See United Nations General Assembly, Universal Declaration of Human Rights 73, Res 217 A (III), 3rd session, A/RES/217 A (Dec. 10 1948) at art. 4, available at <http://www.un-documents.net/a3r217a.htm>

<sup>26</sup> G.A. Res. 70/175, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (hereinafter "Mandela Rules"), at 17 (Jan. 8, 2016).



58 states that “[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals.”<sup>27</sup>

- As it was stated under Category I violation *incommunicado*, the Government of Viet Nam responded to this issue by solely giving the number of visits. There is no mention when the family was able to see Mr. Tran Duc Thach after he was detained. Therefore, it should be determined that the government violated Principle 19, and Rule 43, Rule 58 and Rule 106 by not allowing Mr. Tran Duc Thach’s family to visit him.

### **C. 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>28</sup> and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”<sup>29</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 judgment on appeal.”<sup>30</sup> The right to be tried without undue delay is reiterated by the Body of Principles,<sup>31</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>32</sup> Further, “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”<sup>33</sup>

At first, the trial date for Petitioner was originally scheduled for November 30th but it was cancelled without warning. When Petitioner’s family arrived at court on November 30th, they were told that the trial was rescheduled due to the Petitioner “not being fit to stand trial”.

- In its reply, the Government of Viet Nam states that “The trial for Tran Duc Thach was held in accordance with the order and procedures specified in the

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<sup>27</sup> Mandela Rules, at 20.

<sup>28</sup> See HUMAN RIGHTS COMMITTEE, *General Comment No. 32: Article 14 (Right to Equality Before Courts and Tribunals and to Fair Trial)*, U.N. Doc. CCPR/C/GC/32, para. 27 (Aug. 23, 2007) (*hereinafter* “General Comment No. 32”).

<sup>29</sup> General Comment No. 32, at para. 35.

<sup>30</sup> *Id.*

<sup>31</sup> Body of Principles, *supra* note 21, at Principle 38.

<sup>32</sup> General Comment No. 32, *supra* note 24, at para. 30.

<sup>33</sup> *Id.* at para 35.

Criminal Procedure Code of Viet Nam with a full process of litigation, deliberation and sentencing...”<sup>34</sup>

- However, the response from the government does not give the reasoning behind the reschedule and not notifying the family. Petitioner was never provided any explanation why Petitioner’s trial necessitated such a delay. The need for trial without undue delay was exacerbated by the fact that Petitioner was never given a bail hearing and were forced to remain in detention for the entire time before trial, much of which was *incommunicado*. Therefore, the government violated Article 14(3)(c) of the ICCPR, Principle 38 of the Body of Principles, and Article 31 of the Vietnamese Constitution.

#### **D. 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>35</sup> and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”<sup>36</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 a defense counsel.

- In its reply, the Government of Viet Nam alleges that “Pursuant to Article 74 of the Criminal Procedure Code, in cases where it is necessary to keep the investigation secret for cases infringing upon national security, the competent People's Procuracy has issued a decision to allow defense counsels to participate in proceedings since the end of the investigation period. After finishing the investigation, on 05 November 2020 and 23 March 2021, the Detention Center allowed the defense counsel for Tran Duc Thach to visit him in accordance with the law.”<sup>37</sup>
- The rights of detainees to communicate with the counselor and relatives and to receive visits are fundamental safeguards against human rights violations.

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<sup>34</sup> Reply of the Government of Viet Nam, p. 2.

<sup>35</sup> See HUMAN RIGHTS COMMITTEE, *General Comment No. 32: Article 14 (Right to Equality Before Courts and Tribunals and to Fair Trial)*, U.N. Doc. CCPR/C/GC/32, para. 30 (Aug. 23, 2007) (*hereinafter* “General Comment No. 32”).

<sup>36</sup> *Id.* at para 34.

<sup>37</sup> Reply of the Government of Viet Nam, p. 2.

Therefore, all detainees, regardless of what they are being accused of are to be given all reasonable facilities to communicate with and receive visits from family and friends. Secret investigation does not allow the countries to limit consulting with his counselor. Mr. Tran Duc Thach was not allowed to talk to his attorney during his detention. Restraining communication between client and counselor cannot be justified on any ground in Mr. Tran Duc Thach's case, considering posting on social media would not constitute imminent threat to national security. Therefore, the government violated the Petitioner's right to communicate with counsel.

### **E. Right to a Fair Hearing**

Article 14 of the ICCPR guarantees the right "to a fair and public hearing." This is an "absolute requirement . . . not capable of limitation." One of the key tenets of a fair hearing is the principle that "each side be given the opportunity to contest all the arguments and evidence adduced by the other party."<sup>38</sup> Notably, Article 14(3)(e) of the ICCPR provides that every defendant shall have the right "[t]o examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him." The fair trial guarantees set out in Article 14(3) of ICCPR are the minimum guarantees that *every person* who is accused of a crime is entitled to. Articles 7 and 10 of the UDHR guarantee these same rights. At the three-hour December 15th trial, his counselor Ha Huy Son argued that "he was not allowed to review materials related to his client, that the prosecution violated trial procedures and failed to produce any incriminating evidence or witnesses, and that some of the charges predate Article 109 of the 2015 Criminal Code and therefore should be thrown out".

- In its reply, the Government of Viet Nam alleged that "Tran Duc Thach and his defense counsel were guaranteed to fully exercise their defense rights. The time of the trial depends on the process of clarifying the evidence and the defendant's behaviors in accordance with the law. There is no provision of international law that prescribes the required length of a trial...", "The permission to copy documents in national security cases belonging to the group of top-secret documents should fall under the jurisdiction of the Chief Justice of the High People's Court and the Chief Justice of the Provincial People's Court."<sup>39</sup>
- These arguments, however, are nothing more than general statements, and they have no grounds. First, the fact that the Petitioner and his attorney was not given time for defense clearly constitutes violation of ICCPR, regardless of the length of the trial. The length of the trial, however, is an excellent indication of

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<sup>38</sup> General Comment No. 32, *supra* note 30, at para. 13.

<sup>39</sup> Reply of the Government of Viet Nam, p. 2-3.

the violation when the Petitioner was sentenced to twelve years of imprisonment and three years of probation over a three-hour court session. It is clearly shown that his guilt had been determined prior to the hearing, thus denying him the right to the presumption of innocence guaranteed under Article 14(2) of the ICCPR.

- Second, the government relies on the discretion of the state about *copying* documents in national security cases. However, there is no evidence if they allowed the Petitioner's attorney to *review* documents before his trial. Therefore, the government failed to prove that they honor the Petitioner's right to a fair hearing.
- Third, Mr. Duc Thach's counselor was not given chance to testify or produce any incriminating evidence or witnesses during Mr. Tran Duc Thach's trial. The failure to conduct cross-examination to clarify the damage between the offender and the representative of the "victims" not only provided no grounds to determine the offense, but also led to a complete lack of objectivity. Besides, this seriously violated the current criminal procedures code. The government, as for the other violations against Mr. Tran Duc Thach, failed to address and present any evidence on this issue in its response. The Government of Viet Nam's response does not include any kind of convincing and clear evidence aside from general statements to show that Mr. Tran Duc Thach's right to a fair trial was upheld.