

PETITION TO:
UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Mr Sètondji Roland Adjovi (Benin)
Mr José Guevara (Mexico)
Mr Seong-Phil Hong (Republic of Korea)
Mr Vladimir Tochilovsky (Ukraine)
Ms Leigh Toomey (Australia)

HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY

in the matter of

NGÔ HÀO
(the “Petitioner”)

v.

Government of the Socialist Republic of VIET NAM

Petition for Relief Pursuant to Commission on Human Rights Resolutions 1997/50, 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/1

Submitted by:

Media Legal Defence Initiative
The Foundry
17 Oval Way
London
SE11 5RR
United Kingdom

This Petition was prepared by students participating in the Freedom of Expression Law Clinic at the University of Edinburgh, Faculty of Law, with the Media Legal Defence Initiative, and supervised by barrister Smita Shah and advocate Ailsa Carmichael QC.

EXECUTIVE SUMMARY

This Petition requests that the United Nations Working Group on Arbitrary Detention (“the Working Group”) render an Opinion that the arrest and detention of the Petitioner Mr Ngô Hào amounts to Categories II and III arbitrary detention.

The Petitioner is a Vietnamese citizen, blogger and human rights defender. He was arrested on 8 February 2013 and charged with taking actions “aimed at overthrowing the people’s administration” pursuant to Article 79 of the Viet Nam Penal Code (“VP Code”). He alleges that he was subsequently tortured by State authorities in order to extract a confession. At trial, the Petitioner was denied a lawyer of his choosing, as well as adequate time and facilities to prepare and submit a defence. He was recently transferred to a prison over 300km from his family home.

The Petitioner submits that the charges were brought against him as punishment for his online activities as a human rights blogger and involvement with a number of civil society and pro-democracy organisations. These activities amounted to a lawful exercise of *inter alia* his right to freedom of opinion and expression as guaranteed by Article 19 of the International Covenant of Civil and Political Rights (the “ICCPR”) and reflected in the Universal Declaration on Human Rights (the “UDHR”).

It is submitted that the Petitioner has been arrested and detained for lawful exercise of his right to freedom of opinion and expression (Article 19 ICCPR and UDHR), freedom of association (Articles 21 and 22 ICCPR and Article 20 UDHR) and the right to take part in the conduct of public affairs (Article 25 ICCPR and Article 21 UDHR). Accordingly, the Petitioner’s arrest and detention amounts to Category II arbitrary detention. The Petitioner’s situation also constitutes Category III arbitrary detention as he was detained following a trial that did not comply with international norms relating to the right to a fair trial (Article 14 ICCPR and Articles 10 and 11 UDHR).

The Petitioner respectfully submits that the Working Group therefore render an Opinion requesting the Vietnamese Government (“Government”) terminate his arbitrary detention and bring the situation into conformity with the relevant principles of international law (ICCPR and UDHR).

BASIS FOR REQUEST

The Petitioner is a citizen of the Socialist Republic of Viet Nam which acceded to the ICCPR on 24 September 1982.¹ Viet Nam is therefore legally bound to ensure and act in compliance with the rights therein. It is also bound by those principles of the UDHR which have acquired the status of customary international law. Its obligations under international law are further described in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“BPPP”).

The Petitioner was arbitrarily arrested and detained while exercising - or in situations connected to the exercise of - his rights to freedom of opinion and expression (Article 19 ICCPR and UDHR), freedom of association (Articles 21 and 22 ICCPR and Article 20 UDHR), and the right to take part in the conduct of public affairs (Article 25 ICCPR and Article 21 UDHR). In addition, the State has not complied with international norms relating to the Petitioner’s right to a fair trial (Article 14 ICCPR and Article 10 and 11 UDHR).

For the reasons stated herein, the Petitioner’s arrest and detention violate the fundamental guarantees enshrined in international law and constitute Category II and Category III arbitrary detention as defined by the Working Group.² He should be released from detention immediately.

The Petitioner hereby requests that the Working Group consider this Petition to be a formal request for an Opinion of the Working Group pursuant to Resolutions 1991/42 and 1997/50 of the Commission on Human Rights, Resolution 15/18 of the Committee on Human Rights and Resolution 24/7 of the Human Rights Council.

¹ United Nations, *Chapter IV Human Rights: 4. International Convention on Civil and Political Rights* (16 December 1966), available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en.

² Office of High Commissioner for Human Rights, *Revised methods of the Working Group*, par. 7, available at http://www.ohchr.org/Documents/Issues/Detention/WGAD_RevisedMethodsofWork.pdf.

II. ARREST

Date of arrest:	8 February 2013
Place of arrest:	Mr Hào was invited to a police station in Tuy Hòa City on 8 February 2013 for questioning. His son arrived at the station an hour later where he was informed of Mr Hào's arrest. An exact time of arrest is unknown.
Forces who carried out the arrest or are believed to have carried it out:	The police of Phú Yên Province, Viet Nam.
Did they show a warrant or other decision by a public authority? (Yes) (No)	Sources state that a warrant was not shown at the time of arrest but was disclosed following his appeal.
Authority who issued the warrant or decision:	Unknown.
Relevant legislation applied (if known):	Mr Hào was charged with taking actions "aimed at overthrowing the people's administration" under Article 79 of the Viet Nam Penal Code 1999.

III. DETENTION

Date of detention:	8 February 2013
Duration of detention (if not known, probable duration):	3 years, 4.5 months at the time of filing this Petition.
Length of sentence:	15 years (includes pre-trial detention from 8 February 2013)
Forces holding the detainee under custody:	Ministry of Public Security, Government of the Socialist Republic of Viet Nam.
First place of detention:	Ward 8, Tuy Hòa city, Phú Yên Province (8 February 2013 to 8 February 2014)
Second place of detention:	A20 Xuân Phước Prison, Dong Xuân district, Phú Yên Province, Viet Nam (8 February 2014 to 9 February 2015)
Third place of detention:	An Diem Prison, Quang Nam Province, Viet Nam (9 February 2015 to present)
Authorities that ordered the detention:	Ministry of Public Security, Government of the Socialist Republic of Viet Nam.

Reasons for the detention imputed by the authorities:	Article 79 of the Viet Nam Penal Code (taking actions “aimed at overthrowing the people’s administration”)
Relevant legislation applied (if known):	Article 79 of the Viet Nam Penal Code 1999.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. Circumstances of the arrest and detention

This section presents an overview of the broader context in which the arrest and detention of the Petitioner took place, introduces his background, and summarises the most relevant facts of his arrest and detention. We respectfully refer the Working Group to the responses to sections I (Identity), II (Arrest), and III (Detention) of the Model Questionnaire on pages 3-5 of this Petition for additional information in this regard.

A.1 The Petitioner was arrested and detained amidst a climate of restrictions on the freedoms of expression, association, and participation in political affairs.

The Constitution of the Socialist Republic of Viet Nam (“the Constitution”) recognises the right to participate in public affairs,⁵ and the rights of freedom of expression, association and peaceful assembly, but only “in accordance with the provisions of the law”.⁶ The revised Constitution also provides various fair trial guarantees⁷ and prohibits arbitrary detention.⁸ Despite their enshrinement within its Constitution and international treaties to which Viet Nam is a signatory, reports from a wide range of reputable sources demonstrate that Viet Nam is perpetrating systematic suppression of these fundamental rights and has imposed significant limitations on their exercise.

Viet Nam is repeatedly condemned by international human rights groups for non-compliance with international standards of freedom of expression. In the Reporters Without Borders World Press Freedom Index 2016, Viet Nam ranks among the ten countries which respect press freedom the least.⁹ Media censorship continues to be imposed by the Vietnamese authorities.¹⁰ Article 1 of the 1999 Media Law requires all Vietnamese media to serve as “the mouthpiece of Party organisations”.¹¹ Open criticism of the State is not

⁵ Art. 53 Constitution of the Socialist Republic of Viet Nam (1992).

⁶ Art. 69 Constitution of the Socialist Republic of Viet Nam (1992) and Art. 25 Constitution of the Socialist Republic of Viet Nam (2013).

⁷ Art. 31 Constitution of the Socialist Republic of Vietnam (2013).

⁸ Art. 20 Constitution of the Socialist Republic of Vietnam (2013).

⁹ Reporters without Borders, *2016 World Press Freedom Index*, available at <https://rsf.org/en/ranking>.

¹⁰ Office of the High Commissioner for Human Rights, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Viet Nam*, Human Rights Council Working Group on the Universal Periodic Review, 18th Sess., UN Doc. No. A/HRC/WG.6/18/VNM/3 (4 November 2013), par. 47-54.

¹¹ Committee to Protect Journalists, *The 2015 list of 10 Most Censored Countries* (2015), <https://cpij.org/2015/04/10-most-censored-countries.php>.

tolerated, often resulting in self-censorship by media.¹² Restrictions on online media are of even greater severity. For instance, Decree No. 72 was passed in 2011 to restrict the anonymity of sources and exclude bloggers from press freedom protections.¹³ Freedom House noted in 2015 that:

“Censorship and monitoring of online content [within Viet Nam] is increasingly common. The Ministry of Information and Communications formed an agency in 2008 to monitor the internet and blogosphere. Internet service providers are legally required to block access to websites that are considered politically unacceptable.”¹⁴

In addition to media and internet laws, provisions of the VP Code have been key to the Government’s suppression of freedom of expression and are routinely deployed to enable the imprisonment of human rights defenders and bloggers.¹⁵ Articles 79 and 88 of the VP Code (criminalising acts of “conducting propaganda” against the State and acts aiming to “overthrow” the State) are frequently invoked to imprison bloggers and activists for peaceful exercise of their right to free expression.¹⁶ Several of these laws have been condemned by human rights organisations for explicitly violating the State’s obligations under international human rights law with respect to freedom of expression.¹⁷ Notwithstanding global criticism, the Government has declined to take any steps to repeal laws criminalising free expression.¹⁸

The Government’s campaign to suppress freedom of expression has worsened in the past few years.¹⁹ NGOs have condemned Viet Nam’s continuing “harass[ment], threatening, criminalis[ation] and arresting of writers, journalists, bloggers, political activists and other human rights defenders for reasons connected to their peaceful activities, including the legitimate

¹² Freedom House, *Freedom of the Press 2015: Vietnam*, available at <https://freedomhouse.org/report/freedom-press/2015/vietnam>.

¹³ Reporters Without Borders, *Vietnam: Targeting bloggers* (10 March 2014), available at <http://12mars.rsf.org/2014-en/2014/03/10/vietnam-targeting-bloggers/>; Human Rights Watch, *World Report 2014: Vietnam*, available at <https://www.hrw.org/world-report/2014/country-chapters/vietnam>.

¹⁴ Freedom House, *Freedom of the Press 2015: Vietnam*, available at <https://freedomhouse.org/report/freedom-press/2015/vietnam>.

¹⁵ Amnesty International, *Annual Report 2015/2016: Vietnam*, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>; Amnesty USA, *What You Need to Know About Vietnam’s Human Rights Record* (24 July 2013), available at <http://blog.amnestyusa.org/americas/what-you-need-to-know-about-vietnams-human-rights-record/>; *Id.*

¹⁶ Amnesty International, *Annual Report 2015/2016: Vietnam*, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>; Freedom House, *Freedom of the Press 2015: Vietnam*, available at <https://freedomhouse.org/report/freedom-press/2015/vietnam>.

¹⁷ Office of the High Commissioner for Human Rights, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Viet Nam*, Human Rights Council Working Group on the Universal Periodic Review, 18th Sess., UN Doc. No. A/HRC/WG.6/18/VNM/3 (4 November 2013), par. 48, 53 and 54.

¹⁸ Human Rights Watch, *World Report 2016: Vietnam*, available at <https://www.hrw.org/world-report/2016/country-chapters/vietnam>.

¹⁹ Freedom House, *Freedom in the World 2015: Vietnam*, <https://freedomhouse.org/report/freedom-world/2015/vietnam>; Human Rights Watch, *World Report 2014: Vietnam*, <https://www.hrw.org/world-report/2014/country-chapters/vietnam>; Committee to Protect Journalists, *Blogger sentenced amid clampdown in Vietnam* (31 March 2016), <https://cpj.org/2016/03/blogger-sentenced-amid-clampdown-in-vietnam.php>.

exercise of their freedom of expression rights”.²⁰ The United Nations High Commissioner for Human Rights has similarly denounced the increasing trend of restricting freedom of expression through the conviction and harsh sentencing of journalists and bloggers within Viet Nam, especially “those who use the Internet to voice their criticisms”.²¹ Despite international pressure, Reporters Without Borders notes that Viet Nam remains one of the largest prisons for journalists and citizen journalists in the world.²²

A.2 Viet Nam has a documented history of failing to observe international human rights norms in cases where individuals have sought to exercise the freedoms of expression, association and participation in political affairs.

In addition to its suppression of freedom of expression, Viet Nam has faced widespread criticism for its failure to uphold due process and basic fair trial guarantees. In 2013, the Human Rights Council reported that, despite sustained criticism from various international bodies,²³ the Vietnamese judiciary continues to lack independence and impartiality by virtue of its allegiances to the Government and the Communist Party.²⁴ Similarly, in 2014, Human Rights Watch reported that:

“Where the Party or Government has an interest in the outcome of a case, they - not the facts and the law - dictate the outcome. Trials are often marred by procedural and other irregularities that go along with achieving a politically pre-determined outcome.”²⁵

²⁰ Office of the High Commissioner for Human Rights, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Viet Nam*, Human Rights Council Working Group on the Universal Periodic Review, 18th Sess., UN Doc. No. A/HRC/WG.6/18/VNM/3 (4 November 2013), par. 52; See also Amnesty International, *Annual Report 2015/2016: Vietnam*, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/vietnam/report-viet-nam/>; Amnesty USA, *What You Need to Know About Vietnam’s Human Rights Record* (24 July 2013), available at <http://blog.amnestyusa.org/americas/what-you-need-to-know-about-vietnams-human-rights-record>.

²¹ Office of the High Commissioner for Human Rights Council: Working Group on the Universal Periodic Review, *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Viet Nam*, Human Rights Council Working Group on the Universal Periodic Review, UN Doc. No. A/HRC/WG.6/18/VNM/2 (7 November 2013), par. 56.

²² Reporters Without Borders, *John Kerry must “raise the crucial issue of freedom of information” in Vietnam* (7 August 2015), available at <http://rsf.org/en/news/john-kerry-must-raise-crucial-issue-freedom-information-vietnam>; Reporters Without Borders, *Well-known blogger freed but 15 other citizen-journalists still held* (22 September 2015), available at http://en.rsf.org/vietnam-well-known-blogger-freed-but-15-22-09-2015_48380.html.

²³ Human Rights Watch, *World Report 2013: Vietnam*, available at <https://www.hrw.org/world-report/2013/country-chapters/vietnam>; Office of the High Commissioner for Human Rights Council: Working Group on the Universal Periodic Review, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Viet Nam*, UN Doc. No. A/HRC/WG.6/18/VNM/3 (4 November 2013), par. 32-36; Working Group on the Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Viet Nam*, Human Rights Council, 26th Sess., UN Doc. No. A/HRC/26/6 (2 April 2014), par. 130.

²⁴ Office of the High Commissioner for Human Rights, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Viet Nam*, UN Doc. No. A/HRC/WG.6/18/VNM/3 (4 November 2013), par. 32.

²⁵ Human Rights Watch, *World Report 2014*, p. 400, available at http://www.hrw.org/sites/default/files/wr2014_web_o.pdf.

Indeed, this practice of issuing pre-determined judgments was highlighted in the trial of Tran Huynh Duy Thuc, Nguyen Tien Trung, Le Cong Dinh and Le Thanh Long on 20 January 2010 in which the judiciary deliberated for only 15 minutes before reaching a decision, the reading of which lasted 45 minutes.²⁶

Trials of political and religious activists in particular fail to meet international standards of fairness. The rights to a presumption of innocence, cross-examination of witnesses and access to counsel are routinely denied. Only 9-11 percent of accused persons are legally represented²⁷ and authorities continually use bureaucratic delays to disrupt access to counsel.²⁸ Denial of these fundamental guarantees was demonstrated in the 2014 trial of Hanoi land rights activists, in which the Court declined to hear a defence and refused to summon witnesses who may have given evidence in favour of the accused.²⁹

Furthermore, there have been numerous reports concerning the poor conditions and the ill-treatment of political prisoners within detention centres in Viet Nam.³⁰ Political prisoners are frequently placed in cramped cells and kept in darkness.³¹ Solitary confinement is widespread and is regularly deployed as a means of torture.³² Political prisoners are often provided with inadequate levels of food and water.³³ Many consequently suffer health issues while the requisite medical attention is denied.³⁴ In addition to neglect, police authorities have reportedly engaged in beatings and peculiar forms of maltreatment in order to extract confessions from detainees.³⁵ Prisoners are often transferred around the country, rendering visitation difficult.³⁶

²⁶ Amnesty International, *Silenced Voices: Prisoners of Conscience in Viet Nam* (7 November 2013), par. 3.2, available at <https://www.amnesty.org/en/documents/asa41/007/2013/en/>.

²⁷ Office of the High Commissioner for Human Rights, *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Viet Nam*, Human Rights Council Working Group on the Universal Periodic Review, UN Doc. No. A/HRC/WG.6/18/VNM/2 (7 November 2013), par. 47.

²⁸ US Department of State, *Country Reports on Human Rights Practices for 2013: Vietnam*, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220244>.

²⁹ Human Rights Watch, *World Report 2015: Vietnam*, available at <https://www.hrw.org/world-report/2015/country-chapters/vietnam>.

³⁰ Media Legal Defence Initiative, *Vietnamese Photojournalist Continues Hunger Strike After Four Years Behind Bars* (16 March 2015), available at <https://globalvoices.org/2015/03/16/vietnamese-photojournalist-continues-hunger-strike-after-four-years-behind-bars/>; Human Rights Watch, *World Report 2016: Vietnam*, available at <https://www.hrw.org/world-report/2016/country-chapters/vietnam>.

³¹ PEN Canada, *The Shock of Freedom: Dieu Cay's Life After Prison* (15 January 2015), available at <http://pencanada.ca/news/too-warm-too-bright/>.

³² Radio Free Asia, *Interview: 'The Government Violated the Human Rights of Political Prisoners Severely'* (15 June 2015), available at <http://www.rfa.org/english/news/vietnam/vietnam-tam-06152015140429.html>.

³³ Mr Minh Tam Truong, *Mr Minh Tam Truong (As an Individual) at the Subcommittee on International Human Rights* (28 May 2015), available at <https://openparliament.ca/committees/international-human-rights/41-2/73/minh-tam-truong-1/only/>.

³⁴ Bob Dietz/CPJ Asia Program Coordinator, *Confronting the suffering in Vietnam's prisons* (10 April 2014), available at <https://cpj.org/blog/2014/04/confronting-the-suffering-in-vietnams-prisons.php>.

³⁵ Human Rights Watch, *World Report 2016: Vietnam*, available at <https://www.hrw.org/world-report/2016/country-chapters/vietnam>; Human Rights Watch, *Vietnam: End Thuggish Repression of Activists* (27 January 2016), available at <https://www.hrw.org/news/2016/01/27/vietnam-end-thuggish-repression-activists>.

³⁶ Bob Dietz/CPJ Asia Program Coordinator, *Confronting the suffering in Vietnam's prisons* (10 April 2014), available at <https://cpj.org/blog/2014/04/confronting-the-suffering-in-vietnams-prisons.php>; PEN Canada, *The Shock of Freedom: Dieu Cay's Life After Prison* (15 January 2015), available at <http://pencanada.ca/news/too-warm-too-bright/>.

The suppression of freedom of expression and the deprivation of fair trial guarantees within Viet Nam, as evidenced above, is reflected in a number of declarations made by this Working Group. Recently in Opinion 33/2013,³⁷ the Working Group found the Government of Viet Nam to have engaged in Category III arbitrary detention in relation to its arbitrary arrest and incommunicado detention of Le Quoc Quan, a prominent human rights defender and blogger. The Working Group considered that his detention plausibly resulted from peaceful exercise of his right to freedom of expression and assembly.³⁸ Similarly in Opinion 26/2013,³⁹ the Working Group declared that the treatment of 16 Vietnamese citizens amounted to Categories II, III and V arbitrary detention. The individuals were arrested, detained incommunicado and convicted because of their human rights activism, blogging, journalism, membership of faith-based associations and involvement in opposition groups. Their trials lasted only a few hours. Access to legal counsel was denied or was regarded by the Working Group as insufficient to comply with international fair trial standards.⁴⁰ Significantly, the Working Group has declared arbitrary detention within Viet Nam on no fewer than 23 occasions since 1993.⁴¹

A.3 The Petitioner is a blogger and human rights defender.

The Petitioner has sought to exercise his right to freedom of expression and association through a range of activities. The Petitioner served the South Vietnamese Army before the reunification of Viet Nam in 1975. He was placed in a “re-education camp” due to his support for the American-backed South during the War and subsequently as punishment for his role in establishing the Lien Minh Viet Nam Party (Viet Nam Alliance Party).

Since 2008, the Petitioner has been a blogger and campaigner on a range of matters of public interest within Viet Nam. He has published and disseminated articles on the online blogging platform *Yahoo Groups* in which he has criticised the Government of Viet Nam. Many of his articles relate to human rights issues such as land confiscations and harassment of religious leaders. On 9 February 2012, the Petitioner published a blog post on *Yahoo Groups* discussing the suffering of citizens due to the activities of the Communist Ruling Party:

“The Communist Party of Viet Nam produces propaganda to promote that people have to live and work according to the constitution and the law, but in fact, the Communist Party of Viet Nam do not abide by the law, that is why they can rob 90 million Vietnamese of their assets, pagodas, houses, land, religions, equality rights, freedom rights, freedom of press, freedom of expression, and freedom of religion.”⁴²

³⁷ Working Group on Arbitrary Detention, *Le Quoc Quan v. Viet Nam*, Opinion No. 33/2013, UN Doc. No. A/HRC/WGAD/2013/33 (12 November 2013).

³⁸ *Id.*, par. 29.

³⁹ Working Group on Arbitrary Detention, *Francis Xavier Dang Xuan Dieu, Peter Ho Duc Hoa, John the Baptist Nguyen Van Oai, Anthony Chu Manh Son, Anthony Dau Van Doung, Peter Tran Huu Duc, Paulus Le Van Son, Hung Anh Nong, John the Baptist Van Duyet, Peter Nguyen Xuan Anh, Paul Ho Van Oanh, John Thai Van Dung, Paul Tran Minh Nhat, Mary Ta Phong Tan, Vu Anh Binh Tran and Peter Nguyen Dinh Cuong v. Viet Nam*, Opinion No. 26/2013, UN Doc. No. A/HRC/WGAD/2013/26 (14 January 2014).

⁴⁰ *Id.*, par. 31 and 69.

⁴¹ See: United Nations Working Group on Arbitrary, *Detention Document Search*, available at <http://www.unwgadatabase.org/un/>.

⁴² Annex II.

In addition to blogging, the Petitioner has advocated for the rights of land reform victims, *Dan Oan*, by petitioning *inter alia* the President of Viet Nam.⁴³ He has also conducted advocacy on behalf of imprisoned members of the Hòa Hảo Buddhist tradition,⁴⁴ and the 22 imprisoned members of the Bia Son environmental group.

A.4 The Petitioner was detained without legal justification and in a manner that violates international law.

The Petitioner was detained on the basis of his peaceful and legitimate activities relating to a range of political and social justice issues.⁴⁵ The events leading up to the Petitioner's arrest indicate that his arrest and detention resulted from his online publications and criticism of the Government.⁴⁶

Since 2008, the Petitioner received regular cautions from police authorities warning him against his activities as they were deemed "contrary to the interests of the State".⁴⁷ Subsequently, on 20 December 2012, his home was searched by the police and inspectors of the Department of Information and Communication.⁴⁸ This search was carried out within three days of his posting a blog which was particularly critical of the Communist regime.⁴⁹ It appears that no warrant was provided prior to this search which lasted only 15 minutes.⁵⁰ The search record documents the removal of items from the Petitioner's home and computer which purportedly demonstrate that the Petitioner was "using [the] internet to spread distorted information which infringe[d the interests of] organisations and [citizens]".⁵¹ These included: United States telephone numbers, contact details for Radio Free Asia, a SIM card and micro SD memory stick, communications with a member of Bloc 8406 and Veto! Human Rights Defenders Network, a document calling on international human rights bodies and individuals to advocate the release of imprisoned activist Nguyen Van Lia, and a document relating to a radio program which alleged corruption of the head of Phú Yên police. Items removed from his computer also included a document containing a Saigon flag which was allegedly planted by State authorities during the inspection.⁵² The police also claimed that Mr Hào's old military coats were evidence of his attempts to overthrow the Communist regime.⁵³

On 8 February 2013, the Petitioner was arrested and charged under Article 79 of the VP Code for taking actions "aimed at overthrowing the people's administration".⁵⁴ No arrest warrant was provided to his family at the time of his arrest.⁵⁵ The Petitioner was thereafter held in a detention centre in Tuy Hòa city for 12 months. During a pre-trial visit, Mr Hào told a family

⁴³ Annex III.

⁴⁴ Annex II.

⁴⁵ Radio Free Asia, *Vietnamese Online Activist Ordered Jailed for 15 Years* (11 September 2013), available at <http://www.rfa.org/english/news/vietnam/jailed-09112013161129.html>.

⁴⁶ Annex II.

⁴⁷ Information obtained from Vietnamese sources.

⁴⁸ Annex V.

⁴⁹ Annex II and Annex V.

⁵⁰ Annex V notes 09:00 as the start time of the inspection and 09:15 of the same day as the time of completion of the record.

⁵¹ Annex V.

⁵² Information obtained from Vietnamese sources.

⁵³ *Id.*

⁵⁴ Annex VI.

⁵⁵ Information obtained from Vietnamese sources.

member that he was tortured by the police to extract a confession.⁵⁶ This was allegedly effected through removing his clothes and pouring cold water onto his body continuously.

The Petitioner's trial was held seven months after his arrest, on 11 September 2013, in the People's Court of Phú Yên Province. His family were notified of the trial date only a week in advance and were thus unable to appoint a lawyer. Despite appointment of a State defence lawyer, the Petitioner opted to represent himself due to being prevented from appointing a lawyer of his choice. His family alone were permitted entry into the courthouse which was occupied and surrounded by police to prevent public attendance.⁵⁷ The Petitioner was escorted into the Court by 30 uniformed police and was prevented from addressing the Court throughout the hearing. He was permitted to give only "yes/no" responses to questions and was unable to cross-examine or call witnesses to defend him.

On the same day, the Petitioner was convicted of taking actions "aimed at overthrowing the people's administration" under Article 79 of the VP Code and was sentenced to 15 years in prison with a further five years house arrest. The Petitioner was found guilty, firstly of archiving, writing, spreading and transferring articles which contained distorted information about Viet Nam and which were defamatory of some of its leaders.⁵⁸ Secondly, he was found guilty of calling upon individuals to intervene against the State and to campaign for human rights and democratic reforms.⁵⁹ Finally, he was convicted of being involved with several pro-democracy and civil society groups and organisations, including Bloc 8406, an online coalition of political groups and individuals pushing for democratic reform in Viet Nam.⁶⁰ To this end, the Petitioner's communications with Mr Nguyen Chinh Ket "in order to register [the Petitioner] as [an] official member of the 'Bloc 8406'" was cited as evidence against the Petitioner in the judgment of the People's Court.⁶¹ The judgment of the People's Court itself openly recognised that the Petitioner's offending activities were carried out in "nonviolent form".⁶²

The Petitioner was initially denied a copy of the trial judgment, which was to be used in order to appeal his conviction.⁶³ His family were prohibited from appealing on his behalf on the basis that they were "not related to him".⁶⁴ An appeal was eventually lodged on 23 September 2013.⁶⁵ This was rejected by the Supreme People's Court on 23 December 2013 on the basis that there was sufficient evidence to find the Petitioner guilty of involvement in the alleged acts.⁶⁶

On 8 February 2014, Mr Hào was transferred to Xuân Phước prison where both his physical and mental health rapidly deteriorated due to a lack of access to proper medical treatment

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Annex VIII.

⁵⁹ *Id.*

⁶⁰ *Id.* For information regarding Block 8406, see Radio Free Asia, *Vietnamese Activists Form 'Brotherhood for Democracy'* (8 May 2013), available at <http://www.rfa.org/english/news/vietnam/brotherhood-05082013170834.html>; United Press International, *Vietnam clamps down on democracy activists* (9 October 2009), available at http://www.upi.com/Emerging_Threats/2009/10/09/Vietnam-clamps-down-on-democracy-activists/UPI-48301255093200/.

⁶¹ Annex VIII.

⁶² *Id.*

⁶³ Information obtained from Vietnamese sources.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Annex X.

for his stomach ulcer, paralysis and hearing difficulties, and having been forced to carry out hard labour.⁶⁷ On 9 February 2015, the Petitioner was transferred to An Diem prison, located over 300km from his family home. This transfer has inevitably rendered visitation difficult. During a visit from a family member on 27 May 2016, Ngo Hao disclosed that he had suffered from a stroke and was taken to the prison clinic. His family continue to be concerned about his precarious health.

B. Reasons why the arrest and detention are arbitrary

As noted in the Basis for Request, the arrest and detention of the Petitioner is arbitrary as it falls under both Categories II and III arbitrary detention as articulated by the Working Group. The following section considers the arbitrary nature of the arrest and detention by Category, addressing each in turn. This section also sets out the various ICCPR Articles that Viet Nam has violated as a result of its treatment of the Petitioner. Additionally, this section shows that Viet Nam has breached principles of customary international law reflected in the UDHR. Reference will additionally be made to the BPPP as adopted by the United Nations General Assembly on 9 December 1988. The BPPP is regarded as possessing at least moral force and containing an authoritative interpretation of States' obligations under international law.⁶⁸ The Working Group has identified these principles as a relevant source in determining arbitrariness of detention.⁶⁹ Demonstration of these various violations reflects a failure of the State to fulfil its obligations under international law.

B.1 The detention of the Petitioner constitutes Category II arbitrary detention because his deprivation of liberty results from the exercise of his right to freedom of opinion and expression (Article 19 ICCPR, Article 19 UDHR)

In light of the Petitioner's activities as a human rights blogger and defender, it is submitted that the real purpose of his detention is to punish him for his peaceful exercise of his rights under Article 19 ICCPR and to deter others from similarly exercising their right to freedom of expression. Article 19(2) ICCPR states that everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds and regardless of frontiers or medium adopted to exercise the right.⁷⁰

As demonstrated in Sections A.1 and A.2, the arbitrary arrest and detention of online journalists is widespread within the State of Viet Nam. The events discussed in Section A.4 demonstrate that the Petitioner's situation is yet another example of such arbitrary arrest and detention since the Petitioner's arrest and detention resulted from his online activism and criticism of the Government.⁷¹ The State relied on the Petitioner's history of activism, including the writing and publishing of articles, to secure his conviction for taking actions "aimed at overthrowing the people's administration" under Article 79 of the VP Code. It is

⁶⁷ Information obtained from Vietnamese sources; see also Vietnam Human Rights News, *Ngo Hao The Unjust Prisoner* (11 June 2014), available at <http://vietnamhumanrights.org/ngo-hao-the-unjust-prisoner/>.

⁶⁸ United Nations General Assembly, 43/173. *Body of Principles of All Persons under Any Form of Detention or Imprisonment*, UN Doc. No. A/RES/43/173 (9 December 1988).

⁶⁹ UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 26, The Working Group on Arbitrary Detention* (May 2000), available at <http://www.refworld.org/docid/479477440.html>; Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, UN Doc. No. E/CN.4/1992/20 (21 January 1992).

⁷⁰ Art. 19(2) ICCPR.

⁷¹ Annex II.

submitted that his activities amount to the exercise of his right to freedom of expression which has been unjustifiably interfered with and violated by his arrest, detention, conviction and sentencing.

As emphasised by the Human Rights Committee, the right to freedom of expression under Article 19(2) ICCPR confers particularly high protection on political discourse and debate relating to public institutions,⁷² and “includes the right of individuals to criticise or openly and publicly evaluate their Governments without fear of interference or punishment”.⁷³ The Petitioner’s criticisms of the State therefore amount to an exercise of his right to freedom of expression which is to be afforded particularly high protection under Article 19(2) ICCPR. His arrest, detention, conviction and sentencing on this basis thus constitute a direct restriction on his right to freedom of expression.⁷⁴

Any restriction imposed on freedom of expression must cumulatively satisfy the requirements of Article 19(3) ICCPR. The restriction must be “provided by law”.⁷⁵ It must be undertaken to achieve a specified aim.⁷⁶ Finally, it must be compliant with the “strict tests of necessity and proportionality”.⁷⁷ The present restriction fails to satisfy these for the following reasons and is therefore in violation of Article 19 ICCPR.

The restriction fails to satisfy the requirement that it must be provided by law. For a legislative provision to be characterised as a “law” under Article 19(3) ICCPR, it must be formulated with sufficient precision to enable an individual to regulate his conduct accordingly and it must be made accessible to the public.⁷⁸ Furthermore, the provision cannot confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.⁷⁹ Whilst the Petitioner’s detention has a basis in Article 79 of the VP Code, the legal provision is not formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. It is submitted that Article 79 of the VP Code (which criminalises any action that may be deemed to be “aimed at overthrowing” the government) is excessively vague, thus failing to attain the quality required to be provided by law under Article 19(3) ICCPR. Article 79 of the VP Code has been directly criticised on this basis by NGOs and this Working Group, which condemned the provision as “so vague that it could result in penalties being imposed [...] on persons who have merely exercised their

⁷² Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. No. CCPR/C/GC/34 (12 September 2011), par. 13 and 38; Human Rights Committee, *Mika Miha v. Equatorial Guinea*, Communication No. 414/1990, UN Doc. No. CCPR/C/51/D/414/1990 (28 May 1990); Human Rights Committee, *Bodrozic v. Serbia and Montenegro*, Communication No. 1180/2003, UN Doc. No. CCPR/C/85/D/1180/2003 (11 May 2003).

⁷³ Human Rights Committee, *Marques de Morais v. Angola*, Communication No. 1128/2002, UN Doc. No. CCPR/C/83/D/1128/2002 (5 September 2002), par. 6.7; Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. No. CCPR/C/GC/34 (12 September 2011), par. 34, 37, 38 and 42.

⁷⁴ This accords with the practice of the Human Rights Committee of regarding an individual’s arrest, detention, conviction and sentence as potential restrictions on his or her right to free expression: *e.g.*, Human Rights Committee, *Coleman v. Australia*, Communication No. 1157/2003, UN Doc. No. CCPR/C/87/D/1157/2003 (14 January 2003), par. 7.2.

⁷⁵ Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. No. CCPR/C/GC/34 (12 September 2011), par. 22.

⁷⁶ Art. 19(3) ICCPR.

⁷⁷ Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. No. CCPR/C/GC/34 (12 September 2011), par. 22.

⁷⁸ *Id.*, par. 25; Frank La Rue, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. No. A/HRC/14/23 (20 April 2010), par. 79(d).

⁷⁹ *Id.*

legitimate right to freedom of expression”,⁸⁰ as in the present case. The vague nature of Article 79 of the VP Code also effectively confers unfettered discretion on those responsible for applying the provision. It is therefore evident that the restriction fails to satisfy the first requirement under Article 19(3) ICCPR.

Article 19(3) ICCPR further requires that restrictions on freedom of expression be imposed only for the achievement of one of the specified aims stated therein, namely “respect of the rights or reputations of others” or “the protection of national security, [...] public order, [...] or of public health or morals”.⁸¹ It further requires that those restrictions must be necessary and proportionate to achieve these aims and must be the “least intrusive instrument amongst those which might achieve their protective function”.⁸² It is submitted that the arrest, detention, and conviction of the Petitioner does not strive to achieve any legitimate aim.

Even if it were in pursuit of a legitimate aim, the measures adopted are disproportionate. The Human Rights Committee has emphasised that the form of expression is highly relevant in assessing whether a restriction is proportionate.⁸³ In this regard, the Special Rapporteur on the right to freedom of opinion and expression has stated that restrictions on political debate and expressions of dissent are not permissible under the ICCPR.⁸⁴ The Human Rights Committee has further asserted that the penalisation of a “journalist solely for being critical of the Government or the political social system espoused by the Government can never be considered to be a necessary restriction of freedom of expression.”⁸⁵ As evidenced above, it is precisely by reason of such expressions of dissent that the Petitioner was arrested, detained and sentenced. This restriction may therefore be regarded as disproportionate and unnecessary.

Moreover, the Petitioner has been sentenced to 15 years imprisonment with a further five years house arrest. The imposition of this severe penalty is plainly disproportionate.⁸⁶ This is in accordance with the opinions of both the Human Rights Council and the Special Rapporteur on the right to freedom of opinion and expression who have indicated that the imprisonment and imposition of criminal penalties for offences relating to freedom of

⁸⁰ Working Group on Arbitrary Detention, *Francis Xavier Dang Xuan Dieu, Peter Ho Duc Hoa, John the Baptist Nguyen Van Oai, Anthony Chu Manh Son, Anthony Dau Van Doung, Peter Tran Huu Duc, Paulus Le Van Son, Hung Anh Nong, John the Baptist Van Duyet, Peter Nguyen Xuan Anh, Paul Ho Van Oanh, John Thai Van Dung, Paul Tran Minh Nhat, Mary Ta Phong Tan, Vu Anh Binh Tran and Peter Nguyen Dinh Cuong v. Viet Nam*, Opinion No. 26/2013, UN Doc. No. A/HRC/WGAD/2013/26 (14 January 2014), par. 65; see also Office of the High Commissioner for Human Rights Council, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Viet Nam*, Human Rights Council Working Group on the Universal Periodic Review, 18th Sess., UN Doc. No. A/HRC/WG.6/18/VNM/3 (4 November 2013), par. 6.

⁸¹ Art. 19(3) ICCPR.

⁸² Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. No. CCPR/C/GC/34 (12 September 2011), par. 34; Frank La Rue, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. No. A/HRC/14/23 (20 April 2010), par. 79(g)(iv).

⁸³ Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. No. CCPR/C/GC/34 (12 September 2011), par. 34.

⁸⁴ Frank La Rue, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. No. A/HRC/14/23 (20 April 2010), par. 81(i).

⁸⁵ Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. No. CCPR/C/GC/34 (12 September 2011), par. 42.

⁸⁶ Human Rights Committee, *Marques de Morais v. Angola*, Communication No. 1128/2002, UN Doc. No. CCPR/C/83/D/1128/2002 (5 September 2002), par. 6.8.

expression by members of the media should be avoided.⁸⁷ In a previous case involving political activists in Viet Nam, this Working Group held that “[i]n the absence of any information as to any violence involved in the [Petitioner’s] activities”, Article 79 of the VP Code “cannot be regarded as consistent with the relevant provisions of the UDHR and the ICCPR”.⁸⁸ The Viet Nam courts themselves conceded that the Petitioner’s impugned activities were of a non-violent nature.⁸⁹ Furthermore, the Viet Nam courts explicitly stated in their judgments that the Petitioner was penalised for having *inter alia* defamed the leaders of Viet Nam.⁹⁰ The Human Rights Committee has stated that imprisonment is never an appropriate remedy in defamation cases.⁹¹

The Petitioner’s arrest, detention, conviction and sentence thus fail to satisfy the requirements of Article 19(3) ICCPR and are in violation of the right to free expression. It is therefore submitted that Viet Nam has arrested and detained the Petitioner for exercising his Article 19 ICCPR rights, amounting to Category II arbitrary detention.

B.2 The detention of the Petitioner constitutes Category II arbitrary detention because his deprivation of liberty results from the exercise of his right to freedom of association (Article 22 ICCPR, Article 20 UDHR)

It is submitted that the Petitioner was detained for exercising his right to freedom of association with others under Article 22 ICCPR. The Petitioner was arrested, detained and sentenced pursuant to Article 79 of the VP Code as punishment for his association with civil society and pro-democracy organisations. For instance, “evidence” of his connections with peaceful organisations such as Bloc 8406 and the Government of Republic of Viet Nam in Exile were key reasons for his conviction.⁹² Such “evidence” included a request from Mr Nguyen Chinh Ket for the Petitioner’s details “in order to register [him] as the official member of the ‘Bloc 8406’”.⁹³ These facts demonstrate that the Petitioner’s detention was a restriction on his right to freedom of association with others. The arrest of the Petitioner on this basis fits into an ongoing pattern of arbitrarily detaining associates of opposition groups within Viet Nam.⁹⁴

⁸⁷ Human Rights Council, *Resolution on Freedom of opinion and expression*, UN Doc. No. A/HRC/RES/12/16 (12 October 2009), par. 5(j), where States are called to “refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence”; Frank La Rue, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. No. A/HRC/20/17 (4 June 2012), par. 79, where use of criminal laws against journalists and media members is criticised; Human Rights Committee, *Marques de Morais v. Angola*, Communication No. 1128/2002, UN Doc. No. CCPR/C/83/D/1128/2002 (5 September 2002).

⁸⁸ Working Group on Arbitrary Detention, *Le Cong Dinh, Tran Huynh Duy Thuc, Nguyen Tien Trung and Le Thang Long v. Viet Nam*, Opinion No. 27/2012, UN Doc. No. A/HRC/WGAD/2012/27 (23 November 2012), par. 41.

⁸⁹ Annex VIII.

⁹⁰ *Id.* and Annex X.

⁹¹ Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. No. CCPR/C/GC/34 (12 September 2011), par. 47.

⁹² Annex VIII and Annex X.

⁹³ Annex VIII.

⁹⁴ Working Group on Arbitrary Detention, *Le Quoc Quan v. Viet Nam*, Opinion No. 33/2013, UN Doc. No. A/HRC/WGAD/2013/33 (12 November 2013); Working Group on Arbitrary Detention, *Francis Xavier Dang Xuan Dieu, Peter Ho Duc Hoa, John the Baptist Nguyen Van Oai, Anthony Chu Manh Son, Anthony Dau Van Doung, Peter Tran Huu Duc, Paulus Le Van Son, Hung Anh Nong, John the Baptist Van Duyet, Peter Nguyen Xuan Anh, Paul Ho Van Oanh, John Thai Van Dung, Paul Tran Minh Nhat, Mary Ta Phong Tan, Vu Anh Binh Tran and Peter Nguyen Dinh Cuong v. Viet Nam*, Opinion No. 26/2013, UN Doc. No. A/HRC/WGAD/2013/26 (14 January 2014); Working Group on Arbitrary

According to Article 22 ICCPR, restrictions on the right to freedom of association must be “prescribed by law” and “necessary [...] 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.”⁹⁵ As asserted in Section B.1 above, the Petitioner was arrested, detained and sentenced pursuant to Article 79 of the VP Code, a provision which lacks the precision required for it to be characterised as “law”.⁹⁶ Article 79 of the VP Code also gives unfettered discretion to those responsible for executing it.⁹⁷ Accordingly, the restriction on the Petitioner’s right to freedom of association cannot be deemed to be “prescribed by law” under Article 22 ICCPR.

Furthermore, the restriction does not pursue a specified legitimate aim. Even if the restriction were to be deemed to pursue a specified legitimate aim, it is contended that the peaceful and non-violent nature of the Petitioner’s activities renders his arrest, detention and sentence a disproportionate restriction on his right to freedom of association.⁹⁸ Indeed, this Working Group has affirmed that the arrest and detention of Vietnamese citizens due to their involvement with pro-democracy groups, such as Bloc 8406, amounts to Category II arbitrary detention in the absence of violence.⁹⁹ As discussed in Section A.4, the judgement of the People’s Court openly recognises that his offending activities were carried out in “nonviolent form”.¹⁰⁰

The Petitioner’s arrest and detention therefore amounts to Category II arbitrary detention in accordance with the Working Group’s definition and prior Opinions.

B.3 The detention of the Petitioner constitutes Category II arbitrary detention because his deprivation of liberty results from the exercise of his right to take part in the conduct of public affairs (Article 25 ICCPR, Article 21 UDHR)

It is submitted that the Petitioner has been arrested and detained for exercising his freedom to take part in the conduct of public affairs guaranteed by Article 25 ICCPR and Article 21 UDHR. His arrest and detention resulted from his expression of his political opinions, his participation in activities relating to a range of political and social justice issues, and his active involvement in civil society. These are activities encompassed by his right to take part in the conduct of public affairs.

Detention, *Le Cong Dinh, Tran Huynh Duy Thuc, Nguyen Tien Trung and Le Thang Long v. Viet Nam*, Opinion No. 27/2012, UN Doc. No. A/HRC/WGAD/2012/27 (23 November 2012); Working Group on Arbitrary Detention, *Nguyen Hoang Quoc Hung v. Viet Nam*, Opinion No. 42/2012, UN Doc. No. A/HRC/WGAD/2012/42 (20 February 2013).

⁹⁵ Art. 22 ICCPR.

⁹⁶ See Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. No. CCPR/C/GC/34 (12 September 2011), par. 24.

⁹⁷ *Id.*; See also Human Rights Committee, *General Comment 27, Freedom of movement (Art.12)*, UN Doc CCPR/C/21/Rev.1/Add.9 (18 October 1999), par. 13.

⁹⁸ See also Art. 2(1) ICCPR; See also Human Rights Committee, *General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13 (29 March 2004), par. 6.

⁹⁹ Working Group on Arbitrary Detention, *Nguyen Hoang Quoc Hung v. Viet Nam*, Opinion No. 42/2012, UN Doc. No. A/HRC/WGAD/2012/42 (20 February 2013), par. 27, 28 and 15, where the Petitioner in this case was admittedly a member of Bloc 8406; Working Group on Arbitrary Detention, *Le Cong Dinh, Tran Huynh Duy Thuc, Nguyen Tien Trung and Le Thang Long v. Viet Nam*, Opinion No. 27/2012, UN Doc. No. A/HRC/WGAD/2012/27 (23 November 2012), par. 41.

¹⁰⁰ Annex VIII.

Article 25 ICCPR and Article 21 UDHR guarantee the freedom of each citizen to take part in the conduct of public affairs. The Human Rights Committee has stated that in order for citizens to fully enjoy the rights under Article 25, there must be “free communication of information and ideas about public and political issues between citizens” and “a free press and other media able to comment on public issues without censorship or restraint”.¹⁰¹ Furthermore, the Human Rights Committee has recognised that “[t]he 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”.¹⁰² Citizens must be able to exercise the freedom guaranteed by Article 25 ICCPR without distinction on any basis, including political or other opinion,¹⁰³ and only objective and reasonable restrictions to this freedom are permissible.¹⁰⁴

In the present case, the Vietnamese authorities have targeted the Petitioner due to his communication of political opinions on matters of public interest and which were critical of the Viet Nam Government. Furthermore, the Petitioner has also been targeted for his association with civil society and pro-democracy organisations, such as Bloc 8406, that advocate for political reform in Viet Nam.

By arresting and detaining the Petitioner, the authorities have violated the internationally protected guarantees under Article 25 ICCPR and 21 UDHR. Therefore, the Petitioner’s detention results from the exercise of the rights guaranteed in Article 25 ICCPR and 21 UDHR, thus constituting Category II arbitrary detention.

B.4 The detention of the Petitioner constitutes Category III arbitrary detention because it violates his right to fair trial guarantees (Article 14 ICCPR, Articles 10 and 11 UDHR, BPPP 18). The conditions of his detention also violates his right to communicate with the outside world, particularly with his family (BPPP 15, 19 and 20).

It is submitted that the Petitioner was detained following a trial during which he did not enjoy the right to a fair and public hearing as guaranteed under Article 14 ICCPR, and the principles set out in Articles 10 and 11 UDHR. Article 14 ICCPR sets out the minimum obligations that must be met in order to ensure a fair and public hearing. These include the right (1) to be tried by a competent, independent and impartial tribunal; (2) to the presumption of innocence; (3) to be informed of the charges against him promptly; (4) to communicate with his lawyers promptly; (5) to have adequate time and facilities to prepare his defence; (6) to examine witnesses against him and summon witnesses of his own; (7) to not be compelled to confess guilt and (8) to be tried without undue delay.¹⁰⁵ Viet Nam has failed to meet these minimum obligations in the following respects.

¹⁰¹ Human Rights Committee, *CCPR General Comment No. 25, Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights, and the Right of Equal Access to Public Service*, UN Doc. No. CCPR/C/21/Rev.1/Add.7 (12 July 1996), par. 25, available at <http://www.refworld.org/docid/453883fc22.html>.

¹⁰² *Id.*, par. 26.

¹⁰³ Art. 2 and 14 ICCPR.

¹⁰⁴ Human Rights Committee, *CCPR General Comment No. 25, Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights, and the Right of Equal Access to Public Service*, UN Doc. No. CCPR/C/21/Rev.1/Add.7 (12 July 1996), par. 4, available at <http://www.refworld.org/docid/453883fc22.html>.

¹⁰⁵ Art. 14 ICCPR.

First, Article 14(1) ICCPR recognises that “[t]he publicity of hearings ensures the transparency of the proceedings and thus provides an important safeguard for the interests of the individual and society at large”.¹⁰⁶ Aside from certain “exceptional circumstances, a hearing must be open to the general public”.¹⁰⁷ As noted in Section A.4, the public were denied access to both his trial and appeal. His family alone were permitted entry and the courthouse was surrounded by police to prevent public attendance. Therefore, the Petitioner’s Article 14(1) ICCPR right to a public trial was not realised as the hearing was not open to the general public. The exclusion of the public from a hearing is only justifiable where there are concerns about national security, public morals, public order, privacy or “where publicity would be prejudicial to the interests of justice”.¹⁰⁸ The Petitioner’s case does not fall within any of these exceptions. The information presented during the trial would not have posed any concerns for national security, public morals, public order or privacy. Nor would publicity have been prejudicial to the Petitioner.

Secondly, in order for a hearing to be considered impartial, judges must not “act in ways that improperly promote the interests of one of the parties to the detriment of the other” and the proceedings should “appear to a reasonable observer to be impartial”.¹⁰⁹ Throughout the hearing, the Petitioner was denied the opportunity to address the Court or fully respond to questions. He was also prevented from cross-examining witnesses against him and from calling witnesses to his defence. These restrictions could not have appeared impartial to a reasonable observer and amount to a violation of the Petitioner’s right to an impartial hearing under Article 14(1) ICCPR and Article 10 UDHR.

Thirdly, Article 14(2) ICCPR and Article 11(1) UDHR entitle the Petitioner to the presumption of innocence. The Human Rights Committee has clarified that “[i]t is a duty for all public authorities to refrain from prejudging the outcome of a trial.”¹¹⁰ The trial judge allegedly took only 45 minutes to deliberate before convicting and sentencing the Petitioner to 15 years imprisonment with a further five years house arrest.¹¹¹ These facts indicate that the Petitioner’s guilt had been determined prior to the hearing. It is therefore submitted that his treatment amounts to Category III arbitrary detention due to violation of the rights guaranteed under Article 14 ICCPR and the principles recognised by Article 11 UDHR.

In addition, Article 14(3) ICCPR requires accused persons be afforded certain procedural guarantees to secure the right to a fair trial which are similarly reflected in Article 11 UDHR. Article 14(3) ICCPR guarantees *inter alia* that the Petitioner has a right “to be informed promptly [...] of the charge against him,”¹¹² to have “adequate time and facilities for the

¹⁰⁶ Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc. No. CCPR/C/GC/32 (23 August 2003), par. 28.

¹⁰⁷ *Id.*, par. 29.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*, par. 21.

¹¹⁰ *Id.*, par. 30.

¹¹¹ Information obtained from Vietnamese sources. Inordinately short trials have been deemed insufficient to reach international standards in the past by the Working Group on Arbitrary Detention: see Working Group on Arbitrary Detention, *Francis Xavier Dang Xuan Dieu, Peter Ho Duc Hoa, John the Baptist Nguyen Van Oai, Anthony Chu Manh Son, Anthony Dau Van Doung, Peter Tran Huu Duc, Paulus Le Van Son, Hung Anh Nong, John the Baptist Van Duyet, Peter Nguyen Xuan Anh, Paul Ho Van Oanh, John Thai Van Dung, Paul Tran Minh Nhat, Mary Ta Phong Tan, Vu Anh Binh Tran and Peter Nguyen Dinh Cuong v. Viet Nam*, Opinion No. 26/2013, A/HRC/WGAD/2013/26 (14 January 2014), par. 69.

¹¹² Art. 14(3)(a).

preparation of his defence and to communicate with counsel of his own choosing”.¹¹³ BPPP 18 also requires that a detained person “be allowed adequate time and facilities for consultations with his legal counsel”. The right to access to counsel without undue delay is also recognised by Article 7 of the Basic Principles on the Role of Lawyers.

As discussed in Section A.4 above, no arrest warrant was provided to the Petitioner’s family at the time of his arrest.¹¹⁴ This violates the Petitioner’s right to be informed of the charges against him. Furthermore, his family were notified of the trial date only a week in advance. This extraordinarily short notification period prevented the Petitioner from appointing a lawyer of his own choosing and denied him adequate time to prepare his defence. Adequate facilities include access to “all materials that the prosecution plans to offer in court against the accused”.¹¹⁵ Since an arrest warrant was not provided at the time of arrest, the Petitioner did not possess adequate information to begin preparing his defence.

Article 14(3)(e) ICCPR affords the Petitioner the right to examine “the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him”.¹¹⁶ Throughout the hearing, the Petitioner was prevented from cross-examining and summoning witnesses. He was not permitted to address the Court and was allowed to give only “yes/no” responses. This is a further violation of the Petitioner’s right to prepare and present his defence under Article 14(3) ICCPR.

The Petitioner’s procedural rights were also violated by confessional evidence used against him that was allegedly extracted through ill-treatment by the police.¹¹⁷ Article 14(3)(g) ICCPR provides that no one should “be compelled to testify against himself or to confess guilt”.¹¹⁸ The Human Rights Committee has stated that a State’s domestic law must ensure that such confessions “are excluded from the evidence” and “the burden is on the State to prove that statements made by the accused have been given of their own free will”.¹¹⁹ As noted in Section A.4, the Petitioner alleges that he confessed only after the police removed his clothes and poured cold water onto his body continuously. This treatment is a direct violation of Article 7 ICCPR which states that no one shall be subjected to torture or cruel, inhuman or degrading treatment and the use of these confessions in the Petitioner’s hearing violates his rights under Article 14(3)(g) ICCPR.

Finally, the Petitioner’s pre-trial detention violates his right under Article 14(3)(c) ICCPR to a trial “without undue delay”.¹²⁰ The Human Rights Committee has noted that there should not be any undue delays in criminal proceedings, and that expeditiousness is an important aspect of the fairness of a hearing.¹²¹ Moreover, “[i]n cases where the accused are denied bail

¹¹³ Art. 14(3)(b); *See also* Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc. No. CCPR/C/GC/32 (23 August 2007), par. 32.

¹¹⁴ Information obtained from Vietnamese sources.

¹¹⁵ Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc. No. CCPR/C/GC/32 (23 August 2007), par. 33.

¹¹⁶ Art. 14(3)(e).

¹¹⁷ Information obtained from Vietnamese sources.

¹¹⁸ Art. 14(3)(g) ICCPR.

¹¹⁹ Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc. No. CCPR/C/GC/32 (23 August 2003), par. 41.

¹²⁰ Art. 14(3)(c) ICCPR.

¹²¹ Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc. No. CCPR/C/GC/32 (23 August 2003), par. 27.

by the Court, they must be tried as expeditiously as possible”.¹²² The Petitioner was arrested on 8 February 2013 and was held in prison for seven months until his trial on 11 September 2013. This violation of the Petitioner’s right to trial without undue delay further violates his right to a fair trial under Article 14 ICCPR.

In addition to violating his rights under Article 14 ICCPR, the Petitioner’s pre-trial and ongoing detention violate the rights outlined in BPPP 15, 19 and 20. BPPP 19 grants the Petitioner “the right to be visited by and to correspond with, in particular, members of his family”.¹²³ According to BPPP 15, such visitation and communication “shall not be denied for more than a matter of days”.¹²⁴ During his pre-trial detention and for the first 17 months of his post-trial detention, the Petitioner’s family were permitted to visit him monthly. This is a clear violation of BPPP 15.

Furthermore, on 9 February 2015, the Petitioner was transferred to a detention centre 300km away from his home, significantly hindering visitation. BPPP 20 provides that a prisoner “be kept in a place of detention or imprisonment reasonably near his usual place of residence”.¹²⁵ The Petitioner’s right to be visited by his family and to reside near his home have clearly been violated in the present case.

Viet Nam’s failure to observe and comply with international law relating to the right to a fair trial, guaranteed by Article 14 ICCPR and Articles 10 and 11 UDHR, is of such gravity as to give the Petitioner’s deprivation of liberty an arbitrary character.¹²⁶ On this basis, the detention and trial against the petitioner constitutes Category III arbitrary detention.

V. 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 OF THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN

The Petitioner sought to raise a defence during his trial on 11 September 2013 and unsuccessfully appealed his conviction before the Supreme People’s Court. There is no further remedy available in the Vietnamese courts.

VI. REQUESTED ACTION FROM THE WORKING GROUP

For the reasons set out above, the detention of the Petitioner is rendered arbitrary under Categories II and III. The Petitioner therefore requests the Working Group to:

- a) Render an Opinion that the detention of the Petitioner is arbitrary for resulting from the exercise of the rights guaranteed by Article 19 ICCPR and Article 19 UDHR,

¹²² *Id.*, par. 35.

¹²³ BPPP 19.

¹²⁴ BPPP 15.

¹²⁵ BPPP 20.

¹²⁶ Working Group on Arbitrary Detention, *Deliberation No.9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law*, UN Doc. No. A/HRC/22/44 (24 December 2012), par. 38(c).

Article 21 and 22 ICCPR and Article 20 UDHR, and Article 25 ICCPR and Article 21 UDHR and therefore falls within Category II of the categories of arbitrary detention defined by the Working Group;

- b) Render an Opinion that the detention of the Petitioner is arbitrary due to the failure by the Government of Viet Nam to ensure the Petitioner's rights to a fair trial guaranteed by Article 14 ICCPR and by Article 10 and 11 UDHR and therefore falls within Category III of the categories of arbitrary detention defined by the Working Group;
- c) Recommend that the Government releases the Petitioner and withdraws the charges against him, or ensure the charges are determined by an independent and impartial tribunal in proceedings conducted in strict compliance with the provisions of the ICCPR, and provide just compensation to him for the arbitrary detention that he suffered; and
- d) Request that the Government of Viet Nam takes such steps as are necessary to prevent further violations of the Petitioner's freedom of expression and association, as recognised and guaranteed by the ICCPR and UDHR.

VII. FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION

Submitted by:

Media Legal Defence Initiative
The Foundry
17 Oval Way
London
SE11 5RR
United Kingdom

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