

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

**HUU VINH NGUYEN**  
**(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 Media Legal Defence Initiative, and supervised by barrister Smita Shah and advocate Ailsa Carmichael QC.*

## **EXECUTIVE SUMMARY**

The Petitioner requests that the United Nations Working Group on Arbitrary Detention (“Working Group”) render an Opinion that his arrest and detention amounts to arbitrary detention as defined by the Working Group.

The Petitioner is a professional private detective, blogger and human rights defender working within the Socialist Republic of Viet Nam (“Viet Nam”). He aggregates and re-publishes content from various sources on the internet, including articles published by international media and independent journalists and bloggers. These articles typically discuss politically sensitive issues, such as relations between China and Viet Nam. The Petitioner was arrested on 5 May 2014 and held in pre-trial detention for 22 months. His online activity led to him being charged with “[a]busing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organisations and/or citizens” under Article 258 of the Viet Nam Penal Code (“VP Code”).<sup>1</sup> He was convicted and sentenced to five years’ imprisonment on 23 March 2016.

Although Viet Nam has enacted certain constitutional guarantees for its citizens’ freedom of expression, numerous reports illustrate systemic suppression of this right by the Vietnamese Government (“Government”). Viet Nam has a propensity to use broad criminal provisions, including Article 258 of the VP Code, to penalise alleged infringements of State interests. This has the effect of exposing individuals, including the Petitioner, to prosecution for the lawful exercise of the rights conferred upon them by the International Covenant on Civil and Political Rights (“ICCPR”), the United Nations Declaration on Human Rights (“UDHR”), and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“BPPP”).

It is submitted that the Petitioner’s arrest and detention have resulted from the exercise of his right to freedom of expression and opinion as guaranteed by Article 19 of the ICCPR and enshrined in Article 19 of the UDHR. His arrest and detention, therefore, constitute Category II arbitrary detention as defined by the Working Group. The Viet Nam has also not complied with norms relating to the Petitioner’s right to a fair trial and right to liberty and security of person under Articles 9 and 14 ICCPR, Articles 9, 10 and 11 UDHR, and Principles 11, 15, 18, 19, 36 and 38 BPPP. As a result, his detention also constitutes Category III arbitrary detention as defined by the Working Group.

Therefore, the Petitioner respectfully requests that the Working Group render an Opinion requesting that the Government terminate the Petitioner’s arbitrary detention and that they bring their actions as they pertain to the Petitioner into conformity with the principles set forth in the ICCPR, UDHR and BPPP.

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<sup>1</sup> Annex I.

## **BASIS FOR REQUEST**

The Petitioner, Nguyễn Hữu Vinh, is a citizen of the Socialist Republic of Viet Nam, which acceded to the ICCPR on 24 September 1982.<sup>2</sup> Viet Nam is also bound by those principles of the UDHR that have acquired the status of customary international law. Its obligations under international law are further delineated in the BPPP.

Mr Nguyen has been arbitrarily arrested and detained while exercising his right to freedom of opinion and expression (Article 19 ICCPR and Article 19 UDHR). The Petitioner's arbitrary arrest and detention constitutes a violation of his right to liberty and security of person (Article 9 ICCPR and Article 9 UDHR). During his detention and trial at first instance, international norms relating to the right to a fair trial (Article 14 ICCPR and Article 10 and 11 UDHR) had not been observed.

For the reasons discussed below, the Petitioner's arrest, pre-trial detention, and trial violate the fundamental guarantees enshrined in international law and his arrest and detention constitutes Category II and Category III arbitrary detention as defined by the Working Group on Arbitrary Detention. As a result, he should be immediately released from detention.

The Petitioner hereby requests that the United Nations Working Group on Arbitrary Detention 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 and Resolution 15/18 of the Committee on Human Rights.

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<sup>2</sup> United Nations, *Chapter IV Human Rights: 4. International Covenant 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](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en).

## MODEL QUESTIONNAIRE

The persons submitting this Petition have tried to present all information requested in the Model Questionnaire, but limited access to the Petitioner and those personally familiar with his case has made this difficult. It is submitted that this should not affect the final outcome or admissibility of this Petition, consistent with the position of the Working Group in this regard.<sup>3</sup> Unless otherwise indicated, supporters of the Petitioner and other sources have supplied the information to counsel via civil society organisations.<sup>4</sup>

**The Petitioner:** MR HUU VINH NGUYEN

### I. IDENTITY

Family name	Nguyễn
First name	Hữu Vinh
Sex	Male
Birthdate or age (at the time of detention)	15 September 1956
Nationality/Nationalities	Vietnamese
Identity document: a. Issued by b. On (date) c. No.	a. Unknown b. Unknown c. Unknown
Profession and/or Activity	Private Detective; Blogger; Human Rights Defender
Address of usual residence	██

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<sup>3</sup> This Working Group stated in its first report to the Commission on Human Rights, when establishing its methods of work, that “failure to comply with all formalities [regarding the presentation of information about a petitioner and the use of the model questionnaire] shall not directly or indirectly result in the inadmissibility of the communication”. UN Working Group on Arbitrary Detention, *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment: Report of the Working Group on Arbitrary Detention*, Commission on Human Rights, 48<sup>th</sup> Sess., UN Doc. No. E/CN.4/1992/20 (21 January 1992), par. 13.8, available at <http://www2.ohchr.org/english/issues/detention/docs/E-CN4-1992-20.pdf>. Further, Petition No. 29/2006 was accepted (and detention was proven to be arbitrary) based almost entirely on newspaper articles. It was judged that the information was reliable as far as it was possible because it came from “independent and reliable sources” including NGOs. UN Working Group on Arbitrary Detention, *Mr Ibn al-Shaykh al-Libi and 25 other persons v. United States of America*, Opinion No. 29/2006 (8 December 2005), available at [http://unwgadatabase.org/un/Document.aspx?id=2309&terms=\(+29%2f2006+\)](http://unwgadatabase.org/un/Document.aspx?id=2309&terms=(+29%2f2006+)).

<sup>4</sup> Information has been obtained from our sources in Viet Nam. Due to recent attacks on lawyers, human rights supporters, and other sources in Viet Nam, our sources have been anonymised in order to protect their safety and welfare. If the Working Group wishes for these sources to be identified, they may contact us directly. The sources’ identities can be provided as long as they are not made known to Viet Nam.

	[REDACTED]
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## II. ARREST

Date of arrest	5 May 2014
Place of arrest	Room 1508, Building G03, Ciputra, Xuan La Ward, Tay Ho District, Hanoi
Forces who carried out the arrest or are believed to have carried it out	Investigation Security Agency of the Ministry of Public Security
Did they show a warrant or other decision by a public authority?	Yes, a warrant signed by Nguyen Tuan Hung was produced.
Authority who issued the warrant or decision	Unknown
Relevant legislation applied	Article 81 of the Viet Nam Procedural Criminal Code 2003

## III. DETENTION

Date of detention	5 May 2014
Duration of detention	22 months pre-trial, sentenced to 5 years (pre-trial detention has been deducted from this sentence)
Forces holding the detainee under custody	Details unknown
Places of detention	B14 Detention Centre (Hanoi, Viet Nam)
Authorities that ordered the detention	Public Security Agency
Reasons for the detention imputed by the authorities	Breach of Article 258 of the Viet Nam Criminal Code
Relevant legislation applied	Article 81 of the Viet Nam Criminal Procedure Code 2003 Article 258 Viet Nam Penal Code Article 120(1) and (2)(d) Viet Nam Criminal Procedure Code 2003

#### **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 occurred, introduces his background, and summarises the most relevant facts of his arrest and his 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 4-5 of this Petition for additional information in this regard.

##### A.1 The Petitioner was arrested and detained amidst a climate of restrictions on freedom of expression and the arbitrary arrest, detention and prosecution of those who seek to exercise this freedom in Viet Nam.

The Constitution of the Socialist Republic of Viet Nam (“Constitution”) protects the right to freedom of expression. Article 69 of the Constitution makes provision for the rights to freedom of opinion, press, and information, stating that “[t]he citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed”.<sup>5</sup>

However, a multitude of sources discussed below, including UN bodies and prominent human rights organisations, note that the Government has consistently and systematically restricted citizens’ ability to exercise these fundamental rights.

Submissions to the Universal Periodic Review of Viet Nam found that from May 2009 to June 2013 Viet Nam had in fact “severely escalated its systematic campaign to silence all forms of independent dissent in the country”.<sup>6</sup> UN Member States note the Government’s ongoing and methodical use of legislation, specifically the VP Code, to suppress freedom of expression and prosecute bloggers.<sup>7</sup> Amnesty International contends that these harsh sentences for legitimate expression instil fear in bloggers who play a crucial role in facilitating political diversity in Viet Nam, where the media is largely state controlled.<sup>8</sup>

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<sup>5</sup> The Constitution of the Socialist Republic of Viet Nam (2013), English translation available at [http://www.constitutionnet.org/files/tranlation\\_of\\_vietnams\\_new\\_constitution\\_enuk\\_2.pdf](http://www.constitutionnet.org/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf).

<sup>6</sup> CIVICUS-World Alliance for Citizen Participation, *Written statement submitted by CIVICUS-World Alliance for Citizen Participation, a non-governmental organization in general consultative status*, Human Rights Council, 26<sup>th</sup> Session, UN Doc. No. A/HRC/26/NGO/101 (6 June 2014), available at [http://www.ecoi.net/file\\_upload/1930\\_1403102418\\_g1404484.pdf](http://www.ecoi.net/file_upload/1930_1403102418_g1404484.pdf).

<sup>7</sup> Working Group on the Universal Review, *Report of the Working Group on the Universal Periodic Review: Vietnam*, Human Rights Council, 26<sup>th</sup> Session, UN Doc. No. A/HRC/26/6 (2 April 2014), par. 28.

<sup>8</sup> Amnesty International, *Viet Nam: Blogger’s shameful jail sentences aim to stifle free speech* (24 September, 2012), available at <https://www.amnesty.org/en/press-releases/2012/09/viet-nam-bloggers-shameful-jail-sentences-aim-stifle-free-speech/>; see also New York Times, *Harsh Prison Sentences for 3 Vietnamese Bloggers* (25 September 2012), available at [http://rendezvous.blogs.nytimes.com/2012/09/25/harsh-prison-sentences-for-3-vietnamese-bloggers/?\\_r=0](http://rendezvous.blogs.nytimes.com/2012/09/25/harsh-prison-sentences-for-3-vietnamese-bloggers/?_r=0).

Since its first Universal Periodic Review in 2009, Viet Nam “has made no steps to respect [its] pledge” to fully respect the freedom of expression and has only “stepped up legal restrictions [...] both online and off-line and cracked down heavily on journalists, netizens and bloggers”.<sup>9</sup> On 25 February 2011, Viet Nam implemented Media Decree 2/2011/ND-CP “which imposes heavy fines on journalists who violate [...] vague provisions, such as failing to ‘provide honest domestic and international news in accordance with the interests of the country and the people’”.<sup>10</sup> Journalists and bloggers have been subject to arrest, intimidation and sexual assault by State authorities.<sup>11</sup>

The Government utilises Article 258 of the VP Code to prohibit a wide range of alleged “abuses” of the right to freedom of expression. Article 258 of the VP Code is so vague that it can be used against anyone whose actions are not sanctioned by the State. To this end, we respectfully refer the Working Group to Opinion No. 24/2011, reiterating its previous criticism (in Opinion No. 1/2009) that:

“broad criminal law provisions, which make ‘taking advantage of democratic freedoms and rights to abuse the interests of the State’ are inherently inconsistent with any of the rights and liberties guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Viet Nam is a party.”<sup>12</sup>

In 2014, Freedom House called Viet Nam “one of the worst jailers of bloggers in the world”<sup>13</sup> and reported that Article 258 of the VP Code was used “to convict at least 10 rights advocates and arrest 4 bloggers”.<sup>14</sup>

#### A 1.1 Control of the media and repression of independent journalists, bloggers and rights activists

Numerous international organisations have observed that Viet Nam regularly exerts control over the media and represses the speech of journalists, bloggers and activists who are critical of it. Freedom House’s 2015 Report finds that the Government uses the media as a tool to promote State policy and exerts control over the press.<sup>15</sup> Reiterating previous Amnesty International and

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<sup>9</sup> International Federation for Human Rights and Vietnam Committee on Human Rights, *Universal Periodic Review of Vietnam: Submission to the UN Human Rights Council* (17 June 2013), par. 21, available at [https://www.fidh.org/IMG/pdf/joint\\_upr\\_submission\\_on\\_vietnam\\_final\\_version.pdf](https://www.fidh.org/IMG/pdf/joint_upr_submission_on_vietnam_final_version.pdf).

<sup>10</sup> *Id.*, par. 22.

<sup>11</sup> *Id.*, par. 24. Examples include the arrest of journalist Nguyen Van Khuong in January 2012, harassment of blogger Huynh Ngoc Tuan in April 2013 and the humiliating vaginal cavity search of Nguyen Hoang Vi in December 2012.

<sup>12</sup> UN Working Group on Arbitrary Detention, *Cu Huy Ha Vu v. Viet Nam*, Opinion No. 24/2011 (28 February 2011), par. 24, available at [http://unwgadatabase.org/un/Document.aspx?id=2806&terms=\(+Viet+Nam+\)](http://unwgadatabase.org/un/Document.aspx?id=2806&terms=(+Viet+Nam+)).

<sup>13</sup> Freedom House, *Freedom on the Net 2015* (October 2015), p. 928, available at <https://freedomhouse.org/sites/default/files/FOTN%202015%20Full%20Report.pdf>.

<sup>14</sup> *Id.*, p. 935.

<sup>15</sup> Freedom House, *Freedom of The Press 2015: Vietnam*, available at <https://freedomhouse.org/report/freedom-press/2015/vietnam>.

Human Rights Watch reports,<sup>16</sup> UN Member States have expressed concern about the Government's strict control over the media.<sup>17</sup> These reports also state that Viet Nam imposes criminal penalties for the dissemination of materials deemed to "oppose the government, threaten national security, reveal state secrets, or promote 'reactionary' ideas".<sup>18</sup> The fear of criminal penalties has resulted in widespread self-censorship of journalists and bloggers.<sup>19</sup>

The Amnesty International Annual Report and Human Rights Watch World Report for 2015/2016 reiterate serious issues concerning the Government's systematic repression of peaceful political and social activists.<sup>20</sup> Such findings follow a long line of similar reports from previous years.<sup>21</sup>

The 2015 Freedom House Report identifies at least 16 bloggers who were imprisoned in Viet Nam.<sup>22</sup> Amnesty International's Annual Report for 2015/2016 details at least seven currently detained activists.<sup>23</sup> The report contends that vague legislation, including Article 258 of the VP Code, is continuously used to facilitate the Government's crackdown on dissidents and rights activists.<sup>24</sup> Although acknowledging a decrease in arrests throughout 2015/2016, Amnesty International and Human Rights Watch underscore that this is accompanied by an increase in the use of violence and surveillance to harass activists and dissidents, noting that "[d]uring the first nine months of 2015, at least 40 bloggers and rights activists were beaten by plainclothes agents".<sup>25</sup>

Bloggers and online activists are subjected to a range of measures aimed at silencing them. These include forced blog and/or website closure, intimidation, physical assault,<sup>26</sup> house

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<sup>16</sup> Human Rights Watch, *World Report 2012: Vietnam*, available at <https://www.hrw.org/world-report/2012/country-chapters/vietnam>; Human Rights Watch, *World Report 2013: Vietnam*, available at <https://www.hrw.org/world-report/2013/country-chapters/vietnam>.

<sup>17</sup> Working Group on the Universal Review, *Report of the Working Group on the Universal Periodic Review: Vietnam*, Human Rights Council, 26<sup>th</sup> Session, UN Doc. No. A/HRC/26/6 (2 April 2014), par. 40 and 115.

<sup>18</sup> Human Rights Watch, *World Report 2013: Vietnam*, available at <https://www.hrw.org/world-report/2013/country-chapters/vietnam>.

<sup>19</sup> Freedom House, *Freedom of The Press 2015: Vietnam*, available at <https://freedomhouse.org/report/freedom-press/2015/vietnam>.

<sup>20</sup> Amnesty International, *Annual Report: Vietnam 2015/2016*, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>; Human Rights Watch, *World Report 2016: Vietnam*, available at <https://www.hrw.org/world-report/2016/country-chapters/vietnam>.

<sup>21</sup> See, for example, Human Rights Watch, *World Report 2014: Vietnam*, available at <https://www.hrw.org/world-report/2014/country-chapters/vietnam>; Human Rights Watch, *World Report 2013: Vietnam*, available at <http://www.hrw.org/world-report/2013/countrychapters/vietnam>; Amnesty International, *Annual Report 2012: Vietnam*, available at <http://amnesty.org/en/region/vietnam/report-2012>; Human Rights Watch, *World Report 2012: Vietnam*, available at <http://www.hrw.org/world-report-2012/worldreport-2012-vietnam>.

<sup>22</sup> Freedom House, *Freedom of The Press 2015: Vietnam*, available at <https://freedomhouse.org/report/freedom-press/2015/vietnam>.

<sup>23</sup> Amnesty International, *Annual Report: Vietnam 2015/2016*, p. 400, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>

<sup>24</sup> *Id.*, p. 399.

<sup>25</sup> Human Rights Watch, *World Report 2016: Vietnam*, available at <https://www.hrw.org/world-report/2016/country-chapters/vietnam>.

<sup>26</sup> Vietnam Right Now, *Blogger "beaten and arrested" at Nha Trang vigil (27 July 2015)*, available at <http://vietnamrightnow.com/2015/07/blogger-beaten-and-arrested-at-nha-trang-vigil/>; Radio Free Asia,

arrest,<sup>27</sup> prolonged or indefinite detention,<sup>28</sup> denial of right to due process of law, and maltreatment in prisons.<sup>29</sup>

On the basis of the above assertions, the targeted repression of bloggers and journalists in Viet Nam continues, with increased levels of harassment and intimidation of critics by State security forces.

### A 1.2 Suppression of freedom of opinion and expression in online media

Blogging, online journalism, and internet activism are all severely restricted by the Government. The World Press Freedom Index 2016 ranks Viet Nam among the five countries that least respect freedom of the press.<sup>30</sup>

Legislation used to curb journalistic freedoms online includes, but is not limited to:

1. Decree 72/2013,<sup>31</sup> which prohibits the sharing of news articles and other information on social media and requires social networks to provide user information on request for surveillance purposes;
2. Decree 2/2011,<sup>32</sup> which restricts the use of pseudonyms and anonymous sources, decreasing critical journalism and increasing self-censorship; and
3. Decree 97/2008/ND-CP,<sup>33</sup> which obligates blogs to refrain from posting political or social commentary and prohibits them from disseminating press articles, literary works, and other works prohibited by the 1990 Press Law (as amended in 1999).

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*Vietnamese Blogger Harassed, Beaten by Plainclothes Police* (10 December 2014), available at <http://www.rfa.org/english/news/vietnam/harassed-12102014165915.html>; Amnesty International, *Annual Report 2015*, <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>; Human Rights Watch, *Vietnam: Plainclothes Agents Target Rights Campaigners* (25 January 2015), <https://www.hrw.org/news/2015/01/25/vietnam-plainclothes-agents-target-rights-campaigners>.

<sup>27</sup> Radio Free Asia, *Vietnam Puts Dissidents Under House Arrest Amid UN Envoy's Visit* (25 July 2014), available at <http://www.rfa.org/english/news/vietnam/dissidents-07252014175831.html>; Reporters Without Borders, *Third Blogger Arrested in Less Than a Month* (17 June 2013), available at <http://en.rsf.org/vietnam-blogger-and-former-party-official-17-06-2013.44801.html>.

<sup>28</sup> 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>. Of the 15 individuals mentioned in this article, 14 have been held for over one year, and more than half have been detained for over four years; Human Rights Watch, *World Report 2015: Vietnam*, available at <https://www.hrw.org/world-report/2015/country-chapters/vietnam>; Electronic Frontier Foundation, *Human Rights and Free Expression Groups Demand Release of Vietnamese Bloggers* (20 March 2012), available at <https://www.eff.org/ru/deeplinks/2012/03/human-rights-and-free-expression-groups-call-release-vietnamese-bloggers>; Home Office, *Country Information and Guidance: Vietnam Opposition to the Government* (December 2014), available at [http://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389941/CIG.Vietnam.Opposition\\_to\\_the\\_Government.v1.0.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389941/CIG.Vietnam.Opposition_to_the_Government.v1.0.pdf).

<sup>29</sup> Vietnam Committee on Human Rights, *Bloggers and Netizens Behind Bars: Restrictions on Internet Freedom in Vietnam* (January 2013), available at [https://www.fidh.org/IMG/pdf/bloggers\\_report\\_in\\_english.pdf](https://www.fidh.org/IMG/pdf/bloggers_report_in_english.pdf).

<sup>30</sup> Reporters Without Borders, *2016 World Press Freedom Index*, available at <https://rsf.org/en/ranking>.

<sup>31</sup> Mong Palatino, *Decree 72: Vietnam's Confusing Internet Law* (8 August 2013), available at <http://thediplomat.com/2013/08/decree-72-vietnams-confusing-internet-law/>.

<sup>32</sup> Article 19, *Comment: On the Decree No. 02 of 2011 On Administrative Responsibility for Press and Publication Activities of the Prime Minister of the Socialist Republic of Vietnam* (June 2011), available at <http://www.article19.org/data/files/medialibrary/1830/11-06-20-COMM-vietnam.pdf>.

Furthermore, the Vietnamese Ministry of Public Security founded a cyber-police unit, the Bureau of Internal Political Security, to track down the sources of banned online posts and material. The head of the Bureau in Hanoi stated that the main objective of the Bureau of Internal Political Security is “monitoring the content of all forms of internet postings, including press articles, blogs, comment” and “exposing all activities that take advantage of the communications industry to violate the law”.<sup>34</sup>

According to the Viet Nam Committee on Human Rights, at a press conference in May 2010 the Deputy Director of the Ministry of Public Security’s General Department of Security, announced that his department had “destroyed 300 bad internet web pages and individual blogs”.<sup>35</sup>

Since 2010, there have been routine cyber-attacks against websites operated by Vietnamese bloggers inside and outside Viet Nam.<sup>36</sup> In March 2010, Google and computer security firm McAfee discovered malicious software potentially infecting “tens of thousands of [Vietnamese-language] computers”.<sup>37</sup> The malicious software enabled spying on infected computer users and distributed denial-of-service (“DDoS”) attacks against blogs containing messages of political dissent.<sup>38</sup> Officials from Google and McAfee expressed suspicions that the perpetrators in these cyber-attacks had “some allegiance to the government of the Socialist Republic of Viet Nam”.<sup>39</sup>

Accordingly, it is clear that the Government suppresses online expression. Vague laws controlling the internet, violence towards bloggers, and the forced closure of blogs work together to create an environment in which the right to free expression online is compromised.

### A 1.3 Arbitrary detention

Viet Nam's Government regularly suppresses freedom of expression by arbitrarily detaining bloggers, journalists and human rights defenders. Such critical voices are also routinely harassed by the police and subjected to surveillance.<sup>40</sup> The Government often uses vaguely and broadly defined laws to justify imprisonment of those seeking to exercise their right to freedom of expression. In 2013 Amnesty International observed that in Viet Nam “[d]issidents were held

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<sup>33</sup> Decree Number 97/2008/ND-CP (28 August 2008), English Translation available at <https://www.vnnic.vn/en/about/legaldocs/972008nd-cp?lang=en>.

<sup>34</sup> Quoted in Vietnam Committee on Human Rights, *Bloggers and Netizens Behind Bars: Restrictions on Internet Freedom in Vietnam* (January 2013), p. 10, available at [https://www.fidh.org/IMG/pdf/bloggers\\_report\\_in\\_english.pdf](https://www.fidh.org/IMG/pdf/bloggers_report_in_english.pdf).

<sup>35</sup> *Id.*

<sup>36</sup> Human Rights Watch, *Vietnam: Stop Cyber Attacks Against Online Critics* (26 May 2010), available at <https://www.hrw.org/news/2010/05/26/vietnam-stop-cyber-attacks-against-online-critics>.

<sup>37</sup> New York Times, *Google Links Web Attacks to Vietnam Mine Dispute* (31 March 2010), available at [http://www.nytimes.com/2010/04/01/world/asia/01vietnam.html?\\_r=0](http://www.nytimes.com/2010/04/01/world/asia/01vietnam.html?_r=0).

<sup>38</sup> Human Rights Watch, *Vietnam: Stop Cyber Attacks Against Online Critics* (26 May 2010), available at <https://www.hrw.org/news/2010/05/26/vietnam-stop-cyber-attacks-against-online-critics>.

<sup>39</sup> *Id.*; see also New York Times, *Google Links Web Attacks to Vietnam Mine Dispute* (31 March 2010), available at [http://www.nytimes.com/2010/04/01/world/asia/01vietnam.html?\\_r=0](http://www.nytimes.com/2010/04/01/world/asia/01vietnam.html?_r=0).

<sup>40</sup> Human Rights Watch, *World Report 2015: Vietnam*, available at <https://www.hrw.org/world-report/2015/country-chapters/vietnam>.

in lengthy pre-trial detention, often incommunicado and sometimes beyond the period allowed under Vietnamese law”.<sup>41</sup> There are numerous examples of bloggers and campaigners being arbitrarily detained in Viet Nam.

On 24 March 2016, anti-corruption campaigner Dinh Tat Thang was sentenced to seven months and 11 days in prison. On 5 August 2015, Mr Dinh wrote a letter to the Vietnamese Fatherland Front, a pro-government movement. He was arrested 11 days later and charged with “abusing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens” under article 258 of the VP Code.<sup>42</sup> Because Mr Dinh’s conviction resulted directly from his exercise of the freedom of expression, this constitutes a Category II arbitrary detention, as defined by the Working Group.

On 4 March 2014, political blogger Truong Duy Nhat was imprisoned for two years under Article 258 of the VP Code. The court held that his blog, *A Different Point of View*, was critical of the Government and an “abuse of democratic freedoms to infringe upon the interests of the state”. The blogger had been held in pre-trial detention since May 2013.<sup>43</sup> Mr Truong’s conviction, as a result of his blogging activities, also constitutes a Category II arbitrary detention.

On 10 August 2012, another blogger Le Thanh Tung was convicted for blog posts advocating multi-party democracy in Viet Nam and improved human rights, following a one hour trial. He has been sentenced to four years in prison and four years of house arrest.<sup>44</sup> This is yet another example of a Category II arbitrary detention.

On 20 January 2010, blogger and pro-democracy activist Tran Huynh Duy Thuc was sentenced to 16 years in prison under Article 88 of the Viet Nam Criminal Code after he had posted a blog calling for the Government to respect human rights and institute political reform.<sup>45</sup> In August 2012, the UN Working Group on Arbitrary Detention declared his detention to be arbitrary.<sup>46</sup>

The Government uses vague laws to systematically detain individuals who are critical of it. Arbitrary detention has been used to silence such individuals and has resulted in the wider chilling effects of self-censorship and fear of opposing Government views.

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<sup>41</sup> Amnesty International, *Annual Report: Vietnam 2013* (30 May 2013), available at <http://www.amnestyusa.org/research/reports/annual-report-viet-nam-2013>.

<sup>42</sup> Human Rights Watch, *Vietnam: 7 Convicted in One Week* (4 April 2016), available at <https://www.hrw.org/news/2016/04/04/vietnam-7-convicted-one-week>.

<sup>43</sup> Human Rights Watch, *Vietnam: Relentless Prosecutions to Squelch Dissent* (3 March 2014), available at <https://www.hrw.org/news/2014/03/03/vietnam-relentless-prosecutions-squelch-dissent>.

<sup>44</sup> Amnesty International, *Viet Nam: Silenced Voices: Prisoners of Conscience in Viet Nam* (7 November 2013), par. 4.6, available at <https://www.amnesty.org/en/documents/ASA41/007/2013/en/>; Reporters Without Borders, *Another Blogger gets jail term on anti-government propaganda charge* (14 August 2012), available at <https://rsf.org/en/news/another-blogger-gets-jail-term-anti-government-propaganda-charge>.

<sup>45</sup> Amnesty International, *Viet Nam: Silenced Voices: Prisoners of Conscience in Viet Nam* (7 November 2013), par. 4.6, available at <https://www.amnesty.org/en/documents/ASA41/007/2013/en/>.

<sup>46</sup> UN Working Group on Arbitrary Detention, *Le Cong Dinh et al. v. Viet Nam*, Opinion No. 27/2012 (15 March 2012), available at <https://www1.umn.edu/humanrts/wgad/27-2012.html>.

#### A 1.4 Violation of fair trial rights

Human Rights Watch contends that “Vietnamese courts lack the independence and impartiality required by international law”.<sup>47</sup> Article 2(3) of the Vietnamese Constitution says that “State powers are unified and delegated to state bodies, which shall coordinate with and control one another”.<sup>48</sup> Indeed, “ninety percent of appointed judges are Communist Party members and [...] owe responsibilities to the Party [...] [so, o]rdinarily, [these] judicial officers strive to develop the law in line with party leadership”.<sup>49</sup>

This lack of judicial independence is accompanied by other procedural irregularities. Amnesty International has found that there is “no presumption of innocence in practice, [and] no opportunity for suspects to call and examine witnesses”.<sup>50</sup> Such violations of the right to a fair trial allow the Government to use courts as a vehicle to achieve “a politically pre-determined outcome”.<sup>51</sup> This is evidenced by the fact that “trials often last for only a few hours”.<sup>52</sup>

Human Rights Watch observed that “trials of political and religious dissidents [in Viet Nam] consistently failed to meet international fair trial standards”.<sup>53</sup> In its 2015/2016 report, Amnesty International recorded that “45 prisoners of conscience remained imprisoned in harsh conditions after unfair trials”.<sup>54</sup> Bloggers convicted under broad, vague legislation due to the exercise of their freedom of expression have been continuously deprived of their right to a fair trial.<sup>55</sup>

In 2012, blogger and human rights lawyer Le Quoc Quan was arrested on “trumped up charges of tax evasion” following years of harassment and intimidation by Vietnamese officials for criticising the Government for persecuting dissidents.<sup>56</sup> His 9 July 2013 trial date was cancelled

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<sup>47</sup> Human Rights Watch, *World Report 2014: Events of 2013* (2014), p. 400, available at [http://www.hrw.org/sites/default/files/wr2014\\_web\\_0.pdf](http://www.hrw.org/sites/default/files/wr2014_web_0.pdf).

<sup>48</sup> The Constitution of the Socialist Republic of Viet Nam (2013), English translation available at [http://www.constitutionnet.org/files/tranlation\\_of\\_vietnams\\_new\\_constitution\\_enuk\\_2.pdf](http://www.constitutionnet.org/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf).

<sup>49</sup> Penelope (Pip) Nicholson and Nguyen Hung Quang, *The Vietnamese Judiciary: The Politics of Appointment and Promotion* (2005) Vol. 1 No. 1 Pacific Rim Law & Policy, available at <http://hdl.handle.net/1773.1/659>.

<sup>50</sup> Amnesty International, *Viet Nam: 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/>.

<sup>51</sup> Human Rights Watch, *World Report 2014: Events of 2013* (2014), p. 400, available at [http://www.hrw.org/sites/default/files/wr2014\\_web\\_0.pdf](http://www.hrw.org/sites/default/files/wr2014_web_0.pdf).

<sup>52</sup> Amnesty International, *Viet Nam: 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/>.

<sup>53</sup> Human Rights Watch, *World Report 2016: Vietnam*, available at <https://www.hrw.org/world-report/2016/country-chapters/vietnam>.

<sup>54</sup> Amnesty International, *Annual Report: Vietnam 2015/2016*, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>

<sup>55</sup> UK Home Office, *Country Information and Guidance: Vietnam: Opposition to the Government* (December 2014), par. 1.3.4 and 2.2.2, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389941/CIG.Vietnam.Opposition\\_to\\_the\\_Government.v1.0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389941/CIG.Vietnam.Opposition_to_the_Government.v1.0.pdf); US Department of State, *Country Reports on Human Rights Practices 2013: Vietnam* (27 February 2014), par. 1.b, 1c, 1d and 2a, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dldid=220244>.

<sup>56</sup> Human Rights Watch, *Vietnam: Quash Conviction of Le Quoc Quan* (16 February 2014), available at <https://www.hrw.org/news/2014/02/16/vietnam-quash-conviction-le-quoc-quan>.

and postponed for two months, violating Vietnamese domestic law and his ICCPR right to trial without undue delay.<sup>57</sup> This Working Group concluded that the deprivation of liberty of Mr Quan was arbitrary, being in contravention of Articles 9 and 14 ICCPR.<sup>58</sup>

Despite trials being declared public, limitations are put in place as to who may attend. In the case of Le Quoc Quan, only a few foreign diplomats were granted access. Even then, this was through video screening.<sup>59</sup> All family members, except for his wife, were denied access. The International Commission for Jurists reports that “[n]o independent journalists were allowed to enter the courtroom except for a reporter with the police and government media personnel”.<sup>60</sup>

Thus, the Government continues to violate activists’ fair trial rights. Accordingly, Human Rights Watch contends that Viet Nam “consistently failed to meet international fair trial standards”.<sup>61</sup> Such violations of the right to a fair trial deter bloggers and activists who seek to hold the Government to account and have a chilling effect on freedom of expression in Viet Nam.<sup>62</sup>

## A.2 The Petitioner is a professional private detective who also works as a blogger defending human rights

The Petitioner is a prominent Vietnamese human rights defender and blogger.<sup>63</sup> His first blog, *Ba Sam* (“Sidewalk News Agency”), became a key source of independent news coverage in Viet Nam. The Petitioner also advocates peacefully for human rights protections in Viet Nam, especially the rights to freedom of information and freedom of the press.<sup>64</sup>

After finishing his education, the Petitioner worked as a public security official for government agencies, then founded Viet Nam’s first private detective agency, VPI Ltd, in 2000.

In 2007 he established the popular *Ba Sam* site under the pseudonym Anh Ba Sam, aggregating content from various online sources. The site contains articles translated from international media, independent bloggers and journalists who are committed to “ethical codes of accuracy [and] neutrality”.<sup>65</sup> Over 5,615 articles, features and daily news summaries were published

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<sup>57</sup> International Commission For Jurists, *Vietnam: Le Quoc Quan did not receive a fair trial* (2 October 2013), available at <http://www.icj.org/vietnam-le-quoc-quan-did-not-receive-fair-trial/>.

<sup>58</sup> UN Working Group on Arbitrary Detention, *Le Quoc Quan v. Viet Nam*, Opinion No. 33/2013 (25 June 2013), available at [http://www.unwgadatabase.org/un/Document.aspx?id=2946&terms=\(+Le+Quoc+Quan++\)](http://www.unwgadatabase.org/un/Document.aspx?id=2946&terms=(+Le+Quoc+Quan++)).

<sup>59</sup> International Commission For Jurists, *Vietnam: Le Quoc Quan did not receive a fair trial* (2 October 2013), available at <http://www.icj.org/vietnam-le-quoc-quan-did-not-receive-fair-trial/>.

<sup>60</sup> *Id.*

<sup>61</sup> Human Rights Watch, *World Report 2016: Vietnam*, available at <https://www.hrw.org/world-report/2016/country-chapters/vietnam>.

<sup>62</sup> 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. 63; see also 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.

<sup>63</sup> Sources in Viet Nam.

<sup>64</sup> Nguyen Huu Vinh (aka. Anh Ba Sam), *Anh Ba Sam Breaks the Chain of Oppression* (13 November 2014), p. 6, available at <https://anhbasam.files.wordpress.com/2014/11/anh-ba-sam-tieng-viet.pdf>.

<sup>65</sup> *Id.*, p. 21.

between 2007 and 2014.<sup>66</sup> The website grew to be a key source for those in Viet Nam seeking independent coverage of politically sensitive issues, receiving roughly 100,000 daily views.<sup>67</sup>

In September 2012, the Petitioner announced that he would no longer have a role within the *Ba Sam* blog due to the “heated atmosphere” of State pressure.<sup>68</sup> Sources claim that the Government has continuously mobilised hackers against the blog.<sup>69</sup> The Petitioner was also threatened and intimidated by security officials.<sup>70</sup>

He went on to establish two more blogs, *Chep Su Viet* (“Writing Vietnamese History”) and *Dan Quyen* (“Civil Rights”). Similar to *Ba Sam*, these became key sources of independent information, allegedly attracting 3.7 million views between 2012 and 2014.<sup>71</sup>

In January 2013, the Petitioner co-founded Group 72, consisting of 72 intellectuals and human rights defenders calling for, among other things, a redrafted constitution in line with the UDHR.

### A.3 The Petitioner was detained without legal justification and in a manner that violates international law

#### A.3.1 Events prior to detention

On 5 May 2014, agents from the Vietnamese Investigation Security Agency entered the Petitioner’s workplace and arrested both the Petitioner and his assistant pursuant to the urgent arrest procedures enshrined in Article 81 of the Viet Nam Criminal Procedure Code 2003. It was alleged in the indictment that the Petitioner had contravened Article 258 of the VP Code by “abusing [his] democratic freedoms to infringe upon the interests of the State”.<sup>72</sup>

The use of the urgent arrest procedure has been criticised by human rights lawyer Trinh Huu Long as a misplaced use of power in these circumstances.<sup>73</sup> Crimes under Article 258 of the VP Code do not fall within the remit of urgent arrest warrants afforded by Article 81 of the Viet Nam Procedural Criminal Code 2003. The agents confirmed in their report that they found no relevant evidence in their search of the Petitioner’s home and office.<sup>74</sup>

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<sup>66</sup> *Id.*, p. 10.

<sup>67</sup> *Id.*, p. 5.

<sup>68</sup> Human Rights Watch, *Vietnam: Arrests of Internet Activists Escalate* (7 May 2014), available at <https://www.hrw.org/news/2014/05/07/vietnam-arrests-internet-activists-escalate>.

<sup>69</sup> Nguyen Huu Vinh (aka. Anh Ba Sam), *Anh Ba Sam Breaks the Chain of Oppression* (13 November 2014), p. 5, available at <https://anhbasam.files.wordpress.com/2014/11/anh-ba-sam-tieng-viet.pdf>.

<sup>70</sup> *Id.*, p. 6.

<sup>71</sup> Annex I.

<sup>72</sup> *Id.*

<sup>73</sup> Nguyen Huu Vinh (aka. Anh Ba Sam), *Anh Ba Sam Breaks the Chain of Oppression* (13 November 2014), p. 11, available at <https://anhbasam.files.wordpress.com/2014/11/anh-ba-sam-tieng-viet.pdf>.

<sup>74</sup> *Id.*, p. 13-14.

### A 3.2 Events during detention

The Petitioner was detained on the same day (5 May 2014). Following his arrest, the Petitioner was prevented from seeing his lawyer for a period of one month.<sup>75</sup>

Before being formally charged on 10 May 2014, State-owned newspaper *Phap Luat Viet Nam* published an article entitled “Exposing the liar and rebel Nguyen Huu Vinh”,<sup>76</sup> falsely accusing the Petitioner of contacting United States-based pro-democracy group Viet Tan and taking instructions from them to write his blog posts.<sup>77</sup>

On 13 May 2014, the Investigation Security Agency issued a decision to prosecute the Petitioner.<sup>78</sup> The Petitioner was charged under Article 258 of the VP Code, alleging he had abused his democratic freedoms using blogs *Chep Su Viet* and *Dan Quyen*.<sup>79</sup>

On 5 June 2014, the Petitioner’s wife sent a complaint to the Communist Party of Viet Nam and State officials accusing public security officers of having violated domestic law by arbitrarily arresting the Petitioner and calling for him to be released. A second complaint was submitted on 28 August 2014. Both went unanswered.<sup>80</sup>

On 30 October 2014, the Investigation Security Agency produced a report in which it declared that there was enough evidence to charge the Petitioner under Article 258 of the VP Code. The Report cited 24 articles re-published on *Chep Su Viet* and *Dan Quyen*, which criticised corruption within the Vietnamese political system and certain decisions made by the Government. None of the articles were written by the Petitioner, but were merely disseminated via his blogs. The time limit for prosecution was extended to allow supplementary investigation, however the 6 February 2015 indictment contained identical findings.<sup>81</sup>

On 6 February 2015, the Head of the People’s Supreme Procuracy issued an indictment for the prosecution of the Petitioner under Article 258 of the VP Code. This concluded that the 24 aforementioned articles contained

“untrue and unfounded contents, misrepresenting the Party’s lines and policies and the State’s laws, defaming individuals, expressing a [...] one-sided pessimistic view, causing concern and anxiety, lowering public trust in the leadership of the Party, Government, National Assembly and the Socialist Republic of Viet Nam”.<sup>82</sup>

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<sup>75</sup> Sources in Viet Nam.

<sup>76</sup> *Id.*

<sup>77</sup> The Viet Tan is a banned opposition group in Viet Nam. The Vietnamese Government has previously jailed activists for their suspected connections to the group. See International Business Times, *Vietnam Court Sentences 14 Activists for ‘Plot’ against Communist Government* (9 January 2013), available at <http://www.ibtimes.co.uk/vietnam-court-sentence-13-activists-plot-against-422292>.

<sup>78</sup> The Petitioner’s 6 February 2015 indictment (Annex I) incorporates the findings of the investigation.

<sup>79</sup> *Id.*

<sup>80</sup> Sources in Viet Nam.

<sup>81</sup> Annex I.

<sup>82</sup> *Id.*

Following this, on the 22 May 2015, the second supplementary investigation was concluded. On 3 April 2015, the People's Supreme Procuracy issued a statement that, in light of the findings of the supplementary investigation, the indictment would not be amended.

The Petitioner was arbitrarily detained for the duration of these investigations. Throughout his detention, he was subjected to a number of procedural irregularities. In the first month of his detention he was denied access to his lawyers. Additionally, he was denied communication with his family until 21 November 2014, 200 days after his arrest on 5 May 2014. The Petitioner also informed his family and lawyers that he had sustained many bruises and skin wounds on his back and leg, and that during the first 18 months of his detention he had not been able to go outside and was not exposed to sunlight.<sup>83</sup> After repeated appeals to the police, the Petitioner was allowed to receive treatment at a hospital.<sup>84</sup> Two months after the hospital visit, the Petitioner's illness relapsed and he has not been approved for additional professional treatment despite many pleas from his family.<sup>85</sup>

### A 3.3 Trial and sentencing

A trial date was set for 19 January 2016, 19 months after the beginning of the Petitioner's detention. This was delayed,<sup>86</sup> and rescheduled for 23 March 2016 before the People's Court of Hanoi.<sup>87</sup> Following a one-day trial, the Petitioner was sentenced to five years in prison by Judge Nguyen Van Pho.<sup>88</sup>

The Petitioner maintained his innocence during the trial, denied writing the articles, but admitted to aggregating the articles for his blogs.<sup>89</sup> The prosecution was permitted to present evidence that was not in the investigative report.<sup>90</sup> Furthermore, the prosecution provided evidence that was illegible.<sup>91</sup>

While the trial was not held behind closed doors, witnesses say authorities were selective about who gained access to the courtroom.<sup>92</sup> Members of the public wishing to witness the proceedings were required to provide their identity before being allowed into the courtroom. Many were

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<sup>83</sup> Sources in Viet Nam.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Annex II.

<sup>87</sup> Annex III.

<sup>88</sup> Sources in Viet Nam.

<sup>89</sup> *Id.*

<sup>90</sup> Radio Free Asia, *Vietnam Throws The Book at Ba Sam Bloggers* (23 March 2016), available at <http://www.rfa.org/english/news/vietnam/vietnam-throws-the-book-at-independent-bloggers-03232016151439.html?searchterm:utf8:ustring=nguyen++huu+vinh>.

<sup>91</sup> Sources in Viet Nam.

<sup>92</sup> Radio Free Asia, *Vietnam Throws The Book at Ba Sam Bloggers* (23 March 2016), available at <http://www.rfa.org/english/news/vietnam/vietnam-throws-the-book-at-independent-bloggers-03232016151439.html?searchterm:utf8:ustring=nguyen++huu+vinh>.

denied entry.<sup>93</sup> The Associated Press reported that foreign media and diplomats were only allowed to view the courtroom through closed-circuit TV in another room.<sup>94</sup>

### *B. Reasons why the arrest and detention are arbitrary*

The arrest and detention of the Petitioner falls within Categories II and III arbitrary detention as articulated by the Working Group. The following section demonstrates by category that the arrest and detention are arbitrary. It is noted that the Socialist Republic of Viet Nam is a party to the ICCPR. This Petition sets out the various provisions of the ICCPR that Viet Nam has breached as a result of its treatment of the Petitioner. The Petition also notes that the Socialist Republic of Viet Nam has breached principles of customary international law reflected in the UDHR and the BPPP. Although the BPPP does not itself have binding legal effect, this Petition refers to certain relevant principles from the BPPP because this Working Group has identified these principles as relevant considerations in determining arbitrariness of detention.<sup>95</sup>

#### 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 and Article 19 UDHR)

The deprivation of the Petitioner's liberty is the direct consequence of the exercising his right to freedom of expression (Article 19 ICCPR and Article 19 UDHR). The 6 February 2015 indictment directly references 24 articles on the Petitioner's blogs which were the basis for his detention.<sup>96</sup> The true purpose of the Petitioner's arrest, prolonged pre-trial detention and sentence is to punish the legitimate exercise of this right, to prevent the Petitioner from continuing to exercise this right, and to deter others from exercising this right. Shortly after his arrest, the Petitioner's two newest blogs, *Chep Su Viet* and *Dan Quyen*, were shut down,<sup>97</sup> which is itself a violation of the Petitioner's right to freedom of expression. It follows that the arrest, pre-trial detention, and sentence of the Petitioner to a term of five years imprisonment amounts to a restriction and interference with his right to freedom of expression under Article 19 ICCPR and Article 19 UDHR.

Any restriction imposed on freedom of expression must satisfy three requirements set out in Article 19(3) ICCPR; otherwise such a restriction will amount to a violation of the right under international law. These cumulative requirements are that the restriction must be "provided by

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<sup>93</sup> Sources in Viet Nam.

<sup>94</sup> Radio Free Asia, *Vietnam Throws The Book at Ba Sam Bloggers* (23 March 2016), available at <http://www.rfa.org/english/news/vietnam/vietnam-throws-the-book-at-independent-bloggers-03232016151439.html?searchterm=utf8:ustring=nguyen++huu+vinh>.

<sup>95</sup> Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, UN Doc. No. E/CN.4/1992/20 (21 January 1992).

<sup>96</sup> Annex I.

<sup>97</sup> Radio Free Asia, *Vietnam Arrests Two Bloggers for 'Anti-State' Posts* (6 May 2014), available at: <http://www.rfa.org/english/news/vietnam/bloggers-05062014181447.html>; Nguyen Huu Vinh (aka. Anh Ba Sam), *Anh Ba Sam Breaks the Chain of Oppression* (13 November 2014), p. 19, available at <https://anhbasam.files.wordpress.com/2014/11/anh-ba-sam-tieng-viet.pdf>.

law”;<sup>98</sup> that it must be undertaken to “respect [...] the rights or reputations of others” or “[f]or the protection of national security, [...] public order, [...] or of public health or morals”;<sup>99</sup> and that it must be compliant with the “strict tests of necessity and proportionality”.<sup>100</sup>

We respectfully submit that the present restriction fails to satisfy these requirements for the following reasons, and therefore violates Article 19 ICCPR.

### B 1.1 Provided by law

For a restriction to be “provided by law,” it must (1) have a basis in national law that is not customary in nature,<sup>101</sup> (2) “be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly”,<sup>102</sup> (3) “be made accessible to the public”,<sup>103</sup> and (4) “not confer unfettered discretion [...] on those charged with its execution”.<sup>104</sup>

The Petitioner’s arrest, detention and sentence were pursuant to Article 258 of the VP Code which is provided for by national legislation. That legal provision criminalises any “abuse” of the freedom of expression which may be deemed “to infringe upon the interests of the state, the legitimate rights and interests of organisations and/or citizens”. This is excessively broad and is too vague to permit individuals to regulate their conduct in compliance with the law. There is no way for an individual to know what constitutes an “abuse” of their freedom of expression. Nor can they know what the State considers to be its “interests” or what specific “rights and interests of organisations [and] citizens” are protected under the provision.

It also follows that Article 258 of the VP Code’s vague wording confers unfettered discretion on those charged with its execution. Due to the political control of the courts mentioned in Section A 1.4 above, there are no adequate safeguards in place preventing the Government from exploiting Article 258 of the VP Code “to sanction people for all sorts of activities – and their underlying attitudes – which are deemed to somehow run counter to the interest of the State”.<sup>105</sup> The consequence of such discretionary uncertainty is a wider chilling effect on the exercise of freedom of expression, making the limitation on individual rights even greater than expressly provided for.

In summary, Article 258 of the VP Code does not meet the qualitative requirements for being “provided by law”. Its wording is so broad that the scope of the provision is unascertainable, in

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<sup>98</sup> 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.

<sup>99</sup> Art. 19(3) ICCPR.

<sup>100</sup> 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.

<sup>101</sup> *Id.*, par. 24.

<sup>102</sup> *Id.*, par. 25.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Press Statement by the Special Rapporteur on Freedom of Religion or Belief on the visit to the Socialist Republic of Viet Nam, Hanoi (31 July 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14914&LangID=E>.

effect conferring unfettered discretion upon those executing it. It also goes against the provisions of the ICCPR to the extent that it undermines the aims and objectives of the ICCPR.

In addition, the Petitioner's prolonged pre-trial detention did not have a legal basis and was in contravention of domestic law. Viet Nam's Code of Criminal Procedure sets a maximum period of pre-trial detention of 16 months for those charged with 'especially serious crimes'.<sup>106</sup> As stated in Section A 3.3 above, the Petitioner had been detained for 22 months prior to his trial on 23 March 2016. Even if his crime were to be considered "especially serious" by the authorities, there was no provision under Viet Nam's criminal procedure laws for the length of pre-trial detention imposed on the Petitioner. Consequently, the Petitioner's prolonged pre-trial detention was not provided by law.

### B 1.2 Legitimate aims provided by Article 19(3)(a) and (b)

Article 19(3) ICCPR provides the legitimate aims for which freedom of expression may be restricted under international law. Restrictions pursue a specified legitimate aim if they are (1) for the purpose of respecting the rights or reputations of others; or (2) for the purpose of protecting national security, public order, public health or public morals.<sup>107</sup> Article 258 of the VP Code does not strive to achieve any of these aims and therefore fails to meet the second requirement under Article 19(3) ICCPR.

As discussed in Section A.2 above, the Petitioner's blogs were key sources for independent coverage of Vietnamese politics<sup>108</sup> and human rights issues.<sup>109</sup> The Petitioner's arrest, detention and sentence served the purpose of punishing the Petitioner for criticising the Government of Viet Nam and informing the general public of Viet Nam's political affairs.<sup>110</sup> This purpose does not amount to a specified legitimate aim under Article 19(3) ICCPR.

The Government's application of Article 258 of the VP Code for the purpose of restricting the Petitioner's freedom of expression does not achieve any legitimate aim under Article 19(3) ICCPR. Consequently, it is respectfully submitted that the Petitioner's arrest, detention and sentence do not pursue a legitimate aim under Article 19(3) ICCPR.

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<sup>106</sup> Art. 120 Viet Nam Criminal Procedure Code 2003, English translation available at <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46817432.pdf>; Amnesty International, *Silenced Voices, Prisoners of Conscience* (7 November 2013), p. 11, available at <https://www.amnesty.org/en/documents/ASA41/007/2013/en/>.

<sup>107</sup> Art. 19(3) ICCPR.

<sup>108</sup> Nguyen Huu Vinh (aka. Anh Ba Sam), *Anh Ba Sam Breaks the Chain of Oppression* (13 November 2014), p. 5, available at <https://anhbasam.files.wordpress.com/2014/11/anh-ba-sam-tieng-viet.pdf>

<sup>109</sup> *Id.*, p. 5.

<sup>110</sup> Annex I.

### B 1.3 Necessity and Proportionality

Any restriction on the right to freedom of expression must also comply with the “strict tests of necessity and proportionality”.<sup>111</sup> In order to be considered necessary and proportional, the restriction must be the “least intrusive instrument amongst those which might achieve their protective function” and the restriction must also be “proportionate to the interest to be protected”.<sup>112</sup> Even if the Working Group were to find that the Petitioner’s arrest, detention and sentence pursued a specified legitimate aim under Article 19(3) ICCPR, the Petitioner’s five-year sentence and 22-month pre-trial detention are disproportionate measures and are not the least intrusive measures available to Viet Nam in order to achieve a legitimate aim. Consequently, the Petitioner’s arrest, detention, and sentence cannot be deemed necessary or proportionate for attaining any of the specified legitimate aims.

The Human Rights Committee has 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”.<sup>113</sup> The Human Rights Committee has also stated that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties”.<sup>114</sup> This is because “all public figures [and public institutions] [...] are legitimately subject to criticism and political opposition”.<sup>115</sup> Therefore, restrictions on the discussion of government policies and political debate, including restrictions on reporting on human rights, government activities and corruption in government, are not consistent with Article 19(3) ICCPR.<sup>116</sup>

As observed in Section A.1 above, Article 258 of the VP Code has been used numerous times to arrest and detain individuals who are engaging in these exact activities. In the present case, Article 258 of the VP Code has been utilised to penalise and punish the Petitioner for imparting information and ideas of public interest and political import. The articles referred to in the Petitioner’s indictment included reporting on corruption, human rights and politics which were deemed by the Head of the People’s Supreme Procuracy to *inter alia* defame individuals and express “a one-sided pessimistic view, causing concern and anxiety, lowering public trust in the leadership of the Party, Government, National Assembly and the Socialist Republic of Vietnam”.<sup>117</sup> Accordingly, the Petitioner was penalised for insulting and criticising those in power in Viet Nam. In light of the fact that those in power must demonstrate greater tolerance

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<sup>111</sup> 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.

<sup>112</sup> *Id.*, par. 34; see also 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(iv).

<sup>113</sup> 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.

<sup>114</sup> *Id.*, par. 38.

<sup>115</sup> *Id.*

<sup>116</sup> Human Rights Council, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Resolution adopted by the Human Rights Council*, UN Doc. No. A/HRC/RES/12/16 (12 October 2009), par. 5(p)(i).

<sup>117</sup> Annex I.

to such expression, the application of criminal penalties to the Petitioner in these circumstances is not justifiable.

Furthermore, Viet Nam has failed to “demonstrate in specific and individualized fashion the precise nature of the threat” posed by the Petitioner’s articles to national security, public order or public morality.<sup>118</sup> All of the 24 articles listed in the indictment pertain to issues of general public interest and none can be said to contain information designed to harm the security of the Vietnamese nation, nor can they be construed as disruptive to public order or public morals. For instance, punishing expression that supposedly “caus[es] concern and anxiety” has no obvious connection to maintaining national security, public order or public morality. The Human Rights Committee has stated that it is not compatible with Article 19(3) “to suppress or withhold from the public information of legitimate public interest that does not harm national security, or to prosecute journalists [...] for having disseminated such information”.<sup>119</sup> It follows that the Petitioner’s prosecution is incompatible with the right to freedom of expression as guaranteed by Article 19 ICCPR.

Additionally, Viet Nam has not demonstrated “the necessity and proportionality of the specific action [it has] taken” to address any supposed threat.<sup>120</sup> Under Article 19(3) ICCPR “imprisonment is never an appropriate penalty” in cases involving defamation, and lengthy pre-trial detention is impermissible because it “has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others”.<sup>121</sup> The Petitioner was detained for 22 months before trial and sentenced to five years imprisonment. In addition to being inappropriate and impermissible under Article 19(3), the pre-trial detention was substantial and the term of imprisonment is more than a nominal sentence. Consequently, the Petitioner’s detention was neither necessary nor proportionate to any legitimate aim.

In light of the above, the Petitioner’s arrest, detention, and sentence fails to meet the cumulative criteria for determining whether a restriction of the right to freedom of expression amounts to a violation under Article 19 ICCPR. We therefore respectfully request that the Working Group render an opinion that the Petitioner’s detention is arbitrary and should be terminated in order to bring the Government’s actions as they pertain to the Petitioner into conformity with Article 19 of the ICCPR and UDHR.

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<sup>118</sup> 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. 35.

<sup>119</sup> *Id.*, par. 30.

<sup>120</sup> *Id.*, par. 35.

<sup>121</sup> *Id.*, par. 47.

B.2 The detention of the Petitioner constitutes Category III arbitrary detention because it violates his right to liberty and security, the right to humane treatment of persons deprived of their liberty and the right to equality before courts and tribunals and to a fair trial (Articles 9 and 14 ICCPR, Articles 9, 10, and 11 UDHR, and Principles 11, 15, 18, 19, 36 and 38 BPPP)

B.2.1 Violation of the Petitioner's rights under Article 9 ICCPR and Article 9 UDHR

The arbitrariness of the Petitioner's arrest and detention is exacerbated by the Government's failure to adhere to norms relating to the Petitioner's right to liberty and security of the person. The Petitioner was arrested on 5 May 2014 and was held in pre-trial detention for 22 months before his trial on 23 March 2016.

According to Article 9(1) ICCPR, "deprivation of liberty must not be arbitrary, and must be carried out with respect for the rule of law".<sup>122</sup> Article 9(1) ICCPR requires a broad interpretation of "arbitrary" and an assessment of arbitrariness must be informed by considerations of "reasonableness, necessity, and proportionality".<sup>123</sup>

As discussed in Section B.1.1 above, the Petitioner's pre-trial detention was not in accordance with the rule of law. Article 9 ICCPR "requires compliance with domestic rules that define [...] legal limits on the duration of detention".<sup>124</sup> The Petitioner was held in pre-trial detention for 22 months, exceeding the maximum period of pre-trial detention of 16 months stipulated by the Viet Nam Criminal Procedure Code 2003.<sup>125</sup> As a result of non-compliance with due process prescribed by domestic law, the Petitioner's pre-trial detention is arbitrary within the meaning of Article 9 ICCPR.

Even if the Petitioner's pre-trial detention was provided for by domestic law and in compliance with domestic procedures, this does not preclude it from being arbitrary under Article 9 ICCPR.<sup>126</sup> The Human Rights Committee has stated that the arrest or detention as punishment for the legitimate exercise of the right to freedom of opinion and expression renders an arrest arbitrary.<sup>127</sup> The Petitioner was charged with "abusing [his] democratic freedoms to infringe upon the interests of the State [...] and interests of organisations and/or citizens".<sup>128</sup> However, as discussed in Sections A.2 and A.3 above, the Petitioner was acting within the scope of Article 19 ICCPR in re-publishing on his blogs the 24 articles for which he was indicted.

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<sup>122</sup> Human Rights Committee, *General Comment No. 35, Article 9 (Liberty and security of person)*, UN Doc. No. CCPR/C/GC/35 (16 December 2014), par. 10.

<sup>123</sup> *Id.*, par. 12.

<sup>124</sup> *Id.*, par. 23.

<sup>125</sup> Art. 120 Viet Nam Criminal Procedure Code 2003, English translation available at <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46817432.pdf>; Amnesty International, *Silenced Voices, Prisoners of Conscience* (7 November 2013), p. 11, available at <https://www.amnesty.org/en/documents/ASA41/007/2013/en/>.

<sup>126</sup> Human Rights Committee, *General Comment No. 35, Article 9 (Liberty and security of person)*, UN Doc. No. CCPR/C/GC/35 (16 December 2014), par. 12.

<sup>127</sup> *Id.*, par. 17.

<sup>128</sup> Annex I, quoting Art. 258(2) of the VP Code.

Additionally, the Human Rights Committee notes that in order for ongoing pre-trial detention to be reasonable and necessary, the State must have made an individual determination that the Petitioner was at risk of fleeing, interfering with evidence or repeating the crime.<sup>129</sup> On 5 May 2014, the Petitioner's blogs *Chep Su Viet* and *Dan Quyen* were closed, eliminating the possibility for him violating Article 258 of the VP Code through these mediums. There is no indication that the Petitioner would attempt to flee or interfere with evidence. Therefore, the extensive pre-trial detention of the Petitioner does not meet the requirement of necessity, rendering his pre-trial detention arbitrary under Article 9 ICCPR.

Finally, it is recognised that detention is arbitrary if it “amount[s] to an evasion of the limits on the criminal justice system by providing the equivalent of criminal punishment without the applicable protections”.<sup>130</sup> Article 258 of the VP Code provides for prison terms between six months and seven years. The Government detained the Petitioner beyond the minimum prison term provided in the VP Code. This amounts to an evasion of the criminal justice system as the equivalent to the minimum penalty under Article 258 of the VP Code had already been imposed on the Petitioner by the time he appeared before a court for sentencing.

On the basis of the above analysis, the Petitioner's arrest and continuing detention constitute Category III arbitrary detention as it violated the right to liberty and security under Article 9 ICCPR and Article 9 UDHR.

*B 2.2 Violation of the Petitioner's rights under Article 14 ICCPR, Article 10 and 11 UDHR, and Principles 11, 15, 18, 19, 36, and 38 BPPP*

It is further submitted that the Petitioner's detention constitutes Category III arbitrary detention as it violates his fair trial rights under Article 14 ICCPR, and the principles set out in the UDHR and BPPP, including the right (1) to be tried by a competent, independent and impartial tribunal; (2) to the presumption of innocence; (3) to communicate with the outside world and with his lawyers promptly; and (4) to be tried without undue delay.<sup>131</sup>

Article 14 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”.<sup>132</sup> The Human Rights Committee has stated that “a hearing must be open to the general public, including members of the media” and must not be discriminatory in nature.<sup>133</sup> As discussed in Section A 3.3 above, during the Petitioner's trial members of the public were required to provide their identity before being allowed into the courtroom and many were

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<sup>129</sup> Human Rights Committee, *General Comment No. 35, Article 9 (Liberty and security of person)*, UN Doc. No. CCPR/C/GC/35 (16 December 2014), par. 38; Human Rights Committee, *Felix Kulov v Kyrgyzstan*, Opinion No. 1369/2005 (2010), par. 8.3.

<sup>130</sup> Human Rights Committee, *General Comment No. 35, Article 9 (Liberty and security of person)*, UN Doc. No. CCPR/C/GC/35 (16 December 2014), par. 14.

<sup>131</sup> UN Office of the High Commissioner for Human Rights, *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, (May 2000), available at <http://www.refworld.org/docid/479477440.html>.

<sup>132</sup> 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. 28.

<sup>133</sup> *Id.*, par. 29.

denied entry.<sup>134</sup> Diplomats who were permitted to attend were not given access to the courtroom, but were placed in a separate room to view the proceedings via closed-circuit TV.<sup>135</sup> 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 and the authorities permitted individuals access to the courtroom on a discriminatory basis.

The exclusion of the public from a hearing is only justifiable under special circumstances.<sup>136</sup> These circumstances include cases where there are concerns about national security, public morals or public order, where there are privacy concerns or "where publicity would be prejudicial to the interests of justice".<sup>137</sup> 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, Article 14(2) ICCPR, Principle 11(1) UDHR, and Principle 36 BPPP entitle the Petitioner to the presumption of innocence. The Human Rights Committee has reasoned that the "media should avoid news coverage undermining the presumption of innocence".<sup>138</sup> As referenced in Section A 3.2 above, the State-owned newspaper *Phap Luat Viet Nam* published an article five days after the Petitioner's arrest entitled "Exposing the liar and rebel Nguyen Huu Vinh".<sup>139</sup> The article falsely accused the Petitioner of having taken instructions from the Viet Tan, a pro-democracy organisation which has been banned in Viet Nam, to write the 24 articles for which he was indicted and convicted under Article 258 of the VP Code.<sup>140</sup> At the time the article was published, the Petitioner had not been indicted or otherwise formally charged with the commission of a crime. This accusation could have prejudiced the Petitioner's trial or may even have been an indication that the trial verdict had already been predetermined. The Vietnamese State-owned newspaper's accusation against the Petitioner is therefore a violation of the Petitioner's Article 14(2) ICCPR right to presumption of innocence.

Thirdly, Article 14(3)(b) ICCPR provides the Petitioner with the right to "have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing".<sup>141</sup> The Human Rights Committee recognises this as "an important element of the

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<sup>134</sup> Sources in Viet Nam.

<sup>135</sup> Radio Free Asia, *Vietnam Throws the Book at Ba Sam Bloggers* (23 March 2016), available at <http://www.rfa.org/english/news/vietnam/vietnam-throws-the-book-at-independent-bloggers-03232016151439.html>.

<sup>136</sup> 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. 29.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*, par. 30.

<sup>139</sup> Sources in Viet Nam.

<sup>140</sup> The Vietnamese Government has previously jailed activists for their suspected connections to the group. See International Business Times, *Vietnam Court Sentences 14 Activists for 'Plot' against Communist Government* (9 January 2013), available at <http://www.ibtimes.co.uk/vietnam-court-sentence-13-activists-plot-against-422292>.

<sup>141</sup> Art. 14(3)(b) ICCPR.

guarantee of a fair trial”.<sup>142</sup> Adequate facilities include access to “all materials that the prosecution plans to offer in court against the accused”.<sup>143</sup> The prosecutor, however, presented evidence that was both illegible<sup>144</sup> and not made available to the Petitioner’s counsel before the hearing.<sup>145</sup> This deprived the Petitioner of his right to prepare his defence properly, violating the Petitioner’s right to a fair trial. Furthermore, reading Article 14(3)(b) together with Principle 18(3) BPPP, which requires that access to counsel be “without delay or censorship”, the fact that the Petitioner was prevented from seeing his lawyer immediately after his arrest for a period of one month is a further violation of the Petitioner’s right to communicate with, and have prompt access to, his lawyer.<sup>146</sup> The Government therefore violated Article 14(3)(b) ICCPR.

Fourthly, the Petitioner’s pre-trial detention violates his right to an expeditious trial under Article 14(3)(c) ICCPR and Principles 11 and 38 BPPP which require that detained persons be tried without undue delay. 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.<sup>147</sup> Moreover, the Human Rights Committee has stated that “[i]n cases where the accused are denied bail, [...] they must be tried as expeditiously as possible”.<sup>148</sup> The Petitioner was held in pre-trial detention for 22 months without trial or bail. This violates Viet Nam’s international obligations and, as stated above, Viet Nam’s Criminal Procedure Code.<sup>149</sup> This violation of the Petitioner’s right to trial without undue delay further violates his right to a fair trial under Article 14 ICCPR.

Finally, the Petitioner was intermittently detained incommunicado. The Petitioner was first able to see his family on 21 November 2014, 200 days after being placed in custody.<sup>150</sup> Principle 15 BPPP provides that communication between a detained person and his family “shall not be denied for more than a matter of days”.<sup>151</sup> Principle 19 BPPP stipulates the right of a detained person to communicate with the outside world and be visited by his family. It is evident that the Petitioner was deprived of his right to communicate with his family, in violation of Principles 15 and 19 BPPP.

Viet Nam’s partial or total non-observance and non-compliance with international law relating to the right to a fair trial guaranteed by the ICCPR, UDHR, and BPPP, as highlighted above, is of

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<sup>142</sup> 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.

<sup>143</sup> *Id.*, par. 33.

<sup>144</sup> Sources in Viet Nam.

<sup>145</sup> Radio Free Asia, *Vietnam Throws The Book at Ba Sam Bloggers* (23 March 2016), available at <http://www.rfa.org/english/news/vietnam/vietnam-throws-the-book-at-independent-bloggers-03232016151439.html?searchterm:utf8:ustring=nguyen++huu+vinh>.

<sup>146</sup> 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. 34.

<sup>147</sup> *Id.*, par. 27.

<sup>148</sup> *Id.*, par. 35.

<sup>149</sup> Art. 120 Viet Nam Criminal Procedure Code 2003, English translation available at <https://www.oecd.org/site/adbocedanti-corruptioninitiative/46817432.pdf>; Amnesty International, *Silenced Voices, Prisoners of Conscience* (7 November 2013), p. 11, available at <https://www.amnesty.org/en/documents/ASA41/007/2013/en/>.

<sup>150</sup> Sources in Viet Nam.

<sup>151</sup> Principle 15 BPPP.

such gravity as to give the Petitioner's deprivation of liberty an arbitrary character.<sup>152</sup> On this basis, the detention of 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 OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN**

The Petitioner was convicted at first instance on 23 March 2016 and sentenced to five years' imprisonment. The Petitioner is currently working on his appeal.

Additionally, a petition with 200 signatories was sent to the Government demanding the Petitioner's release. The Government has not responded to that petition. The Petitioner's wife submitted two separate letters to the Government and certain individual officials within the Communist Party of Viet Nam demanding the Petitioner's release, which have also gone unanswered. Attempts to draw the violations of the Petitioner's rights to the State's attention have been made in the form of a petition. Amnesty International has made a general appeal for individuals to petition the Minister of Public Security requesting the immediate and unconditional release of the Petitioner and his assistant, Nguyen Thi Minh Thuy. On the date of filing this Petition, over 1,700 individuals have signed on to the petition.<sup>153</sup>

**VI. REQUESTED ACTION FROM THE WORKING GROUP**

The Petitioner therefore requests the Working Group to:

- (a) render an opinion that the detention of the Petitioner is arbitrary for having resulted from the Petitioner's exercising of the right to freedom of expression under Article 19 of the ICCPR and Article 19 of the 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 failure by the Government of Viet Nam to ensure the Petitioner's rights to liberty and security of person and fair trial guaranteed by Articles 9 and 14 of the ICCPR, and Articles 9 and 10 of the UDHR and therefore falls within Category III of the categories of arbitrary detention defined by the Working Group;
- (c) recommend that the Government of Viet Nam release the Petitioner and withdraw the charges against the Petitioner, or ensure the charges are determined by an independent

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<sup>152</sup> Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, Human Rights Council, 22<sup>nd</sup> Session, UN Doc. No. A/HRC/22/44 (24 December 2012), par. 38(c).

<sup>153</sup> Amnesty International, *Help Us to Send as Many Appeals for the Immediate Unconditional Release of Nguyen Huu Vinh and Nguyen Thi Minh Thuy as Possible*, available at <http://www.amnesty.cz/en/pripad/letters/vietnamsky-blogger-ve-vazby>.

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 take such other steps as are necessary to prevent further violations of the Petitioner's freedom of expression as guaranteed by the ICCPR and the UDHR.

**VII. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION**

Submitted by:

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

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