

**PETITION TO:**  
**UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Mr. José Guevara (Mexico)

Vice-Chairperson: Ms. Leigh Toomey (Australia)

Vice-Chairperson: Ms. Elina Steinerte (Latvia)

Mr. Seong-Phil Hong (Republic of Korea)

Mr. Sètonджи Adjovi (Benin)

**HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

**Le Huu Minh Tuan**

Citizen of the Socialist Republic of Vietnam

v.

**Government of the Socialist Republic of Vietnam**

Submitted by

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Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4, 15/18, 24/7<sup>1</sup>

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<sup>1</sup> Resolutions 1991/41, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, March 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, and 24/7

## **I. IDENTITIES OF THE VICTIMS**

*1. Family Name: Le*

*2. First Name: Huu Minh Tuan*

*3. Sex: Male*

*4. Birth Date: 20/03/1989*

*5. Nationality: Vietnamese*

*6. (a) Identity document (if any):*

*(b) Issued by:*

*(c) On (date):*

*(d) No.: N/A*

*7. Professional and/or activity (if believed to be relevant to the arrest/detention):  
independent journalist*

*8. Address of usual resident:*

*44 Mẹ Thử,*

Vĩnh Điện,  
Điện Bàn,  
Quảng Nam.

## **II. ARREST**

- 1. Date of arrest: Jun 12, 2020*
- 2. Place of arrest (as detailed as possible): 44 Mẹ Thử, Vĩnh Điện, Điện Bàn, Quảng Nam*
- 3. Forces who carried out the arrest or are believed to have carried it out: Ho Chi Minh City Security Bureau of Investigation*
- 4. Did they show a warrant or other decision by a public authority? Yes*
- 5. Authority who issued the warrant or decision: N/A*
- 6. Relevant legislation applied (if known): N/A*

## **III. DETENTION**

- 1. Date of detention: June 12, 2020*
- 2. Duration of detention (if not known, probable duration): Since June 12, 2020*
- 3. Forces holding the detainee under custody: Ho Chi Minh City Security Bureau of Investigation*
- 4. Places of detention (indicate any transfer and present place of detention): Chi Hoa prison*
- 5. Authorities that ordered the detention: Ho Chi Minh City Security Bureau of Investigation*

*6. Reasons for the detention imputed by the authorities: “publish, store, and disseminate or propagandize information, documentation, and products against the Social Republic of Vietnam”*

*7. Relevant legislation applied (if known): Article 117 of Vietnam’s current Penal Code*

#### **IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION**

On June 12, Ho Chi Minh City authorities arrested Tuan and charged him under Article 117 of the country’s criminal code, a provision that criminalizes “opposing the state,”

Tuan, who publishes under the name “Le Tuan,” is a member of the journalists’ association and covers daily news for Vietnam Toi Bao, a news website affiliated with the association, according to that statement. He is the fourth journalist affiliated with the group to be arrested and charged under Article 117 since late 2019, according to CPJ research

Le Huu Minh Tuan was taken by police in the morning of 12 June 2020 following a raid of a coffee shop in home owned by his sister in Quang Nam province. Between 8:30 and 9:00, around 30 plain-clothes police and 10 uniformed police reportedly forced the coffee shop in to close, used black nylon bags to cover all the internal security cameras, and cut off the Wi-Fi.

Right before the raid at the coffee shop, police escorted Le Huu Minh Tuan back to his residence, which was also searched. Police confiscated his phone, along with his mother’s phone, and 3 books. The officer in charge is reported the same officer in charge of Pham Chi Dung and Nguyen Tuong Thuy’s cases, Ho Sy Hai.

The police did not leave copies of the warrants with the family after taking Le Huu Minh Tuan. Prior to this, he had been summoned at least four times by the police previously to answer questions relating to Pham Chi Dung but had refused to cooperate. He is now detained and charged under Article 117 of the Penal Code. He is believed to be held in Chi Hoa prison in HCMC, along with Thuy; and Dung is held at 4 Phan Dang Luu in HCMC.

#### **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. STATEMENT OF FACTS**

The Socialist Republic of Vietnam (“Vietnam” or “Government”) and its history of human rights abuses, including the violation of basic human rights such as opinion, press, religion, association and particularly the right to speak freely in dissent of the governing party. The Communist Party of Vietnam (“CPV”) also has shown a propensity for using the criminal code to arbitrarily detain journalists and others who speak out against its regime<sup>2</sup>

This section presents the case of Tuan a young citizen-journalist in Vietnam who was wrongfully detained on Jun 12, 2020 and subsequently wrongfully convicted on Jun 12 2020 of opposing the Government as well as conducting propaganda.

##### **1. The situation in the Socialist Republic of Vietnam**

Vietnam has been an authoritarian one-party communist state since the CPV came into power in the 1970s<sup>3</sup> Despite being bound by several human rights treaties, including the International Covenant on Civil and Political Rights (the “ICCPR”), Vietnam routinely violates its citizens’ most basic human rights, including freedom of speech, opinion, assembly, press, religion, and association<sup>4</sup> in particular by detaining individuals who speak against the interests of the Government and the CPV<sup>5</sup> The Government routinely restricts citizens’ political rights, particularly their right to change their government through free and fair elections and has inadequately protected citizens’ due process rights, notably failing to protect against arbitrary detention<sup>6</sup>

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<sup>2</sup> See generally HUMAN RIGHTS WATCH, Vietnam: End Attacks on Activists and Bloggers - Pattern of Thuggish Assaults Against Rights Campaigners Across Country (June 18, 2017), <https://www.hrw.org/news/2017/06/18/vietnam-end-attacks-activists-and-bloggers>.

<sup>3</sup> See generally Vietnam’s Human Rights Defenders, Human Rights Watch (2010) <https://www.hrw.org/news/2010/03/23/vietnams-human-rights-defenders> and See <https://www.hrw.org/asia/vietnam>.

<sup>4</sup> See <https://www.hrw.org/asia/vietnam>.

<sup>5</sup> HUMAN RIGHTS WATCH, Vietnam: End Attacks on Activists and Bloggers - Pattern of Thuggish Assaults Against Rights Campaigners Across Country (June 18, 2017), <https://www.hrw.org/news/2017/06/18/vietnam-end-attacksactivists-and-bloggers>.

<sup>6</sup> UNITED STATES DEPARTMENT OF STATE, Bureau of Democracy, Human Rights and Labor, Vietnam 2017 Human Rights Report, 18, available at <https://www.state.gov/documents/organization/277375.pdf> (hereinafter “State Department 2017 Report”).

## **1. a Interference of the Government with the right to freedom of expression**

The Government has suppressed its citizens' freedom of expression through its detention of journalists<sup>7</sup>In its 2018 World Press Freedom Index, Reporters Without Borders ranked Vietnam 175 out of 180 countries for press freedom and reported that, because the Government controls all of the mainstream media in the country, bloggers and citizen-journalists are the only source of independent information<sup>8</sup>Vietnam is also consistently ranked among the countries that most censor journalists according to the Committee to Protect Journalists ("CPJ")<sup>9</sup>CPJ noted in its 2015 report that the Government instructs editors and regularly jails those who report on sensitive topics.

In the past decade, the Government passed several laws and ordinances that restrict both personal and media freedom of expression, particularly in the context of electronic communications and online postings. The 2015 Law on Cyber Information Security, Decree 72 in 2013, and Decree 174 in 2014 impose fines on anyone criticizing the Government, defaming Government leaders, or "spreading propaganda" on social media<sup>10</sup> The Law on the Press, which went into effect in 2017, dictates that the press should "propagandize and disseminate, and contribute to the protection of, the line and policies of the Party...and build and promote socialist democracy, strengthen the great national unity bloc, and build and protect the socialist Fatherland of Vietnam."<sup>11</sup>

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<sup>7</sup> HUMAN RIGHTS WATCH, Vietnam - Human Rights In A Season Of Transition: Law and Dissent in the Socialist Republic of Vietnam (August 1995), <https://www.hrw.org/reports/1995/Vietnam2.htm> (hereinafter "HRW 1995 Report").

<sup>8</sup> REPORTERS WITHOUT BORDERS, 2018 World Press Freedom Index, <https://rsf.org/en/ranking>.

<sup>9</sup> COMMITTEE TO PROTECT JOURNALISTS, 10 Most Censored Countries (2015), <https://cpj.org/2015/04/10-mostcensored-countries.php#6>.

<sup>10</sup> FREEDOM HOUSE, Freedom in the World 2017: Vietnam, available at <https://freedomhouse.org/report/freedomworld/2017/vietnam>

<sup>11</sup> Law on the Press, No. 103/2016/QH13, art. 1 (2016), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=447052](http://www.wipo.int/wipolex/en/text.jsp?file_id=447052).

## **1.b Lack of due process protections in the Socialist Republic of Vietnam**

Even though the Vietnamese Constitution calls for the presumption of innocence, a timely, fair and public trial, the right to representation by a lawyer and the right to present a defense against the charges, these protections are not available to defendants in practice.<sup>12</sup> Prisoners are systematically subjected to lengthy pre-trial detention and frequently held incommunicado before their trials, denied visits from family or attorneys, while being at risk of torture.<sup>13</sup> Trials of human rights activists in Vietnam consistently fail to meet international standards of fairness. The police often intimidate defendants into confessions, limit access to trials for family members, and have not allowed defendants to adequately prepare a defense for trial.<sup>14</sup> The U.S. State Department has confirmed that the due process issues in Vietnam were among the country's most significant human rights problems.<sup>15</sup>

## **1.c Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

Prisoners in Vietnam are frequently subjected to physical and mental forms of torture and ill-treatment.<sup>16</sup> International observers have noted a pattern of physical abuse, torture and coerced confessions during arrest, police investigations, and detention. Activists have been robbed, beaten and received death threats from security officials, including being assaulted by other prisoners at the instruction of prison officials while in custody. In addition to the physical torture, prisoners of conscience were held incommunicado for long periods, were denied medical treatment, and were re-located to prisons very far from their families, in order to mentally intimidate them into confessions.<sup>17</sup>

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<sup>12</sup> THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM, 2013, translation available at International Institute for Democracy and Electoral Assistance, [http://www.constitutionnet.org/sites/default/files/tranlation of vietnams new constitution enuk 2.pdf](http://www.constitutionnet.org/sites/default/files/tranlation%20of%20vietnams%20new%20constitution%20enuk%20.pdf) ; see also HRW 1995 Report.

<sup>13</sup> See generally UN Working Group on Arbitrary Detention, Opinion No. 75/2017 UN Doc. A/HRC/WGAD/2017/75 (2017); see also State Department 2017 Report, supra note 6; UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMM'R, "UN rights experts condemn Viet Nam for incommunicado detention of blogger 'Mother Mushroom'" (March 8, 2017), available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21318&LangID=E>.

<sup>14</sup> Human Rights Watch, World Report 2018: Vietnam Country Summary (January 2018), available at <https://www.hrw.org/world-report/2018/country-chapters/vietnam> (hereinafter "HRW 2018 Vietnam Report").

<sup>15</sup> UNITED STATES DEPARTMENT OF STATE, Bureau of Democracy, Human Rights and Labor, Vietnam 2016 Human Rights Report, available at <https://www.state.gov/documents/organization/265598.pdf>

<sup>16</sup> Amnesty International, Inside Viet Nam's secretive and torturous world of 'prisons within prisons' (2016) <https://www.amnesty.org/en/latest/news/2016/07/the-secretive-world-of-viet-nam-torturous-prisons/>

<sup>17</sup> State Department 2017 Report.

#### **1.d Prison condition in Vietnam**

Conditions for detainees in Vietnam often fail to meet minimum international standards. Torture and corporal punishment are common but are rarely investigated by authorities. Prisons are often overcrowded and unsanitary, and inmates have extremely poor nutrition and lack of access to medical care, sometimes even being deprived of medical treatment to force “confessions”<sup>18</sup> Former prisoners have detailed frequent instances of torture, injections with unknown drugs, long stretches of solitary confinement, attacks from other inmates incited by the prison officials, and other acts that violate international laws prohibiting ill-treatment<sup>19</sup>

Amnesty International conducted a study in which it interviewed 18 former prisoners of conscience from Vietnam, examining the ill-treatment of the prisoners in the Vietnamese criminal justice system<sup>20</sup> The horrifying stories from this report include frequent instances of torture, injections with unknown drugs, long stretches of solitary confinement, attacks from other inmates incited by the prison officials, and other acts that violate international laws prohibiting ill-treatment of prisoners

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<sup>18</sup> Idem

<sup>19</sup> AMNESTY INTERNATIONAL, Inside Viet Nam’s secretive and torturous world of ‘prisons within prisons’ (July 12,

<sup>20</sup> Id



### **III. LEGAL ANALYSIS**

Le Huu Minh Tuan's arrest and detention is arbitrary<sup>21</sup> under Categories I, II and III as established by the UN Working Group on Arbitrary Detention (the "Working Group"). The detention is arbitrary under Category I because it is impossible to invoke any legal basis justifying his deprivation of liberty and continued detention. The detention is arbitrary under Category II because it resulted from Le Huu Minh Tuan's peaceful exercise of his right to freedom of expression and association. The detention is arbitrary under Category III because the Government's detention and prosecution of Tuan failed to meet minimum international standards of due process.

#### **3.1. Deprivation of Liberty Under Category I**

A detention violates Category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. The Working Group has found detentions arbitrary under Category I when some of the following violations are present: (1) when the government has held an individual incommunicado for a period of time; (2) when the government has arrested an individual without a warrant and without judicial authorization for such deprivation of liberty; and (3) when vague laws are used to prosecute individuals<sup>22</sup>

##### **3.1.a Le Huu Minh Tuan was Held Incommunicado and Never Given Access to Judicial Review of his Detention**

Article 9(3) of the ICCPR calls for "anyone arrested or detained on a criminal charge [to] be brought promptly before a judge or other officer authorized by law to exercise judicial power . . ." This obligation for a habeas corpus hearing "without delay" is reiterated in Article 9(4) of the ICCPR

The Human Rights Committee has determined that incommunicado detention inherently violates Article 9(3) of the ICCPR<sup>23</sup> This guarantee not only serves as a check on arbitrary

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<sup>21</sup> An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law." International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 UNT.S. 171, entered into force on March 23, 1976, at art. 9(1). Such a deprivation of liberty is specifically prohibited by international law. Id. "No one shall be subjected to arbitrary arrest, detention or exile." Universal Declaration of Human Rights, G.A. Res. 217A (III), UN Doc. A/810, at art. 9, (1948). "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law..." Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, UN Doc. A/43/49 (hereinafter "Body of Principles"), at Principle 2

<sup>22</sup> See, e.g., Bettar v. Morocco, Working Grp. on Arbitrary Detention, Commc'n No. 3/2013, paras. 30-314 (April 30, 2013); 61 Individuals v. United Arab Emirates, Working Grp. on Arbitrary Detention, Commc'n No. 60/2013, para. 22 (November 22, 2013)

<sup>23</sup> HUMAN RIGHTS COMMITTEE, General Comment No. 35: Article 9 (Liberty and Security of Person), U.N. Doc. CCPR/C/GC/35, (December 16, 2014) at para. 35 (hereinafter "General Comment No. 35").

detention, but also provides an important safeguard for other related rights, such as freedom from torture<sup>24</sup>The prohibition against incommunicado detention is also articulated by Principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”), which prohibits the denial of communication between a detainee and his family or counsel for more than a few days<sup>25</sup>

Le Huu Minh Tuan was arrested on ... He was never brought before a judge to confirm the legal basis for his arrest or his continuing pre-trial detention.

### **3.1.b Vietnam’s Criminal Code is Overly Broad and Vague**

Article 15(1) of the ICCPR<sup>26</sup>and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”) <sup>27</sup>both guarantee individuals the right to know what the law is and what conduct violates the law. These articles protect citizens from prosecution for any criminal offense “which did not constitute a[n] [] offense, under national or international law, at the time when it was committed.” The Human Rights Committee states that “[a]ny substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.”<sup>28</sup> In addition, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has explained that the standard for legal certainty requires framing laws “in such a way that [...] the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and [that] the law [be] formulated with sufficient precision so that the individual can regulate his or her conduct”<sup>29</sup>

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<sup>24</sup> Id. at para. 34. Other rights that may be at risk are those guaranteed by Articles 6, 7, 10 and 14 of the ICCPR.

<sup>25</sup> Body of Principles, *supra* note 60, at Principle 15.

<sup>26</sup> International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), UN Doc. A/6316 (1966), 999 UNT.S. 171 (March 23, 1976) at art. 9(1) (hereinafter “ICCPR”) (“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.”).

<sup>27</sup> United Nations General Assembly, Universal Declaration of Human Rights 73, Res 217 A (III), 3rd session, A/RES/217 A (December 10 1948) at art. 11(2), available at <http://www.un-documents.net/a3r217a.htm> (“No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”).

<sup>28</sup> General Comment No. 35, *supra* note 62.

<sup>29</sup> Scheinin, M, Commission on Human Rights, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 62nd session (December 28, 2005) at para. 46, available at <http://www.refworld.org/docid/441181f10.html>; Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 28th session, A/HRC/28/28 (December 19, 2014), available at <http://www.refworld.org/docid/54f86a2e4.html>, para 48.

Article 117 of Penal Code defines the crime of “conducting propaganda” so vaguely as to make it impossible for any individual to reasonably foresee what behavior is criminal. The relevant section of the Article reads as follows:

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

1. Any person, for the purpose of opposing the State of Socialist Republic of Vietnam, commits any of the following acts shall face a penalty of 05 - 12 years' imprisonment:

a) Making, storing, spreading information, materials, items whose that contains distorted information about the people's government;

b) Making, storing, spreading information, materials, items whose that contains fabricated information to cause dismay among the people;

b) Making, storing, spreading information, materials, items to cause psychological warfare.<sup>30</sup>

2. An extremely serious case of this offence shall carry a penalty of 10 - 20 years' imprisonment.

3. Any person who makes preparation for the commitment of this criminal offence shall face a penalty of 01 - 05 years' imprisonment.

No instruction is given as to what constitutes propagating psychological warfare, dismay among the people, or documents/products that are against the Government. There is no intent component and no measure of what a prosecutor must prove to convict.

Article 117 of the Penal Code lacks any plain meaning and gives individuals no fair notice of what conduct is prohibited. For Le Huu Minh Tuan, Article 117 of the 1999 Penal Code has resulted in arbitrary prosecutions for acts that are both unforeseeable as criminal and protected under the ICCPR, the UDHR, and other international norms and standards. Concerned UN member countries recommended that Vietnam repeal or amend , provisions in the 1999 Penal Code, in order to prevent those provisions from being applied in an “arbitrary manner to impede freedom of opinion and expression, including on the Internet.”<sup>71</sup> Because this crime of “conducting propaganda” is so vague, such provision cannot supply the legal basis for detention resulting from conviction on such charge

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<sup>30</sup> Vietnam Penal Code of 1999, available at <http://un-act.org/publication/view/viet-nam-penal-code-1999/>

### 3.2 Deprivation of liberty under category II

Deprivation of liberty is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20, and 21 of the UDHR and Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR<sup>31</sup> This case meets the requirements of Category II because Le Huu Min Tuan's detention is a result of his exercise of his fundamental freedoms of opinion, expression, and association guaranteed by the UDHR and the ICCPR.

#### 3.2.a Le Huu Minh Tuan Was Convicted for Exercising His Freedoms of Opinion and Expression

The freedoms of opinion and expression are protected by international instruments and include the freedom to seek, receive, and impart information of all kinds, either orally or in writing<sup>32</sup> Article 19(2) of the ICCPR provides that "everyone shall have the right to freedom of expression."<sup>33</sup>Article 19 of the UDHR provides an analogous guarantee of freedom of opinion and expression<sup>34</sup>The Human Rights Committee has clarified that Article 19 of the ICCPR "protects all forms of expression and the means of their dissemination."<sup>35</sup>This includes "all forms of audio-visual as well as electronic and internet-based modes of expression"<sup>36</sup>

Article 19 of the ICCPR is of special importance for human rights defenders<sup>37</sup> and journalists working on reporting of human rights abuses are explicitly recognized as human rights defenders<sup>38</sup>The Working Group has confirmed the right of human rights defenders "to investigate, gather information regarding and report on human rights violations."<sup>39</sup>The Human Rights Committee has also specifically recognized that Article 19(2) protects the work of journalists<sup>40</sup>and "includes the right of individuals to criticize or openly and publicly evaluate

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<sup>31</sup> Human Rights Council, Methods of Work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/30/69, para. 8(b) (August 4, 2015) (hereinafter "Methods").

<sup>32</sup> Id

<sup>33</sup> ICCPR at art. 19(2). As noted above, Vietnam acceded to the ICCPR in 1982 and entered no reservations to this provision

<sup>34</sup> UDHR at art. 19

<sup>35</sup> Human Rights Committee, General Comment No. 34: Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/G/34 at para. 12 (September 12, 2011) (hereinafter "General Comment No. 34").

<sup>36</sup> Id

<sup>37</sup> Human rights defenders are individuals who promote and protect all human rights through peaceful means without discrimination. Human rights defenders can join groups of people with or without structure, or organizations such as associations or foundations. Anyone, regardless of their occupation, can be a human rights defender; they are defined primarily by what they do rather than their profession. See generally, Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Resolution 53/144, U.N. Doc. A/RES/53/144 (March 8, 1998)

<sup>38</sup> See, e.g., UNITED NATIONS SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, "Who is a Defender," available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>

<sup>39</sup> Hassan Ahmed Hassan Al-Diqqi v. United Arab Emirates, United Nations Working Group on Arbitrary Detention, Opinion No. 8/2009, UN Doc. A/HRC/13/30/Add.1, para. 18 (2010).

<sup>40</sup> Movlonov et. al. v. Uzbekistan, UN Human Rights Committee, Communication No. 1334/2004, U.N. Doc. CCPR/C/95/D/1334/2004 (March 19, 2009).

their Government without fear of interference or punishment.”<sup>41</sup>In fact, the imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny; the Working Group has recognized the necessity to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review”<sup>42</sup> This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals<sup>43</sup>

The Government arbitrarily detained and prosecuted Minh Tuan as a direct result of his publishing in his capacity as a citizen journalist. First, the charge of “opposing the state” under Article 117 of the 1999 Penal Code violates an individual’s freedom of expression because it vaguely criminalizes a broad swath of speech and information-sharing acts. Thus, no matter whether the underlying factual allegations are true, the Government has deprived Minh Tuan of his liberty under a law which is itself incompatible with right to freedom of expression guaranteed under the UDHR and ICCPR.

Furthermore, Tuan was targeted for his independent reporting; his detention thus violated his right to freedom of expression both de jure and de facto.

Tuan, who publishes under the name “Le Tuan,” is a member of the journalists’ association and covers daily news for Vietnam Toi Bao, a news website affiliated with the association. Tuan publishes articles on Vietnam- China relations, Democracy and politics.

Tuan’s arrest, conviction and lengthy sentence, was an attempt by the Government to silence him and punish him for sharing pro-democracy and Vietnam China relations and Democracy and politics as an independent reporter, an activity which is expressly protected as free expression.

The Government’s detention of Tuan for his critical expression also fits directly into the Government’s well-documented pattern of attacking and attempting to silence journalists through arbitrary detention. Considering this history and the deprivation of free expression inflicted against Tuan for sharing writings that reported on instances of democracy, politics, and, it is clear that the Government targeted Tuan for detention as a means of reprimanding him for his political opinions, for his independent reports that advocated for democracy and , and for his sharing the work of other anti-corruption writers.

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<sup>41</sup> De Morais v. Angola, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, para. 6.7 (March 29, 2005).

<sup>42</sup> Nega v. Ethiopia, UN Working Group on Arbitrary Detention, Opinion No. 62/2012, U.N. Doc. A/HRC/WGAD/2012/62, para. 39 (November 21, 2012); see also, Sotoudeh v. Islamic Republic of Iran, UN Working Group on Arbitrary Detention, Opinion No. 21/2011, U.N. Doc. A/HRC/WGAD/2011/21, para. 29 (January 27, 2011).

<sup>43</sup> Bialitski v. Belarus, United Nations Working Group on Arbitrary Detention, Opinion No. 39/2012, para. 43, (November 23, 2012).

### **3.2.b The Vietnam Government Detained Tuan Because He Exercised His Rights to Freedom of Association**

Article 20(1) of the UDHR provides that “[e]veryone has the right to freedom of peaceful assembly and association.” Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others . . .” The Human Rights Council has specifically called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views and human rights defenders<sup>44</sup> In General Comment No. 25 to the ICCPR, the Human Rights Committee noted that “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25 [right to participate in public affairs]<sup>45</sup>

Similarly, Vietnamese law ensures the right to freedom of association. Article 25 of the Constitution affirms that citizens have the right to “assemble, form associations and hold demonstrations.”<sup>46</sup>

Contrary to these international standards, the Government has criminalized and imprisoned individuals for associating with other journalists and political organizations that are critical of the Government, as evidenced by the treatment of Tuan communication with IJAVN was detained in connection with an ongoing investigation into Pham Chi Dung, a journalist and the president of the Independent Journalists Association of Vietnam(IJAVN), who has been held in detention without trial since last November.

Even if Le Huu Minh Tuan has the right to associate with a group of journalists and express his political opinions through such organizations, the Government has persecuted him as a means to punish his involvement and communications with these people and organizations that are critical of the Government. By punishing Tuan for his communications and associations with IJAVN and members of that organization, Vietnam has violated Tuan’s right to freedom of association in violation of Article 20(1) of the UDHR, Article 22(1) of the ICCPR, and Article 25 of Vietnam’s own constitution

### **3.2.c None of the Restrictions to Freedom of Expression and Association Enumerated Under Articles 19(3) and 22(2) of the ICCPR Apply to Tuan’s Prosecution and Detention**

Article 19(3) of the ICCPR, freedoms of expression and opinion may only be restricted as necessary for either the respect of the rights and reputations of others or the protection of national security or public order, health, or morals<sup>47</sup> The Human Rights Committee has emphasized the narrowness of the limitations set forth in Article 19(3) of the ICCPR by noting

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<sup>44</sup> G.A Res. 15/21, ¶ 1, U.N. Doc. A/HRC/RES/15/21 (Oct. 6, 2010), <https://documents-ddsny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>

<sup>45</sup> General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25), ¶ 26, Human Rights Comm., 57th Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 27, 1996), (hereinafter “General Comment No. 25).

<sup>46</sup> THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM, 2013, translation available at International Institute for Democracy and Electoral Assistance, [http://www.constitutionnet.org/sites/default/files/tranlation\\_of\\_vietnams\\_new\\_constitution\\_enuk\\_2.pdf](http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf).

<sup>47</sup> ICCPR, at art. 19(3)

that “when a State party imposes [a limitation] on the exercise of freedom of expression, [it] may not put in jeopardy the right itself”<sup>48</sup>

Article 22(2) of the ICCPR provides that: “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.” Any limitation on the freedoms of expression and association “must meet a strict test of justification.”<sup>49</sup>

As guidance, the Human Rights Committee has established three requirements for any limitation on the right to freedom of expression and association. A permissible limitation must be (1) “provided by law,” (2) for the protection of national security, public order, or public health and morals, and (3) “necessary” to achieve one of these enumerated purpose<sup>50</sup>

In this case, the limitation on Tuan’s freedom of expression and association fails to meet the second requirement; the Government’s restrictions on Tuan’s right to freedom of expression and association was not for a proper purpose. Although the Government claimed that his detention was based on his “opposing the state” or “conducting propaganda”- as might be considered appropriately banned under Article 20 of the ICCPR—in actuality none of Tuan’s reports or online postings or publications called directly or indirectly for violence or could reasonably be considered to threaten national security, public order, public health or morals, or the rights or reputations of others.

Rather, the Government was merely using the veil of “opposing the state” or “conducting propaganda” as a pretext to silence criticism, which is not an acceptable purpose under Article 19(3) of the ICCPR. To the contrary, political discourse, journalism and discussion of human rights have all been explicitly recognized as protected speech.<sup>51</sup>

Despite such international guarantees for the right to free speech, the Government arbitrarily detained and prosecuted Tuan as a direct result of his articles. His reporting and postings are political and fall under the protections of Articles 19 of the ICCPR and UDHR. Thus, because Tuan’s reporting and critical postings are protected expression under Article 19(2) and because the limitation on these do not fall within the narrow exceptions contained in Articles 19(3), his continued detention is arbitrary pursuant to Category II.

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<sup>48</sup> General Comment No. 34, supra note 76, at para. 21.

<sup>49</sup> Park v. Republic Korea, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, para. 10.3 (adopted October 20, 1998).

<sup>50</sup> Shin v. Republic of Korea, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000, para. 7.3 (adopted March 16, 2004).

<sup>51</sup> General Comment No. 34, supra note 76, at para. 11.

### **3.3 Deprivation of liberty under Category III**

Article 14(5) of the ICCPR states that “everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to the law.” The right to appeal guaranteed by Article 14(5) of the ICCPR “imposes on the State party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case<sup>52</sup> Such a review must consider not just the formal or legal aspects of the conviction, but also the facts of the case, including the allegations against the convicted person and the evidence submitted at trial, as referred to in the appeal.<sup>53</sup>

Furthermore, Article 331 of the 2015 Criminal Procedure Code of Vietnam grants defendants the right to appeal against judgments of courts of first instance. Article 332 states that if a defendant is in detention, the warden of the detention facility must enable the execution of the defendant’s right to appeal by forwarding the written appeal to the proper court.

According to information provided by IJAVN, Mr. Le Huu Min Tuan was not allowed to communicate with his lawyer and accordingly his right to appeal had been violated.

#### **3.3.1 Vietnam Violated Tuan’s Right to be Visited by Family and to Communicate with the Outside World**

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

,Tuan was not allowed to be communicated with the outside World and he was not permitted to be visited by his family. Vietnam violated Principle 19 of the Body of Principles as well as Rules 43, 58, and 106 of the Mandela Rules.

#### **3.3.2 Vietnam Violated Tuan’s Right to Communicate with and Have Assistance of Counsel**

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<sup>52</sup> General Comment No. 32, *supra* note 106, at ¶ 48.

<sup>53</sup> *Id*



Articles 14(3)(d) and 14(3)(b) of the ICCPR guarantee that an individual may “defend himself in person or through legal assistance of his own choosing” and “have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.” Such guarantee “requires that the accused is granted prompt access to counsel<sup>54</sup> and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”<sup>55</sup>

Principle 18 of the Body of Principles further provides for the right of a detainee to communicate and consult with his legal counsel, and Rule 119 of the Mandela Rules also provides for the right to access legal advice. Likewise, the Vietnamese Constitution guarantees a detained or criminally charged individual’s right to choose a defense counsel.

Le Huu Minh Tuan was deprived of his right to communicate with counsel and to prepare a defense. After his arrest, he was not permitted access to a lawyer or his family. Since his arrest and detention, Mr. Le Huu has not communicated with his lawyer. Thus, Vietnam violated Articles 14(3)(b) and 14(3)(d) of the ICCPR, Principle 18 of the Body of Principles, Rule 119 of the Mandela Rules, and Article 31 of the Vietnamese Constitution.

#### **IV. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE)**

I am an international Human Rights lawyer and representing the victims whose rights are violated before the UN Working Group on Arbitrary Detention, UN Human Rights Committee as well as the European Court of Human Rights. I, has been retained by Le Thi Hoai Na as Mr. Le Huu Minh Tuan’s international counsel.

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<sup>54</sup> Id. at para. 32.

<sup>55</sup> Id. at para. 34.