

PETITION TO:
THE UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

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HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
Doan Huy Chuong, Do Thi Minh Hanh, and Nguyen Doan Quoc Hung
Citizens of the Socialist Republic of Vietnam

v.

Government of the Socialist Republic of Vietnam

URGENT ACTION REQUESTED

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, and 15/8

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BASIS FOR “URGENT ACTION” REQUEST

After more than two and a half years in custody, labor organizers Doan Huy Chuong, Do Thi Minh Hanh, and Nguyen Hoang Quoc Hung, continue to languish in prison in the custody of the Vietnamese government. The Vietnamese government charged them with vague “national security” charges that emanated from and were grounded in their protected associational and expressive activities in organizing workers at a shoe factory. Further, as explained within, the petitioners were denied a fair trial, which was held a mere 10 days after they were charged and during which they were not permitted legal counsel in their defense.

Doan, Do, and Nguyen have been subjected to horrific conditions in prison, which have caused all three to fall into poor physical condition. Due to their abysmal treatment in detention, Doan has lost the use of one hand, while Do has lost hearing in one ear. Nguyen has predicted that he will die in prison due to the treatment he has suffered. Despite their deteriorating physical conditions, all three are required to spend eight to ten hours per day in hard labor.

While in detention, the three petitioners have been tortured to extract “confessions” and threats have been made against their families. They have also been subjected to prolonged periods of solitary confinement. Doan was held in solitary confinement for seven months. Do was held in solitary confinement for a period of three months. Nguyen was placed in solitary confinement from the time of his arrest in February 2010 until his trial in October 2010.

This is a case “in which there are sufficiently reliable allegations that a person is being arbitrarily detained and that the continuation of such deprivation constitutes a serious threat to that person’s health or even to his life.”¹ Consequently, it is hereby requested that the Working Group consider this Petition pursuant to its “Urgent Action” procedure. It is also requested that this Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights and reconfirmed by Resolutions 2000/36, 2003/31 and Human Rights Council Resolutions 6/4 and 15/18.

MODEL QUESTIONNAIRE

I. IDENTITY OF THE PERSON ARRESTED OR DETAINED

1. ***Family Name:*** Doan; Do; and Nguyen
2. ***First Name:*** Huy Chuong; Thi Ming Hanh; and Hoang Quoc Hung
3. ***Sex:*** Male, Female, and Male

¹ See Report on the Working Group on Arbitrary Detention, E/CN.4/1998/44 (Dec. 19, 1997), Annex 1 at ¶ 22(a).

4. **Birth date or age (at time of detention):** September 8, 1985; March 13, 1985; and July 25, 1981.
5. **Nationality/Nationalities:** Vietnamese
6. **(a) Identity document (if any):** N/A
(b) Issued by: N/A
(c) On (date): N/A
(d) No.: N/A
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):** All three were involved in the associational activity of organizing workers at the My Phong Leather Shoes, Co., Ltd. factory in the Tran Vinh province. As discussed below, all three had been active in protecting workers rights.
8. **Address of usual residence:** At the time of his arrest, Doan was living in Phu Ngoc.² At the time of her arrest, Do resided in the town of Di Linh.³ Until his arrest, Nguyen lived with his father⁴ in Ho Chi Minh City.⁵

II. ARREST

1. **Date of arrest:** Doan was arrested on either February 11 or 13, 2010. Do was arrested on February 23, 2010. Nguyen was arrested on February 24, 2010.
2. **Place of arrest (as detailed as possible):** Doan was arrested in Tra Vinh province. Do was arrested in Lam Dong. Nguyen was arrested in Xuan Loc in the Dong Nai Province.⁶

² *Truy tố 3 bị can phạm tội phá rối an ninh*, Tuổi Trẻ Online, Oct. 18, 2010, at ¶1, available at <http://tuoitre.vn/Chinh-tri-xa-hoi/Phap-luat/406317/Truy-to-3-bi-can-pham-toi-pha-roi-an-ninh.html>.

³ *Số phận của những con thiêu than*, Cand Online, July 23, 2010, [hereinafter *Fate of the Missing*] available at <http://antg.cand.com.vn/vi-VN/sukien/2010/7/72913.cand?Page=2> .; See also *Đỗ Thị Minh Hạnh: Sinh nhật trong tù*, Vanganh Online, Mar. 13, 2012 [hereinafter *Birthday in Prison*] available at <http://vanganh.info/do-thi-minh-hanh-sinh-nhat-trong-tu/>

⁴ *Fate of the Missing*, *supra* note 3, at ¶3.

⁵ *Đỗ Ty, Nguyễn K. Hoàngm, and Chiêm Thị T. Mạnh, Gia đình ba nhà tranh đấu dân oan và lao động kêu gọi thế giới can thiệp*, Đảng Việt Tân, Oct 26, 2010 [hereinafter *Call for Help*], available at <http://www.viettan.org/Gia-dinh-ba-nha-tranh-dau-dan-oan.html>.

⁶ *Committee to Protect Vietnamese Workers News Release — 3 Labour Rights Advocates to Stand Trial for Organising a Strike*, available at <http://protectvietworkers.wordpress.com/2010/10/19/news-release-3-labour-rights-advocates-to-stand-trial-for-organising-a-strike/>.

3. **Forces who carried out the arrest or are believed to have carried it out:** The Vietnam People's Public Security.
4. **Did they show a warrant or other decision by a public authority:** Unknown.
5. **Authority who issued the warrant or decision:** N/A.
6. **Relevant legislation applied (if known):** On October 18, 2010, eight months after their arrests, the Vietnamese government indicted the three organizers on national security-related charges, accusing them of receiving direction and funding from the Warsaw-based Committee to Protect Vietnamese Workers to incite the strike at the My Phong Leather Shoes Co., Ltd. factory in the Tra Vinh province.⁷ According to the Tra Vinh Police Web site, the three organizers were charged with "disturbing security and order against the people's government" under Article 89 of the Penal Code.⁸

III. DETENTION

1. **Date of detention:** Doan, Do, and Nguyen have all been held in detention since their arrests in February 2010.
2. **Duration of detention:** All three have been detained for more than two and a half years. Nguyen is serving a nine-year sentence for violating Article 89 of the Penal Code, while both Doan and Do are serving seven-year sentences for convictions of the same purported crime.
3. **Forces holding the detainee under custody:** Doan, Do, and Nguyen are being held by the Vietnam Ministry of Public Security.
4. **Places of detention (indicate any transfer and present place of detention):** Doan is believed to be detained at a prison in Binh Thuan. Do and Nguyen are currently being held at a prison in Dong Nai. The three have been transferred frequently during their detention. Doan, Do, and Nguyen were moved from the local police station to the Tra Vinh prison, then to a prison in the Tien Giang province, and finally to the Xuan Loc prison, in Dong Nai province. Because Doan has been considered a troublemaker by the

⁷ VN truy tố 3 nhà hoạt động trẻ tội phá rối an ninh, Radio Free Asia, Oct. 18, 2010, at ¶2 [*hereinafter* Activists Indicted on Security Charges] available at <http://www.rfa.org/vietnamese/VietnameseNews/vietnamnews/Labor-Union-Activist-in-Vietnam-charged-with-disrupting-security-10182010170645.html>.

⁸ Xứ 3 bị cáo "phá rối an ninh nhằm chống lại chính quyền nhân dân" Tra Vinh Provincial Police, Oct 27, 2010, at ¶1 [*hereinafter* Tra Vinh Police Report] available at http://travinh.gov.vn/wps/portal/congan!/ut/p/c0/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gDIws_QzcPIwP3QF8DA6MwD08fxzBH5cgE_2CbEdFAAMpBhs!/?WCM_GLOBAL_CONTEXT=/wps/wcm/connect/Cong%20an/cong+an+tra+vinh/tin+tuc/tin+an+ninh+trong+nuoc/xu+ly+3+bi+cao+chong+lai+chinh+quyen+nhan+dan.

Ministry of Public Security, he was moved from Xuan Loc to Thu Duc prison, in Binh Thuan province, where it is believed that he is currently being held.

6. *Authorities that ordered the detention:* The People’s Court of Tra Vinh convicted Doan, Do, and Nguyen of “disrupting security and order against the people's administration,” under Article 89 of the penal code on October 28, 2010, just 10 days after they were charged.

7. *Reasons for the detention imputed by the authorities:* The government contends that the three violated Article 89 of the penal code, which Doan, Do, and Nguyen were convicted of following a trial in which they were permitted neither legal counsel nor the opportunity to speak in their own defense. The government contends that the three violated Article 89 by attempting to organize workers at a shoe factory and distributing organizing literature

8. *Relevant legislation applied (if known):* Doan, Do, and Nguyen were convicted of disrupting national security under Article 89 of the Penal Code.⁹

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*

I. Statement of Facts

Part A of this section discusses Vietnam and its documented history of arbitrary detention of citizens for their associational activities and free expression and deprivation of its citizens’ fundamental right to a fair trial. Part B presents the cases of Doan Huy Chuong, Do Thi Minh Hanh, and Nguyen Doan Quoc Hung, Vietnamese labor organizers who have been arbitrarily detained by the Vietnamese government for more than two and a half years for their role in helping to organize workers at a shoe factory in Vietnam.

A. *The Socialist Republic of Vietnam and its History of Arbitrary Detention and Suppression of Labor Rights*

The Constitution of Vietnam purports to protect its citizens’ rights to freedom of association and to an impartial trial.¹⁰ Despite this stated freedom, Vietnam has

⁹ See *Arbitrary Detention in the Socialist Republic of Vietnam*, testimony by Vo Van Ai (Que Me: Action for Democracy in Vietnam) to the Tom Lantos Human Rights Commission Hearing on Vietnam: Continuing Abuses of Human Rights and Religious Freedom, May 15, 2012, at 8 [*hereinafter* Lantos Testimony] available at https://www.que.me.net/eng/doc/Arbitrary-detention-in-RSV_Vo-Van-Ai-2012.pdf. Article 89 states that: “Those who intend to oppose the people’s administration by inciting, involving and gathering many people to disrupt security, oppose officials on public duties, obstruct activities of agencies and/or organizations, which fall outside the cases stipulated in Article 82 of this Code, shall be sentenced to between five and fifteen years of imprisonment.” Vietnam Penal Code Art. 89(1).

¹⁰ Gov’t of the Socialist Republic of Vietnam, Constitution, Art. 69 and 130.

traditionally quashed its citizens' right to associational activity. A 2011 report stated that "[t]he government severely restricted freedom of association and neither permitted nor tolerated opposition political parties. The government prohibited the establishment of private, independent organizations, insisting that persons work within established, party-controlled mass organizations, usually under the aegis of the VFF [Vietnam Fatherland Front]."¹¹

Likewise, the International Trade Union Confederation examined Vietnam's associational rights, and found that the rights to organize employees and strike in Vietnam are severely restricted:

There are many obstacles to the free enjoyment of trade union rights. Workers may not organise or join unions of their choosing, as all unions must be approved by and affiliate with the Vietnam General Confederation of Labour (VGCL) and operate under its umbrella. The VGCL, on its part, is under the leadership of the ruling party. Individual unions can only affiliate with, join or participate in international labour bodies if approved by the VGCL.

While VGCL-affiliated unions have the right to bargain collectively, the right to strike is severely restricted. The voting thresholds for calling a strike are prohibitively high, and all strikes must relate to collective labour disputes or concern industrial relations. Furthermore, strikes that involve more than one enterprise are illegal, as are strikes called in public services or state-owned enterprises. Strikes are also banned in sectors considered important to the national economy and defence, a definition which currently covers a total of 54 sectors. The Prime Minister can suspend a strike considered detrimental to the national economy or public security. Finally, if a strike is ruled illegal, the union and the individuals involved are liable for compensation to the employer for "losses and damages."¹²

These policies, combined with the pressure placed on Vietnamese workers by lower wages and difficult working conditions has led to a rash of so-called "wildcat" (non-union) strikes over the past decade.¹³

¹¹ *2011 Country Reports on Human Rights Practices: Vietnam*, U.S. Dep't. of State, at §7(a) [*hereinafter* 2011 State Dep't Report] *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186319.

¹² *Annual Survey of Violations of Trade Union Rights: Vietnam 2012*, International Trade Union Confederation, at §3 ("Trade Union Rights in Law") [*hereinafter* ITUC 2012 Survey] *available at* <http://survey.ituc-csi.org/Vietnam.html?edition=336#tabs-3>.

¹³ The US State Department reported 981 wildcat strikes in 2011, 2011 State Dep't Report, *supra*, note 11, at 44.

Independent unions in Vietnam are systematically and thoroughly suppressed. According to the country's Constitution, the Communist Party of Vietnam (CPV) is the "vanguard of the Vietnamese working class and loyal representative of the interests of the working class."¹⁴ Frequently, the Vietnamese government will use the vague "national security" provisions of its penal code, including Article 89, to detain and punish citizens for their associational activity.¹⁵

The "national security" provisions of the Vietnamese penal code, including Article 89, used to convict the detainees in this case, also have long-been used to oppress Vietnamese citizens' freedom of expression. These criminal provisions "make no distinction between violent acts such as terrorism and the peaceful exercise of freedom of expression"¹⁶ Human Rights Watch has found that "[t]he Vietnamese government systematically suppresses freedom of expression," finding that "Criminal penalties apply to authors, publications, websites, and internet users who disseminate materials deemed to oppose the government, threaten national security, reveal state secrets, or promote "reactionary" ideas. The government blocks access to politically sensitive websites, requires internet café owners to monitor and store information about users' online activities, and subjects independent bloggers and online critics to harassment and pressure."¹⁷

Similar to its systematic suppression of its citizens' rights to association and free expression, the government of Vietnam also has a history of denying its citizens a fair trial. Although the country's Constitution calls for independent trials,¹⁸ in practice the country has a history of not providing fair trials.

The law provides for the independence of judges and lay assessors, but in practice they were not independent. The CPV [Communist Party of Vietnam] controlled the courts at all levels through its effective control over judicial appointments and other mechanisms, and in many cases it determined verdicts. As in past years, political influence, endemic corruption, and inefficiency strongly distorted the judicial system. Most, if not all, judges were members of the CPV and chosen at least in part for their political views. ***The party's influence was particularly notable in high-profile cases and other instances in which authorities charged a person with challenging or harming the party or state.***¹⁹

¹⁴ Gov't of the Socialist Republic of Vietnam, Constitution, Art. 4,

¹⁵ Lantos Testimony *supra*, note 9, at 8.

¹⁶ Lantos Testimony *supra*, note 9, at 8.

¹⁷ Human Rights Watch January 2012 Country Summary: Vietnam at 1-2, *available at* http://www.hrw.org/sites/default/files/related_material/vietnam_2012.pdf.

¹⁸ Gov't of the Socialist Republic of Vietnam, Constitution, Art. 130.

¹⁹ 2011 State Dep't Report, *supra*, note 11, at 8 (emphasis supplied).

Similarly, the Working Group on Arbitrary Detention (Working Group) just last year found that Vietnam denied a group of seven pro-democracy citizens their fair trial rights by denying them the rights to communicate with their counsel and have a public trial.²⁰ The Working Group has similarly found Category III arbitrary detention in at least two other prior instances where detainees were denied the assistance of counsel in 1997 and 2003.²¹

B. The Arbitrary Detentions of Doan Huy Chuong, Do Thi Minh Hanh, and Nguyen Doan Quoc Hung

Doan Huy Chuong²², Do Thi Minh Hanh, and Nguyen Doan Quoc Hung are Vietnamese labor activists. Since February 2010, they have been detained for organizing workers at the My Phong Leather Shoe Co., Ltd. factory in the Tra Vinh province. Subsequently, as described below, they were shepherded through a closed trial, during which they were refused legal counsel and the right to defend themselves.

1. Background Information on Doan Huy Chuong

Doan Huy Chuong is a 27 year-old labor activist who has been active in the Vietnamese workers' rights community for more than six years. He has previously been arbitrarily detained by the Vietnamese government for his associational activity on national security related charges. Doan is married and has two children.²³

Doan's father was a long-time political activist in Vietnam, focusing on land rights activism and, later, religious freedom.²⁴ In the summer of 2006, Doan and his father started the United Farmers and Workers Organization ("UFWO").²⁵ According to Human Rights Watch, UFWO's "stated goals were to protect workers' rights, including the right to form and join independent trade unions, engage in strikes, and collectively bargain with employers without being required to obtain government or party approval.

²⁰ *Tran, et. al. v. Vietnam*, U.N. Working Group on Arbitrary Detention, Op. No. 46/2011 (The Socialist Republic of Vietnam) (Sept. 2, 2011).

²¹ *Phuc, et. al. v. Vietnam*, U.N. Working Group on Arbitrary Detention, Op. No. 21/1997 (The Socialist Republic of Vietnam) (July 14, 1997); *Nguyen v. Vietnam*, U.N. Working Group on Arbitrary Detention, Op. No. 20/2003 (The Socialist Republic of Vietnam) (May 28, 2002).

²² Doan Huy Chuong has also gone by the name Nguyen Tan Hoang.

²³ Call for Help, *supra*, note 5.

²⁴ *Human Rights Case of Doan Van Dien and Doan Huy Chuong*, Ho Chi Minh City US Consulate, Dec 26, 2006 at ¶6 [*hereinafter* Case of Doan Huy Chuong] available at <http://www.wikileaks.org/cable/2006/12/06HOCHIMINHCHITY1485.html>.

²⁵ The UFWO's work focused on building grassroots support among factory workers and dispossessed farmers.

They also planned to disseminate information about workers' rights and exploitative and abusive labor conditions."²⁶ The group was non-violent.²⁷

Later in 2006, the Vietnamese government began to crackdown on dissidents, specifically targeting the UWFO.²⁸ All known members of the UWFO were arrested, including Doan and his father.²⁹ Their arrests were noted in an Urgent Appeal from the Special Rapporteur on Human Rights Defenders and the Chairperson-Rapporteur of the Working Group.³⁰

Charges against Doan based on his 2006 arrest were not shared with his family,³¹ but the government later insisted to the Working Group his family *had* been informed that Doan was charged under Article 79 of the Penal Code.³² Article 79 of the Penal Code, similar to Article 89 used in the current instance, criminalizes the behavior of "[t]hose who carry out activities, establish or join organizations with intent to overthrow the people's administration."³³ After his eventual release in May 2008, Doan stated that he had been held in shackles twice for long periods of seven and five days, subjected to solitary confinement for weeks at a time, and was only allowed three visits from his family.³⁴

In early December 2007, the People's Court in southern Dong Nai province convicted Doan, his father, and two other UFWO members of the vague crime of "abusing democracy and freedom rights to infringe upon the interests of the State and the legitimate rights and interests of organizations and citizens" under Article 258 of

²⁶ *Not Yet a Worker's Paradise: Vietnam's Suppression of the Independent Workers' Movement*, Human Rights Watch, at 6 [*hereinafter* No Worker's Paradise] available at <http://www.hrw.org/reports/2009/05/03/not-yet-workers-paradise>.

²⁷ Case of Doan Huy Chuong, *supra* note 24, at ¶10.

²⁸ *Southern Dissident Watch Post-APEC*, Ho Chi Minh City US Consulate, Dec 5, 2006 at ¶11 [*hereinafter* Dissident Watch Post-APEC] available at <http://www.wikileaks.org/cable/2006/12/06HOCHIMINH/CITY1361.html#>.

²⁹ No Worker's Paradise, *supra* note 26, at 8.

³⁰ See also *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani*, A/HRC/4/37/Add.1 (Mar. 27, 2007) at ¶727 [*hereinafter* Rights Defenders Report] available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-37-Add-1.pdf>.

³¹ Case of Doan Huy Chuong, *supra* note 24, at ¶3, 5.

³² *Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani*, A/HRC/7/28/Add.1 (Mar. 5, 2008) at ¶2039, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/114/44/PDF/G0811444.pdf?OpenElement>.

³³ Viet. Pen. Code. Art. 79

³⁴ Ông Nguyễn Tấn Hoàn được nhà cầm quyền trả tự do, Radio Free Asia, May 18, 2008, at ¶18 [*hereinafter* Mr. Nguyen Tan Heng is released] available at <http://www.rfa.org/vietnamese/HumanRights/Nguyen-Tan-Hoanh-political-prisoner-set-free-VHung-05182008134432.html>.

Vietnam's Penal Code.³⁵ Specifically, the prosecution relied on leaflets Doan and his father had distributed and interviews they had given to Radio Free Asia purportedly defaming the State of Vietnam by asserting the Vietnamese government committed labor rights violations and arrested peaceful protesters.³⁶ Although they were allowed to speak in their own defense at trial, Doan, his father, and the others convicted were not permitted to have counsel and the trial lasted just 90 minutes.³⁷ Doan was sentenced to 18 months in prison.³⁸ The Appellate Court in Ho Chi Minh City conducted a brief procedure, with no defense counsel permitted for Doan and upheld the sentences on February 25, 2008.³⁹

On May 13, 2008, Doan was released from prison. At the time of his release, Doan's health was poor. Five days after his release, he told Radio Free Asia he had suffered from paralysis in prison as a result of his prolonged shackling, and that he continued to have headaches and shortness of breath and had difficulty travelling or "do[ing] anything."⁴⁰

Despite his previous imprisonment, Doan continued to organize workers in Vietnam. By the beginning of 2010, Doan was involved with helping workers organize at the My Phong Shoes Co., Ltd. plant leading to his current arbitrary detention.

2. Background Information on Do Thi Minh Hanh

Do Thi Minh Hanh was born March 13, 1985, in Lam Dong. At the time of her arrest, she resided in the town of Di Linh.⁴¹

Do became politically active at eighteen, writing petitions on behalf of "Victims of Injustice" (*Dan Oan*) in an attempt to help farmers reclaim land, unjustly confiscated from them.⁴² In the spring of 2005, she was detained by authorities for her associational activities for several days but apparently never charged.⁴³ She graduated from college and

³⁵ *Labor Activists Convicted*, Ho Chi Minh City US Consulate, Dec. 12, 2007, at ¶2 [*hereinafter* Labor Activists Convicted] available at <http://www.wikileaks.org/cable/2007/12/07HOCHIMINHCHITY1220.html>.

³⁶ No Worker's Paradise, *supra* note 26, at 21-22.

³⁷ Việt Hùng, *Bị buộc tội chống phá Nhà nước vì trả lời phỏng vấn RFA*, Radio Free Asia, Feb. 27, 2008, at ¶31 [*hereinafter* Charged Because of an RFA Interview] available at http://www.rfa.org/vietnamese/VietnameseNews/Court_sentences_4_dissidents_in_HoChiMinh_City_VHuong-20080227.html.

³⁸ No Worker's Paradise, *supra* note 26, at 21-22.

³⁹ Charged Because of an RFA Interview, *supra* note 37, at ¶1.

⁴⁰ Mr. Nguyen Tan Heng is released, *supra* note 34, at ¶6.

⁴¹ Fate of the Missing, *supra.*, note 3 at ¶ 14. See also Birthday in Prison, *supra.*, note 3.

⁴² See e.g. *VNHRN presented the 2011 Vietnam Human Rights Award in Melbourne, Australia*, Vietnam Human Rights Network, Dec. 10, 2011, at ¶8 [*hereinafter* Award] available at http://www.vietnamhumanrights.net/website/VNHRN_121011.htm.

⁴³ *Chuyện của Hạnh*, Dan Lam Bao, Oct. 26, 2011, at ¶4 [*hereinafter* Hanh's Story] available at <http://danlambao.vn.blogspot.com/2011/10/chuyen-cua-hanh.html>.

became an accountant.⁴⁴ Later, Do quit her job as an accountant to become a full-time labor activist, traveling to factories to help employees organize.⁴⁵

Do became interested in working to help organize the workers at the My Phong shoe factory because of reports that bosses were keeping workers' wages and supervisors were abusively shouting at their employees.

In 2011, Do was given the Vietnam Human Rights Network Award.⁴⁶

3. Background Information on Nguyen Doan Quoc Hung

Nguyen Doan Quoc Hung was born in 1981 in Tien Giang.⁴⁷ Until his arrest, Nguyen lived in Ho Chi Minh City.⁴⁸

Nguyen is Do's boyfriend and they have been together since meeting at Ho Chi Minh University while students in the spring of 2009.⁴⁹ After graduation, he worked in computer repair and later, like Do, developed an interest in injustices occurring in Vietnam⁵⁰ and is a member of the "Victims of Injustice" movement.⁵¹ Nguyen is also a member of the pro-democracy Bloc 8406.⁵²

Due to his political dissidence, on July 28, 2009, Nguyen was briefly detained, taken to Phu Nhuan police headquarters, and beaten.⁵³

Like Doan and Do, Nguyen had become involved in organizing the My Phong workers by early 2010.

4. Arbitrary Arrest, Conviction, and Subsequent Imprisonment

⁴⁴ *Đổi Thoại Nhân Quyền của bộ ngoại giao Úc với quỹ TNLT 8-2011*, Prisoners of Conscience Fund, Jul. 29, 2011, at ¶17, available at <http://www.pocfonline.net/2011/07/bo-ngoai-giao-uc-va-viet-nam-oi-thoai.html>.

⁴⁵ Award, *supra* note 42, at ¶8.

⁴⁶ Award, *supra* note 42.

⁴⁷ Fate of the Missing, *supra* note 3, at ¶3.

⁴⁸ *Id.*

⁴⁹ *Dongasg - Con đường của Hùng Hạnh Chương*, Dân Luận, Mar. 17, 2011, at ¶16 [*hereinafter* Way of the Hung-Hanh-Chuong] available at <http://danluan.org/node/8154>.

⁵⁰ Fate of the Missing, *supra* note 3, at ¶3; Tường An, *Giúp Đỡ Dân Oan: Công hay Tội?*, Radio Free Asia, Sept. 25, 2010, at ¶8 [*hereinafter* Is Helping a Crime?] available at <http://www.rfa.org/vietnamese/HumanRights/Is-helping-land-protesters-a-crime-tan-09252010125155.html>.

⁵¹ *Annual Survey of Violations of Trade Union Rights: Vietnam 2011*, International Trade Union Confederation, at §5 ("Violations") [*hereinafter* ITUC 2011 Survey] available at <http://survey.ituc-csi.org/Vietnam.html?edition=248#tabs-5>.

⁵² *Voices of Conscience*, Viet Tan (Jan. 2012) at 15, available at http://www.viettan.org/IMG/pdf/VOC_January_2012.pdf.

⁵³ Way of the Nguyen-Do-Chuong, *supra* note 49, at ¶11.

In January 2010, Doan, Do, and Nguyen were working with employees of the My Phong Leather Shoes Co., Ltd. factory to organize workers. The My Phong Leather Shoes Co., Ltd. factory is in the Tra Vinh province and was opened in 2005. It operated two branches with some 11,000 workers in early 2010.⁵⁴

In January 2010, the workers at the factory became unhappy with new regulations making it more difficult for them to earn bonuses.⁵⁵ Additionally, Taiwanese corporate executives inspecting the factory were insulting to female workers and possibly physically abusive.⁵⁶

On January 28, 2010, a man in the factory called for a strike.⁵⁷ To prevent the strike from spreading through the factory, the company sealed workers into their individual areas.⁵⁸ After sixteen women fainted from lack of oxygen, the workers — including Doan — broke out to free themselves.⁵⁹ The strike continued, and on January 31 and February 1, 2010 thousands of leaflets were scattered around the factory with a list of workers' demands.⁶⁰ A copy of the My Phong leaflet, with an English translation, is appended as Exhibit A.

The My Phong leaflets reference human dignity and the international community, differentiating the My Phong action from the more typical wildcat strikes found in Vietnam.⁶¹ For instance, in addition to requesting an increase in the worker's basic wage and full bonuses, the leaflet calls on the company to “respect workers' dignity” and demands accountability for violations of workers' rights.⁶² Local and regional government and labor leaders worked with the corporation and the employees to negotiate a compromise. The company promised to consider bonus reform, boosted wages and reinstated Tet bonuses.⁶³ The strike ended and employees returned to work on February 4, 2010.⁶⁴ Radio Free Asia called the action a “striking achievement.”⁶⁵

⁵⁴ *Một vạn công nhân đình công ở Trà Vinh*, BBC Tiếng Việt, Feb. 2, 2010, at ¶12 [*hereinafter* Workers Strike in Tra Vinh] available at http://www.bbc.co.uk/vietnamese/vietnam/2010/02/100202_labour_strike.shtml.

⁵⁵ *Id.* at ¶2.

⁵⁶ *Id.* at ¶6.

⁵⁷ *Bản Tin UBBV - Cập nhật v/v Mỹ Phong: - Rải truyền đơn - 3 triệu để bắt công nhân anh Nguyen*, Committee to Protect Workers in Vietnam, Feb. 22, 2010 [*hereinafter* CPWV My Phong Coverage] available at <http://baovelaodong.com/2010/02/c%E1%BA%ADp-nh%E1%BA%ADt-vv-m%E1%BB%B9-phong-r%E1%BA%A3i-truy%E1%BB%81n-d%C6%A1n-3-tri%E1%BB%87u-d%E1%BB%83-b%E1%BA%Aft-cong-nhan-anh-hung/>.

⁵⁸ *10 ngàn công nhân ở Trà Vinh đình công*, Saigon Tin, Feb. 1, 2010 available at <http://www.saigontin.com/vi%E1%BB%87t-nam/10-ngan-cong-nhan-%E1%BB%9F-tra-vinh-dinh-cong/>.

⁵⁹ *Id.* See also Way of the Hung-Hanh-Chuong, *supra* note 49, at ¶19.

⁶⁰ CPWV My Phong Coverage, *supra* note 57.

⁶¹ Way of the Hung-Hanh-Chuong, *supra* note 49, at ¶22; see also Exhibit A.

⁶² Exhibit A.

⁶³ *Thưởng tết cao hơn cho công nhân Cty giày da Mỹ Phong*, Báo Mới.com, Feb. 2010, available at <http://www.baomoi.com/Thuong-tet-cao-hon-cho-cong-nhan-Cty-giay-da-Mỹ-Phong/47/3841403.epi>. See

Soon after the strike, the Vietnamese government began to make arrests, questioning people about the organizers of the strike.⁶⁶ The responses to the authorities' inquiry apparently implicated Doan, Do, and Nguyen. Doan was arrested on February 13, 2010. Do and Nguyen were arrested on February 23 and 24, 2010 respectively. Do was held for "disturbing social order and security,"⁶⁷ but as late as September 2010, police had not disclosed any charges against Nguyen or Doan.⁶⁸

In late May 2010, Human Rights Watch called on the Vietnamese government to either provide the organizers with lawyers or release them.⁶⁹ With the exception of one visit between Do and her mother, on May 10, 2010 and letters from family members encouraging confession, the three petitioners were held with no access to the outside world, including lawyers.⁷⁰ Doan was in solitary confinement from the time of his arrest until his wife was allowed to visit on September 10, 2010 — a total of seven months.⁷¹ The International Trade Union Confederation reported that all three, and Do in particular, were beaten severely.⁷² During the period between the petitioners' arrest and charges being filed, Doan's family was harassed by authorities and his wife's property was confiscated by the government.⁷³ All three organizers were beaten and tortured, and threatened with violence against their families in an attempt to force their confessions.⁷⁴

On October 18, 2010, eight months after their arrests, the Vietnamese government indicted Doan, Do and Nguyen on national security-related charges, accusing them of

also Trà Vinh: Công nhân Công ty Giày da Mỹ Phong trở lại làm việc, Voice of Vietnam Online, Feb. 4, 2010 [*hereinafter* VoV My Phong Coverage] *available at* <http://www.baomoi.com/Home/LaoDong/vovnews.vn/Tra-Vinh-Cong-nhan-Cong-ty-Giay-da-My-Phong-tro-lai-lam-viec/3834314.epi>.

⁶⁴ *Id.*

⁶⁵ Đinh Nguyên, *Những vụ xử các nhà bất đồng chính kiến trong năm 2011*, Radio Free Asia, Dec. 30, 2011, at ¶14 [*hereinafter* Dissident Trials of 2011] *available at* http://www.rfa.org/vietnamese/in_depth/trials-of-dissident-2011-dn-12302011100831.html.

⁶⁶ CPWV My Phong Coverage, *supra* note 57.

⁶⁷ Tường An, *Công an bắt giữ 3 nhà hoạt động trẻ*, Radio Free Asia, May 22, 2010, at ¶11 [*hereinafter* Police Arrest Three Young Activists] *available at* <http://www.rfa.org/vietnamese/vietnam/chinh-tri/Vn-isolated-political-detainees-at-risk-of-torture-interview-le-quang-liem-tan-05222010145203.html>.

⁶⁸ *Is Helping a Crime?*, *supra* note 50, at ¶2.

⁶⁹ *Vietnam: Isolated Political Detainees at Risk of Torture*, Human Rights Watch, May 20, 2010, at ¶5 [*hereinafter* Vietnam Detainees Risk Torture] *available at* <http://www.hrw.org/news/2010/05/20/vietnam-isolated-political-detainees-risk-torture>.

⁷⁰ *Id.*

⁷¹ *Is Helping a Crime?*, *supra* note 50, at ¶11.

⁷² ITUC 2011 Survey, *supra* note 51, at §5 ("Violations").

⁷³ *Is Helping a Crime?*, *supra* note 50, at ¶13.

⁷⁴ This information was learned through conversations with representatives of the Committee to Protect Vietnamese Workers.

receiving direction and funding from the Warsaw-based Committee to Protect Vietnamese Workers to incite the strike at the shoe factory.⁷⁵ According to the Tra Vinh Police, the three organizers were accused of carrying out demonstrations, leafleting in Tra Vinh, Dong Nai, and Ho Chi Minh City, inciting people against the Party and the State, taking advantage of labor unrest to organize propaganda and incite a strike, protesting, and destroying the machinery and assets of the plant.⁷⁶ The charge of destroying property stems from the incident, described above, where the workers had to break down a door in order to avoid suffocation.

The trial was held just ten days after the indictment, on October 28, 2010. The petitioners' families did not retain counsel because they were assured by the government that a lawyer would be provided. Despite those assurances, none of the three received defense attorneys at trial, nor were any of them permitted to speak on their own behalf.⁷⁷

The People's Court of Tra Vinh convicted the petitioners of disrupting security under article 89 of the penal code.⁷⁸ Doan and Do were sentenced to seven years in prison. Nguyen was sentenced to nine.⁷⁹

Article 89 criminalizes the behavior of “[t]hose who intend to oppose the people’s administration by inciting, involving and gathering many people to disrupt security, oppose officials on public duties, obstruct activities of agencies and/or organizations, which fall outside the cases stipulated in Article 82 of this Code.”⁸⁰ Article 82, not applied in this case, deals with organized, violent rebellion against the Vietnamese government. Although striking by Unions not affiliated with the government-controlled Vietnam General Confederation of Labour is illegal in Vietnam, the petitioners were not charged with a crime specifically involving striking. To the contrary, the actual charge directly implicated their organizing efforts, which drew the attention of the Vietnamese government and led to the petitioners’ arbitrary detention.

After the trial, the families of the three organizers released a joint appeal entitled “Call for Help” to “democratic countries around the world, human rights organizations [and] unions worldwide.”⁸¹

⁷⁵ Activists Indicted on Security Charges, *supra* note 7, at ¶2.

⁷⁶ Tra Vinh Police Report, *supra* note 8, at ¶7.

⁷⁷ *Overturn Labor Activists’ Harsh Prison Sentences*, Human Rights Watch, Mar. 16, 2011, at ¶7 [*hereinafter* *Overturn Harsh Sentences*], available at <http://www.hrw.org/news/2011/03/16/vietnam-overturn-labor-activists-harsh-prison-sentences>.

⁷⁸ Article 89 is one of several “national security” provisions in the penal code Vietnam frequently relies on for arbitrary detention. See Lantos Testimony, *supra.*, note 9.

⁷⁹ *2010 Country Reports on Human Rights Practices: Vietnam*, U.S. Dep’t of State, at §1(e) [*hereinafter* 2010 State Dep’t Report] available at <http://www.state.gov/j/drl/rls/hrpt/2010/eap/154408.htm>.

⁸⁰ Viet. Pen. Code Art 89.

⁸¹ Call for Help, *supra* note 5, at ¶1.

5. *Appeal*

Following the trial, the families engaged a lawyer—Dang The Luan of Ho Chi Minh City.⁸² Luan was not allowed access to his clients, though, and family members—now allowed monthly visits—were forbidden to mention they had engaged him.⁸³ Family members also told Human Rights Watch that prison officials had encouraged the three organizers not to appeal their convictions.⁸⁴

The initial appeal was set for January 24, 2011. On January 18, the families submitted a joint complaint to various authorities asking them to respect the right to counsel and postpone the appeal.⁸⁵ At this point, the proceeding was moved to March 18 and the lawyers were allowed access.⁸⁶

The appeal was held in the same court as the original trial.⁸⁷ When Do's family arrived at the appeal, they were told the courtroom would be closed to family and spectators. Only lawyers and police were allowed in.⁸⁸ Dang The Luan presented a defense on behalf of Doan, Do, and Nguyen. The defense acknowledged that they organized workers and distributed leaflets, but denied that those actions constituted crimes under Article 89. The court upheld its earlier verdict.⁸⁹

6. *Mistreatment During Detention*

All three petitioners have suffered and deteriorated physically due to the horrific conditions to which they have been subjected while in detention. By the time of their appeal, all three petitioners had suffered considerably in prison. All the organizers are frequently beaten, both by their guards and other prisoners.⁹⁰

⁸² *Ba người trẻ bị y án sơ thẩm*, Radio Free Asia, Mar. 18, 2011, at ¶3, [*hereinafter* RFA News of Appeal] available at <http://www.rfa.org/vietnamese/vietnamnews/news-031811-pm-03182011155937.html>.

⁸³ *Overturn Harsh Sentences*, *supra* note 77, at ¶7.

⁸⁴ *Id.*

⁸⁵ *See ĐƠN KHIẾU NẠI VỀ VI PHẠM PHÁP LUẬT TRONG GIẢI QUYẾT VỤ ÁN HÌNH SỰ*, Doi Thoai, Jan. 25, 2011, available at <https://doithoaionline.wordpress.com/2011/01/25/d%C6%A1n-khi%E1%BA%BFu-n%E1%BA%A1i-v%E1%BB%81-vi-ph%E1%BA%A1m-phap-lu%E1%BA%ADt-trong-gi%E1%BA%A3i-quy%E1%BA%BFt-v%E1%BB%A5-an-hinh-s%E1%BB%B1/> (full text of the appeal).

⁸⁶ *Id.* at ¶8. *See also* Khoa Diễm, *Ba nhà dân chủ ở Trà Vinh sẽ ra tòa không có luật sư*, Radio Free Asia, Jan. 24, 2011, available at <http://www.rfa.org/vietnamese/HumanRights/three-labor-activists-going-to-trial-without-lawyers-kdiem-01242011203947.html>.

⁸⁷ RFA News of Appeal, *supra* note 82.

⁸⁸ Tường An, *Tòa phúc thẩm y án 3 nhà hoạt động trẻ*, Radio Free Asia, Mar. 19, 2011, at ¶3 [*hereinafter* Court Upholds Activists' Verdicts] available at http://www.rfa.org/vietnamese/in_depth/court-upholds-verdict-for-3-activists-tan-03192011141030.html.

⁸⁹ *Id.*

⁹⁰ *Japanese Metalworkers Union Meets Families of Jailed Viet Unionists*, Committee to Protect Vietnamese Workers, Aug. 17, 2011, available at

After seven days of torture, Doan was escorted to B-14 prison (Nguyen Van Cu).⁹¹ In a radio interview in mid-2011, Doan's wife, who was visiting him every one or two months, reported he was suffering from muscular dystrophy and had a fractured shoulder.⁹² Doan has lost the use of three of his fingers.⁹³ Doan was also tortured, suffering a leg wound.⁹⁴

Do has lost hearing in one ear and suffered from swollen joints and stomach pains.⁹⁵ She suffers from chronic headaches.⁹⁶ Do has been beaten, starved, and tortured.⁹⁷ In July 2011, an inmate at Xuan Loc prison reported that Do had become very thin, is wounded, and bore evidence of abuse.⁹⁸

In addition to the prolonged time in solitary confinement discussed above, following his initial arrest, Nguyen's nose was broken during beatings and torture in a secret prison in Ho Chi Minh City. Nguyen's family described his transformation from the time of his arrest to the trial eight months later as "from a strong and healthy young man, [he] was physically beaten into a sick and weak man."⁹⁹ Nguyen has predicted he will not live to finish his sentence.¹⁰⁰

The petitioners have been transferred four or five times and fresh rounds of beatings accompany each transfer. While Do and Nguyen are currently detained at a prison in Xuan Loc, Doan has been transferred to another prison because the government believes he was causing trouble while in prison. It is believed that Doan is currently serving his sentence at the Thu Duc prison, in Binh Thuan province. While their families are allowed to send them medication, the prison keeps them on a labor regimen which prevents them from healing from their multitude of injuries. Regardless of their physical

<http://protectvietworkers.wordpress.com/2011/08/17/japanese-metalworkers-union-meets-families-of-jailed-viet-unionists/>.

⁹¹ Hanh's Story, *supra* note 43, at ¶12.

⁹² *Chị Chiêm Thị Tường Mạnh nói về hiện tình giam giữ của chồng, anh Đoàn Huy Chương*, Radio Chân Trời Mới, Aug 6, 2011 [*hereinafter* Thuong Aug 6 Interview] available at <http://www.radiochantroimoi.com/spip.php?article9150>.

⁹³ *Id.*

⁹⁴ Lantos Testimony, *supra* note 9, at 12.

⁹⁵ *Vietnam - Verdict of three workers rights activists, mistreated in custody, confirmed on appeal (2012)*, International Trade Union Confederation, available at <http://survey.ituc-csi.org/Verdict-of-three-workers-rights.html>.

⁹⁶ *Id.*

⁹⁷ Hanh's Story, *supra.*, note 43, at ¶12.

⁹⁹ Call for Help, *supra* note 5, at ¶8.

¹⁰⁰ *Id.*

condition, the trio is required to work between 8 and 11 hours a day. Doan's skin is burnt black from the sun.

II. Analysis

The government's detention of Doan, Do, and Nguyen constitutes an arbitrary deprivation of liberty, falling within both Category II and III of the classifications of cases as defined by the Working Group.¹⁰¹

This case meets the requirements of Category II based upon the government's arbitrary detention of Doan, Do, and Nguyen as a result of the exercise of their fundamental right to freedom of association embodied by Article 22 of the International Covenant on Civil and Political Rights ("ICCPR"), to which Vietnam is a party,¹⁰² Article 8 of the International Covenant on Economic, Social, and Cultural Rights ("ICESR"),¹⁰³ to which Vietnam is a party,, and Article 20 of the Universal Declaration of Human Rights ("UDHR").¹⁰⁴ The continued detention of Doan, Do, and Nguyen also violates their freedom of expression under Article 19(1) of the ICCPR and Article 19 of the UDHR.¹⁰⁵

This case also satisfies the requirements of Category III because the Government of Vietnam did not observe minimum international norms relating to the right to a fair trial, established by Article 14 of the ICCPR, Article 10 of the UDHR, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("Body of Principles"), when it arbitrarily deprived Doan, Do, and Nguyen of their liberty.¹⁰⁶

¹⁰¹ "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law." International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 000 U.N.T.S. 171 *entered into force* 23 March 1976, at art. 9(1) [hereinafter ICCPR]. "No one shall be subjected to arbitrary arrest, detention, or exile." Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art. 9 (1948) [hereinafter UDHR].

¹⁰² Vietnam ratified the ICCPR on December 24, 1982.

¹⁰³ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 *entered into force* March 23, 1976.

¹⁰⁴ Status of Ratification of the International Covenant on Economic, Social, and Cultural Rights, U.N.T.C. Chapter IV(3), *available at* http://treaties.un.org/Pages/.aspx?=&mtdsg_no=IV-3&chapter=4&lang=en.

¹⁰⁵ ICCPR at Art. 19(2).

¹⁰⁶ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter Body of Principles].

A. Vietnam’s Detention of Doan, Do, and Nguyen Resulted from the Exercise of Their Fundamental Right to Freedom of Association

The ICCPR at Article 22(1) provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”¹⁰⁷ Article 20 of the UDHR guarantees everyone “the right to freedom of peaceful assembly and association.”¹⁰⁸ Finally, Article 8(1)d of the International Covenant on Economic, Social, and Cultural Rights (“ICESR”) specifies that the ability of trade unions to protect individuals’ interests includes the right to strike.¹⁰⁹ In combination, these three documents protect Doan, Do, and Nguyen’s associational activities in peacefully organizing the workers at the My Phong factory. Detaining them for exercising their rights under Article 20 of the UDHR is arbitrary under Category II.¹¹⁰

Despite these protections, the government charged Doan, Do, and Nguyen with violating the vague national security provisions of Article 89 of Vietnam’s Penal Code. Article 89 makes it a crime to, *inter alia*, “gather many people to disrupt security.” Prosecuting Doan, Do, and Nguyen for organizing workers at the My Phong factory directly violates their core protected rights under Article 22(1) of the ICCPR and Article 20 of the UDHR. Doan, Do, and Nguyen exercised their associational rights to organize the workers at the shoe factory and to make demands for a work place that recognized the “human dignity” of the workers. In response, the government used those protected activities as the basis for charging them with disrupting national security and subjected them to torture.

I. Vietnam’s Detention of Doan, Do, and Nguyen Is Not Based on the Protection of National Security

Article 22(2) of the ICCPR provides some exceptions to an individual’s right to form associations. Article 22(2) states 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

¹⁰⁷ ICCPR at Art. 22(1).

¹⁰⁸ UDHR at Art. 20(1).

¹⁰⁹ International Covenant on Economic, Social, and Cultural Rights, G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 Jan. 1976, at art. 8(1)d [*hereinafter* ICESCR]; *Report of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/16/47 (“Revised Methods of Work”) (Jan. 19, 2011), at 22 [*hereinafter* Revised Methods of Work] (allowing the Working Group to consider relevant international instruments accepted by the states concerned)..

¹¹⁰ Revised Methods of Work at ¶8(b).

imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.¹¹¹

The exceptions delineated in Article 22(2) do not apply in this case. Although Vietnam may argue that Doan, Do, and Nguyen were convicted of a “national security” crime under Article 89 of the Penal Code, and therefore fall within the national security exception, the evidence reflects that their crime had absolutely nothing to do with national security. The restrictions in Article 22(2) are interpreted narrowly.¹¹² The term “national security” refers to “situations involving an immediate and violent threat to the nation.”¹¹³ Further, the U.N. Human Rights Committee (HRC) has stated that it is of the utmost importance that the restrictions be proportionate to the reason the restriction is being put into place.¹¹⁴

Here, the detention of Doan, Do, and Nguyen is clearly based on the three’s associational activity of helping to organize workers at a shoe factory. Those actions have nothing to do with national security, but were purely associational matters of organizing individuals to request better benefits and human dignity in the workplace. As such, the narrow limitation on freedom of association for national security reasons is plainly inapplicable in these circumstances.

2. *Doan, Do, and Nguyen’s Right to Strike Is Protected Under Article 8 of the ICESCR*

Further, assuming *arguendo* that the charges were based on a strike and not purely organizational, associational activities, the activities of Doan, Do, and Nguyen are still protected under Category II. The HRC has held that the right to strike is covered by Article 8 of the ICESCR, to which Vietnam is a signatory.¹¹⁵ In the opinion in which it held this view, the HRC stated:

[I]n the course of drafting the [ICCPR] and the [ICESCR], the Commission on Human Rights based itself on the [UDHR]. The [UDHR], however, does not refer to the right to strike...[T]he single draft covenant on human rights was split into a draft covenant on civil and political rights and a draft covenant on economic, social, and cultural rights...[A]n amendment to the new draft article 8 of the [ICESCR] was adopted, including “the right to strike[.]” [but]

¹¹¹ ICCPR Article 22(2).

¹¹² Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (Kehl am Rein: N.P. Engel, 1993), pp.386-387..

¹¹³ *Id.*

¹¹⁴ *Laptesevich v. Belarus*, Communication 780/1997, U.N. Human Rights Committee.

¹¹⁵ See *J.B. et al v. Canada*, UN Human Rights Committee, Communication No. 118/1982 (Jul. 18, 1986) at ¶6.4. For an excellent analysis of why the right to strike *should* be included within article 22 of the ICCPR, see the 5-member dissenting opinion of this case.

no similar amendment was introduced or discussed with respect to the draft covenant on civil and political rights.¹¹⁶

Because the ICESCR is an interpretation of the UDHR and the right to strike is expressly included in it, the right to strike is within the meaning of Article 20 of the UDHR. The ICESCR is an instrument that provides greater protection for and elaboration of rights enumerated in the UDHR.

While the right to strike is implicit in Article 20 of the UDHR, the principles by which it should be upheld are articulated in the ICESCR. Vietnam is a party to the ICESCR¹¹⁷ as well as a member of the International Labour Organization (ILO).¹¹⁸ When it comes to interpretation of Article 8 of the ICESCR, the ILO's opinions are authoritative.¹¹⁹ The Committee on Economic, Social and Cultural Rights has expressed its agreement with the ILO, in particular cases, concerning restrictions on the right to strike.¹²⁰

While Article 8(1)d protects strikes undertaken in conformity with the law of the country in which they occur,¹²¹ the ILO has made clear that in regimes like Vietnam the legal barriers erected against the right to strike are illegitimate.¹²² Vietnam limits the subject matter over which employees may instigate a strike, requiring a majority vote for certain strike actions, and a supermajority vote for others, allowing its Prime Minister to

¹¹⁶ *Id.* at ¶6.3.

¹¹⁷ Status of Ratification of the International Covenant on Economic, Social, and Cultural Rights, U.N.T.C. Chapter IV(3), available at http://treaties.un.org/Pages/.aspx?=&mtdsg_no=IV-3&chapter=4&lang=en.

¹¹⁸ *Alphabetical List of ILO Member Countries (185 Countries)*, International Labour Organization, available at <http://www.ilo.org/public/english/standards/relm/country.htm>.

¹¹⁹ The ILO played a large role in drafting Article 8 of the ICESCR, and Article 8 is “very close to being a summary of the ILO standards that already existed on the same subject.” See Colin Fenwick, *Minimum Obligations with Respect to Article 8 of the International Covenant on Economic, Social and Cultural Rights*, in Audrey Chapman and Sage Russell, eds., *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Intersentia, New York 2002, at 60 (quoting Hector Bartolomei de la Cruz, Geraldo von Potobsky and Lee Swepston, *The International Labour Organization – The International Standards System and Basic Human Rights*, Colorado, USA, Westview, 1996 at 128).

¹²⁰ *Report on the Sixteen and Seventeenth Sessions*, U.N. Doc. E/1998/22 (Dec. 5, 1997) at ¶349 (section discussing Azerbaijan).

¹²¹ *Id.*

¹²² Additionally, as discussed above, the petitioners were not actually charged with the act of illegally striking, but instead a national security provision that implicated their acts of organizing the workers at the shoe factory; The ILO considers all of these measures to be categorical interferences with the freedom of association. The Freedom of Association Committee of the Governing Body of the ILO (ILO Freedom of Association Committee) has specifically found such practices incompatible with freedom of association. *Freedom of association - Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (revised) edition, 2006*, International Labour Organization (Nov. 1, 2006) at at #526 & #531, #548, #571, and #628 [hereinafter ILO Digest] available at http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/WCMS_090632/lang--en/index.htm

suspend a strike under certain conditions, and allowing its judiciary to determine whether strikes are legal.¹²³

Because Vietnam's labor laws impermissibly encumber the right to strike in violation of freedom of association, as described above, the fact that Vietnam considers the My Phong strike illegal does not impact whether it was protected by article 8(1)d of the ICESCR. Further, the charges against them demonstrate that it was the act of *organizing* the workers and not the strike itself which led to the charges. Indeed, they were never charged with a violating a prohibition on striking.

Not only did the government violate these three individual's right to freedom of association protected under domestic and international law, the government inflicted physical harm when they arrested and detained Doan, Do, and Nguyen. The arbitrary arrests and detentions of Doan, Do, and Nguyen were clearly undertaken with the aim of infringing the three organizers' right to free association in violation of the aforementioned articles of the UDHR, ICCPR, and ICESCR. Furthermore, the infringement upon their freedom of association also contradicts Vietnam's own Constitution, which purports to protect that freedom.¹²⁴ As such, their detention qualifies as a Category II detention as categorized by the Working Group.

B. Vietnam's Detention of Doan, Do, and Nguyen Resulted from the Exercise of Their Fundamental Right to Freedom of Expression

Article 19(2) of the ICCPR provides that "[e]veryone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally or in print, in the form of art, or through any other media of his choice."¹²⁵ An analogous provision on the guarantee of freedom of opinion and expression is also provided in Article 19 of the UDHR.¹²⁶ Freedom of expression is protected under the Vietnamese Constitution.¹²⁷

The Working Group has found a violation of this right when an individual was detained for circulating a pamphlet that the government found objectionable.¹²⁸ In fact,

¹²³ [See](#) ILO Digest, *supra.*, note 122.

¹²⁴ Gov't of the Socialist Republic of Vietnam, Constitution, Art. 50

¹²⁵ ICCPR at Art. 19(2).

¹²⁶ UDHR at Art. 19 ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.")

¹²⁷ Gov't of the Socialist Republic of Vietnam, Constitution, Art. 50.

¹²⁸ *Sam-Sok, et. al. v. Republic of Korea*, U.N. Working Group on Arbitrary Detention, Opinion No. 49/1995 (May 14, 1995) at ¶¶ 5(b), 14(a).

the Working Group has found that Vietnam has committed a Category II violation by detaining a citizen for circulating a document critical of the government.¹²⁹ Further, the Working Group has explicitly applied the protection of freedom of expression to human rights defenders who denounce human rights violations.¹³⁰

In the present circumstances, the detainees have been punished, under a vague “national security” provision for circulating a pamphlet that encouraged employees to join together and request better benefits and “human dignity” in the workplace.¹³¹ Doan, Do, and Nguyen expressed themselves by circulating the leaflet. The three have since been arbitrarily detained and subjected to horrific conditions because of this expression in violation of Article 19(2) of the ICCPR and Article 19 of the UDHR.

1. Vietnam’s Detention of Doan, Do, and Nguyen Is Not Based on the Protection of National Security

Similar to Article 22, discussed above, Article 19(3) of the ICCPR provides a limitation to citizen’s freedom of expression:

The exercise of the [right to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) [f]or the respect of the rights or reputations of others; [or] (b) [f]or the protection of national security or of public order, or of public health and morals.¹³²

Interpreting this limited exception, the HRC has noted that such restrictions must not put in jeopardy the right itself.¹³³ Rather, any limitation “must meet a strict test of justification.”¹³⁴ Under the HRC’s jurisprudence, a legitimate limitation on the right to freedom of expression must be, 1) “provided by law,” 2) for the protection of one of the “enumerated purposes,” and 3) “necessary” to achieve that purpose.¹³⁵

¹²⁹ *Phuc, et. al. v. Viet Nam*, U.N. Working Group on Arbitrary Detention, Opinion No. 21/1997 (July 14, 1997) at ¶¶ 5(a), 10.

¹³⁰ *Al-Diqqi v. United Arab Emirates*, U.N. Working Group on Arbitrary Detention, Opinion NO. 8/2009, U.N. Doc. A/HRC/13/30/Add.1 (2010) ¶¶ 11, 18.

¹³¹ See Exhibit A.

¹³² ICCPR Art. 19(3).

¹³³ General Comment 10 ¶ 4.

¹³⁴ *Park v. Korea*, Communication No. 628/1995 ¶ 10.3.

¹³⁵ *Shin v. Republic of Korea*, No. 926/2000 ¶ 7.3.

As with the limitation on the detainee’s associational rights, it is expected that Vietnam will argue that the detention is based on a limitation of Doan, Do, and Nguyen’s freedom of expression due to “national security” reasons as Article 89 of the penal code purportedly relates to “national security.” Limitations based on “national security” are properly invoked where “the political independence or territorial integrity of the State is at risk”¹³⁶ In the present instance, there is quite simply no “national security” reason for the detention of Doan, Do, and Nguyen. The three have been imprisoned for distributing a leaflet and attempting to organize a group of workers at a shoe factory in Vietnam. Their behavior, for which they have been arbitrarily detained, has nothing to do with national security and, as such, the limitation on freedom of expression found in Article 19(3) of the ICCPR is inapplicable.

C. Vietnam’s Detention of Doan, Do, and Nguyen Resulted from the Failure to Provide the Three with Their Right to a Fair Trial

A deprivation of liberty is arbitrary under Category III where “the total or partial non-observance of the international norms relating to the right to a fair trial...is of such gravity as to give the deprivation of liberty an arbitrary character.”¹³⁷ The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, the Body of Principles, and the Standard Minimum Rules for the Treatment of Prisoners (Minimum Rules for Treatment). Because Vietnam’s treatment of Doan, Do, and Nguyen from their arrests through their appeal violated numerous express norms, including violations for which the Working Group has already criticized the Vietnamese government, their detention is arbitrary in character and falls into Category III. Vietnam violated the organizers’ rights by, *inter alia*, refusing them the assistance of counsel, torturing them, holding them in solitary confinement for prolonged periods of time, holding them in detention for a prolonged period without announcing charges against them, and failing to allow their families to visit them.

1. Doan, Do, and Nguyen Were Denied Counsel and Not Permitted to Speak in Their Own Defense in Violation of Article 14 of the ICCPR

Article 14(3)(b) of the ICCPR protects the right of all criminal defendants “to communicate with counsel of his own choosing.”¹³⁸ Article 14(3)(d) provides a criminal defendant’s right “[t]o defend himself in person or through legal assistance of his own choosing.” In this case the government denied the organizers access to legal counsel throughout pre-trial detention, the trial itself, and the balance of their time to prepare an appeal. Not until a lawyer retained by their families—who had never had access to the detainees—protested this violation did the government consent to allow them access to a lawyer to prepare their appeal. Having denied petitioners counsel for eleven months and

¹³⁶ JOSEPH ET AL., *The International Covenant on Civil and Political Rights: Cases and Controversies*, 534 (Oxford 2004 2nd ed.).

¹³⁷ Revised Methods of Work at ¶8.

¹³⁸ ICCPR at Art. 14(3)(b). *See also* Body of Principles at principle 15 and 17. *See also* Minimum Rules for Treatment at rule 93.

through most of their legal proceedings, the Vietnamese government clearly violated the petitioners' due process rights under article 14(3)b.

In addition, at their initial trial, the petitioners were not allowed to speak in their own defense, violating their due process rights under article 14(3)d. The Working Group has found a Category III arbitrary detention solely on the basis of Vietnam's violation of a defendant's Article 14 rights.¹³⁹ While the working group examines cumulatively the facts to determine whether a petitioner's circumstances merit a Category III violation for failure of the state to provide a fair trial, the Working Group has shown that a serious violation of only one article can constitute a Category III violation.

In the instant circumstances, Vietnam's flagrant disregard of international norms violated not only Article 14 of the ICCPR, but also Articles 7 and 9 of the ICCPR and Principle 19 of the Body of Principles. Each of these violations, discussed below, would merit finding a Category III violation standing alone. These violations, though, are not standing alone. The cumulative nature of each of these serious violations of the right to a fair trial constitute a Category III violation.

2. Doan, Do, and Nguyen Were Not Presumed Innocent in Violation of Article 14(2) of the ICCPR

Article 14(2) of the ICCPR provides that “[e]veryone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.”¹⁴⁰ The Human Rights Committee has stated that deviating from the fundamental principles of a fair trial, including the presumption of innocence, is prohibited at all times.¹⁴¹

As the Human Rights Committee has explained:

The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by

¹³⁹ See *Ly v. Viet Nam*, UN Working Group on Arbitrary Detention, Opinion No. 6/2010 (May 29, 2009) at ¶24 and ¶28(a). (Finding Category III violation, citing articles 14, 18, 19, and 22 of the ICCPR and 9, 10, 11, 18, 19, and 20 of the UDHR).

¹⁴⁰ ICCPR at Art. 14(2). See also UDHR at art. 11(1) (“Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has all the guarantees necessary for his defense.”).

¹⁴¹ General Comment 29 (2001) on Article 4: Derogations during a state of emergency, para. 11.

abstaining from making public statements affirming the guilt of the accused.¹⁴²

The evidence shows that Doan was presumed guilty by the Vietnamese authorities. After his detention, the Vietnamese police confiscated Doan's property. While article 92 of the Vietnamese Penal Code allows confiscation of the property of individuals convicted under its Article 89,¹⁴³ at that point in the proceeding Doan had not yet been convicted.

3. *The Inhumane Treatment of Doan, Do, and Nguyen While in Detention Is a Violation of Article 7 of the ICCPR*

The inhumane treatment of the petitioners in detention also qualifies as a Category III violation. Article 7 of the ICCPR guarantees that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁴⁴ As discussed above, Doan, Do, and Nguyen were held in solitary confinement for months. They were beaten and their families were threatened in attempts to force confessions. The Working Group has found beatings and solitary confinement to be general evidence of the arbitrary nature of a detention¹⁴⁵ and considers prolonged incommunicado detention a form of cruel and inhuman treatment.¹⁴⁶

Since their sentencing, the petitioners have been forced to perform hard labor regardless of their physical health or the detrimental health effects of the labor itself. At present, they are suffering from a litany of maladies, including broken bones, liver problems, hearing loss, and debilitating sunburn. The tasks Vietnam has set them in prison violate rule 7(1) of the Standard Minimum Rules for the Treatment of Prisoners,¹⁴⁷ in addition to article 7 of the ICCPR. The Working Group has found a violation of Article 7 of the ICCPR where an individual's poor health and chronic ailments are “obviously the result of poor conditions of detention.”¹⁴⁸

¹⁴² General Comment 32 at IV.

¹⁴³ Penal Code, National Assembly, No: 15/1999/QH10 (*enacted* Dec. 21, 1999), at Art. 92, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=610.

¹⁴⁴ ICCPR at Art. 7.

¹⁴⁵ *See Araujo v. Indonesia*, UN Working Group on Arbitrary Detention, Opinion No. 36/1993 (Sept. 29, 1993) at ¶9.

¹⁴⁶ *See e.g. Mendibe v. Spain*, UN Working Group on Arbitrary Detention, Opinion No. 17/2009 (May 28, 2009) [*hereinafter* Mendibe v. Spain] at ¶46.

¹⁴⁷ Minimum Rules for Treatment at rule 7(1) (“Prison labour must not be of an afflictive nature”).

¹⁴⁸ *Nasrawin v. Syrian Arab Republic*, UN Working Group on Arbitrary Detention, Opinion No. 35/1993 (Sept. 29, 1993) at ¶6 (recognizing poor health as result of poor conditions as a violation of article 7 of the ICCPR).

Furthermore, the petitioners were mistreated during attempts to extract confessions. In this regard, the government's attempt to undermine criminal procedure contributes to the arbitrary nature of the petitioners' detention.¹⁴⁹

4. *Doan, Do, and Nguyen's Pretrial Detention Violated the ICCPR*

Additionally, Doan, Do, and Nguyen were held in pre-trial detention for nine months. Under Vietnamese law, prosecutors, independent from the judiciary, are entitled to make the sole determination of the legality of an individual's pre-trial detention, which is authorized in certain cases by Vietnamese criminal procedure. The Working Group has already noted the incompatibility of this practice with articles 9(3) and 9(4) of the ICCPR,¹⁵⁰ during its visit to Vietnam in 1994.¹⁵¹ In addition to the violations of this right suffered in the pretrial phase of petitioners' detention, the encouragement the detainees received from prison officials not to pursue an appeal, as well as the delay in their appeal process created by the government's initial refusal to allow the petitioners access to a lawyer, amount to violations of the right to a prompt review of the lawfulness of one's detention.

5. *The Detention of Doan, Do, and Nguyen Violated the Body of Principles Because They Were Not Permitted to Be Visited By or Correspond With Family Members*

Principle 19 of the Body of Principles provides that "[a] detained or imprisoned person 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."¹⁵² Rule 37 of the Minimum Rules for Treatment provides that "[p]risoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."¹⁵³ Principle 15 of the Body of Principles provides that "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days."¹⁵⁴ The Working Group has referred to solitary detention lasting even five days as "prolonged incommunicado detention." In *Mendibe v. Spain*, the Working Group found that periods of six through 14 and five days were instances in which the petitioner was "indisputably subjected to long

¹⁴⁹ See e.g. *Flores & Garcia v. Mexico*, UN Working Group on Arbitrary Detention, Opinion No. 18/2001 (Sept. 14, 2001) at ¶6, 8 and *Chang et al. v. Republic of Korea*, UN Working Group on Arbitrary Detention, Opinion No. 28/1993 (Apr. 30, 1993) at ¶6-7.

¹⁵⁰ ICCPR at 9(3-4).

¹⁵¹ *Working Group on Arbitrary Detention Visit to Vietnam*, United Nations Working Group on Arbitrary Detention, at 17 [hereinafter Working Group Visit], available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G94/751/47/PDF/G9475147.pdf?OpenElement>. The practice also violates principle 32 of the Body of Principles. See Body of Principles at principle 32.

¹⁵² Body of Principles at Principle 19.

¹⁵³ Minimum Rules for Treatment at 37.

¹⁵⁴ Body of Principles at principle 15.

periods of incommunicado detention.”¹⁵⁵ In this case, petitioners were held in solitary confinement for four, seven, and nine months—a clear violation of their right to be visited by family.

For these reasons, the government has engaged in numerous Category III violations which have led to the detainees’ arbitrary detention. The failure of Vietnam to furnish Doan, Do, and Nguyen with a fair trial clearly violates the ICCPR, UDHR, and the Body of Principles. As such, their case qualifies as a Category III detention as categorized by the Working Group.

IV. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

Following the trial, the families engaged a lawyer—Dang The Luan of Ho Chi Minh City.¹⁵⁶ Luan was not allowed access to his clients and family members — now allowed monthly visits — were forbidden to mention they had engaged him.¹⁵⁷

The initial appeal was set for January 24, 2011. On January 18, the families submitted a joint complaint to various authorities asking them to respect the right to counsel and postpone the appeal.¹⁵⁸ At this point, the proceeding was moved to March 18, 2011 and the lawyers were allowed access.¹⁵⁹

The appeal was held in the same court as the original trial.¹⁶⁰ When Do’s family arrived at the appeal, they were told the courtroom would be closed to family and spectators. Only lawyers and police were allowed in.¹⁶¹ Dang The Luan presented

¹⁵⁵ *Mendibe v. Spain*, UN Working Group on Arbitrary Detention, Opinion No. 17/2009 (May 28, 2009) at ¶ 46.

¹⁵⁶ RFA News of Appeal, *supra* note 82 at ¶3.

¹⁵⁷ *Overtun Harsh Sentences*, *supra* note 77, at ¶7.

¹⁵⁸ See *ĐƠN KHIẾU NẠI VỀ VI PHẠM PHÁP LUẬT TRONG GIẢI QUYẾT VỤ ÁN HÌNH SỰ*, Doi Thoai, Jan. 25, 2011, available at <https://doithoaionline.wordpress.com/2011/01/25/d%C6%A1n-khi%E1%BA%BFu-n%E1%BA%A1i-v%E1%BB%81-vi-ph%E1%BA%A1m-phap-lu%E1%BA%ADt-trong-gi%E1%BA%A3i-quy%E1%BA%BFt-v%E1%BB%A5-an-hinh-s%E1%BB%B1/> (full text of the appeal).

¹⁵⁹ *Id.* at ¶8. See also Khoa Diễm, *Ba nhà dân chủ ở Trà Vinh sẽ ra tòa không có luật sư*, Radio Free Asia, Jan. 24, 2011, available at <http://www.rfa.org/vietnamese/HumanRights/three-labor-activists-going-to-trial-without-lawyers-kdiem-01242011203947.html>.

¹⁶⁰ RFA News of Appeal, *supra* note 82.

¹⁶¹ *Court Upholds Activists’ Verdicts*, *supra*. Note 88 at ¶3.

detainees' defense. They acknowledged their actions, but denied that those actions constituted crimes under Article 89. The court upheld its earlier verdict.¹⁶²

Despite these steps, Doan, Do, and Nguyen remain unlawfully detained by the Vietnamese government more than two and a half years after their initial arrests.

III. REQUEST FOR RELIEF

Based on the foregoing, we respectfully request that the Working Group conclude that Vietnam's detention of Doan Huy Chuong, Do This Minh Hanh, and Nguyen Doan Quoc Hung constitutes an arbitrary deprivation of liberty falling into Categories II and III of cases identified by the Working Group.

IV. FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

This petition is submitted by the following:

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¹⁶² *Id.*