

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

Chairman/Rapporteur: Mr. Seong-Phil Hong (Republic of Korea)
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**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Nguyen Van Hoa
Citizen of the Socialist Republic of Vietnam
v.
Government of the Socialist Republic of Vietnam

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QUESTIONNAIRE TO BE COMPLETED BY
PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

I. IDENTITY

1. *Family Name:* Nguyen
2. *First Name:* Hoa
3. *Sex:* Male
4. *Age at the Time of Detention:* 21
5. *Nationality:* Socialist Republic of Vietnam
 - a. *Identity document (if any):* Chứng minh Nhân dân (Citizen's Identification Card)
 - b. *Issued by:* Vietnam, Ha Tinh province's police
 - c. *On (date):* [REDACTED]
 - d. *No.:* [REDACTED]
6. *Profession and/or activity (if believed to be relevant to the arrest/detention):*
freelance journalist
7. *Address of usual residence:* [REDACTED]

II. ARREST

1. *Date of arrest:* January 11, 2017
2. *Place of arrest (as detailed as possible):* Hoa was arrested en route to observe a trial carried out by the People's Court of Ky Anh district. He was taken by authorities on the street leading to the courthouse, at around noon. Hoa was to report on the trial to which he was traveling at the time of his arrest.
3. *Forces who carried out the arrest or are believed to have carried it out:* The Investigation Agency under the Ha Tinh province's Department of Public Security are believed to have carried out the arrest.
4. *Did they show a warrant or other decision by a public authority?* The police forces who arrested Hoa did not show an arrest warrant at the time of arrest, nor did they inform him of the charges against him at the time of arrest.
5. *Authority who issued the warrant or decision:* N/A.
6. *Relevant legislation applied (if known):* Hoa was initially charged with "abusing democratic freedoms to infringe upon the interests of the state" under Article 258

of Vietnam's 1999 Penal Code; however, this charge was later changed to "conducting propaganda against the state" under Article 88 of the 1999 Penal Code.¹

III. DETENTION

1. *Date of detention*: Hoa was detained on January 11, 2017 and is still in detention as of the date of this petition.
2. *Duration of detention (if not known, probable duration)*: Hoa has been held in detention since January 11, 2017, and on November 2017 he was sentenced to seven years in prison.
3. *Forces holding the detainee under custody*: The Investigation Agency under the Ha Tinh province's Department of Public Security is holding Hoa in custody.
4. *Places of detention (indicate any transfer and present place of detention)*: Hoa was held in pre-trial detention at the Cau Dong temporary detention facility under the authority of Ha Tinh Province's police. He was transferred on or around February 24, 2018 to An Diem prison in Dai Loc district in the province of Quang Nam, approximately 500 km from Ha Tinh Province.
5. *Authorities that ordered the detention*: The People's Court of Ha Tinh ordered the detention.
6. *Reasons for the detention imputed by the authorities*: The detention is for Hoa's conviction under Article 88 of 1999 Penal Code by the People's Court of Ha Tinh.
7. *Relevant legislation applied (if known)*: The relevant legislation for the conviction was Article 88 of 1999 Penal Code, "conducting propaganda against the state".

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

1. Part 1 of this section describes the Socialist Republic of Vietnam ("Vietnam" or "Government") and its history of suppressing and violating the fundamental rights of its citizens, particularly the right to speak freely in dissent of the governing party. The Communist Party of

¹ On January 1, 2018, an amended penal code came into effect. Article 258 is now codified as Article 331 of the amended criminal code and Article 88 is now codified as Article 117 of the amended penal code. Because Hoa was arrested and convicted under the older penal code, unless otherwise noted, all references are to the 1999 penal code.

Vietnam (“CPV”) also has shown a propensity for using the criminal code to arbitrarily detain journalists and others who speak out against its regime.²

2. Part 2 of this section presents the case of Hoa, a young citizen-journalist in Vietnam who was wrongfully detained on 11 January 2017 and subsequently wrongfully convicted in November 2017 of conducting propaganda against the state. Hoa was sentenced to seven years in prison, followed by three years of house arrest.

1. Background on Vietnam

a. Political, Legal, and Social Background on Vietnam

3. Vietnam has been an authoritarian, one-party state since the CPV came into power in the 1980s. In 1980, the Government drafted the first constitution of the Socialist Republic of Vietnam, a document that was most recently updated in 2013. On September 24, 1982, Vietnam acceded to the International Covenant on Civil and Political Rights (the “ICCPR”).³ Nevertheless, despite its constitutional and international obligations to safeguard certain human rights, the Government has continually violated the civil liberties of its citizens, in particular by detaining individuals who speak against the interests of the Government and the CPV party.⁴

4. The human rights record of Vietnam has been dismal for several decades. The Government has suppressed its citizens’ freedom of expression through detention of journalists⁵ and has maintained very poor conditions in the Vietnamese prisons in which those journalists are detained (specifically, providing almost no medical care in prisons) for over twenty years.⁶ These same ongoing human rights violations continue to the present day.⁷ In addition, the Government routinely restricts citizens’ political rights, particularly their right to change their government through free and fair elections. The Government has limited citizens’ civil liberties, including freedom of assembly, association, expression, and movement, and the Government has inadequately protected citizens’ due process rights, notably failing to protect against arbitrary

² 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>.

³ See CIVIL RIGHTS DEFENDERS, *34 Years Later, Vietnam Needs Larger Freedom* (September 23, 2016), <https://crd.org/2016/09/23/34-years-later-vietnam-needs-larger-freedom/> (*hereinafter* “CRD Report”).

⁴ See 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”).

⁵ HRW 1995 Report, *supra* note 4.

⁶ *Id.*

⁷ CRD Report, *supra* note 3.

detention. There are also many documented instances of arbitrary detention and arrest of citizens for political activities, police brutality, and lack of fairness in trials in the country.⁸

5. Although the Government has at times responded in ways that appear receptive to outside scrutiny, it has never effected meaningful change. For example, Vietnam was reviewed during the United Nations (“UN”) Universal Periodic Review (“UPR”) in 2014, and accepted 182 of 227 human rights suggestions made by concerned countries.⁹ However, since its most recent UPR, Vietnam has become even more repressive; in 2017 alone the Government arrested three times as many people for peacefully expressing their political or religious views as in 2016.¹⁰

b. The Government’s Interference with Freedom of Expression

6. Vietnam has significantly limited its citizens’ freedom of expression through legal restrictions, harassment and the detention of activists, journalists and bloggers who speak out against the Government. In the past decade, the Government has passed several laws and ordinances, that are ostensibly in the interest of national security or press freedom, but that actually restrict both personal and media freedom of expression, specifically such expression electronically. For example, the 2015 Law on Cyber Information Security, Decree 72 in 2013, and Decree 174 in 2014 collectively require businesses that provide encryption services to provide user data, when requested, to the Ministry of Public Security, prohibit the online sharing of information the Government deems to harm national security,¹¹ and impose fines on anyone criticizing the Government, defaming Government leaders, or “spreading propaganda” on social media.¹² 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.”¹³

7. In addition to these laws, a number of provisions in Vietnam’s penal code are worded vaguely enough to be interpreted as criminalizing expression that the Government deems

⁸ 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”).

⁹ HUMAN RIGHTS WATCH, *Vietnam: Clean Up Abysmal Rights Record* (July 23, 2018), <https://www.hrw.org/news/2018/07/23/vietnam-clean-abysmal-rights-record>.

¹⁰ See State Department 2017 Report, *supra* note 8, at 6.

¹¹ BBC NEWS, *Vietnam Internet Restrictions Come into Effect* (September 1, 2013), available at <https://www.bbc.com/news/world-asia-23920541>; COMMITTEE TO PROTECT JOURNALISTS, *New Cybersecurity Law Threatens Press Freedom in Vietnam* (June 12, 2018), available at <https://cpi.org/2018/06/new-cybersecurity-law-threatens-press-freedom-in-v.php>.

¹² FREEDOM HOUSE, *Freedom in the World 2017: Vietnam*, available at <https://freedomhouse.org/report/freedom-world/2017/vietnam>.

¹³ Law on the Press, No. 103/2016/QH13, art. 1 (2016), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=447052.

offensive, such as “carrying out activities aimed at overthrowing the people’s administration,”¹⁴ “undermining the unity policy,”¹⁵ “conducting propaganda against the state,”¹⁶ “disrupting security,”¹⁷ or “abusing democratic freedoms to infringe upon the interests of the state.”¹⁸ The Government has used these laws to increasingly detain its critics, by, for example, arresting media activists repeatedly and handing them multi-year prison sentences as Government reprisal for their critical reporting. For instance, activist Tran Thi Nga was sentenced to nine years’ imprisonment under Article 88 of the 1999 Penal Code for “conducting propaganda against the state” – and this was after being kept *incommunicado* for six months.¹⁹ In October 2016, Nguyen Ngoc Nhu Quynh, a prominent environmental human rights defender known as “Mother Mushroom,” was similarly detained and sentenced to ten years of imprisonment for allegedly spreading propaganda against the Government through the Internet.²⁰ In fact, during 2017, at least 21 bloggers and activists were arrested for exercising their civil and political rights, and at least 10 other people had already been put on trial, convicted and sentenced to 5-10 years in prison.²¹ In the spring of 2018, another six activists were convicted of attempting to overthrow the Government, with four of those convictions upheld by the Supreme People’s Court in June.²²

8. The Government’s passage of laws that curtail the right to free expression, online and through other media outlets, is an attempt to silence government critics under the pretext of national security and has been recognized as such by numerous independent human rights organizations. Freedom House, a watchdog organization that promotes civil liberties throughout the world, has deemed Vietnam’s Press Freedom Status as “Not Free” and its Net Freedom

¹⁴ Criminal Code (1999), No. 15/1999/QH10, art 79, December 21, 1999, available at http://www.wipo.int/wipolex/en/text.jsp?file_id=385615. This provision was included in the amended criminal code (2015) at art. 109. Criminal Code (2015), No. 100/2015/QH13, arts. 373-74, November 27, 2015, available at: <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>.

¹⁵ Criminal Code (1999), *supra* note 14, at art. 87. This provision was included in the amended Criminal Code (2015), *supra* note 14, at art. 116).

¹⁶ Criminal Code (1999), *supra* note 14, at art. 88. This provision was included in the amended Criminal Code (2015), *supra* note 14, at art. 117.

¹⁷ Criminal Code (1999), *supra* note 14, at art. 89. This provision was included in the amended Criminal Code (2015), *supra* note 14, at art. 118.

¹⁸ Criminal Code (1999), *supra* note 14, at art. 258. This provision was included in the amended Criminal Code (2015), *supra* note 14, at art. 331.

¹⁹ FRONT LINE DEFENDERS, *Vietnam: Tran Thi Nga sentenced to nine years imprisonment* (2018), available at <https://www.frontlinedefenders.org/en/case/tran-thi-nga-arrested>.

²⁰ THE DIPLOMAT, *One Year After Mother Mushroom’s Imprisonment, Signs of Hope in Vietnam* (June 29, 2018), available at <https://thediplomat.com/2018/06/one-year-after-mother-mushrooms-imprisonment-signs-of-hope-in-vietnam>.

²¹ 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”).

²² AMNESTY INTERNATIONAL, *Vietnam: Activists’ upheld convictions are a blow to freedom of expression* (June 4, 2018), <https://www.amnesty.org/en/latest/news/2018/06/vietnam-activists-upheld-convictions-are-a-blow-to-freedom-of-expression>; BBC NEWS, *Nguyen Van Dai: Vietnam jails activist lawyer and five others* (April 5, 2018), <https://www.bbc.com/news/world-asia-43659830>

Status as “Not Free.”²³ These ratings take into account political rights, access to the democratic process, and the different civil liberties, among them freedom of expression. In evaluating the freedom of expression, Freedom House noted that the Government regularly and actively silences journalists and bloggers through wrongful detention.²⁴

9. In their 2018 report on Vietnam, HRW notes the use of vaguely-worded criminal laws, such as “conducting propaganda,” to imprison bloggers and other journalists who speak out against the Government.²⁵ To further restrict free expression, the Government has banned independent political parties, trade unions and human rights organizations.²⁶

10. Reporters Sans Frontières (“RSF,” also known as Reporters Without Borders) ranks nations each year according to each nation’s freedom of the press.²⁷ In its 2018 World Press Freedom Index, Vietnam ranked 175 out of 180 countries (only ahead of countries such as the People’s Republic of China and North Korea).²⁸ RSF 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.²⁹ However, the Government consistently employs Articles 79, 88, and 258 of the 1999 Penal Code to wrongfully detain and prosecute these independent journalists.³⁰

11. Moreover, Vietnam is consistently ranked among the countries that most censor journalists in the world according to the Committee to Protect Journalists (“CPJ”).³¹ CPJ noted in its 2015 report that the Government gives editors instructions and regularly jails those who report on sensitive topics.³²

12. The European Parliament has also rebuked the Government for instances of such human rights violations against journalists. In a set of resolutions in late 2017, the European

²³ FREEDOM HOUSE, *Freedom in the World 2017: Vietnam*, <https://freedomhouse.org/report/freedom-world/2017/vietnam>.

²⁴ *Id.*

²⁵ HRW 2018 Vietnam Report, *supra* note 21.

²⁶ *Id.*

²⁷ REPORTERS WITHOUT BORDERS, *Vietnam Country Report*, <https://rsf.org/en/vietnam> (*hereinafter* “RWB Vietnam Report”).

²⁸ REPORTERS WITHOUT BORDERS, *2018 World Press Freedom Index*, <https://rsf.org/en/ranking>.

²⁹ RWB Vietnam Report, *supra* note 27.

³⁰ *Id.*

³¹ COMMITTEE TO PROTECT JOURNALISTS, *10 Most Censored Countries (2015)*, <https://cpj.org/2015/04/10-most-censored-countries.php#6>.

³² *Id.*

Parliament called for the release of activist Tran Thi Nga and prominent blogger Mother Mushroom.³³ In these resolutions, the European Parliament also called for the release of Hoa.³⁴

c. Lack of Due Process Protections in Vietnam

13. Once a Vietnamese citizen has been detained under one of the vague provisions of the criminal code used by the Government to silence opposition, that person frequently does not receive adequate due process and a fair trial as guaranteed by domestic and international law. Even though the Vietnamese Constitution guarantees to criminal defendants a 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.³⁵ 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.³⁶ Detainees are often denied access to counsel through bureaucratic delays despite constitutional guarantees, while trials are frequently held in secret, sometimes lasting only a few hours.³⁷

14. Trials of human rights activists in Vietnam consistently fail to meet international standards of fairness.³⁸ In particular, police have often intimidated defendants into confessions, limited access to trials for family members, and have not allowed defendants to adequately prepare a defense for trial.³⁹ The U.S. State Department has confirmed that the due process issues in Vietnam were among the country's most significant human rights problems.⁴⁰ Many defense attorneys have reported that the judge in their trials had made a decision about the

³³ EUROPEAN PARLIAMENT, *European Parliament resolution on freedom of expression in Vietnam, notably the case of Nguyen Van Hoa*, 2017/3001(RSP) (December 12, 2017), <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2017-0688&language=EN>.

³⁴ *Id.*

³⁵ 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; *see also* HRW 1995 Report, *supra* note 4.

³⁶ *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 8; 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>.

³⁷ *See* State Department 2017 Report, *supra* note 8; AMNESTY INTERNATIONAL, *Overview: Viet Nam 2017/2018*, <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>

³⁸ HRW 2018 Vietnam Report, *supra* note 21.

³⁹ *Id.*

⁴⁰ 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>

defendant before the trial.⁴¹ Defense attorneys also noted that they rarely have adequate time prior to trial to prepare their client's defense.⁴²

d. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

15. There is also a pattern in Vietnam of physical abuse, torture and coerced confessions during arrest, police interrogations, and detention.⁴³ According to the same U.S. State Department report, activists in Vietnam have been robbed, beaten and received death threats from security officials, including being assaulted by fellow prisoners at the instruction of prison officials while in custody. Vietnam ratified the UN Convention against torture in 2014, and in its first report on implementing the convention (in 2017) even acknowledged the troubles that the Government is having in stopping torture due to an "incomplete legal framework on human rights."⁴⁴ In addition to the physical torture, prisoners of conscience were subject to long stretches held *incommunicado*, were denied medical treatment, and were moved to prisons very far from their families, in order to mentally intimidate them into confessions.⁴⁵

e. Prison Conditions in Vietnam

16. Detainees in Vietnam are often held in conditions that fail to meet minimum international standards. Torture and corporal punishment are common but are rarely investigated by authorities.⁴⁶ Prisons are often overcrowded and unsanitary, and inmates have extremely poor nutrition and lack of access to medical care, sometimes even being deprived of dire medical treatment to force "confessions" (a method of the torture, mentioned in the section above).⁴⁷

17. 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.⁴⁸ 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.⁴⁹

⁴¹ State Department 2017 Report, *supra* note 8.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ AMNESTY INTERNATIONAL, *Overview: Viet Nam 2017/2018*, *supra* note 37.

⁴⁵ State Department 2017 Report, *supra* note 8.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ AMNESTY INTERNATIONAL, *Inside Viet Nam's secretive and torturous world of 'prisons within prisons'* (July 12, 2016), <https://www.amnesty.org/en/latest/news/2016/07/the-secretive-world-of-viet-nam-torturous-prisons/>

⁴⁹ *Id.*

18. A mistakenly-released internal report from the Government made clear the dangers awaiting Vietnamese prisoners. The report said “429 prisoners had been executed from August 2013 to June 2016,” while from 2011 to 2016, “261,840 inmates had received vocational training, a term that rights activists say essentially means forced labor.” Furthermore, the report stated that the remains of 2,812 prisoners were approved for collection by family members, “suggesting a high rate of deaths in custody” for a total prison population of less than 150,000.⁵⁰

2. Arbitrary Detention of Hoa

a. Background and Arrest of Hoa

19. Hoa was born in 1995 and is a journalist and activist from Ky Anh, Ha Tinh Province in Vietnam.⁵¹ He was a freelance journalist and blogger before his arrest and subsequent arbitrary detention by the Government. In addition to working as an independent journalist and publishing on various social media outlets since 2014, Hoa began working as a video and news reporter for the Vietnamese language portion of Radio Free Asia (a United States government funded service) in mid-2016.

20. Hoa’s home province suffered greatly from an environmental disaster in 2016. The disaster was an industrial toxic spill from the Formosa Ha Tinh Steel factory in April of 2016. The Formosa steel mill flushed cyanide and other chemicals through its waste pipeline into the ocean.⁵² Although a private steel mill caused the spill, the event became a political issue when the Government failed to respond quickly, or to inform the public as to which toxin was causing widespread fish deaths.⁵³ The poisoned fish decimated the local fishing industry in addition to poisoning local citizens.⁵⁴

21. Protests erupted in the wake of the Government’s lackluster response, fueled by the thought among some citizens that the Government had ulterior financial motives to support the steel plant.⁵⁵ One Vietnamese university professor analogized the toxic spill to Chernobyl, to give context to the public outcry over the environmental disaster.⁵⁶ (Prior to this incident,

⁵⁰ Mike Ives, “It’s Very Easy to Die There: How Prisoners Fare in Vietnam,” *New York Times* (August 12, 2017), <https://www.nytimes.com/2017/08/12/world/asia/vietnam-prison-abuses.html>.

⁵¹ THE 88 PROJECT, *Four Activists Arrested Days Before the Traditional New Year* (January 24, 2017), <https://the88project.com/2017/01/24/four-activists-arrested-days-before-the-traditional-new-year/>.

⁵² Richard C. Paddock, “Vietnamese Blogger Gets 7 Years in Jail for Reporting on Toxic Spill,” *New York Times* (November 27, 2017), available at <https://www.nytimes.com/2017/11/27/world/asia/vietnam-nguyen-van-hoa-blogger.html>.

⁵³ Richard C. Paddock, “Toxic Fish in Vietnam Idle a Local Industry and Challenge the State,” *New York Times* (June 8, 2016), available at <https://www.nytimes.com/2016/06/09/world/asia/vietnam-fish-kill.html>.

⁵⁴ *Id.*

⁵⁵ Richard C. Paddock, “Taiwan-Owned Steel Factory Caused Toxic Spill, Vietnam Says,” *New York Times*, (June 30, 2016), available at <https://www.nytimes.com/2016/07/01/world/asia/vietnam-formosa-ha-tinh-steel.html>.

⁵⁶ *Id.*

citizens had protested the plant during its construction. Those early protests had become violent and resulted in four deaths, however, no one was reported harmed in the most recent protests).⁵⁷

22. During the Formosa crisis, Hoa published videos of the 2016 protests against the company and advocated for the rights of those injured. Hoa's Facebook page and blog discussed the incident, but never called for any violent response to the toxic spill.

23. After Hoa began reporting on the Formosa incident, he became the subject of government harassment in the spring of 2016. Local authorities distributed leaflets alleging that Hoa was a member of Viet Tan (a political opposition party that the Government claims to be extremist) although there was nothing in Hoa's background that suggested or established such a connection. In a separate incident, local officials confronted Hoa while he was attending a wedding and openly berated him. Concerned that that police or militia may have been sent to his house to detain him, Hoa hid at a friend's house overnight.⁵⁸

24. On January 11, 2017, Hoa was on his way to observe a trial carried out by the People's Court of Ky Anh district when he was arrested by police from the Investigation Agency of the Ha Tinh province's Department of Public Security.⁵⁹ The trial that Hoa had attempted to attend regarded the construction of a large electronic transmission that Hoa was planning to report on. The police did not present a warrant during the arrest and did not inform Hoa of the reason for the arrest.⁶⁰ It is unclear whether they used force on Hoa during the arrest. The police did not search Hoa's home at the time of his arrest but they did seize his camera and cell phone.⁶¹

25. On the day of Hoa's arrest, the police sent an announcement to authorities of Ky Khang commune (where Hoa and his family live) to inform them of his arrest. However, Hoa's family was not informed of his arrest until January 20. He was held *incommunicado* for about three months until he was first permitted to speak to his family in April 2017; as discussed in subsection (b) below, Hoa was never given access to an attorney of his choosing.⁶²

26. Shortly after his arrest Hoa was accused of violating Article 258 of the 1999 Penal Code, which prohibits "abusing democratic freedoms to infringe upon the interests of the

⁵⁷ Paddock, "Toxic Fish in Vietnam Idle a Local Industry and Challenge the State," *supra* note 53. Apparently Hoa was present at the Formosa riots in October 2016, however his only reported action was sharing a video of the riot. Vietnamese officials also have accused Hoa of "inciting protests" and "causing unrest"; however, nothing has been reported that has actually accused Hoa of violence or suggesting violence. See DEFEND THE DEFENDERS, "Vietnam Announces Arrest of Blogger Covering News about Formosa after Three-Month Incommunicado Detention" (April 6, 2017), <http://www.vietnamhumanrightsdefenders.net/2017/04/07/vietnam-announces-arrest-of-blogger-covering-news-about-formosa/>.

⁵⁸ Interview with AB, July 20, 2018.

⁵⁹ *Id.*

⁶⁰ Interview with AB, August 21, 2018.

⁶¹ Interview with AB, July 20, 2018.

⁶² *Id.*

state.”⁶³ The charge was later changed to violating Article 88 of the 1999 Penal Code, which prohibits “conducting propaganda against the state.”⁶⁴ At no point during his detention, prior to his trial, was Hoa brought before a judge to determine whether his arrest was legal.⁶⁵

27. Hoa was allegedly beaten and tortured by police officers during his arrest and in pre-trial detention. Hoa had limited contact with the outside world during this pre-trial time period, but his abrupt change from requesting a lawyer to denying representation without giving a reason (as explained below) suggest that foul play by the Government coerced such a decision. More recent reports have noted that the torture, particularly the physical beatings and lack of medical diagnosis and treatment (as explained below) have continued, and Hoa’s health is in serious decline.⁶⁶

b. Pre-trial Detention and Prosecution of Hoa

28. From the date of his arrest until after his trial, Hoa was detained in the Cau Dong temporary detention facility under the authority of Ha Tinh province’s police. Once Hoa was permitted to communicate with his family, he asked them to hire Hanoi-based lawyer Ha Huy Son to provide legal assistance. However, when Ha Huy Son submitted a request for documents related to Hoa’s case to the court, the court then sent Mr. Son a letter, allegedly from Hoa, rejecting his legal services. Hoa never met with a lawyer in preparation for his trial, nor did he have an attorney with him during his trial. Considering that the rejection came not from Hoa

⁶³ *Article 258. Abusing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens*

1. Those who abuse the rights to freedom of speech, freedom of press, freedom of belief, religion, assembly, association and other democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens, shall be subject to warning, non-custodial reform for up to three years or a prison term of between six months and three years.

2. Committing the offense in serious circumstances, the offenders shall be sentenced to between two and seven years of imprisonment.

<http://un-act.org/publication/view/viet-nam-penal-code-1999>.

⁶⁴ *Article 88. Conducting propaganda against the Socialist Republic of Vietnam*

1. Those who commit one of the following acts against the Socialist Republic of Vietnam shall be sentenced to between three and twelve years of imprisonment:

a) Propagating against, distorting and/or defaming the people’s administration;

b) Propagating psychological warfare and spreading fabricated news in order to foment confusion among people;

c) Making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Vietnam.

2. In the case of committing less serious crimes, the offenders shall be sentenced to between ten and twenty years of imprisonment.

<http://un-act.org/publication/view/viet-nam-penal-code-1999>.

⁶⁵ Interview with AB, August 21, 2018.

⁶⁶ *Id.*

directly but through the court, and allegations that Hoa had been abused while in custody, observers believe that he likely rejected such services under duress.⁶⁷

29. On April 7, 2017, Hoa gave a televised confession prior to his trial. The televised confession was mainly a narrator giving background on Hoa's "crimes," citing both Articles 88 and 258 of the 1999 Penal Code and offering up reasons for Hoa's actions. The narrator stated that Hoa belonged to a "terrorist organization," referring to an opposition party named Vietnam Reform Revolutionary Party, and had recruited for and helped build up the organization's base in Ha Tinh province, while spreading anti-Vietnamese propaganda in exchange for money. The narrator spoke for around six minutes of the televised statement and Hoa for only two minutes. Hoa's confession went into very little detail, simply stating that he was paid by foreign organizations to create propaganda against the state, apologizing to the Government, and warning others not to follow his example.⁶⁸ Considering the allegations that Hoa was abused while in detention and that he was held *incommunicado* until April 2017, observers also believe that Hoa was likely placed under both mental and physical duress to procure this confession.⁶⁹

30. Around the same time that the video was publicized, the Ha Tinh province police publicly announced that Hoa had already admitted to the offenses discussed in the video.⁷⁰

31. After he had spent 11 months in pre-trial detention (including three months *incommunicado*), Hoa's trial took place on November 27, 2017, without a lawyer of his own choosing present. State media reported that Hoa admitted to the charges and pled guilty and asked the court for reduced penalty;⁷¹ however, in actuality Hoa attempted to defend himself. He was permitted to speak in his defense; but as he had already made his televised confession, all statements that he made in his defense in court were rejected. Hoa's defense of himself was also strictly limited by the court; he was not allowed to speak outside of the small allowances given him by the judge and he was not allowed to challenge any of the state's evidence or cross-examine the state's witnesses.⁷²

⁶⁷ *Id.*

⁶⁸ Televised Confession of Nguyen Van Hoa, <https://www.youtube.com/watch?v=ER1PB9jxdvs> (translation provided by Dechert LLP).

⁶⁹ Interview with AB, July 20, 2018.

⁷⁰ See "Khởi tố phần tử Việt Tân gây rối trật tự, bôi nhọ Đảng, Nhà nước" ("Prosecution of a Viet Tan member who cause disorder, smear the Party, the State"), *Vietnam Net* (April 6, 2017), <http://vietnamnet.vn/vn/phap-luat/ho-so-vu-an/ha-tinh-khoi-to-phan-tu-viet-tan-gay-roi-trat-tu-boi-nho-dang-nha-nuoc-365394.html>; see also BROADCASTING BOARD OF GOVERNORS, "Nguyễn Văn Hoá: Videographer and contributor, RFA Vietnamese Service," <https://www.bbg.gov/threats-to-press/nguyen-van-hoa> (last updated Dec. 13, 2017); DEFEND THE DEFENDERS, "Vietnam Announces Arrest of Blogger Covering News about Formosa after Three-Month Incommunicado Detention" (April 6, 2017), <http://www.vietnamhumanrightsdefenders.net/2017/04/07/vietnam-announces-arrest-of-blogger-covering-news-about-formosa>.

⁷¹ "Phạt Nguyễn Văn Hoá 7 năm tù tội tuyên truyền chống Nhà nước" ("Nguyen Van Hoa sentenced to seven years in prison for propaganda against the state"), *Vietnam Net* (November 27, 2017), <http://vietnamnet.vn/vn/phap-luat/ky-su-phap-dinh/phat-nguyen-van-hoa-7-nam-tu-toi-tuyen-truyen-chong-nha-nuoc-413293.html>.

⁷² Interview with AB, July 20, 2018.

32. While on paper, the trial was open to the public, only Hoa's sister was allowed into the courtroom, while all other friends and family were forced to wait outside.⁷³ The trial only lasted a little over two hours. Hoa was convicted with violating Article 88 of the 1999 Penal Code (*i.e.*, "conducting propaganda against the state") and sentenced to seven years in prison followed by three years of house arrest. As discussed above, the initial charge of an Article 258 violation (*i.e.*, "abusing democratic freedoms to infringe upon the interests of the state") was dropped sometime before the trial.

33. Hoa declined to appeal his sentence, it is suspected as a result of government pressure. In addition, the People's Court of Ky Anh district has not publicly released any documents from Hoa's trial.⁷⁴

c. Current Status

34. Hoa was transferred on or around February 24, 2018 to An Diem prison in Dai Loc district in the province of Quang Nam, approximately 500 km from his home of Ha Tinh Province. He currently shares a cell with three other inmates. While in prison, he is reportedly not receiving adequate food or adequate medication or treatment for his chronic stomach ailment and relies on the food and medicine sent or delivered by his family. Due to the lack of adequate medical care for his stomach condition and the lack of sufficient food, Hoa has significantly lost weight, and his health is in serious decline.⁷⁵

35. While in prison, Hoa has developed a [REDACTED] and a digestive ailment. He has apparently asked the prison to allow him to get medical attention for [REDACTED] but as of October 18, 2018 had been refused. He is in great pain and has trouble lying in bed.⁷⁶

36. There are recent allegations that Hoa was beaten and sustained injuries to his head. Hoa was allegedly tortured in an attempt to coerce testimony from Hoa that helped the Government to convict Le Dinh Luong, an environmental activist, of similar charges to Hoa. In August 2018, CPJ reported that Hoa had previously testified in Luong's favor, but recanted, claiming that he only made his statements against Mr. Luong after he was tortured.⁷⁷ Hoa was allegedly beaten again, in retaliation, after he recanted his testimony.⁷⁸

37. Given that, during Hoa's entire time in detention, he has never been permitted to speak confidentially with an attorney or his family, he has never been able to convey to the

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Interview with AB, July 20, 2018; Interview with AB, August 21, 2018; Interview notes from interview with AB in email correspondence, August 30, 2018; Interview notes from interview with AB in email correspondence, October 18, 2018.

⁷⁷ COMMITTEE TO PROTECT JOURNALISTS, "Vietnamese videographer beaten and harassed in prison" (August 20, 2018), <https://cpj.org/2018/08/vietnamese-videographer-beaten-and-harassed-in-pri.php>.

⁷⁸ Interview with AB, August 21, 2018.

outside world detailed information about torture, abuse, or coercion that he endured with respect to his alleged refusal of an attorney or an appeal, his “confession,” or his testimony against Mr. Luong.⁷⁹

38. On September 19, 2018 police officers for Ha Tinh Province came to his place of detention and demanded to get information about another social media user but Hoa refused to cooperate. The police officers threatened to charge him with additional allegations.⁸⁰

B. LEGAL ANALYSIS

39. Hoa’s arrest and detention is arbitrary⁸¹ 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 Hoa’s peaceful exercise of his right to freedom of expression. The detention is arbitrary under Category III because the Government’s detention and prosecution of Hoa failed to meet minimum international standards of due process.

1. Deprivation of Liberty Under Category I

40. 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.⁸²

41. Hoa was arrested without a warrant, was held *incommunicado* for three months and was never brought before a judge to adjudicate the legality of his pre-trial detention. In addition, he was convicted under Article 88 of the 1999 Penal Code, prohibiting anti-state propaganda, which is a law too vague to properly provide a legal basis for prosecution.

⁷⁹ *Id.*

⁸⁰ Interview notes from interview with AB in email correspondence, October 18, 2018.

⁸¹ 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.

⁸² 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).

a. Hoa was Arrested Without a Warrant, Held *Incommunicado* and Never Given Access to Judicial Review of his Detention

42. Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” As discussed in more detail in section IV.B.3.a(i) below, Vietnamese law requires an arrest warrant as a pre-condition for most instances of deprivation of liberty.

43. 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.

44. The Human Rights Committee, the body tasked with interpreting the ICCPR, has determined that *incommunicado* detention inherently violates Article 9(3) of the ICCPR.⁸³ This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights, such as freedom from torture.⁸⁴ 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.⁸⁵

45. Hoa was arrested on January 11, 2017 without a warrant authorizing such arrest. Hoa was never brought before a judge to confirm the legal basis for his arrest or his continuing pre-trial detention. The first time that Hoa had access to a judge was at his trial on the merits on November 27, 2017 – 11 months and 16 days after his arrest. Moreover, during the first three months of his detention Hoa was held entirely *incommunicado*.

46. The fact that there was never a warrant authorizing Hoa’s detention, that he was held without access to the outside world for three months, and that he was never given an opportunity to challenge the legality of his arrest and detention show that there was no legal basis for his deprivation of liberty and pre-trial detention.

⁸³ 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”).

⁸⁴ *Id.* at para. 34. Other rights that may be at risk are those guaranteed by Articles 6, 7, 10 and 14 of the ICCPR.

⁸⁵ Body of Principles, *supra* note 81, at Principle 15.

b. Vietnam's Criminal Code is Overly Broad and Vague

47. Article 15(1) of the ICCPR⁸⁶ and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”)⁸⁷ 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.”⁸⁸ 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.”⁸⁹

48. Article 88 of the 1999 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 88. Conducting propaganda against the Socialist Republic of Vietnam:

1. Those who commit one of the following acts against the Socialist Republic of Vietnam shall be sentenced to between three and twelve years of imprisonment:
 - a) Propagating against, distorting and/or defaming⁹⁰ the peoples administration;
 - b) Propagating psychological warfare and spreading fabricated news in order to foment confusion among people;

⁸⁶ *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.”).

⁸⁷ 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.”).

⁸⁸ General Comment No. 35, *supra* note 83.

⁸⁹ 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.

⁹⁰ “Defaming” is not defined anywhere in the Vietnam Penal Code.

c) Making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Vietnam.⁹¹

49. No instruction is given as to what constitutes defaming the administration, propagating psychological warfare, fomenting confusion, or documents/products that are against the republic. There is no intent component and no measure of what a prosecutor must prove to convict.

50. Article 88 of the 1999 Penal Code lacks any plain meaning and gives individuals no fair notice of what conduct is prohibited. For Hoa and others, Article 88 of the 1999 Penal Code (and its reiteration in as Article 117 in the revised 2015 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. Because this crime of “conducting propaganda” is so vague, such provision cannot supply the legal basis for detention resulting from conviction on such charge.

2. Deprivation of Liberty Under Category II

51. 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.⁹² This case meets the requirements of Category II because Hoa’s detention is a result of his exercise of his fundamental freedoms of opinion and expression guaranteed by the UDHR and the ICCPR.

a. Hoa Was Convicted for Exercising His Freedoms of Opinion and Expression

52. 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.⁹³ Article 19(2) of the ICCPR provides that “everyone shall have the right to freedom of expression.”⁹⁴ Article 19 of the UDHR provides an analogous guarantee of freedom of opinion and expression.⁹⁵ The Human Rights Committee has clarified that Article 19 of the

⁹¹ Vietnam Penal Code of 1999, available at <http://un-act.org/publication/view/viet-nam-penal-code-1999/>.

⁹² 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”).

⁹³ *Id.*

⁹⁴ ICCPR at art. 19(2). As noted above, Vietnam acceded to the ICCPR in 1982 and entered no reservations to this provision.

⁹⁵ UDHR at art. 19.

ICCPR “protects all forms of expression and the means of their dissemination.”⁹⁶ This includes “all forms of audio-visual as well as electronic and internet-based modes of expression.”⁹⁷

53. Article 19 of the ICCPR is of special importance for human rights defenders⁹⁸ and journalists working on reporting of human rights abuses are explicitly recognized as human rights defenders.⁹⁹ The Working Group has confirmed the right of human rights defenders “to investigate, gather information regarding and report on human rights violations.”¹⁰⁰ The Human Rights Committee has also specifically recognized that Article 19(2) protects the work of journalists¹⁰¹ and “includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.”¹⁰² 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.”¹⁰³ This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.¹⁰⁴

54. Despite international law’s clear guarantees for individuals’ rights to free speech, the Government arbitrarily detained and prosecuted Hoa as a direct result of his speech in his capacity as a journalist. First, the charge of “conducting propaganda” under Article 88 of the 1999 Penal Code is facially violative of an individual’s freedom of expression because it vaguely

⁹⁶ 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”).

⁹⁷ *Id.*

⁹⁸ 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).

⁹⁹ *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>.

¹⁰⁰ *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).

¹⁰¹ *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).

¹⁰² *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).

¹⁰³ *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)

¹⁰⁴ *Bialiatski v. Belarus*, United Nations Working Group on Arbitrary Detention, Opinion No. 39/2012, para. 43, (November 23, 2012).

criminalizes a broad swath of speech and information-sharing acts. In fact, the OHCHR has repeatedly denounced Article 88 of the 1999 Penal Code as violating international human rights law. Notably, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein stated that:

Article 88 effectively makes it a crime for any Vietnamese citizen to enjoy the fundamental freedom to express an opinion, to discuss or to question the Government and its policies. The overly broad, ill-defined scope of this law makes it all too easy to quash any kind of dissenting views and to arbitrarily detain individuals who dare to criticize Government policies.¹⁰⁵

55. The OHCHR recommended that Vietnam repeal Article 88, as well as Article 258 (the provision under which Hoa was originally arrested) of the 1999 Penal Code.¹⁰⁶ The OHCHR also called for the immediate release of all individuals who have been detained as a result of these provisions under the Penal Code.¹⁰⁷ Thus, no matter whether the underlying factual allegations are true, the Government has deprived Hoa of his liberty under a law which is itself incompatible with right to freedom of expression guaranteed under the UDHR and ICCPR.

56. Second, in addition to the fact that Hoa was convicted under a law that facially violated his right to freedom of expression, Hoa was specifically targeted for his independent reporting; his detention thus violated his right to freedom of expression both *de jure* and *de facto*. Shortly after Hoa began to report and blog critically about the Government's response to the Formosa crises he suffered escalating harassment by the Government, as detailed in section IV.A, paragraph 23 above. This harassment, which culminated in his arrest, conviction and lengthy sentence, was an attempt by the Government to silence him and punish him for independent reporting, an activity which is expressly protected as free expression. The Government's detention of Hoa for his critical expression also fits directly into the Government's well-documented pattern of attacking and attempting to silence journalists through arbitrary detention, as detailed in section IV.A, paragraphs 6-12 above. That Hoa was arrested for "abusing democratic freedoms to infringe upon the interests of the State" under Article 258 of the 1999 Penal Code in January 2017¹⁰⁸ only to have that charge changed three months later to a violation for "conducting propaganda against the state" under Article 88 of the 1999 Penal Code, which carries a heavier sentence, further demonstrates the tenuous link between his arrest and his alleged crime.

57. Considering this history and the harassment suffered by Hoa following his coverage of the Formosa disaster, it is clear that the Government targeted Hoa for detention as a means of reprimanding him for his documentation of the Formosa disaster, for his independent

¹⁰⁵ United Nations Human Rights Office of the High Comm'r, *UN Human Rights Chief urges Viet Nam to halt crackdown on bloggers and rights defenders* (October 14, 2016), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20679>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Huong Nguyen, *Four Activists Arrested Days Before the Traditional New Year*, THE 88 PROJECT, (Jan. 24, 2017), <https://the88project.com/2017/01/24/four-activists-arrested-days-before-the-traditional-new-year/>

reports that advocated for the rights of those devastated by the event and for his work through Radio Free Asia.

b. None of the Restrictions to Freedom of Expression Enumerated Under Article 19(3) of the ICCPR Apply to Hoa’s Prosecution and Detention

58. Article 20 of the ICCPR requires states to prohibit “propaganda for war” and “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”¹⁰⁹ However, the Human Rights Committee has confirmed that limitations on expression that a state attempts to justify on the basis of Article 20 must also comply with Article 19(3) of the ICCPR.¹¹⁰ Pursuant to 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.¹¹¹ The Human Rights Committee has emphasized the narrowness of the limitations set forth in Article 19(3) of the ICCPR by noting that “when a State party imposes [a limitation] on the exercise of freedom of expression, [it] may not put in jeopardy the right itself.”¹¹² As such, any limitation “must meet a strict test of justification.”¹¹³ To guide states, the Human Rights Committee has established three requirements for any limitation on the right to freedom of expression. A permissible limitation must be (1) “provided by law,” (2) for the protection of one of the “enumerated purposes,” under Article 19(3) of the ICCPR and (3) “necessary” to achieve that purpose.¹¹⁴

59. In this case, the limitation on Hoa’s freedom of expression fails to meet the second requirement; the Government’s restrictions on Hoa’s right to freedom of expression was not for a proper purpose. Although the Government claimed that his detention was based on his “conducting propaganda”—as might be considered appropriately banned under Article 20 of the ICCPR—in actuality none of Hoa’s reports or online postings called directly or indirectly for violence (much less war or advocacy of hatred) or could reasonably be considered to threaten national security, public order, public health or morals, or the rights or reputations of others. Rather, the Government was merely using the veil of “conducting propaganda” as a pretext to silence criticism, which is not an acceptable purpose under Article 19(3) of the ICCPR, to the

¹⁰⁹ ICCPR, at art. 20.

¹¹⁰ General Comment No. 34, *supra* note 96, at para. 50.

¹¹¹ ICCPR, at art. 19(3).

¹¹² General Comment No. 34, *supra* note 96, at para. 21.

¹¹³ *Park v. Republic Korea*, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, para. 10.3 (adopted October 20, 1998).

¹¹⁴ *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).

contrary, political discourse, journalism and discussion of human rights have all been explicitly recognized as protected speech.¹¹⁵

60. Despite such international guarantees for rights to free speech, the Government arbitrarily detained and prosecuted Hoa as a direct result of his speech. His reporting and postings are political and fall under the protections of Articles 19 of the ICCPR and UDHR. His reporting and postings did not advocate violence or disorder and therefore posed neither a threat to others' rights or reputations nor a threat to national security or public order, health or morals; rather, his advocacy for the rights of those impacted by the Formosa disaster, as well as his coverage of the event, bravely called for attention to the numerous communities that were devastated by the disaster. Thus, because Hoa's reporting and critical online 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.

3. Deprivation of Liberty Under Category III

61. Hoa's arrest and detention is arbitrary under Category III. 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, spelled out in the UDHR and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character."¹¹⁶ The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, the Body of Principles, and the UN Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules").¹¹⁷ The Vietnamese Constitution also guarantees certain due process rights, including the right not to be arrested without a prior authorization (Article 20), the right to a presumption of innocence (Article 31(1)), the right to a prompt, impartial and public trial for anyone charged with a criminal offense (Article 31(2)), and the right to the assistance of defense counsel (Article 31(4)).

a. Arrest and Pre-Trial Violations

(i) Vietnam Violated Hoa's Right Not to Be Subjected to Arbitrary Arrest

62. Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." This right means that "procedures for carrying out legally authorized deprivation of liberty should also be established by law and State parties should ensure compliance with their legally prescribed procedures."¹¹⁸

¹¹⁵ General Comment No. 34, *supra* note 96, at para. 11.

¹¹⁶ Methods, *supra* note 92, at para. 8(c).

¹¹⁷ *Id.* at paras. 7(a), (b).

¹¹⁸ General Comment No. 35, *supra* note 83, at para. 23.

The Vietnamese Constitution also requires an arrest warrant issued by a court or approved by a People's Procuracy before any arrest may be made, except in case of a flagrant offense.

63. Here, the arrest of Hoa did not comply with international law and failed to meet the standards of the Vietnamese laws. The police officers did not show Hoa a warrant for his arrest. At the time of the arrest, Hoa was on his way to observe a trial for reporting purposes and was not engaging in any conduct constituting a flagrant offense. In fact, it does not appear that Hoa's arrest was supported by a valid arrest warrant based on a genuine or reasonable suspicion that Hoa had committed a crime. Rather, the allegation that Hoa had committed a crime was a mere pretext to detain him for his exercise of his fundamental right to expression, as discussed in section IV.B.2.a.

64. Through the arbitrary arrest of Hoa, Vietnam violated Article 9(1) of the ICCPR, Article 9 of the UDHR, Principles 2 and 36(2) of the Body of Principles, and Article 20(2) of the Vietnamese Constitution.

(ii) Vietnam Violated Hoa's Right to be Informed of the Reasons for His Arrest and the Charges Against Him

65. Article 9(2) of the ICCPR requires that a detainee "be informed, at the time of arrest, of the reasons for his arrest and [] be promptly informed of any charges against him."¹¹⁹ The purpose for the first requirement contained in article 9(2) of the ICCPR—that the detainee be given the reasons for his arrest during the arrest itself—is to enable a detainee to request a prompt decision on the lawfulness of his detention if these reasons given are invalid or unfounded.¹²⁰ The Human Rights Committee has confirmed that these reasons must contain "not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim."¹²¹

66. Regarding the second requirement of article 9(2) of the ICCPR—that the detainee be "promptly informed" of any charges against him—the Human Rights Committee has not confirmed precisely what time frame would be considered "prompt." However, the Human Rights Committee had indicated that where a detainee is arrested on pre-existing charges, "the authorities may explain the legal basis of the detention some hours later."¹²² Considering this approved time frame of "some hours later," and that in context of a detainee's *habeas corpus* rights the Human Rights Committee has interpreted "prompt" to mean about 48 hours, it seems clear that the Human Rights Committee would not consider withholding information about the charges against a detainee for more than a week to be "prompt."

¹¹⁹ See also Body of Principles, *supra* note 81, at Principle 10.

¹²⁰ General Comment No. 35, *supra* note 83, at para. 25; *Campbell v. Jamaica*, Communication No. 248/1987, para. 6.3 (March 30, 1992).

¹²¹ General Comment No. 35, *supra* note 83, para. 25.

¹²² *Id.* at para. 30.

67. Additionally, Article 58 of the Vietnamese Criminal Procedure Code requires that an arrested person be informed of reasons of his arrest, and under Article 60, anyone facing criminal charges is entitled to be informed of reasons for charges against them.

68. Here, at the time of his arrest, Hoa was not given any explanation as to the reason for his arrest. The public reason for Hoa's arrest and detention did not become available until his family received a temporary detention notice from the authorities nine days after the arrest, which informed them that his charge was a violation of Article 258 of the 1999 Penal Code for "abusing democratic freedoms to infringe upon the interests of the State and the rights and legitimate interests of organizations and citizens." Even this initial charge was changed about five months later, to "conducting propaganda against the state" in violation of Article 88.

69. Therefore, in not informing Hoa of the reasons why he was being arrested during his arrest and in withholding information about his charge, Vietnam has violated its obligations under Article 9(2) of the ICCPR and Principle 10 of the Body of Principles.

(iii) Vietnam Violated Hoa's Right to *Habeas Corpus* and Right to Release Pending Trial

70. Under Article 9(3) of the ICCPR, a detainee shall "be brought promptly before a judge or other officer authorized by law to exercise judicial power" to challenge the legality of his continued detention (right to *habeas corpus*, also incorporated in Article 9(4) for non-criminal defendants).¹²³ The Human Rights Committee has interpreted the term "promptly" to be within about 48 hours, except in exceptional circumstances,¹²⁴ and has noted that this right shall be observed "even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity."¹²⁵ Moreover, *incommunicado* detention inherently violates the Article 9(3) of the ICCPR.¹²⁶ The right to *habeas corpus* is reiterated in Principles 4, 11, 32(1) and 37 of the Body of Principles.¹²⁷ Aside from acting as a check on

¹²³ ICCPR, art. 9(4) ("Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful").

¹²⁴ General Comment No. 35, *supra* note 83, at para. 33.

¹²⁵ *Id.* at para. 32.

¹²⁶ *Id.* at para. 35.

¹²⁷ Body of Principles, *supra* note 81, at Principle 4 ("Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority."), Principle 11 ("A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law."), Principle 32(1) ("A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful") and Principle 37 ("A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention.").

arbitrary detention, these provisions also safeguard other related rights such as freedom from torture.¹²⁸

71. In addition to the right to *habeas corpus*, Article 9(3) of the ICCPR also enshrines the right to an individual's release pending trial, providing that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody." The Human Rights Committee has found that "[d]etention pending trial must be based on an individualized determination that [such detention] is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime . . . Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances."¹²⁹ Principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.¹³⁰

72. For more than ten months between his arrest on January 11, 2017 and his trial on November 27, 2017, Hoa was never brought before a judge to determine the legality of his arrest and continuing detention. There was never any bail hearing or any publicly-released individualized determination made about why such extended pre-trial detention was proper. In short, Hoa's entire pre-trial detention period was completely unauthorized by any judicial officer.

73. By refusing to bring Hoa promptly before a judge to challenge the legality of his detention, and by denying him release pending trial, Vietnam violated Article 9(3) and 9(4) of the ICCPR, and Principles 11, 32, 37, 38 and 39 of the Body of Principles.

(iv) Vietnam Violated Hoa's Right to be Visited by Family and to Communicate with the Outside World

74. 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."

75. As explained above, Hoa was held *incommunicado* for at least three months after his arrest in January 2017; his family only learned of his arrest and detention nine days after the

¹²⁸ General Comment No. 35, *supra* note 83, at para. 34. Other rights that may be at risk are those guaranteed by Articles 6, 7, 10 and 14 of the ICCPR. *Id.* at para. 35.

¹²⁹ *Id.* at para. 38.

¹³⁰ Body of Principles, *supra* note 81, at Principle 38 ("A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.") and principle 39 ("Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.").

arrest and was not permitted to meet with him until April 2017, only after the Government officially announced his arrest and released a video in which Hoa was likely made to admit guilt.

76. In thus holding Hoa *incommunicado* for three months, Vietnam violated Principle 19 of the Body of Principles as well as Rules 43, 58, and 106 of the Mandela Rules.

b. Trial Violations

(i) Vietnam Violated Hoa’s Right to be Tried Without Undue Delay

77. Article 14(3)(c) of the ICCPR guarantees that every defendant shall have the right to “be tried without undue delay.” “An important aspect of the fairness of a hearing is its expeditiousness,”¹³¹ and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”¹³² In addition, this right “relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal.”¹³³ The right to be tried without undue delay is reiterated by the Body of Principles,¹³⁴ and the same is guaranteed in Article 31 of the Vietnamese Constitution as well.

78. The reasonable amount of time in which a trial must be held must be “assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities.”¹³⁵ Further, “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”¹³⁶

79. Hoa was arrested on January 11, 2017, and his trial did not take place until November 27, 2017. More than ten months elapsed before Hoa was tried, and during this whole time, he was held in custody at Cau Dong “temporary detention” facility under the law enforcement authority of Ha Tinh province. Vietnam did not give any reasons for why any unique circumstances of Hoa’s case might have necessitated such delay nor does it seem that any such unique circumstances exist. As such, Vietnam violated Article 14(3)(c) of the ICCPR, Principle 38 of the Body of Principles, and Article 31 of the Vietnamese Constitution.

¹³¹ HUMAN RIGHTS COMMITTEE, *General Comment No. 32: Article 14 (Right to Equality Before Courts and Tribunals and to Fair Trial)*, U.N. Doc. CCPR/C/GC/32, para. 27 (August 23, 2007) (*hereinafter* “General Comment No. 32”).

¹³² *Id.* at para. 35.

¹³³ *Id.*

¹³⁴ Body of Principles, *supra* note 81, at Principle 38.

¹³⁵ General Comment No. 32, *supra* note 131, at para. 30.

¹³⁶ *Id.* at para. 35.

(ii) Vietnam Violated Hoa’s Right to Communicate with and Have Assistance of Counsel

80. 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 defence and to communicate with counsel of his own choosing.” Such guarantee “requires that the accused is granted prompt access to counsel,”¹³⁷ and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”¹³⁸ Principles 18 of the Body of Principles further provide for the right of a detainee to communicate and consult with his legal counsel, and that such right “may not be suspended or restricted save in exceptional circumstances.” 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.

81. Here, Hoa was deprived of his right to defend himself through legal assistance of his own choosing and to prepare a defense. Hoa was held *incommunicado* for three months after his arrest and was permitted access to neither a lawyer nor his family. Once Hoa could communicate with his family he asked them to engage for him a particular defense lawyer. However, according to the court, Hoa later withdrew his request; the court rejected the documentation submitted by the defense counsel and denied his request for a meeting with Hoa on the grounds that Hoa refused his legal assistance. Considering that Hoa himself had specifically requested legal assistance of this particular lawyer, that Hoa’s alleged rejection of this attorney’s services was not communicated directly between Hoa and the attorney but through the court, that Hoa never publicly announced his desire to reject counsel, that Hoa was never able to obtain a different lawyer, the credible allegations that Hoa was beaten during his pre-trial detention and coerced to confess, and the pattern, noted in section IV.A.1.c above, of Vietnam commonly denying assistance of counsel to defendants, it is highly likely that Hoa’s “refusal” of legal services was involuntary or the result of torture or other undue pressure. As such, 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.

(iii) Vietnam Violated Hoa’s Right to a Presumption of Innocence and Right Not to be Compelled to Testify Against Himself or to Confess Guilt

82. 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.” Article 11(1) of the UDHR and Principle 36(1) of the Body of Principles also guarantee this right, as do Article 31(1) of the Vietnamese Constitution and Article 13 of the Vietnamese Criminal Procedure Code. The presumption of innocence is “fundamental to the protection of human rights” and requires that “the accused has the benefit of doubt, and [] that persons accused

¹³⁷ *Id.* at para. 32.

¹³⁸ *Id.* at para. 34.

of a criminal act must be treated in accordance with this principle.”¹³⁹ Such presumption of innocence creates a “duty for all public authorities to refrain from prejudging the outcome of the trial, e.g. by abstaining from making public statements affirming the guilt of the accused. . . . The media should avoid news coverage undermining the presumption of innocence.”¹⁴⁰

83. The Article 14(3)(g) of the ICCPR guarantees the right not to be compelled to testify against himself or to confess guilt. Article 60(2) of the Vietnamese Criminal Procedure Code also provides that a person facing criminal charges may not be obligated to testify against themselves or admit guilt. Moreover, Principle 21(1) of the Body of Principles specifically provides that “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess [...]”

84. Here, more than seven months before his trial, Hoa was allegedly forced to make a public apology admitting his guilt with respect to inciting protests, causing social unrest, and spreading propaganda against the Government under the direction of foreign influences and anti-Vietnam extremists. Considering credible allegations of torture following his arrest and the fact that Hoa had been held *incommunicado* for three months after his arrest but was permitted to see his family for the first time around the time that he “confessed”, it seems likely that he made the “confession” due to abuse or a threat of further *incommunicado* treatment and prohibition from seeing his family.

85. In addition to likely forcing Hoa’s confession, the Government widely publicized his guilt months before Hoa’s conviction. As discussed in section IV.A.2.b above, Hoa’s “confession” was broadcast on national television, with the narrator confirming that Hoa belonged to a so-called “terrorist organization” and had helped build up the organization’s base in Ha Tinh province, while spreading anti-Vietnamese propaganda.¹⁴¹ Around the same time that the video was publicized, the Ha Tinh province police publicly announced that Hoa had already admitted to the same offenses.¹⁴²

86. In addition to Government-run media and the police publicly affirming Hoa’s guilt, the court also violated Hoa’s right to a presumption of innocence by treating him as if his guilt was a foregone conclusion. During his trial on November 27, 2017, Hoa was prevented from fully presenting his evidence, and all of his defense was dismissed by the court without due consideration. State-owned media falsely reported that Hoa admitted to the charges and pled guilty, asking the court for reduced penalty,¹⁴³ instead of acting in his own defense. This further

¹³⁹ *Id.* at para. 30.

¹⁴⁰ *Id.*

¹⁴¹ Available at <https://www.youtube.com/watch?v=ER1PB9jxdvs> (posted April 7, 2017); see also “Phản tử Việt Tân bị bắt ở Hà Tĩnh xin lỗi nhân dân” (“Viet Tan arrested in Ha Tinh to apologize to the people”), *Vietnam Net* (Apr. 8, 2017), <http://vietnamnet.vn/vn/thoi-su/phan-tu-viet-tan-bi-bat-o-ha-tinh-xin-loi-nhan-dan-viet-nam-365703.html>.

¹⁴² See *supra* note 70.

¹⁴³ See *supra* note 71.

demonstrates that the court, the law enforcement authorities, and the state-owned media all worked to emphasize Hoa's guilt even prior to his conviction.

87. By likely coercing Hoa to confess guilt, Vietnam violated Article 14(3)(g) of the ICCPR and Principle 21(1) of the Body of Principles. By publicly releasing a statement that Hoa had admitted his guilt and broadcasting a video of this "confession" on state-controlled media and by having the court treat Hoa as if his guilt was a foregone conclusion during trial, Vietnam violated Hoa's right to a presumption of innocence under Article 14(2) of the ICCPR, Article 11(1) of the UDHR, Principles 36(1) and 21(1) of the Body of Principles, Article 31(1) of the Vietnamese Constitution and Article 13 of the Vietnamese Criminal Procedure Code.

(iv) Vietnam Violated Hoa's Right to a Fair and Public Hearing

88. Article 14(1) of the ICCPR guarantees the right "to a fair and public hearing." This is an "absolute requirement . . . not capable of limitation." One of the key tenets of a fair hearing is the principle of equality of arms, which requires that both parties have the same procedural rights and, specifically, that "each side be given the opportunity to contest all the arguments and evidence adduced by the other party."¹⁴⁴ Notably, Article 14(3)(e) of the ICCPR provides that every defendant shall have the right "[t]o examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him." Articles 7 and 10 of the UDHR reiterates these requirements.

89. The Human Rights Committee has emphasized the importance of a public hearing as it "ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large."¹⁴⁵ Moreover, a public hearing requires not just that some individuals unconnected with the proceedings are permitted into the courtroom; rather the hearing must be open to the general public, including media, without limiting entrance to a select group of people.¹⁴⁶ The Vietnamese Constitution also require a public hearing, with an exception for "special cases" requiring "protection of state secrets, conformity with fine customs and traditions of the nation, protection of minors, or protection of private life and at the legitimate request of an involved party," for which a court may hold a closed hearing.

90. Hoa's trial was neither fair nor public, and there was no legitimate reason to treat his case as a "special case" requiring a closed hearing. As discussed in more detail in section IV.A.2.b above, although Hoa was permitted to speak in his defense, his time to do so was strictly limited. Hoa was not given an opportunity to challenge any of the evidence presented by the prosecution or cross-examine the prosecution's witnesses, nor was he allowed to present evidence in his defense. As noted above, Hoa was not represented by any counsel. The entire trial, which resulted in a hefty seven-year prison sentence, lasted only two hours suggesting that

¹⁴⁴ General Comment No. 32, *supra* note 131, at para. 13.

¹⁴⁵ *Id.* at para. 28.

¹⁴⁶ *Id.* at para. 29.

the court did not fairly consider all evidence but that the trial was rather used to provide a legal seal of imprimatur on the Government's persecution of Hoa.

91. Moreover, while on paper the trial was open to the public, only Hoa's sister was permitted to enter the courtroom. Accordingly, the trial was effectively closed to the public. Although Article 14(1) of the ICCPR does allow for parts of a hearing to be closed "for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice" no such reasons were applicable to Hoa's case; there was nothing in the court's consideration of his reporting or Facebook postings on the Formosa crises that would threaten morals, public order, national security, his private life or the interests of justice. In fact, the court never even attempted to provide a justification for holding a closed trial.

92. By preventing Hoa from presenting his case fully and from challenging the prosecution's evidence and by refusing to hold a public trial, Vietnam violated Hoa's rights to a fair and public trial and to challenge the evidence against him, in violation of Article 14(1) and 14(3)(e) of the ICCPR, Articles 7 and 10 of the UDHR, and Articles 31 and 103 of the Vietnamese Constitution.

c. Torture and Cruel, Inhuman or Degrading Treatment or Punishment; Prison Conditions

(i) Vietnam Violated Hoa's Right to Freedom from Torture and Cruel, Inhuman or Degrading Treatment

93. Article 7 of the ICCPR guarantees that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 10(1) of the ICCPR further provides that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The right to freedom from torture and cruel, inhuman or degrading treatment or punishment is reiterated by Articles 1, 4 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), to which Vietnam is party, Article 5 of the UDHR, Principle 1 and 6 of the Body of Principles, and Rules 1 and 43 of the Mandela Rules. The Vietnamese Constitution also prohibits "torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health or offending his or her honour and dignity."

94. Article 14(3)(g) of the ICCPR specifically prohibits the infliction of physical or mental pain or suffering by a public official with the intention to coerce a confession. International law's particular concern with torture as an interrogatory tool is further reflected in the definition of torture in CAT, which defines the term as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession," as well as in Principle 21(2) the Body of Principles, which guarantees that "no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment."

95. Any imposition of suffering that is not severe enough to qualify as torture still constitutes cruel, inhuman or degrading treatment, which term “should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental,” pursuant to Principle 6(1) of the Body of Principles.

96. Here, Hoa was tortured or subjected to cruel, inhuman or degrading treatment by law enforcement authorities during both pre-trial and post-trial detention periods. Before trial, Hoa was beaten by interrogators, which likely led him to make his public confession in April 2017. After trial, prison authorities again tortured Hoa to force him to make a confession used in court to convict an environmental activist named Le Dinh Luong in August 2018, as discussed in section IV.B.3.b(iii).¹⁴⁷ Hoa later recanted his testimony on the witness stand during Luong’s trial,¹⁴⁸ and was beaten again, after the trial, in retaliation. Hoa sustained head injuries from these beatings.

97. By torturing or abusing Hoa on multiple occasions, Vietnam has violated Articles 7, 10(1), and 14(3)(g) of the ICCPR, Article 5 of the UDHR, Articles 1, 4 and 16 of the CAT, Principles 1, 6 and 21(2) of the Body of Principles, Rules 1 and 43 of the Mandela Rules, and Article 20 of the Vietnamese Constitution.

(ii) Vietnam Violated Hoa’s Right to Access to Medical Care and Adequate Food Supply While in Detention

98. Numerous authoritative sources have confirmed a government’s obligation to treat ill or injured detainees and that its failure to do so may violate the prohibition on cruel or inhuman treatment. The Committee against Torture has concluded that failure to provide such medical care to detainees can amount to cruel and degrading treatment under the CAT.¹⁴⁹ In particular, a detained or imprisoned person is guaranteed a proper medical examination and any necessary medical care and treatment under Principle 24 of the Body of Principles. Rule 27.1 of the Mandela Rules similarly requires that all prisons ensure prompt access to medical attention in urgent cases, and generally provide adequate medical treatment and care to prisoners, either at the prison’s own hospital facilities or via referral to specialized institutions or civil hospitals.

99. In addition, Rule 22.1 of the Mandela Rules requires that every prisoner be provided with “food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”

100. Here, the prison administration has not provided Hoa the medical care he needs to treat his [REDACTED] and the [REDACTED]. Hoa is relying on the medicine sent by his family, and his request for a medical examination for the [REDACTED] is pending.

¹⁴⁷ See COMMITTEE TO PROTECT JOURNALISTS, “Vietnamese videographer beaten and harassed in prison,” *supra* note 77.

¹⁴⁸ See “Vietnamese Activist Given 20-Year Term For Seeking Regime ‘Overthrow,’” *Radio Free Asia* (August 16, 2018), <https://www.rfa.org/english/news/vietnam/overthrow-08162018144518.html>.

¹⁴⁹ *Report of Committee against Torture*, U.N. GAOR, 53d Sess., Supp. No. 44, U.N. Doc. A/53/44, para. 156 (September 16, 1998), <http://www.freedom-now.org/wp-content/uploads/2015/10/CAT-Report-Supp.-No.-44-A5344.pdf>.

Hoa also has been relying on the food his family brings him once a month because the prison administration does not provide sufficient food. Due to the lack of adequate medical care for his [REDACTED] and the lack of sufficient food, Hoa has significantly lost weight, and his health is in serious decline.

101. By depriving Hoa of access to necessary medical care and adequate food supply while in detention, Vietnam has violated Articles 7 and 10(1) of the ICCPR, Article 5 of the UDHR, Article 16 of the CAT, Principles 1, 6 and 24 of the Body of Principles, and Rules 1, 22.1 and 27.1 of the Mandela Rules.

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

1. Hoa's conviction has not been appealed because he indicated to his family that he does not wish to appeal. However, there is concern that, as with Hoa's confession and testimony against Le Dinh Luong, he has been coerced by the Government into declining an appeal. As illustrated by ongoing instances of physical abuse in prison, Hoa is currently confined in dangerous and unhealthy conditions and may fear for his safety if he appeals his conviction.

2. In addition, as described in detail above, Hoa's arrest, trial and pre- and post-trial confinement have been characterized by flagrant violations of Hoa's due process rights. It is extremely unlikely that any appeal of his conviction would result in his release or lighter sentence, but might rather lead to retaliation against Hoa.

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

1. Freedom Now is a non-profit, non-governmental organization that works to free individual prisoners of conscience through focused legal, political and public relations advocacy efforts. Freedom Now, in collaboration with Dechert LLP, has been retained by Hoa as his international counsel.

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