

PETITION TO:
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

Chairman/Rapporteur: Mr. José Guevara Bermúdez (Mexico)
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HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
Ho Van Hai
Citizen of the Socialist Republic of Vietnam
v.
Government of the Socialist Republic of Vietnam

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October 29, 2019

QUESTIONNAIRE TO BE COMPLETED BY
PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

I. IDENTITY

1. *Family Name:* Ho
2. *First Name:* Van Hai
3. *Sex:* Male
4. *Age at the Time of Detention:* 52
5. *Nationality:* Socialist Republic of Vietnam / granted permanent residency in United States for 10 years
 - a. *Identity document (if any):* Unknown
 - b. *Issued by:*
 - c. *On (date):*
 - d. *No.:*
6. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Doctor / blogger on certain social media forums
7. *Address of usual residence:* Unknown

II. ARREST

1. *Date of arrest:* November 2, 2016
2. *Place of arrest (as detailed as possible):* Dr. Ho was arrested at the clinic he established where he was working as a doctor. The clinic is called Asia Polyclinic and is located in P. Linh Tay Ward, Thu Duc District.
3. *Forces who carried out the arrest or are believed to have carried it out:* The Ho Chi Minh City Police.
4. *Did they show a warrant or other decision by a public authority?* Unknown
5. *Authority who issued the warrant or decision:* Unknown
6. *Relevant legislation applied (if known):* Dr. Ho was charged and convicted for “conducting propaganda against the Socialist Republic of Vietnam” under Article 88 of Vietnam’s 1999 Penal Code.¹

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

III. DETENTION

1. *Date of detention:* Dr. Ho was detained on November 2, 2016 and is still in detention as of the date of this petition.
2. *Duration of detention (if not known, probable duration):* Dr. Ho has been held in detention since November 2, 2016. On February 1, 2018, Dr. Ho was sentenced to four years in prison to be followed by two years house arrest.
3. *Forces holding the detainee under custody:* Unknown
4. *Places of detention (indicate any transfer and present place of detention):* Dr. Ho was initially held in Phan Dang Luu detention center until December 2017 when he was transferred to Chi Hoa prison.
5. *Authorities that ordered the detention:* Ho Chi Minh City Police.
6. *Reasons for the detention imputed by the authorities:* The detention is for Dr. Ho's conviction under Article 88 of 1999 Penal Code by the People's Court of Ho Chi Minh City.
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

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 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 Part 2 of this section presents the case of Dr. Ho Van Hai, a blogger in Vietnam who was wrongfully detained on November 2, 2016 and subsequently wrongfully convicted in February 2018 of conducting propaganda against the state. Dr. Ho was sentenced to four years in prison, followed by two years of house arrest.

1. Background on Vietnam

a. Political, Legal, and Social Background on Vietnam

Vietnam has been an authoritarian, one-party state since the CPV came into power in the 1970s. Despite being bound by several human rights treaties, including the International Covenant on Civil and Political Rights (the "ICCPR"), the Government routinely violates its citizens' most basic human rights, including freedom of speech, opinion, assembly, press, religion, and association, in particular by detaining individuals who speak against the interests of the Government and the CPV party.³

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 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").

b. The Government's Interference with Freedom of Expression

Vietnam has significantly limited its citizens' freedom of expression through legal restrictions, harassment and the detention of activists, journalists and bloggers. In its 2018 World Press Freedom Index, Reporters without Borders ranked Vietnam 175 out of 180 countries, and reported that, because the Government controls all of the mainstream media in the country, bloggers and citizen-journalists are the only source of independent information.⁴ In the past decade, the Government passed several laws and ordinances that restrict both personal and media freedom of expression.⁵ In addition, a number of provisions in Vietnam's penal code are worded vaguely enough to be interpreted as criminalizing expression that the Government deems offensive, such as "carrying out activities aimed at overthrowing the people's administration,"⁶ "undermining the unity policy,"⁷ "conducting propaganda against the state,"⁸ "disrupting security,"⁹ or "abusing democratic freedoms to infringe upon the interests of the state."¹⁰ 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.

c. Lack of Due Process Protections in Vietnam

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.¹¹ 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.¹² 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.¹³

⁴ REPORTERS WITHOUT BORDERS, *Vietnam Country Report*, <https://rsf.org/en/vietnam> (hereinafter "RWB Vietnam Report").

⁵ For example, 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." Law on the Press, No. 103/2016/QH13, art. 1 (2016), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=447052.

⁶ 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>.

⁷ Criminal Code (1999), *supra* note 6, at art. 87. This provision was included in the amended Criminal Code (2015), *supra* note 6, at art. 116).

⁸ Criminal Code (1999), *supra* note 6, at art. 88. This provision was included in the amended Criminal Code (2015), *supra* note 6, at art. 117.

⁹ Criminal Code (1999), *supra* note 6, at art. 89. This provision was included in the amended Criminal Code (2015), *supra* note 6, at art. 118.

¹⁰ Criminal Code (1999), *supra* note 6, at art. 258. This provision was included in the amended Criminal Code (2015), *supra* note 6, at art. 331.

¹¹ THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM, 2013, Art. 31, *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 3.

¹² *See generally* UN Working Group on Arbitrary Detention, Opinion No. 75/2017 UN Doc. A/HRC/WGAD/2017/75 (2017); *see also* United States Department of State, Bureau of Democracy, Human Rights and Labor, Vietnam 2017 Human Rights Report, 18, available at <https://www.justice.gov/eoir/page/file/1057101/download> (hereinafter "State Department 2017 Report"); 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>.

¹³ *See* State Department 2017 Report, *supra* note 12; AMNESTY INTERNATIONAL, *Overview: Viet Nam 2017/2018*, <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>

Trials of human rights activists in Vietnam consistently fail to meet international standards of fairness.¹⁴ The police often intimidated defendants into confessions, limited access to trials for family members, and have not allowed defendants to adequately prepare a defense for trial.¹⁵ The U.S. State Department has confirmed that the due process issues in Vietnam were among the country's most significant human rights problems.¹⁶

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

There is also a pattern in Vietnam of physical abuse, torture and coerced confessions during arrest, police interrogations, and detention.¹⁷ According to the U.S. State Department, 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. In addition to the physical torture, prisoners 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.¹⁸

e. Prison Conditions in Vietnam

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.¹⁹ 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."²⁰ 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.²¹ 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.²²

2. Arbitrary Detention of Ho Van Hai

a. Background and Arrest of Ho Van Hai

Dr. Ho was born in Vietnam in 1964.²³ He graduated from Ho Chi Minh City University of Medicine and Pharmacy in 1989.²⁴ After graduating, Dr. Ho began working at Cho Ray Hospital, the largest general hospital in Ho Chi Minh City, and then opened Asia Polyclinic, a private clinic, in 2004, where he worked until his arrest. He also served as the president of the Go West Foundation, a non-governmental organization that he founded in 2014

¹⁴ HRW 2018 Vietnam Report, *supra* note 3.

¹⁵ *Id.*

¹⁶ UNITED STATES DEPARTMENT OF STATE, Bureau of Democracy, Human Rights and Labor, Vietnam 2015 Human Rights Report, available at <https://2009-2017.state.gov/documents/organization/253025.pdf>.

¹⁷ *Id.*

¹⁸ State Department 2017 Report, *supra* note 12.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 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/>

²² *Id.*

²³ *Ho Van Hai*, 88 PROJECT, <https://vietnamprisoners.info/prisoner/20/ho-van-hai> (last updated Nov. 5, 2018) [hereinafter *Hai*, 88].

²⁴ Hguyên Nguyễn, *Dr. Ho Van Hai was sentenced by the Vietnamese Communist Party to four years in prison on charges of propaganda against the state*, (Feb. 1, 2018), <https://www.sbtn.tv/bac-si-ho-van-hai-bi-csvn-ket-an-4-nam-tu-ve-toi-tuyen-truyen-chong-nha-nuoc/> (translated for use).

to provide assistance to young Vietnamese people seeking to obtain scholarships from Western universities and higher learning institutions.²⁵

Dr. Ho went to the United States through the Orderly Departure Program, an international program, established to allow for the immigration of Vietnamese people to participating countries, such as the United States. In 2014, Dr. Ho received permanent residency in the United States for a period of ten years. Later in 2014, Dr. Ho returned to Vietnam for the purposes of selling properties and completing his projects. Dr. Ho had planned to return to the United States in November 2016 and had a flight scheduled to do so. However, Dr. Ho was prevented from leaving Vietnam when he was arrested on November 2, 2016.

In 2016, multiple provinces in central Vietnam suffered from the environmental disaster, known as the Formosa disaster. 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. 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. The poisoned fish decimated the local fishing industry in addition to poisoning local citizens.²⁶

Protests erupted in the wake of the Government's response, fueled by the thought among some citizens that the Government had ulterior financial motives to support the steel plant. One Vietnamese university professor compared the toxic spill to Chernobyl, to give context to the public outcry over the environmental disaster.²⁷ (Prior to this incident, citizens had protested against the plant during its construction. Those early protests had become violent and resulted in four deaths, however, no one was reported harmed in the more recent protests mentioned in this paragraph).²⁸

Dr. Ho was also an active blogger and posted on his blog and Facebook page under the names of "BSHoHai" and "DrHoHai".²⁹ Following the Formosa disaster, Dr. Ho called for government accountability through his blogs and further posted about suspected government corruption in Vietnam's one-party Communist government, as well as writing articles promoting education. Dr. Ho never advocated for violence and instead proposed peaceful protests, civil reform and government accountability. Subsequent to his arrest, Dr. Ho's blogs became immediately unavailable.

On November 2, 2016, Dr. Ho was arrested by the Ho Chi Minh City police whilst he was at Asia Polyclinic, located in P. Linh Tay Ward, Thu Duc District.³⁰ As Dr. Ho was merely raising awareness of certain issues in Vietnam, he had not anticipated or prepared for the arrest. Further, Dr. Ho did not have close connections with activists in Vietnam and his own knowledge of activism was limited.

The Ho Chi Minh City police searched his computer and found 36 articles which allegedly disseminated "anti-state information". Local authorities claimed that Dr. Ho was "caught in the act of distributing information and materials with anti-state content on the internet."³¹

²⁵ Joshua Lipes, *Vietnam Hands Blogger Ho Van Hai Four-Year Jail Term For 'Anti-State Propaganda,'* RADIO FREE ASIA (Feb 1, 2018), <https://www.rfa.org/english/news/vietnam/trial-02012018125824.html> [hereinafter *Lipes*].

²⁶ Doan Trang, *Timeline: The Formosa Environmental Disaster*, THE VIETNAMESE (Nov 8, 2017), <https://www.thevietnamese.org/2017/11/timeline-the-formosa-environmental-disaster/>.

²⁷ Richard Paddock, *Toxic Fish in Vietnam Idle a Local Industry and Challenge the State*, THE NEW YORK TIMES, (Jun 8, 2016), <https://www.nytimes.com/2016/06/09/world/asia/vietnam-fish-kill.html>.

²⁸ *Id.*

²⁹ Lipes, *supra* note 25.

³⁰ *Id.*

³¹ *Update on Blogger Ho Van Hai*, 88 PROJECT (Dec. 24, 2017), <https://the88project.org/2017/12/24/update-on-blogger-ho-van-hai-december-24-2017/> (*hereinafter Hai Update*, 88).

b. Pre-trial Detention and Prosecution of Dr. Ho

Dr. Ho was charged under Article 88 of the 1999 Penal Code for “conducting propaganda against the Socialist Republic of Vietnam.” It was alleged that Dr. Ho had disseminated “distorted” information that caused the public to lose trust in the government.”³² Further, police officials stated that they had been monitoring Dr. Ho’s online activities prior to his arrest.

Immediately following Dr. Ho’s arrest, he was detained and held in Phan Dang Luu detention center whilst he was being investigated.³³ In December 2017, Dr. Ho was transferred from Phan Dang Luu detention center to Chi Hoa prison. The transfer was sudden and Dr. Ho was unable to take his belongings with him which meant that he had to sleep on a tiled floor without a mat for at least three weeks.³⁴

On February 1, 2018, 15 months after his initial arrest, Dr. Ho was tried and convicted in the Ho Chi Minh City People’s Court.³⁵ The trial lasted just one day, was held in secret, and was closed the public.³⁶ His family was only informed of the trial two days before it began, and only his wife and brother were permitted to attend. Owing to his family’s lack of resources, Dr. Ho did not have a lawyer at the trial. Dr. Ho was sentenced to four years imprisonment to be followed by two years of house arrest.³⁷

On March 3, 2018, the Senior People’s Court in Ho Chi Minh City accepted the case for Dr. Ho, and the appeal was due to be heard on June 19, 2018.³⁸ Further, this appeal was scheduled to be tried in public. However, on June 19, 2018, Dr. Ho’s family was informed that the trial would be delayed for a few days, and then later heard that the trial would be delayed indefinitely.³⁹ No reasons were provided for this postponement. Dr. Ho was not made aware that his trial had been postponed as he did not have a lawyer or access to information in Chi Hoa prison.

c. Current Status

Dr. Ho continues to be detained in Chi Hoa Prison in Ho Chi Minh City. The conditions at Chi Hoa are harsh and severely depriving, which has resulted in Dr. Ho’s health deteriorating. Dr. Ho suffers from several chronic health problems, including: gingivitis, high blood pressure, and diabetes. These health problems have been exacerbated by his time in the Chi Hoa prison. Further, Dr. Ho does not receive enough food or the correct medication to monitor and control his health conditions.⁴⁰

Although Dr. Ho has not been directly tortured by the police, he lives in fear that he will receive such treatment. The Phan Dang Luu detention center and Chi Hoa prison are known for having incredibly poor conditions and torturing its prisoners.⁴¹ This naturally resulted and continues to result in Dr. Ho suffering from psychological pressures.

³² *Blogger detained amid escalating crackdown in Vietnam*, CPJ COMMITTEE TO PROTECT JOURNALISTS, (Nov 4, 2016), <https://cpj.org/2016/11/blogger-detained-amid-escalating-crackdown-in-viet.php>.

³³ Hai Update, 88, *supra* note 31.

³⁴ Hai Update, 88, *supra* note 31.

³⁵ Hai, 88, *supra* note 23.

³⁶ *Four years in prison for Vietnamese blogger*, REPORTERS WITHOUT BORDERS, (Feb 2, 2018) <https://rsf.org/en/news/four-years-prison-vietnamese-blogger> [hereinafter *Four years in prison*].

³⁷ Court document from the Senior People’s Court in Ho Chi Minh City, No. 394/2018/QDXXPT-HS May 22, 2018 (translated for use) [hereinafter Court document].

³⁸ *Id.*

³⁹ Court document *supra* note 37.

⁴⁰ Hai 88, *supra* note 23.

⁴¹ *Vietnam: Torture and Abuse of Political Prisoners*, CAMPAIGN TO ABOLISH TORTURE IN VIETNAM, (Jan, 2014), <https://democraticvoicevn.files.wordpress.com/2014/01/vietnam-torture-and-abuse-01-16-2014.pdf>.

B. LEGAL ANALYSIS

Dr. Ho's arrest and detention is arbitrary⁴² 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 Dr. Ho'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 Dr. Ho failed to meet minimum international standards of due process.

1. Deprivation of Liberty Under Category I

A detention violates Category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. The Working Group has found detentions arbitrary under Category I when some of the following violations are present: (1) when the government has held an individual *incommunicado* for a period of time; (2) when the government has arrested an individual without judicial authorization for such deprivation of liberty; (3) when vague laws are used to prosecute individuals; and (4) when laws are used to target government critics.⁴³ Here, there is evidence that all four of these violations have been committed against Dr. Ho.

a. **Dr. Ho Was Held *Incommunicado***

Incommunicado detention occurs where an individual is "deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including *habeas corpus*."⁴⁴ Article 9(3) of the ICCPR provides that "[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."⁴⁵ In the event that a person is deprived of liberty by arrest or detention, Article 9(4) of the ICCPR guarantees that such person "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."⁴⁶ In General Comment No. 35, the Human Rights Committee has interpreted the term "promptly" to be within approximately 48 hours, except in exceptional circumstances.⁴⁷ The requirement that any person arrested or detained on a criminal charge shall be brought

⁴² 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 (*hereinafter* "ICCPR"), 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.

⁴³ 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).

⁴⁴ Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism*, UN Doc. A/HRC/13/42, p. 2 (May 20, 2010), <https://undocs.org/A/HRC/13/42>. The Special Rapporteur's report has been recognized by the Working Group as identifying the extent of human rights violations associated with *incommunicado* detention. See UN Working Group on Arbitrary Detention, *Report of the Working Group*, UN Doc. A/HRC/22/44, fn. 27 (Dec. 24, 2012),

⁴⁵ ICCPR, *supra* note 42, art. 9(3).

⁴⁶ ICCPR, *supra* note 42, art. 9(4).

⁴⁷ *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶ 33, Human Rights Comm. U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) (*hereinafter* "General Comment No. 35"),

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en ("While the exact meaning of 'promptly' may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.")

promptly before a judge or other judicial officer applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.⁴⁸

In contravention of these obligations, Dr. Ho was not brought promptly before a judge or other judicial officer and was not entitled to a trial within a reasonable time or to release following his arrest. While Dr. Ho was arrested on November 2, 2016, his trial did not begin until 15 months later (February 1, 2018). Also, his trial was held in secret and closed to the public. His family was informed of the trial only two days before it began, and only his wife and brother were allowed to attend. Dr. Ho's family did not have the resources to hire a lawyer, so he did not have a lawyer at trial.

On appealing his conviction, Dr. Ho was not brought promptly before a judge or other judicial officer within a reasonable time. On March 3, 2018, the Senior People's Court in Ho Chi Minh City accepted the case for Dr. Ho's appeal, but on June 19, 2018, which was the date of his scheduled appeal, Dr. Ho's family was told that the date would be delayed for a few days. Later, Dr. Ho's family heard that the case had been delayed indefinitely. The court did not provide an explanation as to why the case was postponed. Since Dr. Ho does not have a lawyer, his family does not have access to information and believes the court will continue postponing the case until his sentence is complete. Dr. Ho did not know his case was postponed because he does not have access to a lawyer or information in Chi Hoa prison. The above facts support a determination that Dr. Ho Van Hai was held *incommunicado* by the Vietnamese government for a significant period of time.

b. The Vietnamese Government Arrested Dr. Ho Without Judicial Authorization

Article 9(1) of the ICCPR states that “[n]o one shall be subjected to arbitrary arrest or detention” and that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law.”⁴⁹ Vietnamese law requires an arrest warrant as a pre-condition for a deprivation of liberty, except in case of a flagrant offense.⁵⁰

The record does not show any evidence of judicial authorization having been presented at the time the Ho Chi Minh City Police arrested Dr. Ho. Rather, Dr. Ho's arrest occurred spontaneously after the police searched his computer and found 36 articles that they found to be “disseminating anti-state information.” This chain of events amounts to a deprivation of liberty without judicial authorization.

c. The Vietnamese Government Used Vague Laws to Prosecute Dr. Ho

The Working Group has previously stated that restrictions on freedom of expression cannot be justified by vague and general references to interests of national security or public order, and that detentions based on these statutes are arbitrary under a Category I classification.⁵¹ Article 15(1) of the ICCPR guarantees individuals the right to know what the law is and what conduct violates the law. Specifically, that article states that “[N]o 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.”⁵² In General Comment No. 35, the Human Rights Committee states that “[a]ny substantive grounds for arrest or detention must be prescribed by law

⁴⁸ General Comment No. 35, *supra* note 47, ¶ 32.

⁴⁹ ICCPR, *supra* note 42, art. 9(1).

⁵⁰ VIETNAM CONSTITUTION, art. 20, http://constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf (“No one shall be arrested in the absence of a decision by the People's Court, a decision or sanction of the People's Procuracy except in cases of flagrant offences.”).

⁵¹ See, e.g., *Mbanza Judicael v. Rep. of Congo: Opinion adopted by the Working Group on Arbitrary Detention*, ¶ 26, Human Rights Council, 28th Sess., U.N. Doc. A/HRC/WGAD/2014/44 (Feb. 4, 2015), <http://hrlibrary.umn.edu/wgad/44-2014.pdf>.

⁵² ICCPR, *supra* note 42, art. 15(1).

and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.”⁵³ The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms has stated that the standard for legal certainty requires that a law be “framed 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...formulated with sufficient precision so that the individual can regulate his or her conduct.”⁵⁴

When Dr. Ho’s trial took place, he was sentenced to four years in prison followed by two years of house arrest under Article 88 of the 1999 Penal Code. Article 88 criminalizes “conducting propaganda against the state” and has been criticized by human rights organizations for being vague and susceptible to abuse by the Vietnamese government. The Working Group itself has raised the issue of prosecution under vague and overly broad penal laws with the Government on several occasions.⁵⁵

In contravention of the requirements described above, Article 88 does not provide individuals with a proper indication of how the law limits their conduct. Rather than providing sufficient precision so that an individual can regulate his or her conduct, Article 88 is vague and has been used to prosecute individuals without sufficient justification.

2. Dr. Ho Deprivation of Liberty Under Category II

a. Dr. Ho Was Detained for Exercising His Freedom of Opinion and Expression

Freedom 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. Article 19 of the ICCPR provides that “[e]veryone shall have the right to hold opinions without interference” and that “[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”⁵⁶ An analogous guarantee of freedom of opinion and expression is provided in the Universal Declaration of Human Rights (UDHR).⁵⁷ The Human Rights Committee has clarified that Article 19 of the ICCPR “protects all forms of expression and the means of their dissemination.”⁵⁸ Article 19 of the ICCPR is of special importance for human rights defenders,⁵⁹ and journalists working on reporting of human rights abuses are explicitly recognized as human rights defenders.⁶⁰ The Working Group has confirmed the right of human rights

⁵³ General Comment No. 35, *supra* note 47, ¶ 22.

⁵⁴ See Martin Scheinin, *Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, ¶ 46, Comm’n on Human Rights, 62d Sess., U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005), <https://www.refworld.org/docid/441181f10.html>.

⁵⁵ *Nguyen Van Hoa v. Socialist Republic of Vietnam: Opinion adopted by the Working Group on Arbitrary Detention*, ¶ 55, Human Rights Council, 42nd Sess., U.N. Doc. A/HRC/WGAD/2019/44 (Sep. 10, 2019), https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session85/A_HRC_WGAD_2019_44.pdf.

⁵⁶ ICCPR, *supra* note 42, at art. 19(1)-(2).

⁵⁷ *Universal Declaration of Human Rights*, G.A. Res. 217A (III), UN Doc. A/810, at Art. 19 (1948).

⁵⁸ Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/G/34 at ¶ 12 (September 12, 2011) (*hereinafter* “General Comment No. 34”).

⁵⁹ 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); 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>.

⁶⁰ See *id.*

defenders “to investigate, gather information regarding and report on human rights violations.”⁶¹ The Human Rights Committee has also specifically recognized that Article 19(2) protects the work of journalists⁶² and “includes the right of individuals to criticize or openly and publicly evaluate their government without fear of interference or punishment.”⁶³ 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.”⁶⁴

Notwithstanding the aforementioned protections of individuals’ rights to freedom of expression, the Government arbitrarily detained and prosecuted Dr. Ho as a direct result of his exercising freedom of expression. First, the charge of “conducting propaganda” under Article 88 of the 1999 Penal Code⁶⁵ is facially a violation of an individual’s freedom of expression because it vaguely criminalizes a broad swath of speech and information-sharing acts. In fact, the UN has repeatedly denounced Article 88 as violating international human rights law. Notably, the UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein described Article 88 as “overly broad” and “ill-defined,” observing that this article “effectively makes it a crime for any Vietnamese citizen to enjoy the fundamental freedom to express an opinion, to discuss or question the Government and its policies.”⁶⁶ The UN has recommended that Vietnam repeal Article 88 of the 1999 Penal Code and has called for the immediate release of all individuals who have been detained as a result of that provision.⁶⁷ Dr. Ho was charged under Article 88 of the 1999 Penal Code for conducting propaganda against the state.⁶⁸ Thus, no matter whether the underlying factual allegations are true, the Government has deprived Dr. Ho of his liberty under a law which is itself incompatible with right to freedom of expression guaranteed under the UDHR and ICCPR.

Also, in addition to the fact that Dr. Ho was convicted under a law that facially violated his right to freedom of expression, Dr. Ho was specifically targeted for his blogging that was critical of the Government. Therefore, his detention violated his right to freedom of expression both *de jure* and *de facto*. Dr. Ho was arrested at his medical clinic after police searched his computer and found his Facebook posts criticizing Vietnam’s one-party Communist government and the Formosa disaster. The Ho Chi Minh City Police alleged Dr. Ho disseminated “distorted” information that caused the public to lose trust in the government.⁶⁹ Nguyen Sy Quang, a spokesman for the Ho Chi Minh City police, said police officials had been monitoring Dr. Ho’s online activities before his arrest.⁷⁰ The indictment contained allegations that in 2015, Dr. Ho “took advantage of important social and political issues at the time to post articles slandering and distorting the policies of the Party and the state. Prosecutors said he had called for people to join protests against Taiwanese steel plant Formosa over a toxic spill in central Vietnam in early 2016, as well as to participate in civil disobedience campaigns and to boycott local People’s Council elections.”⁷¹ Considering this history, it is clear that the Government targeted Dr. Ho for

⁶¹ *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, ¶ 18 (2010).

⁶² *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).

⁶³ *De Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, ¶ 6.7 (March 29, 2005).

⁶⁴ *Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 62/2012, U.N. Doc. A/HRC/WGAD/2012/62, ¶ 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, ¶ 29 (January 27, 2011).

⁶⁵ 1999 Penal Code of Vietnam, at art. 88.

⁶⁶ 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>.

⁶⁷ *Id.*

⁶⁸ *Ho Van Hai*, 88 PROJECT, <https://vietnamprisoners.info/prisoner/20/ho-van-hai> (last updated Feb. 6, 2018).

⁶⁹ *Blogger Detained Amid Escalating Crackdown in Vietnam*, COMM. TO PROTECT JOURNALISTS (Nov. 4, 2016), <https://cpi.org/2016/11/blogger-detained-amid-escalating-crackdown-in-viet.php>.

⁷⁰ *Id.*

⁷¹ *Vietnamese Facebooker Sentenced to 4 Years in Prison for Anti-state Propaganda*, VnExpress (Feb. 2, 2018),

<https://e.vnexpress.net/news/news/vietnamese-facebooker-sentenced-to-4-years-in-prison-for-anti-state-propaganda-3707078.html>.

detention as retaliation for his online posts criticizing Vietnam’s one-party government and its response to the Formosa disaster.

b. The Restrictions on Freedom of Expression Enumerated in Article 19(3) of the ICCPR Do Not Apply to Dr. Ho’s Case

Article 19 of the ICCPR provides limited exceptions for national security, public safety, and public order. Specifically, Article 19 provides that: “The exercise of the [right to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; and (b) For the protection of national security or of public order (ordre public), or of public health and morals.”⁷² However, these exceptions are interpreted narrowly. The Human Rights Committee has noted that restrictions “may not put in jeopardy the right itself.”⁷³ As such, any limitation “must meet a strict test of justification.”⁷⁴ 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.⁷⁵ In particular, the Government must be able to show an “individualized justification” for why the restrictions on the rights were necessary.⁷⁶ General allegations claiming that an individual’s expression or association threatened national security—without evidence of a specific threat and a proportional response—will not meet this high burden.⁷⁷ Where the Government has failed to demonstrate the elements required for justification of an exception, a violation of the relevant article will be deemed to have taken place.⁷⁸

The narrow limitations on the right to freedom of expression and association contained in Articles 19(3) of the ICCPR do not apply in this case. The limitation on Dr. Ho’s freedom of expression fails to satisfy the second requirement. Specifically, the Government’s restrictions on Dr. Ho’s freedom of expression was not for a proper purpose under Article 19(3). Although the Government claimed that his detention was based on his “conducting propaganda against the state”—as might be considered appropriately banned under Articles 19 and 20 of the ICCPR—in actuality none of Dr. Ho’s 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. Instead, the Government was using the veil of “conducting propaganda” as a pretext to silence criticism, which is not an acceptable purpose under Article 19(3) of the

⁷² ICCPR, *supra* note 42, at art. 19(3).

⁷³ See General Comment No. 34, *supra* note 58 at ¶ 21.

⁷⁴ *Park v. Republic of Korea*, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, ¶ 10.3 (adopted October 20, 1998), <http://hrlibrary.umn.edu/undocs/session64/view628.htm>.

⁷⁵ *Shin v. Republic of Korea*, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000, ¶¶ 7.2-7.3 (adopted March 16, 2004), <http://hrlibrary.umn.edu/undocs/html/926-2000.html>.

⁷⁶ *Id.*

⁷⁷ In *Kim v. Republic of Korea*, the Committee rejected the argument that punishing the distribution of materials that coincided with the policy statements of the Democratic Peoples’ Republic of Korea, was “necessary” for the protection of national security. The Human Rights Committee noted that “North Korean policies were well known within the territory of the State party and it is not clear how the (undefined) ‘benefit’ that might arise for the DPRK from the publication of views similar to their own created a risk to national security, nor is it clear what was the nature and extent of any such risk.” *Kim v. Republic of Korea*, Commc’n No. 574/1994, ¶ 12.4, 64th Sess., Human Rights Comm., U.N. Doc. CCPR/C/64/D/574/1994, (Nov. 20, 1998), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F64%2FD%2F574%2F1994&Lang=en. See also *Sohn v. Republic of Korea*, Commc’n No. 518/1992, ¶ 10.4, Human Rights Comm., U.N. Doc. CCPR/C/54/518/1992 (July 19, 1995), <http://hrlibrary.umn.edu/undocs/html/vws518.htm>.

⁷⁸ *Shin v. Republic of Korea*, *supra* note 75, ¶¶ 7.2-7.3.

ICCPR. To the contrary, political discourse, commentary on public affairs, journalism and discussion of human rights have all been explicitly recognized as protected speech.⁷⁹

Despite such international guarantees of the right to free speech, the Government arbitrarily detained and prosecuted Dr. Ho as a direct result of his speech. His blog and other online postings are political and within the protection of the ICCPR and the UDHR.⁸⁰ His blog and other online postings did not advocate violence and instead proposed peaceful protests, civil reform, and government accountability; they posed neither a threat to others' rights or reputations nor a threat to national security or public order, health or morals. Thus, because Dr. Ho's blog and other online postings are protected expression under Article 19(2) of the ICCPR and because the Government's restriction on these does not fall within the narrow exceptions contained in Article 19(3) of the ICCPR, Dr. Ho's continued detention is arbitrary under Category II.

3. Deprivation of Liberty Under Category III

Dr. Ho's arrest and detention is arbitrary under Category III of the Working Group's framework. 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 Universal Declaration of Human Rights 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."⁸¹ The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the "Body of Principles"), and the UN Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules").⁸² The Vietnamese Constitution also guarantees certain due process rights, including 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. Trial Violations

i. Vietnam Violated Dr. Ho's Right to be Tried Without Undue Delay

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,"⁸³ and "in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible."⁸⁴ 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."⁸⁵ The right to be tried without undue delay is reiterated by the Body of Principles,⁸⁶ and the same is guaranteed in Article 31 of the Vietnamese Constitution as well.

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

⁷⁹ See General Comment No. 34, *supra* note 58 at ¶ 11.

⁸⁰ ICCPR, *supra* note 42, at art. 19; The United Nations. *Universal Declaration of Human Rights* (1948), at art. 19.

⁸¹ Human Rights Council, *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/30/69, para. 8(c) (August 4, 2015), <https://studylib.net/doc/6805883/methods-of-work-of-the-working-group-on-arbitrary-detenti...>

⁸² *Id.* at paras. 7(a), (b).

⁸³ 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").

⁸⁴ *Id.* at para. 35.

⁸⁵ *Id.*

⁸⁶ Body of Principles, *supra* note 42, at Principle 38.

matter was dealt with by the administrative and judicial authorities.”⁸⁷ Further, “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”⁸⁸

Dr. Ho was arrested at his clinic on November 2, 2016, and his trial did not begin until February 1, 2018, fifteen months after his initial arrest.⁸⁹ During the time between his arrest and trial, Dr. Ho was transferred from Phan Dang Luu detention center to Chi Hoa prison in early December of 2017.⁹⁰ On March 3, 2018, the Senior People’s Court in Ho Chi Minh City accepted the case for Dr. Ho Van Hai’s appeal.⁹¹ The appeal was scheduled to be heard at the Senior People’s Court in Ho Chi Minh City at the Go Vap District on June 19, 2018.⁹² The case was scheduled to be tried in public.⁹³ However, on June 19, Dr. Ho’s family was told that the date would be delayed for a few days.⁹⁴ Later, they heard that the case had been delayed indefinitely.⁹⁵ The court did not provide an explanation as to why the case was postponed.⁹⁶ Vietnam did not provide any reasons for why any unique circumstances of Dr. Ho’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.

ii. Vietnam Violated Dr. Ho’s Right to Legal Counsel

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.”⁹⁷ The Body of Principles further provide for the right of a detainee to communicate and consult with his legal counsel, stating that such right “may not be suspended or restricted save in exceptional circumstances”⁹⁸ and that “[c]ommunication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a manner of days.”⁹⁹ Rule 119 of the Mandela Rules also provides for the right to access legal advice.¹⁰⁰ Likewise, the Vietnamese Constitution guarantees a detained or criminally charged individual’s right to choose a defense counsel.¹⁰¹

Dr. Ho’s trial was held in secret, and closed to the public.¹⁰² His family was informed of the trial only two days before it began, and only his wife and brother were allowed to attend.¹⁰³ Dr. Ho’s family did not have the resources to hire a lawyer, so he did not have a lawyer at trial.¹⁰⁴ Because Dr. Ho does not have access to a lawyer or information in Chi Hoa prison, he did not know his case was postponed.¹⁰⁵ Because Dr. Ho was not provided

⁸⁷ General Comment No. 32, *supra* note 83, at para. 35.

⁸⁸ *Id.*

⁸⁹ See Nguyen, *Dr. Ho Van Hai Was Sentenced To 4 Years In Prison For Propaganda Against The State*, (Feb. 1, 2018), <https://www.rfa.org/english/news/vietnam/trial-02012018125824.html>.

⁹⁰ *Hai Update*, 88, *supra* note 31.

⁹¹ Court document, *supra* note 37.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Conversation with YI and GV (July 20, 2018) (*hereinafter* YI and GV Conversation). To protect sources, the names of the sources have been replaced by random letters. Document on file with author.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ General Comment No. 32, *supra* note 83, at para. 34.

⁹⁸ Body of Principles, *supra* note 42, at Principle 18.

⁹⁹ *Id.* at Principle 15.

¹⁰⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), (Sept. 29, 2015), Rule 119, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/295/06/PDF/N1529506.pdf?OpenElement>.

¹⁰¹ VIETNAM CONSTITUTION, art. 31(4).

¹⁰² *Four Years in Prison for Vietnamese Blogger*, REPORTERS WITHOUT BORDERS (Feb. 2, 2018), <https://rsf.org/en/news/four-years-prison-vietnamese-blogger>.

¹⁰³ Document from KT (July 25, 2018) (translated for use). Document on file with author. (*hereinafter* Document from KT).

¹⁰⁴ YI and GV Conversation, *supra* note 94.

¹⁰⁵ Document from KT *supra* note 103.

with the opportunity to have the assistance of legal counsel, his rights under Article 14(3) of the ICCPR, Paragraph 18 of the Body of Principles, Rule 119 of the Mandela Rules, and Article 31(4) of the Vietnamese Constitution were violated.

iii. Vietnam Violated Dr. Ho's Right to a Fair and Public Hearing

Article 14(1) of the ICCPR guarantees the right “to a fair and public hearing.” 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.”¹⁰⁶ 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.

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.”¹⁰⁷ 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.¹⁰⁸ The Vietnamese Constitution also requires a public hearing, with an exception for “special cases” for which a court may hold a closed hearing.¹⁰⁹ The special cases listed are the “protection of state secrets, conformity with the fine customs and traditions of the nation, protection of minors, [and] protection of private life and at the legitimate request of an involved party.”¹¹⁰

Here, Dr. Ho's trial was reportedly “held in secret, with nearly none of Hai's supporters aware of the proceedings before they were underway.”¹¹¹ Dr. Ho's appeal was initially accepted and scheduled to be tried in public at the Senior People's Court in Ho Chi Minh City at the Go Vap District on June 19, 2018.¹¹² However, Dr. Ho's family was informed that the case had been delayed indefinitely.¹¹³ The court did not provide an explanation as to why the case was postponed.¹¹⁴ By failing to provide Dr. Ho with a public hearing and by failing to establish that any exception for “special cases” was applicable, the Government violated Dr. Ho's right to a fair and public hearing, which he was entitled to under both international law and the Vietnamese Constitution.

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

i. Vietnam Violated Dr. Ho's Right to Freedom from Torture and Cruel, Inhuman or Degrading Treatment

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”),

¹⁰⁶ General Comment No. 32, *supra* note 83, at para. 13.

¹⁰⁷ *Id.* at para. 28.

¹⁰⁸ *Id.* at para. 29.

¹⁰⁹ VIETNAM CONSTITUTION, art. 103(3).

¹¹⁰ *Id.*

¹¹¹ See Nguyen, *Dr. Ho Van Hai Was Sentenced To 4 Years In Prison For Propaganda Against The State*, (Feb. 1, 2018), <https://www.rfa.org/english/news/vietnam/trial-02012018125824.html>.

¹¹² Court document, *supra* note 37.

¹¹³ YI and GV Conversation, *supra* note 94.

¹¹⁴ *Id.*

to which Vietnam is party¹¹⁵, Article 5 of the UDHR, Principles 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.”¹¹⁶

Article 14(3)(g) of the ICCPR 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 the 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.”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 of the Body of Principles.¹¹⁷

Here, despite Dr. Ho’s chronic health problems (high blood pressure, diabetes, gingivitis), he was transferred suddenly from Phan Dang Luu detention center to Chi Hoa prison and was unable to take his belongings with him.¹¹⁸ He was therefore forced to sleep on the tiled floor without a mat for at least three weeks.¹¹⁹ At the Chi Hoa prison, Dr. Ho is detained with approximately ten other prisoners, a situation that is stressful for Dr. Ho and puts his life in danger.¹²⁰ In addition, the psychological pressures at Chi Hoa prison are negatively affecting Dr. Ho.¹²¹ At Chi Hoa, Dr. Ho has to live with the fear of receiving the death penalty.¹²² Dr. Ho has not been directly tortured by the police, but prisoners are often intimidated while in prison.¹²³ These facts are evidence of the Government violating Dr. Ho’s right to freedom from torture and cruel, inhuman or degrading treatment under international law and Article 20(1) of the Vietnamese Constitution.

ii. Vietnam Violated Dr. Ho’s Right to Access to Medical Care and Adequate Food Supply While in Detention

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. 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. 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.”

Here, the Government has not provided Dr. Ho with the medical care he needs. Dr. Ho has had several chronic health problems, which are only exacerbated in prison.¹²⁴ Dr. Ho’s health conditions can be easily controlled with

¹¹⁵ *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Dec. 10, 1984), https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-9&chapter=4&lang=en

¹¹⁶ VIETNAM CONSTITUTION, art. 20(1).

¹¹⁷ Body of Principles, *supra* note 42, at Principle 6, note 1.

¹¹⁸ *Hai Update*, 88, *supra* note 31.

¹¹⁹ *Id.*

¹²⁰ Document from KT, *supra* note 103.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Document from KT *supra* note 103.

the proper medication, but he is unable to receive such medication or the proper care.¹²⁵ Due to the conditions at the prison, Dr. Ho's health has deteriorated rapidly.¹²⁶ He is also unable to receive food or medical supplies from his family.¹²⁷ These facts clearly show that the Government is violating Dr. Ho's right to access to medical care and adequate food supply during his detention, which he is entitled to under Principle 24 of the Body of Principles and Rules 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.

On March 3, 2018, the Senior People's Court in Ho Chi Minh City accepted the case for Dr. Ho Van Hai's appeal. Without explanation, the appeal proceeding was postponed and still has not been held. In addition, as described in detail above, Dr. Ho's arrest, trial and pre- and post-trial confinement have been characterized by flagrant violations of Dr. Ho's due process rights. It is extremely unlikely that any further appeal of his conviction would result in his release or lighter sentence, but might rather lead to retaliation against Dr. Ho.

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

Freedom Now, in collaboration with Dechert LLP, has been retained by Dr. Ho as his international counsel. Dr. Ho has given explicit consent to Freedom Now and Dechert LLP to initiate the regular procedure before the Working Group. He has given consent to have his name mentioned in a letter to the Government, and for his name to be published in an official opinion by the Working Group which will be reflected in the report to the Human Rights Council.

¹²⁵ *Id.*

¹²⁶ Hai Update, 88, *supra* note 31.

¹²⁷ *Id.*

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