

PETITION TO:
UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Mr Sètondji Roland Adjovi (Benin), Chair-Rapporteur
Ms Leigh Toomey (Australia)
Mr José Guevara (Mexico)
Mr Seong-Phil Hong (Republic of Korea)
Ms Elina Steinerte (Latvia)

HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY

In the matter of

NGUYỄN VĂN ĐÀI

v.

Government of the Socialist Republic of Viet Nam

Observations on the Government's Reply

18 April 2017

Submitted by:

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

On behalf of:

Lawyers for Lawyers
Lawyer's Rights Watch Canada
Media Legal Defence Initiative
PEN International
Viet Tan

To the UN Working Group:

1. We thank you for your letter dated 6 April 2017, transmitting the response of the Government of Viet Nam to our Petition concerning the arbitrary detention of Mr Nguyen Van Dai, which was filed with the Working Group on 25 November 2016. We welcome the opportunity provided by the Working Group to respond to Viet Nam's reply before the Working Group's upcoming session.
2. These observations on the Government's reply are organised as follows. First, we will provide you with an update on the situation of Mr Nguyen Van Dai. Second, we will address the comments of the Government of Viet Nam as far as they relate to the exercise of Mr Nguyen Van Dai's fundamental rights. Third, we will address the Government's comments as far as they relate to the violations of Mr Nguyen Van Dai's fair trial rights.

I. Update on Mr Nguyen Van Dai's current situation

3. Mr Nguyen Van Dai has been detained since 16 December 2016. As conceded by the Government of Viet Nam, he has not had access to a lawyer for the entire duration of his pre-trial detention. One of the consequences of the denial of access to counsel is that it has been difficult for Mr Nguyen Van Dai's legal representatives to obtain up to date information on Mr Nguyen Van Dai's situation. We reiterate that this should not affect the outcome of this Petition, consistent with the position of the Working Group in this regard.¹ Other consequences are that Mr Nguyen Van Dai's detention has been repeatedly extended without him being represented during the relevant hearings. It is not clear when extension of his pre-trial detention will next be considered, nor has a trial date been set.
4. During his 16-month pre-trial detention, his access to other visitors has been severely limited as well. Contrary to the information provided by the Government of Viet Nam, he has only been able to see his wife, Mrs Vu Minh Khanh, twice – in October 2016 and January 2017. The visits lasted for 15-30 minutes each, and were conducted via telephone through a glass wall. Prison guards were present at all times.
5. Mr Nguyen Van Dai's health appears to be deteriorating. He has lost a significant amount of weight and complained about pains in his joints and headaches.
6. Mr Nguyen Van Dai's human rights work and his resulting detention continue to be recognised across the world. On 1 April 2017, poet Simon Pomery paid tribute to Mr Nguyen Van Dai during the second English PEN Modern Literature Festival.² On 5 April 2017, Mr Nguyen Van Dai received the Human Rights Prize (*Menschenrechtspreis*) from the German Association of Judges (*Deutscher Richterbund*), Germany's largest professional organisation for judges and prosecutors. The award is bestowed on judges, prosecutors or lawyers for outstanding merit in the defence of human rights. The German Association of Judges recognised Mr Nguyen

¹ See the Petition, par. 13.

² English PEN, *English PEN Modern Literature Festival 2017* (1 April 2017), <https://www.englishpen.org/event/english-pen-modern-literature-festival-2017>

Van Dai's work "fighting for a democratic and liberal future" and "his efforts to defend human rights".³ When attempting to travel to Germany to receive the award on her husband's behalf, Mrs Vu Minh Khanh was stopped at the airport and informed that she is not allowed to leave the country until 2019.⁴ Mr Nguyen Van Dai was also nominated for the Lawyers for Lawyers Award.

II. Mr Nguyen Van Dai's detention constitutes Category II arbitrary detention

7. In its reply, the Government of Viet Nam argues that Mr Nguyen Van Dai "has not been prosecuted and arrested for exercising of the right to freedom of opinion and expression, but for suspected commission of a criminal offence."⁵
 8. We reiterate that Mr Nguyen Van Dai's arrest and detention were the result of the lawful exercise of his right to freedom of opinion and expression (Article 19 ICCPR and UDHR), and the right to take part in the conduct of public affairs (Article 25 ICCPR and Article 21 UDHR), and that his detention therefore constitutes Category II arbitrary detention.
- A. *The detention of Mr Nguyen Van Dai constitutes Category II arbitrary detention because his deprivation of liberty results from the exercise of his right to freedom of opinion and expression (Article 19 ICCPR, Article 19 UDHR)*

9. In its reply, the Government of Viet Nam argues that Mr Nguyen Van Dai,⁶

"stored, made and uploaded on the Internet materials which distort the national policies and legislation, defamed the State and planned a coup-d'etat [sic]. He affiliated with opposing individuals and organizations in conducting propaganda to induce supporters and incite violence to overthrow the government."

According to the Government, this discloses "signs of crimes under Article 88 of the Criminal Code, which threaten national security and public order".⁷ The Government of Viet Nam further argues that this provision is "entirely compatible with international human rights law", and is used to prosecute instances of abuse of the right to freedom of expression which seriously threaten national security.⁸

³ UCANEWS.com, *Jailed in Vietnam, Christian Lawyer wins German award* (10 April 2017), <http://www.ucanews.com/news/jailed-in-vietnam-christian-lawyer-wins-german-award/78899>. See also Deutscher Richterbund, *DRB-Menschenrechtspreis an inhaftierten vietnamesischen Rechtsanwalt verliehen* (5 April 2017), <http://www.drb.de/presse-meldungen/2017/rista-tag-mrp.html> and Radio Free Asia, *Detained Vietnamese Human Rights Attorney to Receive Award For His Work* (4 April 2017), <http://www.rfa.org/english/news/vietnam/detained-vietnamese-human-rights-attorney-to-receive-award-for-his-work-04042017151910.html>.

⁴ Deutscher Richterbund, *DRB-Menschenrechtspreis an inhaftierten vietnamesischen Rechtsanwalt verliehen* (5 April 2017), <http://www.drb.de/presse-meldungen/2017/rista-tag-mrp.html>.

⁵ Reply of the Government of Viet Nam, unnumbered p. 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*, unnumbered p. 2.

10. These allegations are not substantiated by the Government in any way. The Government fails to indicate what kind of materials were allegedly uploaded by Mr Nguyen Van Dai, how these materials incited violence or an overthrow of the Government, or how Mr Nguyen Van Dai's activities otherwise disclose any criminal offence. On the contrary, the Government of Viet Nam refers to activities that are perfectly legitimate in any democratic society such as "affiliat[ing] with opposing individuals and organizations". In short, the argument of the Government that Mr Nguyen Van Dai is being prosecuted for an abuse of his right to freedom of expression – rather than the legitimate exercise of this right – is entirely unfounded.
11. Even if the argument that Mr Nguyen Van Dai was arrested and detained in response to a form of abuse of his right to freedom of expression would have been substantiated, and the Government would have argued that his arrest and detention are therefore justified under Article 19(3) of the ICCPR, we reiterate that none of the elements of the three-part test set out in Article 19(3) have been met:
- a. **The interference was not provided by law.** First, we reiterate that – given that Mr Nguyen Van Dai was detained for his political and blogging activities – there cannot be a legal basis for his detention. The detention appears to lack legal basis on other grounds as well, including that Mr Nguyen Van Dai has been detained incommunicado for 16 months without being formally informed of the legal basis of his detention or his trial date, nor has he been brought before a court whenever his pre-trial detention was extended.⁹ Second, to the extent that the Government would argue that Article 88 of the Penal Code forms the legal basis of Mr Nguyen Van Dai's arrest and detention, we reiterate that this provision fails to meet the test of 'provided by law'. Article 88 of the Penal Code is overbroad and ill-defined, and therefore provides the Government of Viet Nam with a tool to quash any kind of dissent and arbitrarily detain individuals who dare criticise the Government's policies.¹⁰
 - b. **The interference did not pursue a legitimate aim.** It is for a State party to invoke a legitimate ground for restriction of the right to freedom of expression, and to subsequently demonstrate in specific and individualized fashion the precise nature of the threat.¹¹ In its Reply, the Government of Viet Nam fails to indicate which legitimate aim is served by Mr Nguyen Van Dai's arrest and detention, nor does it substantiate that there was a specific threat. We therefore reiterate that, contrary to the guidance provided by the UN Human Rights Committee in its General Comment No. 34, Mr Nguyen Van Dai's arrest and detention only serve to muzzle any advocacy of for instance democracy and human rights.¹² This does not constitute a legitimate aim within the meaning of Article 19(3) of the ICCPR.

⁹ See the Petition, par. 40-45.

¹⁰ Office of the United Nations High Commissioner for Human Rights ("OHCHR"), *UN Human Rights Chief urges Viet Nam to halt crackdown on bloggers and rights defenders* (14 October 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20670&LangID=E>.

¹¹ UN Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of opinion and expression*, UN Doc. No. CCPR/C/GC/34 (12 September 2011), par. 35.

¹² *Id.*, par. 23.

c. The interference was not necessary and proportionate. We reiterate that even if the first two elements of the three-part test would have been met, the measures adopted by the Government of Viet Nam are disproportionate.¹³ Mr Nguyen Van Dai's arrest and detention result from his expression on his blogs and during meetings with regard to government policies and the human rights situation in Viet Nam. According to the Human Rights Council, the expression of such opinions and dissent should never be subject to restrictions.¹⁴ Criminal sanctions, such as incarceration, should furthermore only be imposed in exceptional circumstances, such as hate speech that incites violence.¹⁵ Mr Nguyen Van Dai's lengthy pre-trial detention, which has largely been incommunicado, is not a necessary and proportionate response by the Vietnamese Government to the lawful exercise of his fundamental rights.

12. In the absence of any evidence that Mr Nguyen Van Dai's arrest and detention are justified under Article 19(3) of the ICCPR, we reiterate that Mr Nguyen Van Dai's arrest and detention instead were the result of the lawful exercise of his right to freedom of opinion and expression. The purpose of his arrest and detention is to punish him for exercising his rights under Article 19 ICCPR, to silence him during a further period of detention, and to deter others from speaking out against the State. This is clear on the basis of the following:

a. **Mr Nguyen Van Dai's arrest and detention follow a pattern of harassment as a result of the exercise of his right to freedom of expression.** As set out in the Petition, Mr Nguyen Van Dai has been vocal in expressing his views on democracy and the state of human rights in Viet Nam for over ten years.¹⁶ He expressed views and opinions on democracy and other political issues relating to human rights in a range of fora.¹⁷ As a result, he has been subject to attacks, arrest and detention on the basis of the same provision, Article 88 of the Penal Code.¹⁸ In the nine months prior to his arrest, Mr Nguyen Van Dai actively pursued a campaign for human rights protection in Viet Nam.¹⁹ On 16 December 2015, the day of his arrest, Mr Nguyen Van Dai was scheduled to attend meetings with EU delegates to discuss the human rights situation in Vietnam.²⁰

b. **Mr Nguyen Van Dai's arrest and detention were widely criticised by international organisations.** As set out in the Petition, Mr Nguyen Van Dai's arrest and detention were widely condemned. The United Nations' High

¹³ See the Petition, par. 58-59.

¹⁴ UN Human Rights Council, Resolution A/HRC/RES/12/15, par. 5 (p) (i). See also the Petition, par. 59.

¹⁵ African Court on Human and Peoples' Rights, *Lohe Issa Konate v Burkina Faso*, App. No. 004 of 2013, (2014) par. 165.

¹⁶ See the Petition, A.2.

¹⁷ *Id.*, A.2 and A.3.

¹⁸ *Id.*, A.2.

¹⁹ *Id.*, B.1.

²⁰ *Id.*, A.3.

Commissioner for Human Rights (“UNHCHR”),²¹ the European Parliament,²² the United States’ State Department,²³ a coalition of 26 non-government organisations²⁴ and a coalition of 73 Members of Parliament from around the world²⁵ have criticised Mr Nguyen Van Dai’s detention and called for his release.

- c. **Mr Nguyen Van Dai’s arrest and detention are consistent with the well-documented approach of the Vietnamese authorities in prosecuting critics of its authoritarian regime, in particular on the basis of Article 88.** Contrary to what the Government claims, it consistently fails to respect, protect and promote human rights in Viet Nam. The Vietnamese authorities regularly prosecute critics of its authoritarian regime.²⁶ Viet Nam is repeatedly condemned by international human rights groups for non-compliance with international standards of freedom of expression.²⁷ It ranks among the ten countries which respect press freedom the least,²⁸ and among the ten countries that have imprisoned the highest number of journalists in 2015.²⁹ Human rights lawyers working in Viet Nam also frequently face reprisals either in relation to their own human rights advocacy or due to their legal representation of journalists and others who are critical of the Government.³⁰ Article 88 in particular has become a tool for the Government of Viet Nam to crack down on legitimate dissent.³¹ As set out in the Petition, journalists, bloggers and pre-democracy activists and human rights lawyers who have been prosecuted under Article 88 of the Penal Code and similar provisions include: blogger and pro-democracy activist Tran Huynh Duy Thuc;³² blogger Le Thanh Tung;³³ political blogger Truong Duy

²¹ OHCHR, *UN Human Rights Chief urges Viet Nam to halt crackdown on bloggers and rights defenders* (14 October 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20679&LangID=E>.

²² European Parliament Resolution on Vietnam, Adopted on 7 June 2016, (2016/2755(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2016-0767&language=EN>.

²³ U.S. Department of State, Daily Press Briefing, Spokesperson: John Kirby (21 December 2015), <http://www.state.gov/r/pa/prs/dpb/2015/12/250813.htm#VIETNAM>.

²⁴ Joint Statement Calling For the Release of Nguyen Van Dai and Le Thu Ha, 6 January 2016, http://www.ishr.ch/sites/default/files/documents/final_joint_statement_-_nguyen_van_dai_and_le_thu_ha_-_final.pdf.

²⁵ Front Line Defenders, *73 MPs on four continents call for the release of Nguyen Van Dai* (25 October 2016).

²⁶ See the Petition, A.1.

²⁷ *Id.*, A.1.

²⁸ Reporters without Borders, *2016 World Press Freedom Index*, available at <https://rsf.org/en/ranking>.

²⁹ See Committee to Protect Journalists, *2015 Prison Census* (1 December 2015), available at <https://cpj.org/imprisoned/2015.php>

³⁰ Lawyers for Lawyers, *County Info: Vietnam*, available at <http://www.advocatenvooradvocaten.nl/countries/vietnam/>.

³¹ Amnesty International, *Annual Report 2015/2016: Vietnam* (2016), available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>; Freedom House, *Freedom of the Press 2015: Vietnam* (April 2015), available at <https://freedomhouse.org/report/freedom-press/2015/vietnam>.

³² On 20 January 2010, Tran Huynh Duy Thuc was sentenced to 16 years in prison under Article 88 of the Penal Code after he had posted a blog calling on Viet Nam to respect human rights and institute political reform. See: Amnesty International, *Viet Nam: Silenced Voices: Prisoners of Conscience in Viet Nam* (7 November 2013), par. 4.6 available at <https://www.amnesty.org/en/documents/ASA41/007/2013/en/>.

³³ On 10 August 2012, Le Thanh Tung was convicted for blog posts advocating multi-party democracy in Viet Nam and improved human rights, following a one hour ‘trial’. He was sentenced to four years in prison and four years of house arrest. See: Amnesty International, *Viet Nam: Silenced Voices:*

Nhat,³⁴ anti-corruption campaigner Dinh Tat Thang³⁵ and human rights lawyer Le Cong Dinh.³⁶ In October 2016, the UNHCHR called for all individuals detained in Viet Nam in connection with Article 88 of the Penal Code and similar provisions to be released.³⁷

13. In summary, the argument of the Government of Viet Nam that Mr Nguyen Van Dai is being prosecuted for an abuse of his right to freedom of expression – rather than the legitimate exercise of this right – is entirely unfounded. The Government has failed to demonstrate that Mr Nguyen Van Dai’s arrest and detention were justified under Article 19(3). Instead, Mr Nguyen Van Dai’s arrest and detention fit squarely within a pattern of harassment to which he has been subjected as a result of the exercise of his right to freedom of expression over the past years, and more broadly, the well-documented practice of the Government to prosecute critics of its authoritarian regime, including on the basis of Article 88. This strongly indicates that his detention is the result of the legitimate exercise of his right to freedom of expression.

B. The detention of Mr Nguyen Van Dai constitutes Category II arbitrary detention because his deprivation of liberty results from the exercise of his right to take part in the conduct of public affairs (Article 25 ICCPR, Article 21 UDHR)

14. In its reply, the Government of Viet Nam reiterates its argument that Mr Nguyen Van Dai was arrested for “suspected commission of criminal offences”, rather than his involvement in providing human rights education to members of the community.³⁸ The Government refers to its arguments in relation to freedom of expression.

15. As set out above, the Government’s argument in relation to freedom of expression is not substantiated in any way. We reiterate that Mr Nguyen Van Dai was arrested and detained because of the exercise of his right to take part in the conduct of public affairs, namely his active involvement in civil society, including human rights education. Only

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

³⁴ On 4 March 2014, Truong Duy Nhat was imprisoned for two years under Article 258 of the Penal Code. The court held that his blog, *A Different Point of View*, was critical of the state and an “abuse of democratic freedoms to infringe upon the interests of the state”.

³⁵ On 24 March 2016, Dinh Tat Thang was sentenced to seven months and 11 days in prison. On 5 August 2015, Mr Dinh wrote a letter to the Vietnamese Fatherland Front, a pro-government movement. He was arrested 11 days later and charged with “abusing democratic freedoms to infringe upon the interests of the state” under article 258 of the Penal Code. See: HRW, *Vietnam: 7 Convicted in One Week* (4 April 2016), available at <https://www.hrw.org/news/2016/04/04/vietnam-7-convicted-one-week>.

³⁶ *Union Internationale des Avocats* (International Association of Lawyers), *The UIA celebrates the release of Vietnamese lawyer Le Cong Dinh*, available at: http://www.uianet.org/en/content/uia-celebrates-release-vietnamese-lawyer-le-cong-d#_ftn1. In November 2012, this Working Group concluded that his deprivation of liberty was arbitrary, see The Working Group, Concerning Le Cong Dinh, Tran Huynh Duy Thuc, Nguyen Tien Trung and Le Thang Long, Opinion No. 27/2012 (Vie Nam), UN Doc. No. A/HRC/WGAD/2012/27 (23 November 2012).

³⁷ OHCHR, *UN Human Rights Chief urges Viet Nam to halt crackdown on bloggers and rights defenders* (14 October 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20679&LangID=E>.

³⁸ Reply of the Government of Viet Nam, unnumbered p. 2.

objective and reasonable restrictions of this right are permissible.³⁹ Restricting Mr Nguyen Van Dai's right under Article 25 of the ICCPR by subjecting him to lengthy, largely incommunicado pre-trial detention in retaliation for his involvement in civil society clearly is not an objective and reasonable restriction, and therefore renders his detention arbitrary in violation of Article 25 ICCPR and Article 21 UDHR.

III. Mr Nguyen Van Dai's detention constitutes Category III arbitrary detention

A. The detention of Mr Nguyen Van Dai constitutes Category III arbitrary detention because it violates his right to be informed promptly of the nature and cause of the charge against him (Article 14(3)(a) ICCPR, Article 11 UDHR, BPPP Principle 10) and his right to be tried without undue delay (Article 14(3)(c) ICCPR, Article 11 UDHR, BPPP Principle 11)

16. The Government of Viet Nam argues in its reply that Mr Nguyen Van Dai “was duly informed on [sic] all relevant procedural decisions as well as the nature and causes of his charges” and that “his case is currently under investigation and Mr Dai will be tried in accordance with relevant laws and regulations.”⁴⁰

17. The arguments of the Government are again entirely unfounded. It is not made clear when Mr Nguyen Van Dai was informed of the charges against him, which “relevant procedural decisions” he has been informed of, nor has a date been set for his trial despite the fact that he has been in pre-trial detention for 16 months.

18. In the absence of any evidence that Mr Nguyen Van Dai's fair trial rights under Article 14(3)(a) and 14(3)(c) ICCPR have been respected, we reiterate that Mr Nguyen Van Dai has in fact not been formally and fully informed of the alleged criminal act(s) underpinning the charge(s) or accusations against him. Furthermore, in the 16 months that Mr Nguyen Van Dai has been detained, he has never been brought before a judge for determination of his rights, including his pre-trial release.⁴¹ This is a clear violation of Mr Nguyen Van Dai's fair trial rights under Article 14 ICCPR.

B. The detention of Mr Nguyen Van Dai constitutes Category III arbitrary detention because it violates his right to adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing without restriction (Article 14(3)(b) ICCPR, Article 11 UDHR, BPPP Principles 11, 15 and 18)

19. In its reply, the Government of Viet Nam concedes that Mr Nguyen Van Dai has not had access to counsel in the 16 months of his pre-trial detention. It argues that the investigation in Mr Nguyen Van Dai's case “needs to be kept secret in case of crimes infringing upon national security” and that therefore the prosecutor may decide that participation of counsel in the proceedings is not possible until after completion of the investigation.

³⁹ UN Human Rights Committee, *General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, UN Doc. No. CCPR/C/21/Rev.1/Add.7 (12 July 1996), par. 4.

⁴⁰ Reply of the Government of Viet Nam, unnumbered p. 2-3.

⁴¹ See the Petition, B.3.

20. First, as set out in the Petition and above, Mr Nguyen Van Dai is not detained as a result of his involvement in crimes infringing upon national security, but as punishment for the legitimate exercise of his fundamental rights. There can therefore be no legitimate reason to restrict his right under Article 14(3)(b) ICCPR.
21. Second, even if there existed a reasonable suspicion that Mr Nguyen Van Dai was involved in crimes threatening national security, a limitation of Mr Nguyen Van Dai's access to counsel and time and facilities to prepare a defence is contrary to international human rights law. The fair trial guarantees set out in Article 14(3) are the *minimum* guarantees that *everyone* who is accused of a crime is entitled to.⁴² Detainees should have access to counsel from the very start of their detention, including during questioning.⁴³ Even the international standards that permit access to counsel to be delayed make clear that this is permissible only in exceptional circumstances.⁴⁴ However, even in such exceptional cases, access should begin no later than 48 hours from the time of arrest or detention.⁴⁵ It is clear that Mr Nguyen Van Dai's situation does not qualify as one of the very limited situations in which access to counsel can be delayed for 48 hours. Moreover, his access has now been denied for over 16 months, which clearly violates international human rights law.

C. The detention of Mr Nguyen Van Dai constitutes Category III arbitrary detention because it violates his right to communicate with the outside world, particularly with his family (BPPP Principles 15 and 19)

22. The Government of Viet Nam argues in its reply that as his wife has been able to visit him three times during his 16-month pre-trial detention, which has otherwise been incommunicado, the allegations regarding the violation of his right to communicate with the outside world are unfounded.
23. It follows from Principle 15 that communication "shall not be denied for more than a matter of days." Principle 19 clarifies that this can only be made subject to "reasonable conditions and restrictions as specified by law or lawful regulations". The rights of detainees to communicate with the outside world and to receive visits are fundamental safeguards against human rights violations. Therefore all detainees, regardless of the offence of which they are accused or convicted, are to be given all reasonable facilities to communicate with and receive visits from family and friends.⁴⁶ International

⁴² Article 14(3) International Covenant on Civil and Political Rights ("ICCPR").

⁴³ Amnesty International, *Fair Trial Manual - Second Edition* (9 April 2014), p. 44.

⁴⁴ *Id.*, p. 45; United Nations Congress, *Basic Principles on the Role of Lawyers* (1990), Principle 7; UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, A/RES/43/173 (9 December 1988) Principle 18(3), Principle 15.

⁴⁵ Amnesty International, *supra* note 43, p. 45; United Nations Congress, *supra* note 44, Principle 7; UN General Assembly, *supra* note 43, Principle 18(3), Principle 15.

⁴⁶ Amnesty International, *supra* note 43, p. 54; Article 17(2)(d) of the Convention on Enforced Disappearance; Article 17(5) of the Migrant Workers Convention; Article 16(2) of the Arab Charter; Rules 26-28 of the Bangkok Rules; African Commission on Human and Peoples' Rights ("ACHPR"), *The Robben Island Guidelines* (October 2002), Guideline 31; UN General Assembly, *Standard Minimum Rules for the Treatment of Prisoners* (17 December 2015), Rule 92; ACHPR, *Principles And Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), Section M(2)(e); Inter-American Commission on Human Rights, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* (March 2008), Principle V; Council of Europe, *European Prison Rules*, Res. 73(5) (19 January 1973), Rules 24 and 99; International Criminal Court, *Regulations of the Court*, ICC-

standards and expert bodies only allow restrictions and delays in granting detainees access to the outside world in exceptional circumstances and for a very short time.⁴⁷

24. Incommunicado detention increases the risk of additional human rights violations. It is conducive to torture and may amount to torture itself.⁴⁸ Prolonged incommunicado detention is inconsistent with the right of all detainees to be treated with respect for human dignity and the obligation to prohibit torture or other ill-treatment.⁴⁹
25. Mr Nguyen Van Dai has only been able to be visited by his wife on two occasions during his 16-month pre-trial detention, which has otherwise been incommunicado. As visits should not be denied for more than a matter of days, it is clear that his visitation rights have been severely restricted by the Vietnamese authorities, in contravention of international human rights standards.
26. The fact that Mr Nguyen Van Dai has otherwise been detained incommunicado heightens the risk of further violations of his human rights while in detention. This includes for instance his right to health. As set out in the Petition, Mr Nguyen Van Dai suffers from hepatitis B. It is not known whether he is receiving appropriate medical treatment for his condition. Mr Nguyen Van Dai had not yet recovered from violent beatings ten days prior to his arrest, following a human rights workshop that he was running. It is not clear if he has received medical treatment for this either. However, Mr Nguyen Van Dai's health generally appears to be deteriorating. This is in line with reports that prisoners of conscience in Viet Nam are routinely denied medical care and some prisoners report being told by the authorities that they would not receive any medical treatment unless they confessed to their alleged crimes.⁵⁰

BD/01-01-04 (26 May 2004), Regulation 100(1); European Committee for the Prevention of Torture ("CPT"), *2nd General Report on the CPT's Activities*, CPT/Inf(92)3 (13 April 1992), par. 51; European Court of Human Rights ("ECtHR"), *Mehmet Nuri Özen and Others v. Turkey*, App. No. 15672/08 et. al. (11 January 2011), par. 59.

⁴⁷ Amnesty International, *supra* note 43, p. 52, 54. (citing UN Special Rapporteur on Torture, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, UN Doc. A/HRC/13/39/Add.5 (5 February 2010), par. 82; ECtHR, *Sari and Çolak v. Turkey*, App. No. 42596/98 and 42603/98 (4 April 2006); ECtHR, *Moiseyev v Russia*, App. No. 62936/00 (9 October 2008), par. 246-47, 252-59; Inter-American Commission on Human Rights, *Marc Romulus v. Haiti*, OEA/Ser.L/V/II.43, doc. 21 (1977); ACHPR, *Civil Liberties Organisation v Nigeria*, Doc. 151/96 (15 November 1999), par. 27).

⁴⁸ OHCHR, *UN Human Rights Chief urges Viet Nam to halt crackdown on bloggers and rights defenders* (14 October 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20670&LangID=E>. See also Inter-American Court of Human Rights ("IACtHR"), *Cantoral-Benavides v Peru*, Series C no 69 (18 August 2000), par. 83; IACtHR, *Chaparro Álvarez and Lapo Íñiguez v Ecuador*, Series C No 170 (21 November 2007), par. 166-172; UN Committee Against Torture ("CAT"), *Concluding Observations: Cambodia*, UN Doc. CAT/C/CR/31/7 (2003), par. 6(j).

⁴⁹ IACtHR, *Chaparro Álvarez and Lapo Íñiguez v Ecuador*, Series C No 170 (21 November 2007), par. 171; IACtHR, *Maritza Urrutia v Guatemala*, Series C No. 103 (27 November 2003), par. 87; *Cantoral-Benavides v Peru*, Series C no 69 (18 August 2000), par. 83-84; See UN Human Rights Committee ("HRC"), *Concluding Observations: Chile*, UN Doc. CCPR/C/CHL/CO/5 (2007), par. 11, UN HRC, *Womah Mukong v. Cameroon*, UN Doc. CCPR/C/51/D/458/1991 (1994), par. 9.4; UN HRC, *El-Megreisi v. Libyan Arab Jamahiriya*, UN Doc. CCPR/C/50/D/440/1990 (1994), par. 5.4; UN HRC, *Polay Campos v. Peru*, UN Doc. CCPR/C/61/D/577/1994 (1997), par. 8.4; See also, UN General Assembly, Resolution 65/205 (21 December 2010), par. 21; UN HRC, Resolution 8/8 (18 June 2008), par. 7(c); UN Commission on Human Rights, Resolution 1997/38 (1997), par. 20.

⁵⁰ Amnesty International, *Prisons Within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam* (2016), p. 9 available at: https://www.amnestyusa.org/sites/default/files/asa_4141872016_eng_report.pdf.

IV. REQUESTED ACTION FROM THE WORKING GROUP

27. For the reasons set out above, the detention of Mr Nguyen Van Dai is rendered arbitrary under Categories II and III. We therefore reiterate our requests to the Working Group to:
- a. render an opinion that the detention of Mr Nguyen Van Dai is arbitrary as being the result of the legitimate exercise of his rights under Article 19 ICCPR and Article 19 UDHR, and Article 25 ICCPR and Article 21 UDHR and therefore falls within Category II of the categories of arbitrary detention defined by the Working Group;
 - b. render an opinion that the detention of Mr Nguyen Van Dai is arbitrary due to failure by the Government of Viet Nam to ensure his fair trial rights as guaranteed by Article 14 ICCPR and by Article 10 and 11 UDHR and therefore falls within Category III of the categories of arbitrary detention defined by the Working Group;
 - c. recommend that the Government of Viet Nam immediately and unconditionally release Mr Nguyen Van Dai and withdraw the charges against him;
 - d. recommend that the Government of Viet Nam provide just compensation to Mr Nguyen Van Dai for the arbitrary detention that he has suffered; and
 - e. request that the Government of Viet Nam take such steps as are necessary to prevent further violations of Mr Nguyen Van Dai's freedom to expression and freedom to participate in public affairs as recognised and guaranteed by the ICCPR and the UDHR.

Submitted by:

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

On behalf of:

Lawyer's Rights Watch Canada
Lawyers for Lawyers
Media Legal Defence Initiative
PEN International
Viet Tan