

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

Chair-Rapporteur: Mr. José Guevara (Mexico)

Vice-Chairperson: Ms. Leigh Toomey (Australia)

Vice-Chairperson: Ms. Elina Steinerte (Latvia)

Mr. Seong-Phil Hong (Republic of Korea)

Mr. Sètonджи Adjovi (Benin)

**HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY**

**In the Matter of**

Nguyen Bao Tien

**Citizen of the Socialist Republic of Vietnam**

v.

**Government of the Socialist Republic of Vietnam**

**Submitted by**

**International Legal Counsel**

Kurtuluş BAŞTİMAR

068030, Street Sapanca, Floor 2

Ankara, 0610

Republic of Turkey

+905360633644(tel)

int.humanrightscounsel@gmail.com(Email)

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

---

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

**MODEL QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING  
ARBITRARY ARREST OR DETENTION**

I. IDENTITY

1. Family name: NGUYEN
2. First name: BAO TIEN
3. Sex: Male
4. Birth date or age (at the time of detention): 35 years old
5. Nationality/Nationalities: Vietnamese
6. (a) Identity document (if any):  
(b) Issued by:  
(c) On (date):  
(d) No.:
7. Profession and/or activity (if believed to be relevant to the arrest/detention): Driver – Liberal Publishing House’s volunteer collaborator in delivering books to the readers.
8. Address of usual residence: Zone 3, ward 4, Tuy Hoa City/ 22 NHS Block B, Nam Hung Vuong social housing Phu Dong ward, Tuy Hoa City, Phu Yen province, Vietnam.

II. Arrest

1. Date of arrest: May 5<sup>th</sup> 2021 (As media information)/ Liberal Publishing House lost his from October 2019

2. Place of arrest (as detailed as possible):

At his home. The state media said that he was arrested while trying to delivers 68 packages of books received from LPH

3. Forces who carried out the arrest or are believed to have carried it out:

Security agency of Phu Yen province’s police

4. Did they show a warrant or other decision by a public authority?

Yes

5. Authority who issued the warrant or decision:

Department of Security and Investigation of the Police of Phu Yen province

6. Reasons for the arrest imputed by the authorities:

He was accused "Stockpiling, distributing and propagating documents to oppose the State of the Socialist Republic of Vietnam" according to the provisions of Point a, Clause 1, Article 117 of the Penal Code.

7. Legal basis for the arrest including relevant legislation applied (if known):

Article 117 of the Penal Code of the So

III. Detention

1. Date of detention: from Oct. 2019.

2. Duration of detention (if not known, probable duration): We suppose that he was arrest and detent for around 18 months

3. Forces holding the detainee under custody:

Civil police force of Phu Yen province.....  
.....

4. Places of detention (indicate any transfer and present place of detention):

May be in Department of Security and Investigation of the Police of Phu Yen province

5. Authorities that ordered the detention:

Department of Security and Investigation of the Police of Phu Yen province .....

6. Reasons for the detention imputed by the authorities:

From mid-August 2019 to October 2019, Tien repeatedly received 68 parcels containing the many titles of books and distributed 24 parcels to recipients. In recent times, when Tien continued to distribute 21 parcels at the Kerry Express Phu Yen Post Office, the Department of Security and Investigation of the Police of Phu Yen province discovered and made a record of seizure. After the illegal act was revealed, Tien handed over to the investigating agency 23 parcels that were still hidden at his home.

.....

7. Legal basis for the detention including relevant legislation applied (if known):

.....  
.....  
.....  
.....

**IV. Describe the circumstances of the arrest.**

Around July and August 2019, the civil police force of Ho Chi Minh City tightened the delivery of postal services to prevent the routes of book delivery by Liberal Publishing House to readers. Facing this difficulty, the Publisher called for the community's help. Our call was supported by many people, including Mr. Nguyen Bao Tien from Phu Yen.

Mr. Tien contacted us through a virtual Facebook nick named "The Venerable Thich Ngo Tinh" (this nick name has stopped working since October 2019) and has since become an enthusiastic collaborator of Liberal Publishing House (LPH). However, since October 2, 2019, we completely lost contact with him, his Facebook and Whatsapp nicknames were locked. We had no way to find him, did not understand what happened and how to support him because in fact, at that time, we did not know his real name, address, or his circumstances.

Then, around November and December 2019, we continuously received notices from readers from many provinces - who were interrogated by the civil police force - about security investigating "a book-making line in Phu Yen. ". From this information, we know that Tien was arrested and that Department of Security and Investigation of the Police of Phu Yen province is seeking to put full responsibility on him for the activities of LPH. However, because there is no information and there is no prior consensus about this situation, we cannot do media to advocate for him, for fear that the information given by the Publisher will accidentally become anti-evidence back to him. However, we have asked a number of diplomatic agencies to seek information about him but completely helpless, no response. Until May 5<sup>th</sup>, 2021, the Vietnamese press simultaneously reported on the arrest and prosecution against Mr. Nguyen Bao Tien.

#### **IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY**

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

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

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

Vietnam has been an authoritarian one-party communist state since the CPV came into power in the 1970s<sup>3</sup> Despite being bound by several human rights treaties, including the International Covenant on Civil and Political Rights (the “ICCPR”), Vietnam routinely

---

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

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

violates its citizens' most basic human rights, including freedom of speech, opinion, assembly, press, religion, and association<sup>4</sup>, in particular by detaining individuals who speak against the interests of the Government and the CPV<sup>5</sup> The Government routinely restricts citizens' political rights, particularly their right to change their government through free and fair elections and has inadequately protected citizens' due process rights, notably failing to protect against arbitrary detention.<sup>6</sup>

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

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

In the past decade, the Government passed several laws and ordinances that restrict both personal and media freedom of expression, particularly in the context of electronic communications and online postings. The 2015 Law on Cyber Information Security, Decree 72 in 2013, and Decree 174 in 2014 impose fines on anyone criticizing the Government, defaming Government leaders, or "spreading propaganda" on social media<sup>10</sup> The Law on the Press, which went into effect in 2017, dictates that the press should

---

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

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

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

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

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

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

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

“propagandize and disseminate, and contribute to the protection of, the line and policies of the Party...and build and promote socialist democracy, strengthen the great national unity bloc, and build and protect the socialist Fatherland of Vietnam.”<sup>11</sup>

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

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

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

Prisoners in Vietnam are frequently subjected to physical and mental forms of torture and illtreatment<sup>16</sup> International observers have noted a pattern of physical abuse, torture and coerced confessions during arrest, police investigations, and detention. Activists have been robbed, beaten and received death threats from security officials, including being assaulted

---

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

<sup>12</sup> THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM, 2013, translation available at International Institute for Democracy and Electoral Assistance, [http://www.constitutionnet.org/sites/default/files/tranlation\\_of\\_vietnams\\_new\\_constitution\\_enuk\\_2.pdf](http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf); see also HRW 1995 Report.

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

<sup>14</sup> Amnesty International, Inside Viet Nam's secretive and torturous world of 'prisons within prisons' (2016) <https://www.amnesty.org/en/latest/news/2016/07/the-secretive-world-of-viet-nam-torturous-prisons/>

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

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

by other prisoners at the instruction of prison officials while in custody. In addition to the physical torture, prisoners of conscience were held incommunicado for long periods, were denied medical treatment, and were re-located to prisons very far from their families, in order to mentally intimidate them into confessions<sup>17</sup>

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

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

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

---

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

<sup>18</sup> Id

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

<sup>20</sup> Id

### **III. LEGAL ANALYSIS**

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

#### **3.1. DEPRIVATION OF LIBERTY UNDER CATEGORY- I**

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

##### **3.1.a Nguyen Bao Tien was Held Incommunicado and Never Given Access to Judicial Review of his Detention**

---

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

<sup>22</sup> 2 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)

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

The Human Rights Committee has determined that incommunicado detention inherently violates Article 9(3) of the ICCPR<sup>23</sup> This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights, such as freedom from torture<sup>24</sup> The prohibition against incommunicado detention is also articulated by Principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”), which prohibits the denial of communication between a detainee and his family or counsel for more than a few days<sup>25</sup>

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

Article 15(1) of the ICCPR<sup>26</sup> and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”)<sup>27</sup> both guarantee individuals the right to know what the law is and what conduct violates the law. These articles protect citizens from prosecution for any criminal offense “which did not constitute a[n] [] offense, under national or international law, at the time when it was committed.” The Human Rights Committee states that “[a]ny substantive

---

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

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

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

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

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

grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application<sup>28</sup>

In addition, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has explained that the standard for legal certainty requires framing laws “in such a way that [...] the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and [that] the law [be] formulated with sufficient precision so that the individual can regulate his or her conduct<sup>29</sup>

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

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

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

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

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

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

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

---

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

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

No instruction is given as to what constitutes propagating psychological warfare, dismay among the people, or documents/products that are against the Government. There is no intent component and no measure of what a prosecutor must prove to convict. Article 117 of the Penal Code lacks any plain meaning and gives individuals no fair notice of what conduct is prohibited. For Nguyen Bao Tien, Article 117 of the 1999 Penal Code has resulted in arbitrary prosecutions for acts that are both unforeseeable as criminal and protected under the ICCPR, the UDHR, and other international norms and standards. Concerned UN member countries recommended that Vietnam repeal or amend , provisions in the 1999 Penal Code, in order to prevent those provisions from being applied in an “arbitrary manner to impede freedom of opinion and expression, including on the Internet.” Because this crime of “conducting propaganda” is so vague, such provision cannot supply the legal basis for detention resulting from conviction on such charge.

## **DEPRIVATION OF LIBERTY UNDER CATEGORY-II**

Article 20(1) of the UDHR provides that “[e]veryone has the right to freedom of peaceful assembly and association.” Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others . . .” The Human Rights Council has specifically called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views and human rights defenders<sup>30</sup> In General Comment No. 25 to the ICCPR, the Human Rights Committee noted that “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25 [right to participate in public affairs]<sup>31</sup> Similarly, Vietnamese law ensures the right to freedom of association. Article 25 of the Constitution affirms that citizens have the right to “assemble, form associations and hold demonstrations.”<sup>32</sup>

---

<sup>30</sup> G.A Res. 15/21, ¶ 1, U.N. Doc. A/HRC/RES/15/21 (Oct. 6, 2010), <https://documents-ddsny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>

<sup>31</sup> General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25), ¶ 26, Human Rights Comm., 57th Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 27, 1996), (hereinafter “General Comment No. 25”).

<sup>32</sup> THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM, 2013, translation available at International Institute for Democracy and Electoral Assistance, [http://www.constitutionnet.org/sites/default/files/tranlation\\_of\\_vietnams\\_new\\_constitution\\_enuk\\_2.pdf](http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf)

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

### **3.1.c None of the Restrictions to Freedom of Association Enumerated Under Article 22(2) of the ICCPR Apply to Tien's Prosecution and Detention**

Article 22(2) of the ICCPR provides that: "No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right." Any limitation on the freedoms of expression and association "must meet a strict test of justification."<sup>33</sup>

As guidance, the Human Rights Committee has established three requirements for any limitation on the right to freedom of expression and association. A permissible limitation must be (1) "provided by law," (2) for the protection of national security, public order, or public health and morals, and (3) "necessary" to achieve one of these enumerated purpose<sup>34</sup>

In this case, the limitation on Tien's freedom of association fails to meet the second requirement; the Government's restrictions on Tien's right to freedom association was not for a proper purpose. Although the Government claimed that his detention was based on his "opposing the state" or "conducting propaganda"- as might be considered appropriately banned under Article 20 of the ICCPR. The meeting of Mr. Nguyen with members of Liberal Publishing House in no ways, directly or indirectly for violence or

---

<sup>33</sup> Park v. Republic Korea, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, para. 10.3 (adopted October 20, 1998).

<sup>34</sup> Shin v. Republic of Korea, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000, para. 7.3 (adopted March 16, 2004).

could not reasonably be considered to threaten national security, public order, public health or morals, or the rights or reputations of others.

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

Article 14(5) of the ICCPR states that “everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to the law.” The right to appeal guaranteed by Article 14(5) of the ICCPR “imposes on the State party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case<sup>35</sup>

Such a review must consider not just the formal or legal aspects of the conviction, but also the facts of the case, including the allegations against the convicted person and the evidence submitted at trial, as referred to in the appeal<sup>36</sup>

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

According to information provided, Mr. Nguyen Bao Tien was not allowed to communicate with his lawyer and accordingly his right to appeal had been violated.

#### **3.3.1 Vietnam Violated Tien’s Right to Communicate with and Have Assistance of 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 defense and to communicate with counsel of his own choosing.” Such guarantee “requires that the accused is granted prompt access to

---

<sup>35</sup> General Comment No. 32, *supra* note 106, at ¶ 48.

<sup>36</sup> *Id.*

counsel<sup>37</sup> and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”<sup>38</sup>

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

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

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

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

I am an international Human Rights lawyer and representing the victims whose rights are violated before the UN Working Group on Arbitrary Detention, UN Human Rights Committee as well as the European Court of Human Rights. I, has been retained as Mr. Nguyen Bao Tien’s international counsel.

Kurtuluş BAŞTİMAR

+905360633644(Tel)

int.humanrightscounsel@gmail.com

---

<sup>37</sup> Id para 32

<sup>38</sup> Id para 34

