



## INDIVIDUAL COMPLAINT

Request for allegation letter on the case of  
Trần Thị Xuân

To the attention of:  
UN Working Group on Arbitrary Detention

New York, June 22, 2018

*Individual Complaint* brief prepared and submitted by:  
The Human Rights Foundation Center for Law and Democracy

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The Human Rights Foundation Center for Law and Democracy (HRF-CLD) is a program of the Human Rights Foundation (HRF). HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law. HRF is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies.

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## **I. Procedural elements**

### **a. Mandate of the U.N. Working Group on Arbitrary Detention**

In accordance with the most recent mandate of the U.N. Working Group on Arbitrary Detention (WGAD), clarified and extended by resolution 1997/50<sup>1</sup> and 24/7 of 26 September 2013, the tasks of the WGAD are:

- (a) To investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned;
- (b) To seek and receive information from Governments and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives;
- (c) To act on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals and communications to concerned Governments to clarify and to bring to their attention these cases;
- (d) To conduct field missions upon the invitation of Government, in order to understand better the situations prevailing in countries, as well as the underlying reasons for instances of arbitrary deprivation of liberty;
- (e) To formulate deliberations on issues of a general nature in order to assist States to prevent and guard against the practice of arbitrary deprivation of liberty and to facilitate consideration of future cases;
- (f) To present an annual report to the Human Rights Council presenting its activities, findings, conclusions and recommendations.

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<sup>1</sup> Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending 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, G.A. Res. 60/251, ¶ 6 (Mar. 15, 2006), has further extended the mandate through Resolution 6/4, 15/18, and 20/16.

## **b. Standing of Human Rights Foundation to submit an individual complaint**

Pursuant to the mandate of the WGAD, the “Manual of Operations of the Special Procedures of the Human Rights Council” (Manual of Operations),<sup>2</sup> and the publication “Working with the United Nations Human Rights Programme, a Handbook for Civil Society” (Handbook for Civil Society),<sup>3</sup> the Human Rights Foundation (HRF), a nongovernmental human rights organization, is permitted to provide information on a specific human rights case or situation in a particular country, or on a country’s laws and practice with human rights implications.

## **c. Grounds for the initiation of the procedure involving investigation of individual cases**

### *c.1 The WGAD working methods*

According to the methods of work of the WGAD<sup>4</sup>, deprivation of liberty is arbitrary if a case falls into one of the following categories:

- a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (Category I);
- b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights<sup>5</sup> (Category II);
- c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of

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<sup>2</sup> See Manual of Operations of the Special Procedures of the Human Rights Council (Aug. 2008) ¶ 23, 38 and 133. *available at* [http://www.ohchr.org/Documents/HRBodies/SP/Manual\\_Operations2008.pdf](http://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf)

<sup>3</sup> See Working with the United Nations Human Rights Programme, a Handbook for Civil Society (2008) *available at* [http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook\\_en.pdf](http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf)

<sup>4</sup> See Methods of work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/33/66 (July 12, 2016). *Available at* <http://www.ohchr.org/EN/Issues/Detention/Pages/MethodsOfWork.aspx>.

<sup>5</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, *available at* <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Vietnam is a state party to the International Covenant on Civil and Political Right (ICCPR). It acceded to the ICCPR on September 24, 1982.

such gravity as to give the deprivation of liberty an arbitrary character (Category III);

- d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);
- e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (Category V).

*c.1 The WGAD working methods as applied in the present case*

The case of Trần Thị Xuân associated with Vietnam's ongoing crackdown on founders and key members of the Brotherhood for Democracy<sup>6</sup> falls under Category II and Category III of the above-mentioned criteria. The detention of Trần Thị Xuân, which will be discussed below, is arbitrary under Category II because the State of Vietnam has deprived her of her liberty as a result of her exercise of the right to freedom of association and freedom of expression, failing to comply with its international obligation under Article 18 and 20 of the Universal Declaration of Human Rights (UDHR), and Article 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR). Trần Thị Xuân's detention is also arbitrary under Category III since her detention and wrongful conviction was in violation or total non-observance, on the part of the State of Vietnam, of the international norms relating to the right to a fair trial, in accordance to Article 10 and Article 11 of the UDHR.<sup>7</sup> Therefore, HRF believes that the case Trần Thị Xuân satisfies the requirements to initiate the "individual complaint" procedure.

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<sup>6</sup> The Brotherhood for Democracy, founded in 2013, is an alliance of Vietnamese human rights defenders and activists. The alliance provides human rights activism training and advocates for non-violent activism. See <https://www.frontlinedefenders.org/en/organization/brotherhood-democracy>.

<sup>7</sup> Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948). While declarations adopted by the United Nation's General Assembly are not always binding (this term is often used to deliberately state that the parties do not intend to create binding obligations but merely disclose certain aspirations), some instruments called "declarations," which initially had no binding force, acquired this characteristic as a result of State practice and became customary international law.

See Mary Robinson, United Nations High Commissioner for Human Rights, Statement by the High Commissioner for Human Rights at the European Colloquy Organized by the Council of Europe (Sept. 2, 1998) in COUNCIL OF EUROPE DOC., at 18–21, [http://www.coe.int/t/dghl/standardsetting/cddh/Proceedings/InOurHands\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/cddh/Proceedings/InOurHands_en.pdf). (In 1998, Mary Robinson, United Nations High Commissioner for Human Rights at the time, stated in this regard: "Many of the provisions of the Declaration have become part of customary international law, which is binding on all states whether or not they are signatories to one or more multilateral conventions concerning human rights. Thus what started its existence as a solemn but non-binding proclamation of rights and freedoms has, at least in some respects, acquired through state practice the status of universal law.").

HRF has received credible allegations that Trần Thị Xuân's detention posed serious threat to her health given the neglect of her preexisting kidney disease. Due to a lack of treatment, Trần Thị Xuân suffered from fluid retention during her detention. HRF believes that without the intervention of the WGAD, not only will Trần Thị Xuân continue to be arbitrarily imprisoned after having been wrongfully convicted, her continuous detention will also place her physical health at a further risk.

#### **d. Confidentiality for victim and confidentiality waiver for HRF**

In accordance with the Manual of Operations, in communications sent to governments, the source is normally kept confidential. The Manual of Operations also states that an information source may request that its identity be revealed. Accordingly, HRF waives its right to confidentiality and requests that its identity be revealed in the event that, as part of the procedure involving investigation of individual cases, an allegation letter is sent to the State of Vietnam in connection with the information supplied herein. Notwithstanding, we request for the identity of the victims whose relatives have approached HRF to be kept confidential at all times.

#### **e. Consent given by the victim**

Trần Thị Xuân, via her family members, has authorized Joy Park from HRF to submit this individual complaint on her behalf to the U.N. Working Group of Arbitrary Detention.

## **II. Questionnaire**

The following questionnaire was retrieved from the Fact Sheet No. 26 of the WGAD (Annex V) available on the website of the United Nations High Commissioner for Human Rights in accordance with the Manual of Operations.<sup>8</sup> The focus of this individual complaint is the arbitrary detention, as well as the wrongful conviction of Trần Thị Xuân, which started on October 17, 2016 in retaliation for the exercise of her right to freedom of peaceful association and freedom of expression, as guaranteed by the UDHR and ICCPR.

#### **a. Identity**

Trần Thị Xuân:

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<sup>8</sup> UN Working Group on Arbitrary Detention, Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Detention, *available at*: <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>

1. Family name: Trần
2. First name: Thị Xuân
3. Sex: Female
4. Birth date: October 10, 1976
5. Nationality/Nationalities: Vietnamese
6. Profession: Freelancer
7. Address of usual residence: Long Hải Hamlet, Thạch Kim Commune, Lộc Hà District, Hà Tĩnh Province

**b. Arrest**

*1. Date of arrest:*

Trần Thị Xuân was arrested on October 17, 2017.

*2. Place of arrest:*

According to HRF's source, the 88 Project, Trần Thị Xuân was arbitrarily taken into custody on her way home from her local church, Cua Sot parish, by the Public Security Agency from Hà Tĩnh province's police department.

Trần has organized activities to aid local residents affected by the environmental disaster caused by the Hung Nghiep Formosa steel plant of the Taiwanese Formosa Plastic Group in 2016 in her community, the Thạch Kim commune in Lộc Hà district. Trần has raised concerns about the environmental pollution caused by the toxic discharge of industrial chemicals into the water and has demanded compensation for fisherman affected by the pollution. Additionally, she is affiliated with the non-violent pro-democracy alliance, Brotherhood for Democracy.<sup>9</sup>

HRF believes that Trần was arrested due to her human rights activism and association with the Brotherhood for Democracy. The online alliance of civil society activists and

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<sup>9</sup> See The 88 Project's profile on Trần Thị Xuân <https://vietnamprisoners.info/prisoner/8/tran-thi-xuan>.

human rights defenders, aimed at achieving a just society in Vietnam, has recently been part of the Vietnamese authorities' crackdown on bloggers and activist.

According to Freedom House, the freedom of civil society activism and expression in Vietnam remains restricted. Recently, Vietnamese authorities have increasingly cracked down on those who use the internet as a mean to spread uncensored information.<sup>10</sup> The state control of the media resulted in the silencing of journalists and bloggers through arrests and prosecutions. As of April 2018, eight members of the Brotherhood for Democracy have been found guilty and given lengthy prison sentences.

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

According to HRF's source, the Public Security Agency of Hà Tĩnh province's police carried out the arrests of Trần Thị Xuân. HRF believes, based on the coordinated arrests of member and activists of the Brotherhood for Democracy, that the orders for the arrests came from the national government. As a result of the 2017 crackdown of the Brotherhood for Democracy, 8 members have been found guilty and sentenced: Nguyễn Văn Đài, Trương Minh Đức, Nguyễn Trung Tôn, Nguyễn Bắc Truyền, Lê Thu Hà, Phạm Văn Trội, Nguyễn Văn Túc, and Trần Thị Xuân.<sup>11</sup> Trần's arrest is a part of eight arrests of members of the Brotherhood for Democracy throughout Vietnam. Given the coordinated efforts of these arrests, it is evident that Trần's imprisonment and detention relate to orders from the national government to dismantle the Brotherhood for Democracy.

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

No, an arrest warrant was not presented at the time of Trần Thị Xuân's arrest. Two days after the arrest, the police of Hà Tĩnh province issued a press release<sup>12</sup> on the "urgent" arrest of Trần.

### ***5. Authority who issued the warrant or decision:***

Not applicable (explanation in section 4 above).

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<sup>10</sup> See Freedom House, *Freedom in the World 2017: Vietnam* (2017), <https://freedomhouse.org/report/freedom-world/2017/vietnam>.

<sup>11</sup> Members are facing sentences of varying length; from 15 years of imprisonment to 7 years. See *Frontline Defenders*, Eight members of Brotherhood for Democracy found guilty and sentenced (April 2018) <https://www.frontlinedefenders.org/en/case/eight-members-brotherhood-democracy-found-guilty-and-sentenced-0>.

<sup>12</sup> See copy of the police press release, available at <https://vuongthuc.files.wordpress.com/2017/10/45689-tempdanlambao.jpg>.

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

As an arrest warrant was not presented at the time of Trần Thị Xuân's arrest, there is no legal basis for the arrest.

**c. *Detention***

Upon her detention on October 17, 2017, Trần Thị Xuân was not given medical treatment for her kidney disease promptly. As a result, she suffered from fluid retention. Her symptoms of fluid retention was apparent when she appeared for her trial. She did not receive permission to obtain medication from her family and from the prison until the end of May 2018, at which time her fluid retention improved.

After six months of arbitrary detention, the closed trial took place on April 12, 2018. According to The 88 Project, Trần's trial was unannounced to the public and to her family. She was tried without the presence of an attorney. She was wrongfully convicted under Article 79 of the 1999 Vietnam penal code ("attempting to overthrow the people's government"). The People's Court of Hà Tĩnh province sentenced her to 9 years in prison and 5 years of house arrest, and she had 15 days to appeal this decision, the deadline being April 30, 2018.

Since her conviction and before the imposed deadline of her appeal, neither Trần's family nor her lawyers were able to visit her, and Trần was not aware of the proper appeal procedure. Because of the prison's hinderance on her visitation and rights, she was unable to appeal before the April 30 deadline.

The press release, issued the day following Trần's arrest, did not provide any clear evidence of criminal activities or wrongdoing to justify her arrest and detention other than announcing her arrest. HRF's source, The 88 Project, stated that no one was notified of the trial date in advance, and she was not given an attorney to present evidence in defense of herself. There was no clarification on the nature of activities that resulted in Trần being charged under Article 79.

HRF is concerned that the continuous and clearly arbitrary and unjustified imprisonment, and the wrongful conviction of Trần will result in further deterioration of her physical health, particularly in light of the blatant medical neglect for her kidney disease causing fluid retention.

**1. *Date of detention:***

October 17, 2017

***2. Duration of detention:***

Trần Thị Xuân has been imprisoned since October 2017. To date, she has spent eight months in prison.

***3. Forces holding the detainee under custody***

The Hà Tĩnh province police at Hà Tĩnh province police detention center are holding Trần under custody. However, her order of arrest likely came from the central government, due to the coordinated arrests of members of the Brotherhood for Democracy.

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

Following her arrest on October 17, 2017, Trần Thị Xuân was held incommunicado in pretrial detention at Hà Tĩnh province police detention center in Vietnam for nearly 5 months until her closed trial on April 12, 2018.

***5. Authorities that ordered the detention***

Trần Thị Xuân's arrest is part of the eight Brotherhood for Democracy arrests in Vietnam. Given the coordinated efforts of these eight arrests, it is evident that her imprisonment and detention relate to direct orders from the national government. The Vietnamese government has a track record of persecuting prodemocracy activism, and the activities of the members of Brotherhood for Democracy fit into this category.

***6. Reasons for the detention imputed by the authorities***

At Trần Thị Xuân's closed trial on April 12, 2018, the prosecution claimed that Trần "attempted to overthrow the people's government." The prosecution gave no concrete evidence to support this charge, yet Trần was found guilty under Article 79 of the 1999 Vietnam penal code.

The prosecution lacked evidence to charge Trần under Article 79. The sole basis for bringing criminal charges upon her was to punish her for her peaceful pro-democracy activism, and her membership with the Brotherhood for Democracy.

HRF believes that the arrest and detention of Trần, as well as seven other members of the Brotherhood for Democracy, was the result of repressive operations initiated by the Public Security Agency of local police, with orders coming from the national government.

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

In the closed court session on April 12, 2018, Trần Thị Xuân was wrongfully convicted and sentenced to 9 years of imprisonment and 5 years of house arrest, under Article 79 of Vietnam's penal code. The article states:

*Article 79: Carrying out activities aimed at overthrowing the people's administration*<sup>13</sup>

Those who carry out activities, establish or join organizations with intent to overthrow the people's administration shall be subject to the following penalties:

- (1) Organizers, instigators and active participants or those who cause serious consequences shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment;
- (2) Other accomplices shall be subject to between five and fifteen years of imprisonment.

Given the subject matter of Article 79 of Vietnam's penal code listed below, and as was referenced earlier, HRF believes that the underlying reasons for the ongoing and continuous detention and wrongful conviction of Trần are her pro-democracy activism and her association with the peaceful pro-democracy alliance, Brotherhood for Democracy.

***8. 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. Background on Trần Thị Xuân***

Trần Thị Xuân has no past criminal record. She has dedicated her time to the betterment of her community. For instance, she has been active in her church by raising funds for

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<sup>13</sup> 1999 penal code of Vietnam, available at <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn017en.pdf>.

charitable causes. Her philanthropy for her community has been documented in the news, with members of her local parish testifying to her kindness and community activism.<sup>14</sup> She has also spoken out against pollution regarding the 2016 Formosa environmental disaster, demanding compensation for the fishermen affected by the toxic spill.

***b. Arrest and detention of 8 Brotherhood for Democracy members***

The case of Trần Thị Xuân is part of a trend, in which civil society activists, human rights defenders, and democracy supporters have increasingly been subject to arrest and detention by Vietnam's fully authoritarian regime. As previously mentioned, eight additional members and activist of the Brotherhood for Democracy are currently detained.

Courts in Hà Nội, Thái Bình and Hà Tĩnh have found guilty and sentenced these eight human rights defenders for "attempting to overthrow the people's government." This charge is one of the most severe allegations an activist can face in Vietnam, as a conviction under this charge carries heavy sentences. Those found guilty by the Vietnamese court may face punishment as harsh as the death sentence or life imprisonment. To date, this charge has only been used against dissidents and pro-democracy activists.

***c. Indicate reasons why you consider the arrest and/or detention to be arbitrary: Legal Analysis***

The detention of Trần Thị Xuân constitutes an arbitrary deprivation of her liberty<sup>15</sup> falling within Category II and Category III as established by the WGAD.<sup>16</sup> A detention is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14, and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22, and 25-27 of the International Covenant on Civil and Political Rights.<sup>17</sup> A detention is arbitrary under Category III, "when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and

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<sup>14</sup> See "Catholics demand justice for jailed Vietnam activist", UCA NEWS, <https://www.ucanews.com/news/catholics-demand-justice-for-jailed-vietnam-activist/82426>.

<sup>15</sup> The UN Commission on Human Rights considers "arbitrary" those deprivations of liberty which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights or in the relevant international instruments ratified by the States (Resolution 1991/42, as clarified by resolution 1997/50).

<sup>16</sup> Office of the High Commissioner for Human Rights, Revised Methods of Work of the Working Group, paras. 8(b) & (c).

<sup>17</sup> *Id.*, para 8(b).

in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”<sup>18</sup>

*i. Deprivation of Liberty under Category II: Violation of Article 18 and 20 of the UDHR, and Article 19 and 22 of the ICCPR*

Given Vietnam’s accession to the ICCPR on September 24, 1982, the deprivation of liberty under Category II is going to be analyzed in light of the provisions of both the UDHR and the ICCPR. Vietnam as a member of the United Nations and a state party to the UN Charter is bound to uphold its commitment to promote and encourage respect for human rights and fundamental freedoms.<sup>19</sup>

The arrest and detention of Trần Thị Xuân are analyzed under Category II because of its relation to the exercise of her right to the freedom of association as guaranteed by Article 20 of the UDHR and Article 22 of the ICCPR, and the exercise of her right to the freedom of expression under Article 18 of the UDHR and Article 19 of the ICCPR.

Article 22 of the ICCPR and Article 20 of the UDHR guarantee the freedom of association with others. Trần’s arrest, continuous detention, and wrongful conviction are based on her association with the Brotherhood for Democracy. The Brotherhood for Democracy provides a platform for human rights defenders to gather and discuss their pro-democracy activism. The fact that Trần’s arrest stems from her association with the group is evident from a pattern of coordinated arrests of her other fellow members. These simultaneous arrests suggest that the Vietnamese government aims to disassemble the Brotherhood for Democracy, violating the members’ right to freedom of association with others.

Article 19 of the ICCPR and Article 18 of the UDHR guarantee the freedom of expression for all. Trần has been a vocal critic of the government, and has participated in peaceful protests. Her outspoken activism was most likely one of the reasons she was persecuted by the government. By depriving Trần’s of liberty based on her political opinion and activism, the Vietnamese government has violated the ICCPR and the UDHR.

Additionally, Trần was prosecuted under a criminal code article that is overbroad and vague. Article 79 of the 1999 Vietnam penal code states:

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<sup>18</sup> *Id.*, para (c).

<sup>19</sup> *Supra* notes 5 and 7.

*Article 79 - Carrying out activities aimed at overthrowing the people's administration<sup>20</sup>*

Those who carry out activities, establish or join organizations with intent to overthrow the people's administration shall be subject to the following penalties:

- (1) Organizers, instigators and active participants or those who cause serious consequences shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment;
- (2) Other accomplices shall be subject to between five and fifteen years of imprisonment.

The article contains an ambiguous term: "serious consequences." The lack of definition for this term makes it easy for the Vietnamese government to abuse the law and target government critics with this charge. Freedom of expression under this article is threatened, because the law does not determine what category of actions would arise to the level of "serious consequence." The ambiguity of the law makes it possible for the government to apply the law to any case arbitrarily.

The police's press release announcing Trần's arrest did not sufficiently state the basis for her arrest, and the government was unable to produce concrete evidence suggesting that Trần possessed the intent to overthrow the people's administration during her closed trial, or that her actions caused "serious consequences," whatever the definition of the term might be. Due to a lack of legal support for the charge, Trần's conviction under Article 79 was arbitrary and violated her freedom of expression guaranteed under Article 18 of the UDHR and Article 19 of the ICCPR.

***ii. Deprivation of Liberty under Category III: The Non-Observance of the International Norms Relating to the Right to a Fair Trial in the case of Trần Thị Xuân is of such Gravity that her Detention is Rendered Arbitrary***

The arbitrariness of Trần Thị Xuân's deprivation of liberty by the People's Court of Hà Tĩnh province is established by the nature of her arrest, wrongful conviction, and continuous detention.

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<sup>20</sup> 1999 Penal Code of Vietnam, available at <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn017en.pdf>.

Article 11 of the UDHR states that “no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence.”

Article 10 of the UDHR declares that: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." The right to be tried by an independent and impartial tribunal is absolute and cannot afford any exceptions.<sup>21</sup> This requirement of independence includes the “independence of the judiciary from political interference by the executive branch and legislature.”<sup>22</sup>

In addition, Principles 10 to 16 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (BOP) states that those arrested must be informed of the reason of arrest, and must be heard promptly by the judicial authority. The BOP also stated that the detained person should receive effective counsel.<sup>23</sup>

Vietnam is not a democratic country in which the fundamental rights of citizens are respected, or where there are independence and separation of powers. Vietnam is ruled by a fully authoritarian regime.<sup>24</sup> Vietnam is a one-party state; the Communist Party of Vietnam has been in power for decades because of a lack of electoral competition. The government has increasingly cracked down on freedom of expression, religious freedom, and civil society activism.

The fully authoritarian regime denies people the right to a public trial and access to a defense attorney, despite the right to a lawyer under Article 18 (“Public trial”) and Article 19 (“Guarantee of equal right before court”) of Vietnam’s Criminal Procedure Code.<sup>25</sup>

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<sup>21</sup> General Comment No. 32, Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial, U.N. Human Rights Committee, CCPR/C/GC/32 (Aug. 23, 2007), para.19. See also, *Gonzalez del Rio v. Peru*, Communication No. 263/1987 (November 2, 1992), para. 5.2. (“the Committee recalls that the right to be tried by an independent and impartial tribunal is absolute right that may suffer no exception.”)

<sup>22</sup> *Id* at para 19

<sup>23</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, Dec. 9, 1988.

<sup>24</sup> See STEVEN LEVITSKY & LUCAN WAY, *COMPETITIVE AUTHORITARIANISM HYBRID REGIMES AFTER THE COLD WAR* 6–7 (Cambridge University Press) (2010) (“Full authoritarianism is a regime in which no viable channels exist for opposition to contest legally for executive power. This category includes closed regimes in which national-level democratic institutions do not exist and hegemonic regimes in which formal democratic institutions exist on paper but are reduced to façade status in practice. In hegemonic regimes, elections are so marred by repression, candidate restrictions, and/or fraud that there is no uncertainty about their outcome. Much of the opposition is forced underground and leading critics are often imprisoned or exiled.”).

<sup>25</sup> Criminal Procedure Code of Vietnam, available at <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46817432.pdf>.

Despite the established framework, criminal trials in Vietnam repeatedly fail to meet international fair standards.<sup>26</sup>

Trần Thị Xuân's arrest, continuous detention, and wrongful conviction were carried out in this context of full authoritarianism. To this date, the state of Vietnam has yet to observe minimum international standards of due process guaranteed by the UDHR. The following occurrences during Trần's arrest, detention, and trial violated Article 10 and 11 of the UDHR, and Principles 10 to 16 of the BOP:

- (1) Trần was not presented with an arrest warrant. She was arbitrarily taken into custody on her way home from her church by the police of Hà Tĩnh province in Vietnam. She was not presented with an arrest warrant or informed of the charges at the time of her arrest and was held incommunicado in the Hà Tĩnh province police detention center. Her family members were unable to communicate with her. She was subject to inhumane treatment while in detention as a result of medical neglect deteriorating her physical health. This violates Article 11 of the UDHR and Principles 10, 11, 12, 13, 15, and 16 of the BOP;
- (2) By practicing her freedom of association and freedom of expression, Trần has not violated any national or international law, yet the Vietnamese government deprived her of liberty and wrongfully charged her under Vietnam's penal code, violating Article 11 of the UDHR;
- (3) Trần's closed trial was neither fair nor public, and the court that presided was neither independent nor impartial. Trần's trial on April 12, 2018 was a closed trial. The trial was unannounced to the public, therefore her family members were not able to attend the trial. Trần was unable to retain a lawyer to represent her in her defense due to being held incommunicado. This violates Article 10 of the UDHR and Principles 11 and 15 of the BOP;
- (4) During the trial, Trần was not given the option of having a lawyer to represent her and to present evidence in defense of herself. This violates Article 10 of the UDHR and Principles 11, 13, and 15 of the BOP;
- (5) Trần was not properly informed of her right to appeal, and she was not allowed to retain a lawyer of her choice to represent her in the procedure.

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<sup>26</sup> See the Human Rights Watch 2018 human rights report on Vietnam, available at <https://www.hrw.org/world-report/2018/country-chapters/vietnam>.

Her family was denied visitation until after her appeal deadline had expired. This violates Article 10 of the UDHR, and Principles 15 and 16 of the BOP.

Due to the abovementioned reasons, Trần Thị Xuân's arrest, continuous detention, and conviction violated international legal principles, rendering her continued imprisonment arbitrary.

***9. 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.***

As indicated in 8(c)(ii) above, Vietnam is not a democratic country that ensures the separation of powers and the independence of the judiciary. As such, the legal system in Vietnam is not an effective way to address grievances fairly. While the process of appealing one's conviction and sentencing exists in the Vietnamese legal system, the outcome is unlikely to be highly biased, and would be subject to party influence.

In fact, Vietnam violates its own laws in cases such as Trần Thị Xuân's, where government critics are arrested and imprisoned. In Trần's case, the manner in which the arrest, detention, and conviction of Trần Thị Xuân were conducted was in violation of Articles 7, 11, and 18 of Vietnam's 1999 criminal procedure code listed below.

*Article 7 - Protection of life, health, honor, dignity and property of citizens*

Citizens have the right to have their life, health, honor, dignity and property protected by law. All acts of infringing upon the life, health, honor, dignity and/or property shall be handled according to law. Victims, witnesses and other participants in the procedure as well as their relatives, when their life and health are endangered, their honor, dignity and/or property are infringed upon, shall be protected by competent procedure-conducting bodies through applying necessary measures according to law.

*Article 11 - Guarantee of the right to defense of detainees, accused and defendants*

The detainees, accused and defendants shall have the right to defend by themselves or ask other persons to defend them. Investigating bodies, procuracies

and courts shall have the duty to ensure that the detainees, accused and defendants exercise their right to defense under the provisions of this Code.

#### *Article 18 - Public trial*

The court should not be held behind closed doors, and everybody should have the right to attend the trial.<sup>27</sup>

The procedure in which the arrest, detention, and conviction were carried out are not in line with the relevant articles of Vietnam's Criminal Procedure Code above, evidently showing that the domestic remedies available in Vietnam are ineffective in addressing the case of the Trần Thị Xuân. Trần's case should be analyzed within the context of a fully authoritarian regime in which there is no independence of the judiciary.

Moreover, the government of Vietnam blatantly hindered Trần's efforts to appeal her case. She was not properly informed of the appeals procedure, and she was not allowed to contact a lawyer or her family members until the court mandated appeal deadline had passed. It is apparent through this incident of government interference that Trần is unable to address her appeal within the Vietnam legal system.

Due to these reasons, HRF concludes that Trần Thị Xuân has exhausted all effective legal options available to her in Vietnam.

### ***10. Urgent Appeal***

As discussed earlier, the case of Trần Thị Xuân is not an isolated incident, given the coordinated efforts of the arrest of 8 members of the Brotherhood for Democracy. It is a part of an ongoing Vietnamese governmental crackdown on civil society and pro-democracy activists throughout the country.

On October 17, 2017, Trần Thị Xuân — female activist and human rights defender — was arrested and sentenced to 9 years of prison and 5 years of probation under Article 79 of Vietnam's penal code. Furthermore, also as of April 2018, eight activists and members of the Brotherhood for Democracy were arrested under Article 79 of Vietnam's penal code with sentences ranging from 15 years in prison with 5 years of probation to 7 years in prison with 1 year probation, for their association in the pro-democracy group Brotherhood for Democracy, and their peaceful activism.

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<sup>27</sup> Criminal Procedure code of Vietnam, *supra* note 25.

In addition to the case of Trần Thị Xuân, we request that WGAD take note of the cases of other members of the Brotherhood for Democracy and closely monitor the false accusations and unwarranted imprisonment of individuals linked with Brotherhood for Democracy.

### *11. Identity of the persons submitting the case*

1. Family name: Park
2. First name(s): Joy
3. Status: Legal Counsel - Asia
4. Address (telephone, e-mail):  
350 Fifth Avenue, Suite 4202, New York, NY, 10118  
Tel: +1 (212) 246-8486  
Email: [joy@hrf.org](mailto:joy@hrf.org)  
Website: <http://www.hrf.org>
5. Please state whether you want your identity to be kept confidential: As stated above, HRF waives its right to confidentiality, but asks for the confidentiality of the victim to be kept.

### **III. Petition**

In accordance with resolution 24/7 of 26 September 2013, HRF hereby submits this individual complaint to the U.N. Working Group on Arbitrary Detention, and respectfully calls on the working group to initiate the procedure involving investigation of individual cases towards reaching an opinion of the WGAD declaring Trần Thị Xuân's detention to be arbitrary and in violation of international law. Specifically, HRF calls on the WGAD:

- a. To initiate a procedure involving investigation of individual cases, in the case of Trần Thị Xuân, and send an allegation letter to the state inquiring about her case generally, and specifically about the legal basis for her arrest, imprisonment, and/or the cruel, inhumane, and degrading treatment suffered by Trần Thị Xuân while in detention.

- b. To urge the State of Vietnam to release Trần Thị Xuân immediately and unconditionally, as she is arbitrarily and illegally being deprived of her freedom solely for peacefully exercising her right to freedom of association and freedom of expression according to international law;
- c. To issue an opinion declaring that Trần Thị Xuân ongoing detention, and the ongoing detention of other Brotherhood for Democracy members, to be arbitrary and in violation of international law as a result of both Category II and Category III violations; and
- d. To ask the State of Vietnam to guarantee that Trần Thị Xuân will cease to be subjected to cruel, inhumane, and degrading treatment and receive adequate medical treatment for her kidney disease from here on.