

***Amicus Curiae* Brief**

In the case of Public Prosecutor of the Department of Foreign Affairs, Thailand's Office of the Attorney General, against Mr. Y Quynh Bdap

Bangkok Criminal Court (Black Case No. Por.Dor. 8/2567)

I. Introduction

1. Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession. The ICJ has been working in Thailand for almost two decades, engaging with the Royal Thai Government, the country's judiciary, academics and legal practitioners.
2. In this brief, the ICJ makes submissions regarding Thailand's *non-refoulement* obligations under international and domestic law in relation to the extradition proceeding brought by the Public Prosecutor of the Department of Foreign Affairs, Thailand's Office of the Attorney General, against Mr. Y Quynh Bdap. The extradition proceedings against him were initiated following an extradition request made by Vietnam, through the Embassy of the Socialist Republic of Vietnam in Thailand. The Vietnamese authorities seek to have Mr. Y Quynh Bdap extradited from Thailand to Vietnam for the stated purpose of having him serve a 10-year prison sentence imposed on him by the People's Court of Dak Lak, following his *in absentia* conviction on "terrorism" charges (see below) in January 2024.
3. The objective of the ICJ in this brief is to assist the Court by providing information and analysis with a view to detailing the nature and scope of Thailand's *non-refoulement* obligations under international human rights law in the context of extradition proceedings, including the question of whether there are substantial grounds for believing that a person whose extradition is being sought would face a real risk of serious human rights violations, such as torture or other ill-treatment, upon extradition to another State.
4. Mr. Y Quynh Bdap, who has been residing in Thailand since 2018, was recognized as a refugee by the United Nations High Commissioner for Refugees (UNHCR); since then, he has been awaiting resettlement to a third country. Mr. Y Quynh Bdap is a member of the Ê Đê (Montagnard) minority ethnic group from the Central Highlands of Vietnam, a member of the Christian minority and a founder of the organization Montagnards Stand for Justice (MSFJ), which advocates for Montagnards' indigenous rights in Vietnam. In January 2024, he was convicted *in absentia* on "terrorism" charges under section 299 of Vietnam's Penal Code by the People's Court of Dak Lak.¹ His *in absentia* trial and conviction

¹ On 14 June 2024, several independent UN human rights experts expressed concern that this section is vague, imprecise, uncertain and overly broad in its practical application, potentially rendering it incompatible with the principle of legality. See: Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary

arose from his purported implication in the 11 June 2023 alleged attack on police stations in Vietnam's Dak Lak Province in which nine people were killed and two seriously injured.² Mr. Y Quynh Bdap maintains that he was in Thailand at the time and has denied any involvement in the attack. In June and July of this year, several UN independent human rights experts expressed concern about Mr. Y Quynh Bdap's sentencing following his *in absentia* "mobile court" trial, which, along with that of other 100 defendants, was marred by a failure to meet fair trial guarantees under international law.³

II. Thailand has an obligation under international and domestic law not to extradite a person to another State where there are substantial grounds for believing that they would face a real risk of torture, other cruel, inhuman or degrading treatment or punishment or other irreparable harm

5. The *non-refoulement* principle is expressly guaranteed under various international human rights law treaties binding on Thailand,⁴ including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Protection against *refoulement* entails an obligation on the part of a State not to expel, transfer, return (*refouler*), surrender or extradite people to another State or

Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the rights of Indigenous Peoples; the Independent Expert on human rights and international solidarity; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 'AL VNM 4/2024', 14 June 2024, at 10, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29087> ('Communication AL VNM 4/2024').

² Oliver Slow, 'Vietnam rebel attacks: 98 go on trial accused of killing nine people', *BBC News*, 16 January 2024, available at: <https://www.bbc.com/news/world-asia-67995372>.

³ Communication AL VNM 4/2024, at 7-9; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Special Rapporteur on the situation of human rights defenders, Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Independent Expert on human rights and international solidarity, Special Rapporteur on Minority issues, Working Group on enforced or involuntary disappearances, Special Rapporteur on the right to freedom of opinion and expression, Special Rapporteur on the human rights of migrants, and Special Rapporteur on freedom of religion or belief, 'Experts alarmed by possible extradition of refugee and human rights defender Y Quynh Bdap from Thailand to Vietnam,' 4 July 2024, available at: <https://www.ohchr.org/en/press-releases/2024/07/experts-alarmed-possible-extradition-refugee-and-human-rights-defender-y> ('Press Release of the UN Independent Expert dated 4 July 2024')

⁴ Thailand is also a State party to the International Covenant on Civil and Political Rights (ICCPR). According to the UN Human Rights Committee, a State's *non-refoulement* obligations arise where there are "substantial grounds for believing that there is a real risk of irreparable harm", such as violations of the right to life, guaranteed under article 6 of the ICCPR, or of the right to be free from torture or cruel, inhuman or degrading treatment or punishment under article 7 of the ICCPR. UN Human Rights Committee, 'General comment no. 31 [80], The nature of the general legal obligation imposed on State Parties to the Covenant', UN Doc. CCPR/C/21/Rev.1/Add.13 ('CCPR/C/21/Rev.1/Add.13'), para. 12. It must be noted that the Committee uses the term "such as" when referring to articles 6 and 7 of the ICCPR as examples, indicating that this list of "irreparable harm" is non-exhaustive and may include other types of irreparable harm.

territory where there are substantial grounds for believing that they would face a real risk of serious human rights violations – such as torture or other cruel, inhuman or degrading treatment or punishment or enforced disappearance. In addition to its treaty obligations, Thailand is bound to respect the *non-refoulement* principle as a norm of customary international law binding upon all States.⁵

6. Pursuant to article 3 of the UNCAT:

“1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

7. Similarly, according to article 16 of the ICPPED:

“1. No State Party shall expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.”

8. The obligation to ensure human rights guaranteed under international human rights treaties binding on Thailand is not limited to the legislative and executive branches of the State but extends to and should also be discharged effectively by Thailand’s judiciary. As the UN Human Rights Committee affirmed in its authoritative General Comment No. 31:

“The obligations of the Covenant in general [...] are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State Party.”⁶

9. The *non-refoulement* principle is also explicitly enshrined in Thai law under section 13 of the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565

⁵ OHCHR, ‘The principle of non-refoulement under international human rights law,’ accessed on 7 August 2024, available at:

<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> United Nations, ‘Draft conclusions on identification of customary international law, with commentaries,’ 2018, available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf; see also, Article 38, Statute of the International Court of Justice (“The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply [...] international custom, as evidence of a general practice accepted as law”), available at: <https://www.icj-cij.org/statute>.

⁶ CCPR/C/21/Rev.1/Add.13, para. 4

(2022), which states: “No government organizations or public officials shall expel, deport, or extradite a person to another state where there are **substantial grounds for believing that the person would be in danger of torture, cruel, inhuman, or degrading treatment, or enforced disappearance**” (emphasis added). Therefore, should Thailand expel, deport, extradite or otherwise remove a person to another State where there are substantial grounds for believing that the person concerned would face a real risk of enforced disappearance, torture or other ill-treatment, Thailand would not only violate its international human rights law obligations, but also Thai domestic law. With respect to this, a failure to comply with its *non-refoulement* obligations would also bring Thailand into non-compliance with its own extradition law, as the present extradition proceedings were brought under the country’s Extradition Act B.E. 2551 (2008). Section 9 of this act states that the Government of Thailand may consider surrendering a person to the requesting State for prosecution or serving punishment in a criminal case, in cases, *inter alia*, “where it is not prohibited by Thai laws.” As noted above, section 13 of the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022) clearly prohibits the extradition of a person where there is a real risk of enforced disappearance, torture or other ill-treatment.

10. As this is the first case being heard by the Court on the interpretation of section 9 of the Extradition Act B.E. 2551 (2008), following the entry into force of the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022), the ICJ draws to the Court’s attention Thailand’s procedural obligation to assess all extradition requests in light of the *non-refoulement* protection enshrined in section 13 of the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022), as well as more broadly under the country’s international human rights law obligations.

III. There are substantial grounds for believing that Mr. Y Quynh Bdap would be in danger of being subjected to torture, other ill-treatment, enforced disappearance or other irreparable harm if he is extradited to Vietnam

11. The ICJ respectfully calls on the Court to ensure it applies Thailand’s *non-refoulement* obligations under domestic law in a manner that is consistent with the country’s international human rights law obligations. With respect to this, the ICJ submits that it is incumbent upon the Court to carry out an individualized, impartial and independent assessment of whether there are substantial grounds for believing that Mr. Y Quynh Bdap would be in danger of being subjected to torture, other ill-treatment, enforced disappearance or other irreparable harm should his extradition to Vietnam proceed.⁷

12. The ICJ draws the Court’s attention to the UN Committee against Torture’s guidance on the obligation of the Court to assess whether Mr. Y Quynh Bdap’s faces a real risk of torture, other ill-treatment, etc. “individually, impartially and independently [...] in conformity with essential procedural safeguards, notably the guarantee of a prompt and transparent process, a review of the deportation decision and a suspensive effect of the appeal.”⁸

13. As mentioned above, the ICJ draws the Court’s attention to the fact that UNHCR

⁷ UN Committee against Torture, ‘General Comment No. 4 (2017) on the implementation of article 3 of the Convention against Torture in the context of article 22’, UN Doc. CAT/C/GC/4, 4 September 2018, para 13, available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc4-general-comment-no-4-2017-implementation> (‘CAT/C/GC/4’)

⁸ CAT/C/GC/4, para. 13

recognized Mr. Y Quynh Bdap as a refugee, confirming that he has a well-founded fear of persecution in his country of origin, in accordance with the UN Refugee Agency's mandate to carry out such assessments pursuant to the 1951 Convention Relating to the Status of Refugees (1951 Convention) and its 1967 Protocol Relating to the Status of Refugees (1967 Protocol).⁹ Such recognition by the UN Refugee Agency indicates that UNHCR has determined that there are no "serious reasons for considering that" Mr. Y Quynh Bdap should be excluded from the 1951 Convention pursuant to article 1F,¹⁰ even after his conviction by the People's Court of Dak Lak.

14. In light of the above, the ICJ submits that the Court should hold that Mr. Y Quynh Bdap's extant refugee status is ultimately dispositive of its determination of whether there are substantial grounds for believing that he would face a real risk of serious human rights violations should he be extradited to Vietnam. He clearly would, which is why he continues to be entitled to international protection as a recognized refugee.

15. For the sake of completeness, the ICJ draws the Court's attention to the UN Committee against Torture's authoritative interpretation of the scope and content of the *non-refoulement* principle under article 3 of the UNCAT featured in the Committee's General Comment No. 4, according to which, "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present, and real", either "as an individual or a member of a group that may be at risk of being tortured in the State of destination",¹¹ and if there is a lack of adequate measures to prevent and prohibit torture in Vietnam.¹²

a. Mr. Y Quynh Bdap faces a personal risk of being subjected to torture or other ill-treatment or other irreparable harm if returned to Vietnam

16. The Committee against Torture elaborated that it would consider the risk of torture as "foreseeable, personal, present, and real" by assessing the existence of facts relating to the risk at the time of its decision. Pursuant to this, the ICJ submits that, with respect to Mr. Y Quynh Bdap, there are several indications of personal risk,¹³ including his minority

⁹ Press Release of the UN Independent Expert dated 4 July 2024. UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,' UN Doc. HCR/1P/4/Eng/REV.2, reissued in 2019, available at: <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁰ Article 1F of the Refugee Convention states that the provisions of the Convention "shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he [or she] has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he [or she] has committed a serious non-political crime outside the country of refuge prior to his [or her] admission to that country as a refugee; or (c) he [or she] has been guilty of acts contrary to the purposes and principles of the United Nations".

¹¹ CAT/C/GC/4, para 11.

¹² CAT/C/GC/4, para 48

¹³ Paragraph 45 of CAT/C/GC/4 provides a non-exhaustive list of indicators of personal risks of torture, characterized as foreseeable, personal, present, and real. These include: (a) ethnic background; (b) political activities; (c) arrest and/or detention without guarantees of fair treatment and trial; (d) sentencing in absentia; (e) sexual orientation and gender identity; (f) desertion from the national armed forces or armed groups; (g) previous torture; (h) incommunicado detention or other forms of arbitrary and illegal detention in the country of origin; (i) clandestine escape from the country of origin following threats of torture; (j) religious affiliation; (k) violations of the right to freedom of thought, conscience, and religion, including those related to the prohibition of conversion to a religion different from the State

ethnic background as a Montagnard, his religious affiliation as Christian, his political activities as MSFJ's founder and advocate for indigenous rights of the Montagnard minority, the 10-year sentence following his *in absentia* trial, previous torture, incommunicado detention, and other forms of arbitrary and illegal detention in Vietnam.¹⁴ Mr. Y Quynh Bdap's past experiences in Vietnam constitute serious harm rising to the level of persecution, which was presumably core to UNHCR's recognizing him as a refugee with a well-founded fear of persecution if he is returned to Vietnam.

17. The ICJ's assessment is also consistent with that of several UN independent human rights experts featured in their communication to the Thai Government of 14 June 2024. In the context of examining efforts by the Government of Vietnam to secure the involuntary or forced repatriation of Vietnamese Montagnards from Thailand, including in the case of Mr. Y Quynh Bdap, the experts found that "risks of serious rights violations are clearly present in Vietnam given the well-documented mistreatment of Montagnard human rights activists, defenders of minority religions, and members of MSFJ."¹⁵
18. The ICJ considers that it is beyond dispute that Vietnam's extradition request relates to his ten-year sentence *in absentia* by the People's Court of Dak Lak. Should Mr. Y Quynh Bdap's extradition proceed, it will result in his arbitrary and illegal detention in Vietnam without guarantees of fair trial. As previously recalled, several UN independent human rights experts expressed serious concern that Mr. Y Quynh Bdap's conviction *in absentia* "did not meet fair trial guarantees under international law", as he was "sentenced to 10 years in prison after a 'mobile court' trial of 100 defendants".¹⁶
19. In addition, in 2023, the UN Committee on the Elimination of Racial Discrimination, in its concluding observations on the combined fifteenth to seventeenth reports of Viet Nam, specifically expressed concern about the investigation led by the Ministry of Public Security following the attacks on the police stations in Dak Lak province on 11 June 2023, highlighting reports of "persistent racial profiling, torture, ill-treatment, deaths in custody, abuse of authority and excessive use of force by law enforcement officials against

religion where such conversion is prohibited and punished by law and in practice; (l) risk of expulsion to a third country where the person may be in danger of being subjected to torture; and (m) violence against women, including rape.

¹⁴ The 88 Project, a non-governmental organization, documented Mr. Y Quynh Bdap's past experience of being arbitrarily arrested and detained on several occasions, and physically beaten while in detention in 2010. The 88 Project, 'Y Quynh Bdap Faces Extradition to Vietnam on Questionable Terrorism Charge After His Canadian Asylum Claim Was Not Granted,' 14 June 2024, available at: <https://the88project.org/y-quynh-bdap/>

¹⁵ Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples; the Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 'AL THA 6/2024', 14 June 2024, at 4, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29112> ('Communication AL THA 6/2024').

¹⁶ Press Release of the UN Independent Expert dated 4 July 2024; Communication AL VNM 4/2024, at 7-9; and Communication AL THA 6/2024, at 4.

individuals and groups at risk of racial discrimination, as well as those working on the rights of ethnic minorities, Indigenous Peoples and non-citizens.”¹⁷

b. There is a consistent pattern of gross, flagrant or mass violations of human rights, particularly against Christian Montagnards like Mr. Y Quynh Bdap in Vietnam

20. Under article 3(2) of the UNCAT and article 16(2) of the ICPPED, for the purpose of determining whether the individual concerned would face a real risk of serious human rights violations upon removal, “the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights” in the receiving country. The Committee against Torture has highlighted that this can be evidenced by the “widespread use of torture and impunity of its perpetrators”, “harassment and violence against minority groups”, and “widespread use of sentencing and imprisonment of persons exercising fundamental freedoms”.¹⁸
21. Mr. Y Quynh Bdap’s plight is consistent with the predicament of other Christian Montagnards in Vietnam. Research indicates that Montagnards, whose predominant religion is Montagnard or De Ga Christianity, have consistently faced religious restrictions in their own country, including forced renunciation of non-recognized religious denominations, conversion to official churches, and the criminalization of religious leaders.¹⁹ Additionally, Vietnamese authorities often equate being Montagnard Christians with being anti-Communists, terrorists, or advocates for a separate Montagnard state.²⁰ Montagnards are accused of undermining national unity and may face formal charges on these grounds, regardless of their actual political activities.²¹
22. Several UN independent human rights experts also consider that these restrictions intensified after the June 2023 attack.²²
23. In its 2018 concluding observations on the initial report of Viet Nam, the UN Committee against Torture expressed concern about the “allegations of the widespread use of torture

¹⁷ Committee on the Elimination of Racial Discrimination, ‘Concluding observations on the combined fifteenth to seventeenth reports of Viet Nam’, Un Doc CERD/C/VNM/CO/15-17, 8 December 2023, para. 16.

¹⁸ CAT/C/GC/4, para 43

¹⁹ See also Press Release of the UN Independent Expert dated 4 July 2024.

²⁰ This includes labeling Montagnard advocacy groups, such as MSFJ, founded by Mr. Y Quynh Bdap, as “terrorist organizations”, regardless of whether there is actual proof or evidence connecting these groups with so-called “terrorist” activities. See, for instance, Reuters, ‘Vietnam lists overseas dissident groups as ‘terrorist organisations’, 6 March 2024, available at: <https://www.reuters.com/world/asia-pacific/vietnam-lists-overseas-political-groups-terrorist-organisations-2024-03-06/>. The UN independent experts have noted that the “NGO Montagnards Stand for Justice has been abusively listed as a terrorist organisation”, see, Press Release of the UN Independent Expert dated 4 July 2024. For more information, please see: Communication AL VNM 4/2024, at 11-12.

²¹ UK Home Office, Country Policy and Information Note – Vietnam: Ethnic and religious groups, March 2018, at Section 4.1.3, available at: https://www.ecoi.net/en/file/local/1428002/1226_1522301613_vietnam-ethnic-and-religiousgroups-cpin-v2-0-ex.pdf; Human Rights Watch, Persecuting “Evil Way” Religion: Abuses against Montagnards in Vietnam, June 2015, at Background, available at: https://www.ecoi.net/en/file/local/1215630/1788_1435321441_vietnam0615-4upload.pdf.

²² Communication AL VNM 4/2024, at 5-6 and 14-16.

and ill-treatment” in places where individuals are deprived of their liberty and reported “disproportionate number of detentions and the high number of deaths in custody of members of ethnic and religious minorities, particularly those living in remote areas of the country, as a result of torture and ill-treatment in police stations and other places of deprivation of liberty.”²³

24. The UN Human Rights Committee expressed similar concerns in its 2019 concluding observations on the third periodic report of Viet Nam, and highlighted reports indicating that “persons, particularly human rights defenders, activists, and religious leaders, may face arbitrary arrests, detention, and incommunicado detention without charges,” and “widespread use of torture and ill-treatment, in particular during pretrial detention, sometimes resulting in death in custody, including of members of ethnic and religious minorities.”²⁴

25. Additionally, reports indicate that Vietnam has resorted to arbitrary detention and extrajudicial killings under the guise of combating terrorism. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has reported in 2023: “In Vietnam, the Ministry of Public Security utilizes terrorism and other criminal code articles to target dissidents, particularly those who question the authority and legitimacy of the Communist Party of Vietnam.”²⁵

26. In their 4 July 2024 statement and their communication to the Vietnamese Government dated 4 June 2024, UN independent human rights experts underscored that Montagnard Indigenous peoples and religious minorities in Vietnam, to which Mr. Y Quynh Bdap belongs, have been victims of discrimination and ill-treatment, including as a result of the misuse of terrorism charges. The experts also raised concern about the death and alleged prior torture in custody of a Montagnard in March 2024.²⁶

c. There is a lack of adequate measures in Vietnam to prevent and prohibit torture and other ill-treatment

27. Further, in its General Comment No. 4, the UN Committee against Torture recalled that, when assessing whether “substantial grounds” exist, a receiving State, such as Vietnam in the present case, should demonstrate the implementation of “certain essential measures to prevent and prohibit torture throughout the entire territory under its jurisdiction, control, or authority.” These measures include, for example, clear legislative provisions on the absolute prohibition of torture and its punishment with adequate

²³ Committee against Torture, ‘Concluding observations on the initial report of Viet Nam,’ UN Doc. CAT/C/VNM/CO/1, 28 December 2018, paras 14 and 22, available at: <https://www.ohchr.org/en/documents/concluding-observations/catcvnmco1-concluding-observations-initial-report-viet-nam> (‘CAT/C/VNM/CO/1’)

²⁴ Human Rights Committee, ‘Human Rights Committee: Concluding observations on the third periodic report of Viet Nam,’ UN Doc. CCPR/C/VNM/CO/3, 29 August 2019, paras 25 and 27, available at: <https://www.ohchr.org/en/documents/concluding-observations/ccprcvnmco3-human-rights-committee-concluding-observations-third> (‘CCPR/C/VNM/CO/3’)

²⁵ UN Human Rights Special Procedures, ‘Outcome Document of the Asia & the Pacific regional civil society consultation on the impact of counter-terrorism measures on civil society & civic space,’ 21 June 2023. (excerpt from The 88 Project, ‘Y Quynh Bdap Faces Extradition to Vietnam on Questionable Terrorism Charge After His Canadian Asylum Claim Was Not Granted,’ 14 June 2024, available at: <https://the88project.org/y-quynh-bdap/>.)

²⁶ Press Release of the UN Independent Expert dated 4 July 2024, and Communication AL VNM 4/2024.

penalties; steps to end impunity for acts of torture, violence, and other illegal practices committed by public officials; and the prosecution of public officials allegedly responsible for acts of torture and other ill-treatment.²⁷

28. However, to date, the Government of Vietnam and the public prosecutor in this case have not clearly established the implementation of such measures. Instead, several international human rights experts, institutions and bodies have consistently expressed profound concern over Vietnam's consistent failure to meet its obligations regarding the prohibition of torture and other ill-treatment, particularly concerning persons from ethnic and religious minorities. Furthermore, as previously noted, various sources indicate that the State has been actively involved in resorting to the "widespread use of torture and ill-treatment, in particular during pretrial detention, sometimes resulting in death in custody, including of members of ethnic and religious minorities."²⁸
29. In 2018, the UN Committee against Torture, in its concluding observations, noted issues such as the vague definitions of torture offences in various articles, a low number of investigations and prosecutions of torture and ill-treatment cases, and reports of reprisals against victims or their relatives who complain about acts of torture.²⁹ Additionally, in 2019, the UN Human Rights Committee expressed concern that Vietnam's criminal legislation, particularly the Penal Code, does not explicitly criminalize torture.³⁰ The recommendations of the UN treaty bodies do not appear to have been implemented, demonstrating the lack of steps being taken to address gaps and the absence of safeguards to prevent torture.
30. This evidence is not outdated but has been strongly reaffirmed by various civil society organizations during the recent examination of Vietnam's human rights record at the UN Human Rights Council's Universal Periodic Review (UPR) in May 2024. The adoption of the outcome report is expected in September 2024. During this review, concerns were expressed about the widespread use of torture and other ill-treatment against persons deprived of liberty.³¹ Additionally, concerns were raised about the lack of incorporation of the absolute prohibition of torture into the country's legislation, as well as the practices of incommunicado detention and solitary confinement.³²

IV. Thailand's *non-refoulement* obligation is absolute in nature without any exception under international human rights law

31. As an inherent element of the prohibition of torture and other ill-treatment and of the prohibition of enforced disappearance, the *non-refoulement* principle — as guaranteed under various instruments of international human rights law applicable to Thailand,³³ and

²⁷ CAT/C/GC/4, para 48

²⁸ CCPR/C/VNM/CO/3, paras 25 and 27

²⁹ CAT/C/VNM/CO/1, paras 8 and 14.

³⁰ CCPR/C/VNM/CO/3, para 27

³¹ This was despite the Vietnamese government's response to the UN Committee Against Torture, which claimed a consistent policy of strictly punishing those who commit acts of torture and ill-treatment.

³² Working Group on the Universal Periodic Review, 'Summary of stakeholders' submissions on Viet Nam,' UN Doc. A/HRC/WG.6/46/VNM/3, 21 February 2024, paras 13-15, available at: <https://www.ohchr.org/en/hr-bodies/upr/vn-index>

³³ CCPR/C/21/Rev.1/Add.13, para. 12; UNCAT and ICPPED.

as emphasized by several UN independent human rights experts in their abovementioned communication to the Thai Government³⁴ — is absolute in nature, without any exception and no derogations permitted either in law or in practice.

32. With respect to the question of diplomatic assurances, the ICJ considers that whenever upon removal the individual concerned would face a real risk of torture or other ill-treatment, enforced disappearance or other irreparable harm, diplomatic assurances are unreliable, ineffective and contrary to the non-refoulement principle.³⁵ According to the UN Committee against Torture, diplomatic assurances from a State party to the Convention — such as those provided by the Vietnamese Government in this case, as reportedly attested by the representative of the Thai Ministry of Foreign Affairs to the Bangkok Criminal Court — “should not be used as a loophole to undermine the principle of *non-refoulement*.”³⁶ Our position aligns with that of the UNHCR, which states that diplomatic assurances “should be given no weight” when a refugee who enjoys the protection of the 1951 Convention is being refouled to the country of origin or former habitual residence.³⁷

V. Conclusion

33. In light of the above submissions, the ICJ respectfully requests that the Court interpret Thailand’s laws to ensure conformity with the country’s international human rights law obligations, including the UNCAT, ICPPED and ICCPR. In particular, the organization calls on the Court to uphold the *non-refoulement* principle, ensuring that Thailand does not extradite a person to another State where there are substantial grounds for believing that the individual would be in danger of irreparable harm.
34. The ICJ submits that there are substantial grounds for believing that Mr. Y Quynh Bdap would be at risk of torture or other ill-treatment or other irreparable harm if extradited. This risk is based on his identity, personal circumstances, ethnic background, religious affiliation, and prior predicament in Vietnam, including torture in detention, arbitrary and incommunicado detention, as well as on his conviction *in absentia*. The risks he faces are compounded by the widespread use of torture, impunity for its perpetrators, harassment, and violence against minority groups in Vietnam. These factors illustrate a consistent pattern of gross, flagrant, or mass human rights violations, as well as a lack of adequate preventive measures in Vietnam, both in law and in practice.

³⁴ Communication AL THA 6/2024, at 4.

³⁵ ICJ, Amnesty International and Human Rights Watch, ‘Reject rather than regulate: Call on Council of Europe member states not to establish minimum standards for the use of diplomatic assurances in transfers to risk of torture and other ill-treatment’, 2 December 2005, available at: <https://www.amnesty.org/en/documents/ior61/025/2005/en/>

³⁶ CAT/C/GC/4, para 20.

³⁷ UNHCR, ‘UNHCR Note on Diplomatic Assurances and International Refugee Protection,’ August 2006, para. 30, available at: <https://www.refworld.org/policy/legalguidance/unhcr/2006/en/40015>