



THE OBSERVATORY
for the Protection of
Human Rights Defenders

Gerald Staberock
Secretary General
World Organisation Against Torture (OMCT)
Rue du Vieux Billard 8
1205 Geneva, Switzerland

Alice Mogwe
President
FIDH (International Federation for Human
Rights)
17 Passage de la Main d'Or
75011 Paris, France

Mr. Sakchai Rangsiwong
Chief Justice of the Criminal Court
Criminal Court, Ratchadaphisek Road
Chom Phon Subdistrict
Chatuchak District
Bangkok, Thailand, 10900

Mrs. Anocha Chevitsophon
President of the Supreme Court of Thailand
6 Ratchadamnoen Nai Road
Phra Borom Maha Ratchawang Subdistrict
Phra Nakhon District
Bangkok, Thailand 10200

August 19, 2024

Dear Mr. Sakchai Rangsiwong and
Mrs Anocha Chevitsophon,

RE: Concerns over possible extradition of Y Quynh Bdap

The Observatory for the Protection of Human Rights Defenders (the Observatory), a joint partnership between the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH) created in 1997 to prevent or remedy situations of repression against human rights defenders, is respectfully writing to express its concern regarding the extradition proceedings of Mr. Y Quynh Bdap, currently underway before the Bangkok Criminal Court under file number **Por Dor 8/2567**.

Mr. Y Quynh Bdap is a Montagnard and Ede indigenous human rights defender and the co-founder of Montagnards Stand for Justice. His organisation advocates for religious freedom, indigenous rights, and land rights in Viet Nam. Since 2018, Mr. Bdap has resided in Thailand, where he has been recognised as a refugee by the United Nations High Commissioner for Refugees (UNHCR) and is awaiting resettlement to a third country.

On June 11, 2024, Thai authorities arrested Mr. Bdap for overstaying his visa, following an extradition request from the Vietnamese government, and detained him at the Bangkok Remand Prison. This arrest occurred one day after Mr. Bdap's meeting with Canadian Embassy officials in Bangkok regarding his resettlement. In January 2024, Vietnamese authorities had convicted him *in absentia* to 10 years in prison on terrorism charges. This



conviction was part of a “mobile trial” involving 100 defendants and failed to meet international fair trial standards. The charges stemmed from Mr Bdap’s alleged involvement in attacks on government offices in Dak Lak Province, Viet Nam, in June 2023, resulting in nine deaths. Mr. Bdap has consistently denied any involvement in these attacks and asserted that his human rights work is peaceful and non-violent. At the time of the events, he had already left Viet Nam to seek asylum in Thailand.

On July 4, 2024, United Nations (UN) human rights experts [expressed](#) “grave concern” about Viet Nam’s extradition request and urged Thai authorities to “respect the obligation of *non-refoulement* under international human rights law”. During Mr. Bdap’s extradition hearing on July 15, 2024 at Bangkok Criminal Court, his lawyer requested a postponement due to the late receipt of the extradition application in a language that Mr. Bdap understands and to limited visitation times, which hampered preparation for the inquiry. Mr. Bdap had only received the application on July 10, 2024, due to the prison’s review regulations for foreign language documents, and as a new foreign detainee, he is limited to 20-minute visits per day with his lawyers. The hearing was subsequently postponed to August 1 and 19. On August 1, Mr. Bdap did not appear in court following the request of the prosecutor to hold the proceedings via video conferencing. His lawyer objected to proceed with the witness examination without Mr. Bdap’s presence. The hearing was adjourned to August 2.

The Observatory is deeply concerned that Mr. Bdap’s extradition to Viet Nam could expose him to the risk of torture, other ill-treatment or enforced disappearance, thereby violating the principle of *non-refoulement*. International treaties and customary law¹ prohibit the expulsion (or *refoulement*) of individuals to states where they face a real risk of such severe violations. Thailand, as a state party to the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), and the recently ratified International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), is obligated to prevent actions leading to torture and enforced disappearance, including refraining from extraditing individuals to countries where they are at significant risk of such human rights violations.

The jurisprudence of the United Nations Committee against Torture (CAT), the Human Rights Committee, and other international human rights bodies has consistently affirmed the *non-refoulement* principle as an inherent part of the prohibition against torture and other forms of ill-treatment.² Article 3(1) of the UNCAT explicitly prohibits the expulsion, return (*refoulement*),

¹ For a detailed discussion of the sources, scope and application of the non-refoulement principle, see Joint Third Party intervention of AI, APT, HRW, INTERIGHTS, ICJ, OSI and REDRESS in *Ramzy v. The Netherlands*, 22 November 2005. On non-refoulement as a fundamental norm of international refugee law: UNHCR, “Advisory Opinion on the Extraterritorial Application of NonRefoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol” (2007); see also Farmer, A., *Non-Refoulement and Jus Cogens: Limiting Anti-Terror Measures that Threaten Refugee Protection* (2008), available at: <http://www.hrw.org/node/108468>

² CAT Committee: among others, *Abdussamatov et al. v. Kazakhstan*, Comm. No. 444/2010, para. 13.7, *Tebourski v. France*, Comm. No. 300/2006, para. 8.2, General Comment No. 2, para. 6; HRC General Comment 20, para. 9; *HRC, Chitat Ng v. Canada*, Comm. No. 469/1991, para. 16.4; *Loizidou v. Turkey*, No. 15318/89, ECtHR (18 December 1996); *Soering v. the United Kingdom*, No. 14038/88, ECtHR (7 July 1989); *Chahal v. the United Kingdom*, No. 22414/93, ECtHR (15 November 1996); African Commission: *Modise v. Botswana*, Communication

or extradition of individuals to another state where there are substantial grounds to believe that they would be in danger of being subjected to torture in the state of destination, either as individuals or as members of a group.³ The CAT's General Comment No. 2 (2007) extends this obligation to include both torture and ill-treatment.⁴ In this regard, the CAT's case law indicates that a risk of being subjected to ill-treatment under Article 16 of UNCAT could itself give rise to the application of the *non-refoulement* principle.⁵ The CAT also made it clear in its General Comment No. 4 (2017) that the principle of *non-refoulement* is absolute, even in cases involving national security concerns. Charges of terrorism do not exempt states from their obligations under Article 3 of UNCAT. The CAT's decisions in cases such as *Agiza v. Sweden*,⁶ *Abdussamatov et al. v. Kazakhstan*,⁷ *B.S. v. Sweden*,⁸ *Erdoğan v. Morocco*,⁹ *Singh v. Canada*,¹⁰ and *Nasirov v. Kazakhstan*,¹¹ affirm that the fight against terrorism does not absolve a state party from its obligation to refrain from expelling or returning individuals where there are substantial grounds to believe that they would face torture. The Committee's practice has been to determine that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".¹²

Indicators of personal risk may include ethnic background, arrest and/or detention without guarantee of fair treatment and trial, sentencing in absentia, previous torture, religious affiliation, and violations of the right to freedom of thought, conscience and religion, including prohibition of conversion to a religion different from the State religion and where such a conversion is prohibited and punished in law and in practice.¹³ Authorities must consider all relevant factors, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the concerned state.¹⁴

States must implement Article 3 of UNCAT through legislative, administrative, judicial, and preventive measures against violations of the *non-refoulement* principle. This includes ensuring that individuals are fully informed of the reasons for deportation procedures, provided access to these procedures in a language they understand, and assisted by interpreters if needed.¹⁵ In cases where obligations under Article 3 conflict with those under multilateral or

97/93, (229XXXVII), para. 91. For further analysis, see CINAT recommendations on the Torture Resolution of the UN Commission on Human Rights, March/April 2005

³ General Comment No. 4, para. 11, 2017

⁴ CAT Committee, General Comment No. 2, para. 6. See also *ibid.*, para. 25, "[a]rticles 3 to 15 of the Convention constitute specific preventive measures that the States parties deemed essential to prevent torture and ill-treatment, particularly in custody or in detention" (emphasis added).

⁵ See CAT Committee, *E.L. v. Canada*, Comm. No. 370/2009, para. 8.6. See also, *inter alia*, Concluding Observations on the Netherlands, (2013) UN Doc. CAT/C/NLD/CO/5–6, para. 11(a)

⁶ Comm. No. 233/2003, UN Doc. CAT/C/34/D/233/2003

⁷ Comm. No. 444/2010, UN Doc. CAT/C/48/D/444/2010

⁸ Comm. No. 1076/2021, UN Doc. CAT/C/78/D/1076/2021

⁹ Comm. No. 827/2017, UN Doc. CAT/C/66/D/827/2017

¹⁰ Comm. No. 319/2007, UN Doc. CAT/C/46/D/319/2007

¹¹ Comm. No. 475/2011, UN Doc. CAT/C/52/D/475/2011

¹² General Comment No. 4, para. 11, 2017

¹³ See CAT Committee, *E.L. v. Canada*, Comm. No. 370/2009, para. 8.6. See also, *inter alia*, Concluding Observations on the Netherlands, (2013) UN Doc. CAT/C/NLD/CO/5–6, para. 11(a)

¹⁴ United Nations Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, Article 3(2)

¹⁵ General Comment No. 4, para. 18

bilateral extradition treaties, such treaties should be applied in accordance with the principle of *non-refoulement* or include a clause ensuring that the Convention prevails.¹⁶

Thailand's domestic legislation also upholds the principle of *non-refoulement*. Article 13 of the Act on Prevention and Suppression of Torture and Enforced Disappearances, which took effect on February 22, 2023, explicitly prohibits the expulsion, deportation or extradition of individuals to states where there are substantial grounds to believe that they would be subjected to torture, cruel, inhuman or degrading treatment or enforced disappearance.

Extraditing Y Quynh Bdap to Viet Nam would constitute a clear violation of Thailand's obligations under both domestic and international law. Mr. Bdap faces a significant risk of arbitrary detention, torture and enforced disappearance, a particularly serious threat given Viet Nam's documented history of violations against Montagnard communities and dissidents.¹⁷ Human rights groups and UN experts have repeatedly condemned Viet Nam's repression of ethnic Indigenous peoples and religious minorities, who face discrimination, forced renunciations, and conversion to state-approved churches.¹⁸ In 2018, the CAT's Concluding Observations on Viet Nam's initial report raised concerns over the "reported disproportionate number of detentions and the high number of deaths in custody of members of ethnic and religious minorities, in particular 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".¹⁹

Recent incidents have underscored the ongoing persecution of ethnic and minority groups in Viet Nam and the severe risks faced by Mr. Bdap. On March 8, 2024, [Y Bum Bya](#), a Christian from the Central Highlands Evangelical Church of Christ in Viet Nam, was found dead with signs of torture after a meeting with public security officers in Dak Lak Province. Previously, in December 2023, he was beaten by police and forced to renounce his church affiliation. This incident is part of a broader crackdown on the Evangelical Church of Christ of the Central Highlands, which includes members of the Montagnard ethnic group. In January 2024, [Nay Y Blang](#), an Ede ethnic group Evangelist, was sentenced to four-and-a-half-year in prison for resisting government orders to disband his house church. On March 28, [Y Krec Bya](#) was sentenced to 13 years in prison for "sabotaging the national unity policy". Additionally, on April 28, 2023, UN human rights experts issued a communication to the government of Viet Nam expressing serious concern over the alleged arbitrary arrest, threats, surveillance, undue travel restrictions, and harassment of Montagnard human rights defenders Y Khiu Niê and Y Sî Êban, which appeared to be related to their legitimate exercise of fundamental rights. The experts also highlighted an "emerging pattern of intimidation and reprisals" against those

¹⁶ Ibid., para. 23

¹⁷ See for instance UN Special Procedures, *Viet Nam : End convictions and deplorable detention conditions for human rights defenders, UN experts say*, 14 February 2024; Joint Special Procedures Communication AL VNM 2/2023, 28 April 2023

¹⁸ See Human Rights Watch, *Persecuting "Evil Way" Religion: Abuses against Montagnards in Vietnam*, 26 June 2015

¹⁹ UN Doc. CAT/C/VNM/CO/1, para. 22, 28 December 2018

cooperating with civil society organisations, UN human rights mechanisms, or foreign diplomatic representatives.²⁰

The troubling precedents of forced repatriation and disappearance of Vietnamese human rights defenders in Thailand further amplify these concerns. For instance, Vietnamese journalist [Duong Van Thai](#) disappeared after being abducted in Bangkok on April 13, 2023. By April 16, 2023, Vietnamese state media reported that Duong Van Thai had been arrested while allegedly re-entering illegally Viet Nam from Laos. Similarly, in 2019, Vietnamese blogger [Truong Duy Nhat](#) was abducted in Thailand, only to resurface in Viet Nam days later. He was subsequently sentenced to 10 years in prison. At the time of his disappearance, Nhat was seeking refugee status in Thailand.

Furthermore, torture and ill-treatment remain pervasive in Viet Nam. The CAT, in its Concluding Observations, has expressed alarm over the widespread use of torture and ill-treatment in police stations, often employed to extract confessions and frequently resulting in deaths shortly after detention. The CAT highlighted the severe lack of fundamental legal safeguards for detainees, particularly those accused of national security offenses, which often leads to incommunicado detention. The high prevalence of deaths in custody, many attributed to police violence or unexplained causes, further underscores the gravity of the situation. Additional concerns include the frequent use of prolonged pretrial detention, reports of confessions obtained through torture leading to death sentences, and poor conditions in penitentiary facilities, such as inadequate sanitation, overcrowding, and insufficient healthcare, which may amount to torture. The CAT also noted issues with solitary confinement, punitive transfers, and restricted communication between prisoners and their families.²¹

We also wish to recall that Mr. Bdap's case is eminently political and, as such, it constitutes a clear exemption to his extradition from Thailand, pursuant to Article 9(2) of Thailand's Extradition Act (2008).

If returned to Viet Nam, Mr. Bdap would be one of the more than 200 other political prisoners that Viet Nam currently holds. They include individuals who have been detained or imprisoned for their human rights work, the legitimate and peaceful exercise of rights guaranteed by international law, and/or membership of certain religious groups or ethnic minorities.

Similarly to Mr. Bdap, most of Viet Nam's political prisoners have been charged under numerous "national security" provisions of the country's Criminal Code. These national security offenses, six of which carry the death penalty, make no distinction between violent acts and the peaceful and legitimate exercise of the right to freedom of expression. The government regularly invokes these offenses to criminalise the peaceful dissent and activities of human rights defenders, government critics, civil society activists, and members of non-recognised religious groups. Various UN human rights monitoring mechanisms have

²⁰ Joint Special Procedures Communication, UN Doc. VNM 2/2023, 28 April 2023

²¹ UN Doc. CAT/C/VNM/CO/1, para. 6-32, 28 December 2018

repeatedly declared that such vague and overly broad “national security” provisions are incompatible with international human rights law.

Given the aforementioned principles and precedents, we respectfully urge the Court to deny the extradition of Mr. Y Quynh Bdap and ensure that his safety and fundamental rights are protected. We believe that extraditing Mr. Bdap would place him at significant risk of torture and enforced disappearance. The current human rights situation in Viet Nam, combined with Mr. Bdap's personal circumstances and the nature of the charges against him, substantiate such risk. The Observatory respectfully calls upon the Court to act in full compliance with Thailand's obligations under both domestic and international human rights law. It is essential that the Court takes all necessary steps to uphold the guarantees of a fair trial, ensure protection against *refoulement*, and provide robust safeguards to prevent torture and ill-treatment. By adhering to these principles, the Court will not only protect Mr. Bdap's rights but also affirm Thailand's steadfast commitment to international human rights standards and to uphold the integrity of its legal system.

The Court's decision will also serve as a critical test of Thailand's new Act on Prevention and Suppression of Torture and Enforced Disappearances and the recently ratified ICPPED, demonstrating the country's commitment to implementing these vital legal instruments. This decision has the potential to reaffirm Thailand's dedication to international human rights and contribute to the global effort to eradicate torture and ill-treatment.

We urge the Court to carefully consider these factors in its decision and remain at the Court's disposal for any further information or assistance required.

Sincerely,



Gerald Staberock
Secretary General
World Organisation Against Torture (OMCT)



Alice Mogwe
President
FIDH (International Federation for Human Rights)