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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021****Opinion No. 82/2021 concerning Đinh Thị Thu Thủy (Viet Nam)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,<sup>1</sup> on 4 August 2021 the Working Group transmitted to the Government of Viet Nam a communication concerning Đinh Thị Thu Thủy. The Government replied to the communication on 4 November 2021. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (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 or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (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 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).

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<sup>1</sup> [A/HRC/36/38](#).



## Submissions

### *Communication from the source*

4. Đinh Thị Thu Thủy is a citizen of Viet Nam, usually residing in the city of Ngã Bảy, Hậu Giang Province, Viet Nam. She was 39 years of age at the time of her arrest.

5. The source reports that Ms. Đinh is an environmental activist with a master's degree in aquatic pathology. She is reportedly one of many Facebook users and bloggers in Viet Nam to have recently been detained and sentenced to lengthy prison terms after being convicted of anti-State propaganda for their social media posts.

6. According to the source, on 18 April 2020, Ms. Đinh was arrested at her home by approximately 50 Hậu Giang police officers, who did not produce a warrant or any other decision issued by a public authority. The officers reportedly surrounded Ms. Đinh's home, entered it, searched all the rooms and seized a number of items, then arrested Ms. Đinh. They also ordered a member of Ms. Đinh's family to sign a police report regarding the search and seizure.

7. Relatives of Ms. Đinh reportedly received notification of her detention from the police two days later. Ms. Đinh was charged with making, storing or spreading information, materials or items for the purpose of opposing the State, under article 117 of the Criminal Code of 2015 (previously covered under article 88 (c) of the Criminal Code of 1999). The forces holding her in custody are reportedly the People's Procuracy of Hậu Giang Province and the Hậu Giang police Security Investigations Office.

8. Ms. Đinh was initially held in Hậu Giang police detention centre. She was reportedly held incommunicado for nearly eight months following her arrest and was not permitted to consult a lawyer until one month before her court date of 20 January 2021. After a short trial, which lasted just four hours, Ms. Đinh was sentenced to seven years in prison. She is currently being detained in An Phước prison, in the district of Phú Giáo, Bình Dương Province.

9. The source submits that the arrest and detention of Ms. Đinh is arbitrary under categories I, II and III: under category I, because it is arguably impossible to invoke any legal basis justifying her deprivation of liberty and continued detention; under category II, because her deprivation of liberty allegedly resulted from the peaceful exercise of her rights to freedom of expression, opinion and association; and under category III, because her detention and prosecution failed to meet the minimum international standards of due process.

10. The source specifies that the Working Group has found detention to be arbitrary under category I when either of the following conditions are present: (a) the Government has held an individual incommunicado for a period of time; and (b) vague laws are used to prosecute an individual.<sup>2</sup> In this context, the source recalls that Ms. Đinh was held incommunicado for many months after her arrest. In addition, she was convicted under article 117 of the 2015 Criminal Code, which the source alleges is too vague to provide a legal basis for detention.

11. The source specifies that the Human Rights Committee has determined that incommunicado detention inherently violates article 9 (3) of the Covenant.<sup>3</sup> This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights, such as freedom from torture. The source recalls that the prohibition of incommunicado detention is also articulated in principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, according to which communication of detainees with the outside world, in particular their family or counsel, must not be denied for more than a matter of days. The source states that Ms. Đinh was not permitted to see her family for seven months or to consult with an attorney for eight months after her arrest, thus resulting in incommunicado detention that clearly constitutes a violation under category I.

12. Moreover, the source recalls that article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant both guarantee the right of individuals to know what

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<sup>2</sup> Opinions No. 3/2013, paras. 30–34, and No. 60/2013, para. 22.

<sup>3</sup> General comment No. 35 (2014), para. 35.

the law is and what conduct violates the law. These articles protect citizens from prosecution for any criminal offence that did not constitute an offence, under national or international law, at the time when it was committed. According to the Human Rights Committee, any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.<sup>4</sup>

13. In this context, the source submits that the offence of making, storing or spreading information, materials or items for the purpose of opposing the State is defined so vaguely under article 117 of the Criminal Code as to make it impossible for any individual to reasonably foresee and anticipate what behaviour is criminal. The article refers to “distorted information”, “fabricated information” and “psychological warfare”, but no instruction or clarification is provided as to what they entail. The source states that the article fails to give individuals fair notice of what conduct is prohibited. The source therefore argues that Ms. Đinh was arbitrarily prosecuted under that article for acts whose classification as criminal is impossible to foresee and that are protected under the Universal Declaration of Human Rights, the Covenant and other international norms and standards. The source submits that because the crime of “making, storing or spreading information, materials or items for the purpose of opposing the State” is so vague as to be meaningless, conviction under that article cannot form a legal basis justifying Ms. Đinh’s detention.

14. In relation to category II, the source submits that Ms. Đinh’s detention is a direct result of the exercise of her fundamental rights to freedom of opinion, expression and association, as guaranteed by the Universal Declaration of Human Rights and the Covenant.

15. In this context, the source notes that the rights to freedom of opinion and expression are protected by international instruments and include the freedom to seek, receive and impart information of all kinds, either orally or in writing. Article 19 (2) of the Covenant provides for the right of everyone to freedom of expression, and article 19 of the Universal Declaration of Human Rights provides for an analogous guarantee of freedom of opinion and expression. The Human Rights Committee has clarified that article 19 (2) of the Covenant protects all forms of expression and the means of their dissemination, including all forms of audiovisual, electronic and Internet-based modes of expression.<sup>5</sup>

16. The source notes that article 19 of the Covenant is of special importance for human rights defenders, and that international law explicitly recognizes that those who seek the promotion and protection of civil and political rights and the promotion, protection and realization of economic, social and cultural rights, including environmental rights, are to be treated as human rights defenders. The Working Group has confirmed the right of human rights defenders to investigate, gather information regarding and report on human rights violations.<sup>6</sup>

17. Furthermore, it is noted that the Human Rights Committee has also specifically recognized that article 19 (2) of the Covenant protects the work of activists, and includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.<sup>7</sup> The imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny. The Working Group has recognized the need to subject interventions against individuals who may qualify as human rights defenders to particularly intense review.<sup>8</sup> This heightened standard of review by international bodies is especially appropriate where there is a pattern of harassment by national authorities targeting such individuals.<sup>9</sup>

18. The source submits that, in the present case, the authorities arbitrarily harassed, detained and prosecuted Ms. Đinh under article 117 of the Criminal Code as a direct result of her activities as an environmental activist and human rights defender. The authorities have therefore deprived Ms. Đinh of her liberty under a law that is itself incompatible with the

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<sup>4</sup> Ibid., para. 22.

<sup>5</sup> General comment No. 34 (2011), para. 12.

<sup>6</sup> Opinion No. 8/2009, para. 18.

<sup>7</sup> *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

<sup>8</sup> Opinion No. 62/2012, para. 39.

<sup>9</sup> Opinion No. 39/2012, para. 45.

rights to freedom of opinion and expression guaranteed under the Universal Declaration of Human Rights and the Covenant.

19. The source argues that Ms. Đinh was imprisoned for criticizing the Government, a violation of her rights to freedom of opinion and expression both *de jure* and *de facto*. Ms. Đinh's arrest, conviction and lengthy sentence were an attempt to silence her and to punish her for sharing her views, an activity that is expressly protected by international law.

20. Moreover, the source submits that Ms. Đinh was convicted for exercising her freedom of association. In this regard, the source notes that article 20 (1) of the Universal Declaration of Human Rights states that everyone has the right to freedom of peaceful assembly and association, while article 22 (1) of the Covenant states that everyone has the right to freedom of association with others.

21. The source recalls that the Human Rights Council, in its resolution 15/21, specifically called upon States to respect and fully protect the rights of all individuals to associate freely, including persons espousing minority or dissenting views and human rights defenders. The source also recalls that the Human Rights Committee has noted that the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25 of the Covenant, on the right to participate in public affairs.<sup>10</sup>

22. In this context, the source submits that, contrary to the above-mentioned international standards, Viet Nam has criminalized and imprisoned individuals for associating with others who are critical of the Government. By punishing Ms. Đinh for associating with others using an online platform such as Facebook, the authorities violated her right to freedom of association, in contravention of article 20 (1) of the Universal Declaration of Human Rights, article 22 (1) of the Covenant and article 25 of the Constitution.

23. The source notes that none of the restrictions on freedom of expression and association enumerated under articles 19 (3) and 22 (2) of the Covenant applies to the prosecution and detention of Ms. Đinh. Article 20 of the Covenant requires States parties to prohibit propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The Human Rights Committee has confirmed, however, that limitations of expression that a State party justifies on the basis of article 20 must also comply with article 19 (3).<sup>11</sup>

24. The source also recalls that, pursuant to article 19 (3) of the Covenant, freedom of expression may be restricted only as necessary for the protection of national security or of public order (*ordre public*), or of public health or morals. The Human Rights Committee has emphasized the narrowness of the limitations set forth in article 19 (3) of the Covenant by noting that, when a State party imposes a limitation on the exercise of freedom of expression, it may not put in jeopardy the right itself.<sup>12</sup>

25. Article 22 (2) of the Covenant provides that no restrictions may be placed on the exercise of the right to freedom of association other than those that are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. It also provides that article 22 should not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of that right. Any limitation of the exercise of the rights to freedom of expression and association must meet a strict test of justification.<sup>13</sup> As guidance, the Human Rights Committee has established three requirements for any limitation of the right to freedom of expression and association. A permissible limitation must be: (a) provided for by law; (b) for the purposes of protection of national security, public order, or public health or morals; and (c) necessary to achieve one of these enumerated purposes.<sup>14</sup>

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<sup>10</sup> General comment No. 25 (1996), para. 26.

<sup>11</sup> General comment No. 34 (2011), para. 50.

<sup>12</sup> *Ibid.*, para. 21.

<sup>13</sup> *Park v. Republic of Korea* (CCPR/C/64/D/628/1995), para. 10.3.

<sup>14</sup> *Shin v. Republic of Korea* (CCPR/C/80/D/926/2000), para. 7.2.

26. The source argues that the limitation of Ms. Đinh's freedom of expression and association fails to meet the second requirement, as the restrictions imposed by the Government on her right to freedom of expression and association were not for a proper purpose. None of Ms. Đinh's writings called directly or indirectly for violence or could reasonably be considered a threat to national security, public order, or public health or morals. The source submits that the authorities have used the term "conducting propaganda" as a pretext to silence her criticism, which under article 19 (3) of the Covenant is not an acceptable purpose. It notes that, indeed, the Human Rights Committee has explicitly recognized that the right to freedom of expression includes political discourse and discussion of human rights.<sup>15</sup> The source concludes that because Ms. Đinh's advocacy is protected under article 19 (2), and because the limitations on it do not fall within the exceptions contained in articles 19 (3), Ms. Đinh's continued detention is arbitrary under category II.

27. In relation to category III, the source submits that Ms. Đinh's right to habeas corpus and her right to be released pending trial have been violated, citing article 9 (3) of the Covenant, and article 9 (4) for non-criminal defendants. The Human Rights Committee has interpreted the term "promptly" to mean within 48 hours, except in exceptional circumstances, and has noted that this requirement should be observed even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.<sup>16</sup> Moreover, incommunicado detention inherently violates article 9 (3) of the Covenant.<sup>17</sup> The right to habeas corpus is reiterated in principles 4, 11, 32 (1) and 37 of the Body of Principles. These provisions not only serve as a check on arbitrary detention, but also safeguard other related rights, such as freedom from torture.<sup>18</sup>

28. In addition to the right to habeas corpus, article 9 (3) of the Covenant also enshrines an individual's right to release pending trial, as it provides that it should not be the general rule that persons awaiting trial are detained in custody. According to the Human Rights Committee, detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.<sup>19</sup> Principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.

29. The source recalls that Ms. Đinh was never brought before a judge to determine the legality of her arrest and continuing detention. A bail hearing was never held, nor was any publicly released individualized determination made about why such extended pretrial detention was necessary. Ms. Đinh's pretrial detention was not authorized by any judicial officer. The source concludes that, by refusing to bring Ms. Đinh promptly before a judge to challenge the legality of her detention and by denying her release pending trial, the authorities violated article 9 (3) and (4) of the Covenant and principles 11, 32, 37, 38 and 39 of the Body of Principles.

30. The source further argues that the authorities have violated Ms. Đinh's right to family visits. It notes that, according to principle 19 of the Body of Principles, detained or imprisoned persons have the right to be visited by and to correspond with, in particular, members of their family, subject to reasonable conditions and restrictions as specified by law or lawful regulations. Similarly, this right is protected by the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), notably rule 43, under which disciplinary sanctions or restrictive measures must not include the prohibition of family contact; rule 58, under which prisoners must be allowed, under necessary supervision, to communicate with their family and friends at regular intervals; and rule 106, under which special attention must be paid to the maintenance and improvement of such relations between prisoners and their family as are desirable in the best interests of both.

<sup>15</sup> General comment No. 34 (2011), para. 11.

<sup>16</sup> General comment No. 35 (2014), paras. 32–33.

<sup>17</sup> *Ibid.*, para. 35.

<sup>18</sup> *Ibid.*, para. 34.

<sup>19</sup> *Ibid.*, para. 38.

31. The source states that Ms. Đinh was held incommunicado for many months after her arrest, during which time she was prohibited from meeting with members of her family, including her young child. By detaining Ms. Đinh incommunicado prior to trial, and by prohibiting visits from her family, the authorities violated principle 19 of the Body of Principles and rules 43, 58 and 106 of the Nelson Mandela Rules.

32. The source argues that Ms. Đinh's right to be tried without undue delay was also violated. The source recalls that article 14 (3) (c) of the Covenant guarantees the right of every defendant to be tried without undue delay. An important aspect of the fairness of a hearing is its expeditiousness, and in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.<sup>20</sup> This right applies from the formal charging of the accused not just until the trial commences, but until the final judgment on appeal is handed down. The right to be tried without undue delay is reiterated in principle 38 of the Body of Principles and guaranteed under article 31 of the Constitution.

33. What constitutes a reasonable amount of time within which a trial must be held must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the administrative and judicial authorities.<sup>21</sup>

34. The source argues that more than nine months elapsed before Ms. Đinh was tried. She was held in custody throughout that time, and the authorities never explained why such a delay to her trial was necessary. The situation was exacerbated by the fact that, as mentioned above, Ms. Đinh was never given a bail hearing and was forced to remain in detention for the entire time before trial, much of which was incommunicado. The source concludes that, by refusing to give Ms. Đinh a bail hearing and by unnecessarily delaying her trial, the authorities violated article 14 (3) (c) of the Covenant, principle 38 of the Body of Principles and article 31 of the Constitution.

35. The source further submits that the authorities violated Ms. Đinh's right to communicate with her legal counsel. In this context, the source recalls that, under article 14 (3) (b) and (d) of the Covenant, all accused persons are entitled to defend themselves in person or through legal assistance of their own choosing, to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. This guarantee requires that accused persons be granted prompt access to counsel,<sup>22</sup> and State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.<sup>23</sup> Principle 18 of the Body of Principles provides for the right of a detainee to communicate and consult with legal counsel, and rule 119 of the Nelson Mandela Rules provides for the right of access to legal advice. Likewise, the Constitution guarantees the right of detained or criminally charged persons to choose defence counsel.

36. The source reiterates its earlier submission that Ms. Đinh was held incommunicado and deprived of her right to prompt access to counsel. Consequently, it submits that the authorities violated article 14 (3) (b) and (d) of the Covenant, principle 18 of the Body of Principles, rule 119 of the Nelson Mandela Rules and article 31 of the Constitution.

37. Lastly, the source argues that Ms. Đinh's right to a fair hearing was also violated. It notes that article 14 of the Covenant guarantees the right to a fair and public hearing, which is an absolute requirement that should not be subject to limitation. It argues that one of the key tenets of a fair hearing is the principle of equality between parties, which demands that each side be given the opportunity to contest all the arguments and evidence adduced by the other party.<sup>24</sup> Notably, article 14 (3) (e) of the Covenant states that defendants should have the right to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. Articles 7 and 10 of the Universal Declaration of Human Rights guarantee these same rights. In the present case, Ms. Đinh's attorneys were not permitted to

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<sup>20</sup> Human Rights Committee, general comment No. 32 (2007), paras. 27 and 35.

<sup>21</sup> *Ibid.*, para. 35.

<sup>22</sup> *Ibid.*, para. 34.

<sup>23</sup> Human Rights Committee, general comment No. 35 (2014), para. 35.

<sup>24</sup> Human Rights Committee, general comment No. 32 (2007), para. 13.

examine witnesses who had concluded that her writings constituted propaganda. Moreover, Ms. Đinh's trial was very short (lasting only four hours), a fact which, according to the source, clearly establishes that Ms. Đinh's guilt had been determined prior to the hearing, and thus that she was denied the right to be presumed innocent, guaranteed under article 14 (2) of the Covenant.

38. The source concludes that, given that Ms. Đinh's arrest, trial and pretrial detention were characterized by violations of her due process rights, it is unlikely that any appeal of Ms. Đinh's conviction would result in her release or a lighter sentence.

*Response from the Government*

39. On 4 August 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 4 October 2021, detailed information about the current situation of Ms. Đinh and to clarify the legal provisions justifying her continued detention, as well as its compatibility with the State's obligations under international human rights law, in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Ms. Đinh's physical and mental integrity.

40. On 28 September 2021, the Government requested an extension, in accordance with paragraph 16 of the methods of work of the Working Group. The extension was granted, with a new deadline of 4 November 2021. The Government submitted its reply on 4 November 2021.

41. The Government submits that the right to freedom of expression is not an absolute right and that the exercise of this right is subject to the limits provided by law, as affirmed in article 29 of the Universal Declaration of Human Rights and article 19 (3) of the Covenant. Accordingly, the right to freedom of expression does not cover the use of information that distorts the truth as propaganda with a view to infringing the lawful rights and interests of individuals and organizations in society. The Government notes that, in order to ensure a democratic and civilized society, the exercise of the right to freedom of expression must come with the responsibility of each individual with respect to the information that the individual disseminates. Any individual abusing the right to freedom of expression or other rights to freedom and democracy to conduct activities violating the law must be dealt with.

42. The Government submits that, while it encourages its citizens to exercise the right to freedom of expression to express their opinions on and criticism of the policies of the State, the exercise of this right needs to comply with legal provisions and be based on a constructive spirit and good faith when pointing out shortcomings, thus contributing to the construction and development of the country. The Government submits that it is strictly prohibited to abuse the rights to freedom and democracy, to criticism and to the protection of human rights by using as propaganda information that distorts the truth, incites hate and causes division in society, with the purpose of overthrowing the people's Government by the use of force.

43. The Government submits that Ms. Đinh was arrested for intentionally posting and sharing articles on social networks with untrue content that misrepresented the intent and policies of the State; inciting hatred and division between communities and the people and the State; obstructing cooperation between the people and the State; distorting the history of the struggle to gain the independence and unity of Viet Nam; defaming and offending the memory of Ho Chi Minh; and using hate speech to incite division between the regions of Viet Nam. The Government believes that the protection of national security and social order does not stop at preventing violent acts or direct threats. It contends that Ms. Đinh's acts cannot be regarded as the legitimate exercise of the rights to freedom and democracy, or to freedom of expression, peaceful assembly and association, and must be dealt with strictly by the law. The risks threatening the national security of Viet Nam and other countries come from violent acts, such as spreading fake and untrue news. The Government contends that acts of spreading fake news with a view to defaming and hurting the honour and reputation of other persons must be dealt with to ensure a clean, civilized and responsible information environment.

44. The Government submits that article 117 of the Criminal Code contains clear provisions determining offences and deals only with the use as propaganda of information

and documents that distort the truth and are against the State. It asserts that the Working Group takes into account only the form of acts exercising the right to freedom of expression (spreading of information) and ignores the nature and purpose of such acts (posting and spreading of information that distorts the truth, with a view to overthrowing the people's Government). This arguably leads to an incorrect assessment of the legal system and the judicial activities of Viet Nam. The Government submits that article 117 is fully compatible with article 19 (3) of the Covenant.

45. The Government submits that the warrants for the arrest and temporary detention of Ms. Đinh were approved by the People's Procuracy, the judicial agency empowered to examine the legality of criminal procedural activities carried out by investigative agencies, and that this is consistent with article 9 (3) of the Covenant. According to the Government, article 117 of the Criminal Code addresses offences infringing national security. Pursuant to article 74 of the Criminal Procedure Code and article 22 of the Law on Temporary Detention and Custody, the competent authorities issued the decision during legal proceedings in which three defence lawyers were allowed to take part, and Ms. Đinh was permitted to meet her relatives after the investigative phase was over, in order to ensure the confidentiality of the investigative process of cases infringing national security. After the investigative phase was over, Ms. Đinh and her defence lawyers were allowed to prepare for her defence, such as by having access to and copying documents in case records. The Government submits that there was no limitation on the number or length of the meetings between Ms. Đinh and her defence lawyers, in accordance with article 14 (3) of the Covenant.

46. The Government submits that the arrest and adjudication of Ms. Đinh fully complied with the provisions of the Criminal Procedure Code. It asserts that the execution of the arrest warrant against Ms. Đinh was published and witnessed by the local authority and Ms. Đinh's relatives. It submits that the execution of the arrest warrant against Ms. Đinh was recorded in a written document signed by all relevant parties. The allegation that the arrest warrant was not shown at the time of arrest is therefore untrue.

47. The Government submits that Ms. Đinh's trial was held publicly and fairly, and complied with the State's provisions on criminal procedures and all phases provided by State laws, including Ms. Đinh's right to defend herself and to be assisted by defence counsel during the trial. The Government submits that the duration of trials depends on how long is necessary to clarify evidence and the acts of the accused person, in accordance with legal provisions. Furthermore, the Government submits that, as no treaty specifies requirements for the duration of trials, the allegation that Ms. Đinh's guilt was predetermined merely because of the brief duration of the trial is groundless.

*Additional comments from the source*

48. The source notes that the Government fails to dispute the source's allegations, rather claiming that its actions were justified on the grounds of national security. The source reiterates its submission that Ms. Đinh's arrest and detention are arbitrary under categories I, II and III.

49. Regarding category I, the source notes that the Government does not dispute that Ms. Đinh was held incommunicado for many months after her arrest. The source also recalls the Working Group's previous findings that article 117 of the Criminal Code of 2015 is vague and overly broad, and is therefore incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant.

50. With regard to category II, the source claims that Ms. Đinh's conduct is expressly protected under article 19 (2) of the Covenant and that the Government failed to produce evidence of the conduct of which it accuses Ms. Đinh.

51. Lastly, in relation to category III, the source stresses that, given the arbitrary nature of Ms. Đinh's detention under category II, no trial should have been held. It adds that Ms. Đinh's Facebook posts did not jeopardize any legitimate national security interests that would warrant the deprivation of her due process rights.



## Discussion

52. The Working Group thanks the source and the Government for their submissions.

53. In determining whether Ms. Đinh's deprivation of liberty is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.<sup>25</sup>

### *Category I*

54. The source alleges that, on 18 April 2020, Ms. Đinh was arrested at her home by approximately 50 Hậu Giang police officers from who did not produce an arrest warrant or other decision issued by a public authority. The Government refutes this allegation.

55. While the Government submits that the execution of the arrest warrant was published and witnessed by the local authority and Ms. Đinh's relatives, it has not provided sufficiently detailed information about the arrest warrant. In contrast, in the light of the detailed submissions of the source on the circumstances surrounding the arrest, the Working Group considers that it has presented a credible prima facie case that the authorities did not present an arrest warrant at the time of Ms. Đinh's arrest.<sup>26</sup> Moreover, in a series of recent cases, the Working Group has found that an arrest warrant was not presented at the time of the arrest, suggesting that the source's claims are credible.<sup>27</sup>

56. The Working Group finds that Ms. Đinh was arrested without an arrest warrant, in violation of article 9 (1) of the Covenant. It is not sufficient that there is a law which authorizes the arrest. The authorities must invoke that legal basis and apply it through an arrest warrant.<sup>28</sup> An arrest is arbitrary when carried out without informing the arrested person of the reasons for the arrest.<sup>29</sup> Ms. Đinh was not informed of the reasons for her arrest at the time of arrest, and not promptly informed of the charges, in violation of article 9 of the Universal Declaration of Human Rights and article 9 (2) of the Covenant.

57. The source alleges that Ms. Đinh was held incommunicado for nearly eight months following her arrest. She was not permitted to consult a lawyer until one month before her court date of 20 January 2021. She was also not been permitted any visits by her family, including her young child, during this period. The Government does not dispute this submission but relies on article 74 of the Criminal Procedure Code (2015), which permits defence counsel's engagement in legal proceedings upon completion of the investigations in cases involving national security, to ensure confidentiality. The Government submits that these restrictions are fully consistent with article 14 (3) of the Covenant.

58. The Government does not dispute the source's submission that Ms. Đinh was not brought before a judge during her entire pretrial detention, most of which she spent incommunicado. The Working Group therefore finds that she was not brought promptly before a judicial authority to challenge her detention, in violation of article 9 (3) of the Covenant. The Government submits that the arrest warrants were approved by the People's Procuracy, pursuant to domestic legislation. However, as the Working Group has previously stated, the Procuracy is not an independent judicial authority.<sup>30</sup>

<sup>25</sup> [A/HRC/19/57](#), para. 68.

<sup>26</sup> Opinion No. 45/2018, paras. 40–42.

<sup>27</sup> Opinions No. 75/2017, para. 35; No. 35/2018, para. 26; No. 36/2018, para. 39; No. 45/2018, para. 40; No. 46/2018, para. 48; No. 8/2019, para. 49; No. 9/2019, para. 29; No. 44/2019, para. 51; No. 45/2019, para. 50; No. 36/2021, para. 68; and No. 40/2021, para. 62.

<sup>28</sup> Opinions No. 36/2018, paras. 39–40; No. 46/2018, para. 48; No. 44/2019, para. 52; and No. 45/2019, para. 51.

<sup>29</sup> Opinions No. 10/2015, para. 34, and No. 46/2019, para. 51. See also [CAT/C/VNM/CO/1](#), para. 16.

<sup>30</sup> [E/CN.4/1995/31/Add.4](#), para. 57 (c). See also opinions No. 75/2017, para. 48; No. 35/2018, para. 37; No. 46/2018, para. 50; No. 44/2019, para. 53; and No. 45/2019, para. 52. See also Human Rights Committee, general comment No. 35 (2014), para. 32; [CCPR/C/VNM/CO/3](#), para. 26; and [CAT/C/VNM/CO/1](#), paras. 24–25.

59. Moreover, as the Working Group and other human rights mechanisms have stated, holding persons incommunicado violates their right to challenge the lawfulness of their detention before a court under article 9 (3)<sup>31</sup> and (4) of the Covenant.<sup>32</sup> Incommunicado detention, especially during the early stage of an investigation, is an environment conducive to torture and cruel and inhuman treatment, as it may be used to coerce the individual to confess to the commission of the alleged crimes and admit guilt.<sup>33</sup> It may also be considered as amounting in itself to a form of torture or ill-treatment, prohibited under article 7 of the Covenant and articles 1 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

60. Judicial oversight of detention is a fundamental safeguard of personal liberty<sup>34</sup> and is essential in ensuring that detention has a legal basis. Given that Ms. Đinh was unable to challenge her detention before a court, her right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant has been violated. She was also placed outside the protection of the law, in violation of her right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant. The Working Group also finds that Ms. Đinh's right to contact with the outside world, under rules 43 (3) and 58 (1) of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles, has been violated.

61. The Government refers to article 117 of the Criminal Code as the legal basis for the detention of Ms. Đinh, submitting that the article contains clear provisions determining offences and deals with the use as propaganda of information and documents that distort the truth and are against the State. The Government submits that the Working Group fails to consider the underlying purpose of the acts, which is to overthrow the Government. The source argues that the offence of making, storing or spreading information, materials or items for the purpose of opposing the State is defined so vaguely under article 117 of the Criminal Code as to make it impossible for any individual to reasonably foresee and anticipate what behaviour is criminal. The article refers to "distorted information," "fabricated information" and "psychological warfare", but no instruction or clarification is provided as to what they entail. The source therefore argues that Ms. Đinh was arbitrarily prosecuted under that article for acts whose classification as criminal is impossible to foresee and that are protected under the Universal Declaration of Human Rights and the Covenant.

62. The Working Group considers that the charge on which Ms. Đinh is being detained is so vague that it is impossible to invoke a legal basis for her detention. Ms. Đinh was arrested and detained under article 117 of the Criminal Code for making, storing or spreading information, materials or items for the purpose of opposing the State, but no instruction or clarification is provided as to what constitutes "distorted information", "fabricated information" or "psychological warfare". She therefore could not have foreseen that campaigning for the environment would amount to criminal conduct.

63. The Working Group has raised the issue of prosecution under vague penal laws with the Government on several occasions,<sup>35</sup> specifically article 117 of the Criminal Code.<sup>36</sup> The principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law, and regulate their conduct accordingly.<sup>37</sup> In the Working Group's view, article 117 of the Criminal Code does not meet this standard. It

<sup>31</sup> Human Rights Committee, general comment No. 35 (2014), para. 35.

<sup>32</sup> Opinions No. 45/2017, No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

<sup>33</sup> General Assembly resolution 68/156, para. 27. See also [A/56/156](#), para. 39 (f), and Human Rights Committee, general comment no. 35 (2014), paras. 35 and 56.

<sup>34</sup> [A/HRC/30/37](#), para. 3, and [CAT/C/VNM/CO/1](#), para. 24.

<sup>35</sup> Opinions No. 21/1997, para. 6; No. 27/1998, para. 9; No. 13/1999, para. 12; No. 20/2003, para. 19; No. 27/2012, paras. 38–41; No. 26/2013, para. 68; No. 45/2015, para. 15; No. 40/2016, para. 36; No. 26/2017, para. 51; No. 27/2017, para. 35; No. 75/2017, para. 40; No. 79/2017, para. 54; No. 35/2018, para. 36; No. 36/2018, para. 51; No. 46/2018, para. 62; No. 8/2019, para. 54; No. 9/2019, para. 39; No. 44/2019, para. 55; and No. 45/2019, para. 54.

<sup>36</sup> For example, opinions No. 11/2021, paras. 67, 73–74 and 96; No. 36/2021, paras. 73–74, 77–78 and 103; and No. 40/2021, paras. 69, 73–75 and 99.

<sup>37</sup> Opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59, and Human Rights Committee, general comment No. 35 (2014), para. 22.

is thus incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant; due to its vague and overly broad language, the restrictions therein cannot be considered as provided by law or as defined with sufficient precision.<sup>38</sup> The Human Rights Committee has called on Viet Nam, as a matter of urgency, to take all necessary steps – including revising legislation such as article 117 of the Criminal Code that contains vague and broadly formulated offences – to end violations of the right to freedom of expression offline and online, and to ensure that restrictions do not go beyond the strictly defined limitations set forth in article 19 of the Covenant, taking into account the Committee’s general comment No. 34 (2011).<sup>39</sup>

64. For these reasons, the Working Group finds that the Government failed to establish a legal basis for Ms. Đinh’s arrest and detention. Her detention is arbitrary under category I.

#### *Category II*

65. The source submits that Ms. Đinh’s arrest, detention and prosecution are a direct result of the exercise of her fundamental rights to freedom of opinion, expression and association, as guaranteed under the Universal Declaration of Human Rights and the Covenant. The Government argues that she was arrested for violating national law, namely article 117 of the Criminal Code.

66. The source reports that Ms. Đinh is an environmental activist. According to the source, the authorities have used the term “conducting propaganda” as a pretext to silence her criticism, and Ms. Đinh was imprisoned for criticizing the Government. The Government submits that she was arrested for violating article 117 of the Criminal Code.

67. The Working Group considers that charges and convictions under article 117 of the Criminal Code for the peaceful exercise of rights cannot be regarded as consistent with the Universal Declaration of Human Rights or the Covenant. The Working Group has considered, in many opinions, the application of vague and overly broad provisions of the criminal laws of Viet Nam.<sup>40</sup> The Working Group came to a similar conclusion during its visit to Viet Nam in October 1994, noting that vague provisions on national security did not distinguish between violent acts capable of threatening national security and the peaceful exercise of rights.<sup>41</sup>

68. In May 2017, the United Nations country team in Viet Nam recommended that the State repeal or revise numerous articles of the Criminal Code, including article 117, on the basis of their incompatibility with the State’s human rights obligations under the Covenant.<sup>42</sup> Along with other provisions, article 117 was highlighted as being vague and broad without defining which action or activities were prohibited, or the constitutive elements of the prohibited offences. The country team also noted that those provisions did not differentiate between the use of violent means, which should be prohibited, and legitimate peaceful activities to protest, express one’s opinion, including criticism of the Government’s policies and actions, or advocate any kind of change, including of the political system, which directly fell under the rights to freedom of expression, opinion, assembly and religion and to participation in public life, and as such should be guaranteed and protected in accordance with international human rights law, in particular articles 18, 19, 21 and 25 of the Covenant.<sup>43</sup>

69. The Human Rights Committee has called on Viet Nam to end violations of the right to freedom of expression offline and online, and ensure that restrictions do not go beyond the strictly defined limitations set forth in article 19 of the Covenant.<sup>44</sup> It expressed regret that the vague and broadly formulated offences in various articles of the Criminal Code, including

<sup>38</sup> Human Rights Committee, general comment No. 34 (2011), paras. 22 and 25.

<sup>39</sup> [CCPR/C/VNM/CO/3](#), paras. 45 (a) and 46.

<sup>40</sup> Opinions No. 1/2003, No. 1/2009, No. 6/2010, No. 24/2011, No. 27/2012, No. 26/2013, No. 26/2017, No. 27/2017, No. 75/2017, No. 8/2019, No. 44/2019 and No. 45/2019. See also [A/HRC/41/7](#), paras. 38.73, 38.171, 38.175, 38.177, 38.183–38.184, 38.187–38.191 and 38.196–38.198.

<sup>41</sup> [E/CN.4/1995/31/Add.4](#), paras. 58–60. See also [CCPR/C/VNM/CO/3](#), para. 45 (d).

<sup>42</sup> See <https://vietnam.un.org/en/14681-un-recommendations-2015-penal-code-and-criminal-procedural-code-viet-nam>, p. 1.

<sup>43</sup> *Ibid.*

<sup>44</sup> [CCPR/C/VNM/CO/3](#), para. 46.

article 117, and their use to curtail freedom of opinion and expression, and the definition of certain crimes related to national security to encompass legitimate activities, such as exercising the right to freedom of expression, appeared not to comply with the principles of legal certainty, necessity and proportionality.<sup>45</sup>

70. There is nothing to suggest that the permissible restrictions on these rights set out in articles 19 (3) of the Covenant apply in the present case. The Working Group is not convinced that prosecuting Ms. Đinh is necessary to protect a legitimate interest under this article of the Covenant, or that Ms. Đinh's arrest and detention is a necessary or proportionate response to her peaceful activities. Importantly, there is nothing to suggest that the purpose of her environmental activism, as alleged by the Government, was to overthrow the Government.

71. The Working Group considers that Ms. Đinh's conduct relating to environmental activism amounts to the exercise of the right to freedom of opinion, expression and association protected under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the Covenant. Similarly, the Working Group is of the view that Ms. Đinh was detained for exercising her right to take part in the conduct of public affairs, in violation of article 21 of the Universal Declaration of Human Rights and article 25 (a) of the Covenant.<sup>46</sup> The Working Group thus refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

72. In accordance with articles 1 and 6 (c) of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights, and to draw public attention to the observance of human rights.<sup>47</sup> The Working Group has confirmed the right of human rights defenders to investigate, gather information regarding and report on human rights violations.<sup>48</sup> The Human Rights Committee has also specifically recognized that article 19 (2) of the Covenant protects the work of journalists and includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.<sup>49</sup> The imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny; the Working Group has recognized the need to subject interventions against individuals who may qualify as human rights defenders to particularly intense review.<sup>50</sup> This heightened standard of review by international bodies is especially appropriate where there is a pattern of harassment by national authorities targeting such individuals.<sup>51</sup> The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.<sup>52</sup>

73. The Working Group concludes that Ms. Đinh's detention resulted from the peaceful exercise of her rights to freedom of opinion, expression and association, as well as the right to take part in the conduct of public affairs, and is contrary to article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. Her detention is therefore arbitrary and falls under category II.

### *Category III*

74. Given its finding that Ms. Đinh's detention was arbitrary under category II, the Working Group emphasizes that no trial should have taken place. The source submits, and

<sup>45</sup> Ibid., para. 45 (a).

<sup>46</sup> Human Rights Committee, general comment No. 25 (1996), para. 8. See also opinions No. 13/2007, No. 46/2011, No. 42/2012, No. 26/2013, No. 40/2016, No. 35/2018, No. 36/2018, No. 45/2018, No. 46/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

<sup>47</sup> See also General Assembly resolution 74/146, para. 12.

<sup>48</sup> Opinion No. 8/2009, para. 18.

<sup>49</sup> *Marques de Morais v. Angola*, para. 6.7.

<sup>50</sup> Opinions No. 21/2011, para. 29, and No. 62/2012, para. 39.

<sup>51</sup> Opinion No. 39/2012, para. 45.

<sup>52</sup> See opinions No. 75/2017, No. 79/2017, No. 35/2018, No. 36/2018, No. 45/2018, No. 46/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

the Government does not dispute, that Ms. Đinh was tried on 20 January 2021. She was sentenced to seven years in prison.

75. The source argues that Ms. Đinh was not afforded her right to be tried without undue delay, given that nine months elapsed before she was tried. The Government has not disputed this nine-month period. Her detention was not reviewed by a judicial authority. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the authorities.<sup>53</sup> The delay in bringing Ms. Đinh to trial was unacceptably long, in violation of articles 9 (3) and 14 (3) (c) of the Covenant and principle 38 of the Body of Principles. The Human Rights Committee has stated that an important aspect of the fairness of a hearing is its expeditiousness, and that in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.<sup>54</sup> The delay in this case is exacerbated by the source's submission that Ms. Đinh was not given a bail hearing. International standards require that non-custodial measures be prioritized for women.<sup>55</sup>

76. The source alleges that Ms. Đinh's right to communicate with legal counsel was violated, noting she was held incommunicado and denied prompt access to counsel. The Government does not refute this allegation, but confirms that, due to confidentiality concerns pertaining to the investigation against Ms. Đinh, defence lawyers could take part in the proceedings only after the investigation phase for national security offences, in accordance with article 74 of the Criminal Procedure Code.

77. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access is to be provided without delay.<sup>56</sup> The Working Group finds that the failure to provide Ms. Đinh access to a lawyer during the investigation violated her right to adequate time and facilities to prepare her defence under article 14 (3) (b) of the Covenant. Any legislation that purports to remove the right to counsel is inherently contrary to international human rights standards. This case is another example of legal representation being denied or limited for individuals facing serious charges, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in Viet Nam.<sup>57</sup>

78. The Working Group finds that the limited access to legal assistance violated Ms. Đinh's right to equality of arms and to a fair hearing by an independent and impartial tribunal, under article 14 (1) of the Covenant. Moreover, Ms. Đinh was not afforded her rights to adequate time and facilities for the preparation of her defence and to communicate with counsel, under article 14 (3) (b) of the Covenant. Further, the source submits, and the Government does not deny, that Ms. Đinh's lawyers were not permitted to examine prosecution witnesses who had determined that her writings constituted propaganda. In the Working Group's view, this propaganda issue is at the crux of the charges against her.

79. The Working Group notes that the right to equality before courts and tribunals and to a fair trial entails strict obligations to respect the right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge

<sup>53</sup> Human Rights Committee, general comment No. 35 (2014), para. 37, and general comment No. 32 (2007), para. 35. See also [CCPR/C/VNM/CO/3](#), paras. 35–36.

<sup>54</sup> Human Rights Committee, general comment No. 32 (2007), paras. 27 and 35.

<sup>55</sup> See United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), sect. III. See also the Working Group's deliberation No. 12 ([A/HRC/48/55](#), annex), paras. 7–9.

<sup>56</sup> See principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. See also Human Rights Committee, general comment No. 35 (2014), para. 35; [A/HRC/48/55](#), para. 56, and annex, para. 8; [A/HRC/45/16](#), paras. 50–55; and [A/HRC/27/47](#), para. 13.

<sup>57</sup> See opinions No. 40/2016, No. 26/2017, No. 27/2017, No. 75/2017, No. 79/2017, No. 35/2018, No. 46/2018, No. 9/2019, No. 44/2019 and No. 45/2019. See also [CCPR/C/VNM/CO/3](#), paras. 25–26 and 35–36, and [CAT/C/VNM/CO/1](#), paras. 16–17.

witnesses against them at some stage of the proceedings.<sup>58</sup> In the present case, Ms. Đinh was denied that right and she was not allowed to properly defend herself in the proceedings. The Working Group finds that these failings constitute serious violations of articles 7 and 10 of the Universal Declaration of Human Rights and article 14 (3) (e) of the Covenant.

80. The source submits that Ms. Đinh was convicted after a short trial, lasting four hours, and sentenced to seven years in prison. The Government argues that the source's submissions relating to the length of the trial are insufficient to conclude that Ms. Đinh's guilt had been predetermined, noting that no treaty specifies requirements for the duration of trials. While the Working Group agrees that the length of a trial is not specified in any treaty, it has previously observed that a short trial suggests that the guilt and sentence were determined prior to the hearing.<sup>59</sup> This conclusion is reinforced in the present case, involving a trial of four hours for a criminal offence relating to national security, which by the Government's own admission was so serious as to necessitate confidentiality and the denial of legal counsel until the completion of investigations. Moreover, the failure to permit the examination of prosecution witnesses is a further factor. The Working Group therefore finds that Ms. Đinh's right to the presumption of innocence, under article 11 of the Universal Declaration of Human Rights and article 14 (2) of the Covenant, has been violated.

81. The source submits that, given that Ms. Đinh's arrest, trial and pretrial detention were characterized by violations of her due process rights, it is unlikely that any appeal of her conviction would result in her release or a lighter sentence. As the source's submissions on this matter contain insufficient detail, the Working Group is unable to make any observations on it.

82. The Working Group concludes that the violations of the right to a fair trial are of such gravity as to give Ms. Đinh's detention an arbitrary character under category III.

#### *Category V*

83. The source submits that Ms. Đinh was targeted because of her activities as an environmental activist. The Working Group observes an apparent pattern in Viet Nam of harassing and detaining environmental activists and human rights defenders for their work.<sup>60</sup> The Working Group notes the concluding observations by the Human Rights Committee concerning Viet Nam, in which the Committee expressed its concern at reports that persons, particularly human rights defenders, activists and religious leaders, could face arbitrary arrests, detention and incommunicado detention without charges.<sup>61</sup> The Working Group has previously found that the detention of environmental activists on the basis of their status as human rights defenders is arbitrary.<sup>62</sup>

84. The Working Group finds credible the source's submission that Ms. Đinh's arrest, conviction and lengthy sentence were an attempt to silence her and to punish her for sharing her views, an activity that is expressly protected by international law. In the discussion above concerning category II, the Working Group established that Ms. Đinh's detention had resulted from the peaceful exercise of her rights under international law. When detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>63</sup>

85. The Working Group thus finds that Ms. Đinh was deprived of her liberty on discriminatory grounds, that is, owing to her status as a human rights defender, and because of her political or other opinion. Her detention violates articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and is arbitrary under category V. The Working Group refers the case to the Special Rapporteur on the situation of

<sup>58</sup> Human Rights Committee, general comment No. 32 (2007), para. 39.

<sup>59</sup> See, for example, opinions No. 75/2017 and No. 36/2018.

<sup>60</sup> See opinions No. 27/2017, No. 75/2017, No. 79/2017, No. 35/2018, No. 36/2018, No. 45/2018, No. 46/2018, No. 9/2019, No. 44/2019 and No. 45/2019. See also [CCPR/C/VNM/CO/3](#), para. 25.

<sup>61</sup> [CCPR/C/VNM/CO/3](#) para. 25. See also *De Morais v. Angola*, para. 6.7.

<sup>62</sup> See, for example, opinions No. 35/2018 and No. 81/2020.

<sup>63</sup> Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.



human rights defenders and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

*Concluding remarks*

86. The Working Group would welcome the opportunity to work constructively with the Government of Viet Nam to address arbitrary detention. A significant period has passed since its last visit to Viet Nam, in October 1994, and the Working Group considers that it is now an appropriate time to conduct another visit. On 11 June 2018, the Working Group reiterated earlier requests to the Government to undertake a country visit and will continue to seek a positive response.

**Disposition**

87. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Đinh Thị Thu Thủy, being in contravention of articles 2, 6, 7, 8, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16, 19, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

88. The Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation of Ms. Đinh without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

89. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Đinh immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Ms. Đinh.

90. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Đinh and to take appropriate measures against those responsible for the violation of her rights.

91. The Working Group requests the Government to bring its laws, particularly article 117 of the Criminal Code of 2015, into conformity with the recommendations made in the present opinion and with the commitments made by Viet Nam under international human rights law.

92. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on human rights and the environment, for appropriate action.

93. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

**Follow-up procedure**

94. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Ms. Đinh has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Đinh;
- (c) Whether an investigation has been conducted into the violation of Ms. Đinh rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Viet Nam with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

95. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

96. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

97. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>64</sup>

*[Adopted on 19 November 2021]*

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<sup>64</sup> Human Rights Council resolution 42/22, paras. 3 and 7.