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Human Rights Council Working Group on Arbitrary Detention

Opinion No. 43/2022 concerning Nguyen Ngoc Anh (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,¹ on 2 February 2022 the Working Group transmitted to the Government of Viet Nam a communication concerning Nguyen Ngoc Anh. The Government replied to the communication on 5 April 2022. The State is 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).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Nguyen Ngoc Anh, born in 1980, is a Vietnamese blogger and human rights defender resident in Binh Dai district, Ben Tre Province.

5. According to the information received, prior to his arrest Mr. Anh sought to exercise his rights to freedom of expression and to participate in public affairs through peaceful activities. While working as an engineer, he became increasingly engaged in various environmental issues affecting his community and Viet Nam. Following the Formosa disaster in 2016, he became more active, participated in peaceful protests, and posted on social media platforms about topical issues relating to environmental disasters, politics and human rights abuses affecting Vietnamese citizens.

6. Mr. Anh was the administrator of various Facebook accounts, which he used to participate in different livestreams with other activists. For example, on 16 May 2016, in the wake of the Formosa disaster, he published a post on Facebook urging people to speak up against oppression, and the destruction of the environment, and for the health of the Vietnamese people. On 8 June 2018, Mr. Anh livestreamed, via Facebook, a discussion with eight other individuals about the water crisis in the country. The livestream, with the title “When the water is gone, is the house destroyed?”, gained wide traction, notching up 3,000 shares and 113,000 views.

7. On 11 June 2018, Mr. Anh posted a photo on one of his Facebook accounts that showed civilians helping police officers escape smoke bombs used to disperse riots. The photo was captioned “How kind and helpful people are”. On 10 July 2018, he shared a YouTube video on Facebook containing comments on the high taxes paid by Vietnamese citizens. On 16 July 2018, Mr. Anh shared an article in which he questioned why parts of the country were receiving government investment to build better highways and others were not. Reportedly, the posts and livestreams contained critical commentaries on the Government’s stance in response to the 2016 Formosa disaster, the Paracel and Spratley Archipelago disputes, and other issues.

8. In the months preceding Mr. Anh’s arrest, human rights organizations expressed increasing concern over the crackdown by Viet Nam on political dissidents, human rights defenders, journalists and bloggers. Prior to the arrest, Mr. Anh and his family allegedly received harassing phone calls, from unknown individuals, warning him not to continue with any criticism online. In addition, he and his family noticed that they were being monitored by plain-clothes police officers, who were periodically present outside their home.

9. Mr. Anh was arrested on 30 August 2018, near his home. Allegedly, no arrest warrant was read or provided to him at the time. Following the arrest, the police conducted a search of his home and seized a number of items, including mobile phones and a laptop. A police officer reportedly read the arrest and search warrants to the family before the search. However, they did not provide a copy of either warrant at that time.

10. Mr. Anh was taken to Ben Tre Detention Centre. On or around 31 August 2018, his family attended the centre and were provided with a copy of the arrest warrant, which stated that Mr. Anh had been charged with disseminating information and documents for the purpose of opposing the Government, pursuant to article 117 of the Penal Code.

11. The source argues that Mr. Anh was held in pretrial detention for approximately 10 months, during which the authorities failed to bring him before any tribunal to assess the legal basis of his detention; Mr. Anh was therefore unable to challenge the legality of his detention. Mr. Anh was not provided with basic information, such as the alleged criminal activities that underpinned the charge, or the court hearing dates, or the likely duration of his detention.

12. Mr. Anh was allegedly held incommunicado for the first six months of his detention, prevented from contacting anyone in the outside world, including his family. Reportedly, he was told by State authorities that if he remained unrepresented, he would receive a more lenient sentence.

13. Starting in March 2019, Mr. Anh's family were permitted visits on a monthly basis. The visits were always monitored by prison guards. This made it impossible to talk about the conditions of his detention and any mistreatment. During one of the few family visits, Mr. Anh was unable to walk properly, suffering noticeably from an injury to his leg. He refused to discuss how he sustained the injury, showing fear that that might make his situation worse.

14. Following his conviction and sentencing on 6 June 2019, Mr. Anh was taken back to Ben Tre Detention Centre. He was subsequently denied any visits from his family for approximately three months. No reasons were provided, despite his family making numerous requests. Reportedly, this was a tactic deployed to deter him from appealing against his conviction and sentence.

15. In or around August 2019, Mr. Anh's family appeared before the People's Court in Ben Tre Province to complain about the lack of access to him. The Court responded that it did not have the requisite authority, and requested the authorities at Ben Tre Detention Centre to resolve the issue. On 6 September 2019, Mr. Anh's family were permitted to visit him in prison.

16. In early October 2019, Mr. Anh was allegedly assaulted by his cellmate and sustained injuries to his head, back, left foot and right arm. He was denied access to a medical practitioner and was refused any X-rays, and was given pain relief medication for two days only. He is unable to walk properly and remains in physical pain. The extent of his injuries has not been verified or identified, given the lack of any comprehensive medical examination by a qualified practitioner.

17. Prior to the October 2019 attack, Mr. Anh had complained that he was receiving death threats from his cellmate. Reportedly, he was told by his cellmate that if he was killed, prison guards had promised to release the cellmate. This cellmate would shout threats and profanities while prison guards played loud music. The source alleges that these attacks are a tactic used by the authorities to intimidate Mr. Anh and prevent him from continuing with his appeal.

18. Following the attack, prison authorities allegedly transferred Mr. Anh to solitary confinement, where he was held in isolation 24 hours a day. The guards stated that this was necessary for his own protection. However, his conditions of detention were severe and he was kept in a small cell and was denied books, television or other material. He had no access to natural sunlight and only left his cell once to attend a family visit.

19. Following his unsuccessful appeal on 7 November 2019, Mr. Anh was moved to a slightly larger cell, with natural light. He was still held in solitary confinement, unable to mix with the general population, and was not allowed outside his cell to exercise. Though he was permitted visits from his family, these have been heavily monitored by the prison guards. Mr. Anh is not allowed to talk about social or political issues.

20. Mr. Anh's trial hearing took place on 6 June 2019, before the Southern Provincial Court in Ben Tre Province. It lasted approximately four hours. Allegedly, Mr. Anh was unrepresented and was not given an opportunity to present a defence.

21. According to the information received, the only media in the room were State media. The prosecution's case allegedly contained discrepancies and procedural defects, including contradictory assertions about the periods when the alleged offending behaviour took place and about the number of posts made on Facebook.

22. After approximately four hours, Mr. Anh was declared guilty, convicted and sentenced to six years in prison and five years under house arrest.

23. Mr. Anh lodged an appeal and instructed a lawyer to represent him. Three months after the request for permission to appeal, the court finally accepted the request, even though according to the law, courts are meant to respond within 24 hours. Mr. Anh's lawyer was then sent the case file, which consisted of 18 volumes, containing over 10,000 pages.

24. The appeal took place before the People's Supreme Court, in Ho Chi Minh City, on 7 November 2019. It was the only case that day and the court building had been placed under heavy guard, with scores of uniformed and plain-clothes police outside. Some members of the public, who were permitted to enter the building, watched the proceedings via television

in a separate room. Reportedly, when Mr. Anh or his lawyer spoke, the quality of the picture on the television deteriorated and the audio went silent.

25. The source claims that Mr. Anh's lawyer was prevented from bringing his laptop, containing notes and relevant documents, into the courtroom. Following an application to the judge, the lawyer was allowed to print out approximately 500 pages to use during the course of the hearing, out of the file's approximately 10,000 pages. During the hearing, the defence lawyer was prevented from placing relevant evidence before the judge and was not allowed to ask questions that were directly relevant to the charges. Following a short recess, the sentence was upheld on the same day. Mr. Anh was taken back to Ben Tre Temporary Detention Centre.

26. In January 2020, Mr. Anh was transferred to Xuan Loc Prison Camp in Dong Nai Province. He is detained with one inmate in a small cell which includes a toilet.

27. Reportedly, Mr. Anh is not allowed to leave his cell, to visit the canteen or to go to the yard for physical exercise. He is permitted use of a small kitchen area in front of his cell to warm his food, once a day for one hour. He does not have access to clean water. Prison guards prevent him from speaking and mixing with the general prison population.

28. Mr. Anh's defence has complained about the conditions of his detention. Earlier in 2021, a written complaint was presented to the manager of the prison guards. A second written complaint was filed to C10, a higher administrative body within the prison. No response has been received to either complaint. When Mr. Anh complains of poor conditions to the prison guards, he is subjected to mistreatment. This includes spraying pepper spray into his cell and guards bringing an aggressive dog to just in front of his cell to frighten and intimidate him.

29. From January 2020 to February 2021, Mr. Anh was permitted one monthly visit from his family, which took place with a glass panel separating them. All visits are heavily monitored by prison guards on both sides, preventing the detainee from giving a full account of his situation.

30. In February 2021, all visits to the prison camp were suspended due to coronavirus disease (COVID-19) restrictions. The only contact with his family has been through a 10-minute telephone call once a month, which is often cut off before 10 minutes are up.

31. Since October 2021, in protest against his poor prison conditions, Mr. Anh has been refusing to eat prison food. He is surviving on snacks from the prison canteen provided by inmates, including noodles which he eats dry as he does not have access to clean water. He has lost a significant amount of weight.

Category I

32. The source refers to article 9 (1) of the Covenant and notes that detention is arbitrary under category I when the laws under which the individual is prosecuted are vague and/or overly broad.

33. Further referring to article 15 (1) of the Covenant and article 11 (2) of the Universal Declaration of Human Rights, the source recalls that the Human Rights Committee has stated that "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".²

34. The source claims that Mr. Anh was arrested, detained and convicted pursuant to article 117 of the Penal Code, which criminalizes dissemination of "distorted information", "fabricated information" or information disseminated in order to "cause psychological warfare". The legislation fails to define key terms, nor does it provide any guidance on their interpretation. The language used is overly broad and vague. It does not allow individuals to regulate their conduct to ensure that their actions are in conformity with the law. In the absence of any definition and/or guidance, there is a significant risk that this law will be

² See the Committee's general comment No. 35 (2014), para. 22.

applied arbitrarily, as has happened in Mr. Anh's case. Therefore, article 117 violates the principle of legality and cannot constitute a legal basis for detention.

Category II

35. The source claims that Mr. Anh was detained and convicted in order to punish him for exercising his right to freedom of expression and opinion, protected by article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. His conviction and sentence were designed to prevent him from participating in further criticism of the Government and to deter others from expressing any critical views.

36. Shortly before his arrest, Mr. Anh expressed criticism of the Government's response to environmental disasters. The arrest is allegedly consistent with the suppression of political activism by the authorities. The source argues that Mr. Anh's arrest, detention and conviction does not satisfy any of the three requirements of article 19 (3) of the Covenant.

37. The source claims that article 117 of the Penal Code criminalizes the dissemination of information that criticizes the Government. The vague, overbroad language provides no guidance as to what constitutes the elements of the offence. The failure to clarify the parameters of what constitutes criminal conduct therefore violates the principle of legal certainty.

38. Referring to article 19 (3) of the Covenant, the source further argues that the authorities failed to identify which legitimate aims they were seeking to achieve when they prosecuted Mr. Anh. At no point during the arrest, detention or trial did the authorities establish that his expression was conducive to violence or that it posed a threat to national security, public order, public health or morals. The only evidence produced by the prosecution was articles, videos and posts that Mr. Anh had shared with others who held similar political views. Any posts or livestreams that he had participated in, or had created, related to his political views and/or commented on the human rights situation in the country.³

39. The source claims that there is no evidence to suggest that Mr. Anh's posts had the intention or potential to incite violent behaviour. His online engagement on current affairs was always carried out in an individual capacity and in a peaceful manner.

40. Additionally, even if the restriction imposed on Mr. Anh was in pursuit of a legitimate aim, the measures adopted are alleged to be disproportionate. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has criticized the use of criminal sanctions on individuals exercising their right to freedom of expression.⁴ The Human Rights Council has established that the nature of the expression is relevant when assessing whether the restriction was necessary and proportionate. Specifically, the following types of expression should never be subject to restrictions: discussion of government policies and political debate; reporting on human rights, government activities and corruption; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.⁵

41. According to the source, Mr. Anh's work as a citizen journalist falls within the forms of expression that should never be restricted. His activism in the wake of the Formosa disaster, through his social media posts and participation in public protests, allegedly falls within the category of reporting on human rights and government activities. These are forms of expression that should not be subject to restrictions. Therefore, Mr. Anh's arrest and detention are neither necessary nor proportionate and are in contravention of article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights.

42. The source further claims that Mr. Anh's arrest, detention and conviction were carried out to punish him for exercising his freedom to take part in the conduct of public affairs, as part of a wider movement by the authorities to suppress any criticism of the Government.

³ Opinion No. 45/2018, para. 48; and Human Rights Committee, general comment No. 34 (2011), para. 23.

⁴ A/HRC/20/17, para. 79; and *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002).

⁵ A/HRC/14/23, para. 81 (i).

43. Article 25 of the Covenant protects individuals exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves, and requires free communication of information and ideas about public and political issues between citizens, and a free press and other media which are able to comment on public issues without censorship or restraint. Citizens must be able to exercise the freedom guaranteed by article 25 without distinction on any basis, including political or other opinion, and only objective and reasonable restrictions to this freedom are permissible.⁶

44. The source argues that Mr. Anh was targeted by State authorities for participating in the conduct of public affairs. By expressing his political views online, Mr. Anh contributed to efforts to hold the Government to account. His right was allegedly restricted because of his political dissent.

Category III

45. The source claims that during the first six months, Mr. Anh was held in incommunicado detention and was prevented from having any access to the outside world, including his family. Reportedly, he was first permitted to see his family on a short visit in March 2019, six months after his initial arrest. Thereafter, he was allowed infrequent visits, which were monitored so that he was unable to discuss any mistreatment he had suffered. Attempts to visit him a month before his trial and his appeal hearing were not successful.

46. Furthermore, while he was being held in pretrial detention, Mr. Anh was told not to instruct a lawyer. He was informed that he would receive a reduced sentence and that the proceedings would be quicker if he remained unrepresented.

47. The source stresses that incommunicado detention is a clear violation of principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁷

48. The source further refers to articles 9 (3) and 14 of the Covenant, which set out the minimum guarantees an accused person is entitled to when facing a criminal charge.

49. The Human Rights Committee has interpreted the term “promptly” to be within around 48 hours, save in exceptional circumstances.⁸ Additionally, “pretrial detention should be the exception” and “bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party”.⁹ The source alleges that none of those factors are present in Mr. Anh’s case.

50. The source submits that Mr. Anh did not benefit from any judicial review of his pretrial detention. Additionally, his trial took place 10 months after his arrest, despite the absence of any expert witnesses or of any complex evidentiary review, which is often the reason for delaying a trial. In the absence of any explanation for the delay, Mr. Anh’s right to be tried without undue delay was violated, in contravention of article 14 (3) (c) of the Covenant, article 10 of the Universal Declaration of Human Rights and principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

51. The source claims that the conditions of Mr. Anh’s detention make it arbitrary, because his right to time and facilities to prepare his defence, and his right to communicate with counsel, were violated. This is reported as a common practice in Viet Nam, where detainees are routinely encouraged not to instruct legal counsel.¹⁰ When a lawyer is instructed, visits are often denied and/or delayed by State authorities, so there is not enough time to adequately prepare a defence.

52. While Mr. Anh was in pretrial detention, the authorities allegedly told him not to instruct a lawyer, and that by remaining unrepresented he would receive a more lenient

⁶ Human Rights Committee, general comment No. 25 (1996), paras. 4, 8 and 25.

⁷ See opinion No. 33/2013.

⁸ Human Rights Committee, general comment No. 35 (2014), para. 32.

⁹ *Hill and Hill v. Spain* (CCPR/C/59/D/526/1993), para. 12.3.

¹⁰ Opinion No. 44/2019, para. 72.

sentence. He was not provided with access to any prosecution evidence against him to adequately prepare his defence before the trial.

53. In advance of the appeal hearing on 7 November 2019, the defence lawyer was unable to visit him in prison until just prior to the trial beginning. On the day of the hearing, his lawyer was told that he would not be allowed to use his laptop in the courtroom. When the lawyer protested, he was brought into the judge's chambers, where he was eventually allowed to print out some 500 pages out of a total of approximately 10,000 pages, compromising his ability to represent Mr. Anh properly.

54. Referring to Human Rights Committee general comment No. , article 14 (3) (b) of the Covenant, principles 15 and 18 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and article 11 of the Universal Declaration of Human Rights, the source concludes that by interfering with Mr. Anh's right of access to legal counsel and not providing him with the case file at the original trial, and then denying his lawyer access to the case file during the course of the appeal hearing, the authorities violated Mr. Anh's right to a fair trial.

55. The source submits that all trials in criminal matters must, in principle, be conducted orally and publicly, which ensures the transparency of proceedings and safeguards against abuse and arbitrariness. Courts must make information regarding the time and venue of the oral hearings available to the public and provide adequate facilities for the attendance of interested members of the public, within reasonable limits, considering, inter alia, the potential interest in the case and the duration of the oral hearing.

56. The source claims that Mr. Anh was not given a fair and public hearing by an independent tribunal. His trial lasted only four hours, with very little evidence offered by the prosecution, and a severe sentence imposed. The trial judge is reported to have deliberated for only 15 minutes before convicting and sentencing Mr. Anh to six years' imprisonment and five years' house arrest. Mr. Anh's appeal suffered from serious procedural defects, with the presiding judge allowing the defence lawyer access to only about 500 of the 10,000 pages of documents in the case file, after the lawyer was denied permission to use his laptop in the courtroom.

57. The source claims that Mr. Anh was not afforded a fair trial before an impartial tribunal, nor was he allowed to put forward his defence. The trial proceedings of 6 June 2019 and the appeal hearing of 7 November 2019 violated Mr. Anh's rights under article 14 (1) of the Covenant, article 11 of the Universal Declaration of Human Rights and principles 10 and 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, rendering his detention arbitrary under category III.

Category V

58. The source argues that Mr. Anh was targeted because of his activities as a human rights defender, in particular his reporting on the Formosa disaster and his criticism of the Government. Shortly after a series of online posts relating to the Formosa disaster, involving criticism of the Government, he was arrested. He has received a disproportionate sentence for someone who was engaged in peaceful activism in his community.

59. According to the source, there appears to be a pattern of detaining human rights defenders for their work, including activists who have attempted to raise awareness about the Formosa steel plant in Viet Nam.¹¹ Mr. Anh was deprived of his liberty on discriminatory grounds, owing to his status as a human rights defender and on the basis of his political or other opinion in challenging the Government's actions. His deprivation of liberty 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.

Response from the Government

60. On 2 February 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group

¹¹ Ibid., para. 78.

requested the Government to provide detailed information about the situation of Mr. Anh and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Viet Nam under international human rights law. Moreover, the Working Group called upon the Government to ensure Mr. Anh's physical and mental integrity.

61. On 30 March 2022, the Government requested an extension, which was granted.

62. In its reply dated 5 April 2022, the Government submits that the allegations were inaccurate and based on unverified information. Mr. Anh was arrested because he had violated the laws of Viet Nam and on the basis of the evidence collected and provided by the competent authorities – not for exercising fundamental rights. Competent authorities carried out all of the relevant legal proceedings and procedures, fully complying with the laws of Viet Nam and the relevant international conventions on human rights.

63. During the investigation, the prosecution and the adjudication, and the execution of the judgment, the rights of Mr. Anh were protected in accordance with the laws of Viet Nam.

64. The Government denies the allegations of a crackdown on political dissidents, human rights defenders and bloggers in the country. In Viet Nam, everyone is free to exercise their legitimate rights in accordance with the law.

65. The Government submits that on 30 August 2018, the police of Ben Tre Province executed an arrest warrant against Mr. Anh, to investigate his acts, which indicated the offence of “making, possessing or spreading information, materials and items for the purpose of opposing the State of the Socialist Republic of Viet Nam” under article 117 of the Penal Code. The detention of Mr. Anh was conducted in compliance with the Criminal Procedural Code, and included a reading of the prosecution decision, the temporary detention warrant and the search warrant, with the participation of local authorities and of witnesses. The arrest process was recorded in the written minutes and was signed by all parties who had participated in the arrest process. The criminal proceedings against Mr. Anh were supervised by the local People's Procuracy, which approved the relevant procedural decisions.

66. The Government submits that the People's Procuracy is empowered under the Constitution to supervise judicial activities, the legality of procedural activities, and protection of the law and human rights. Therefore, the allegation that the authorities failed to provide a legal basis for the detention of Mr. Anh and to present him before a tribunal to assess the legal basis of his detention was not accurate.

67. The Government also submits that Mr. Anh did not only “exercise his right to freedom of expression and right to participate in public affairs through peaceful activities” or “participate in peaceful protests and post via his media platform”. In fact, he often used social media to post and share articles with content that distorted, slandered, conveyed fabricated information, or incited and terrorized, in order to create confusion among the people, including in the areas of policies, laws and diplomatic relations. This behaviour of propagating false information created hatred and incited violence, encouraged illegal gatherings, and promoted plans to prepare tools and means to fight against the competent authorities to overthrow the Government.

68. During the investigation, Mr. Anh admitted his violations of the country's laws. The Government submits that Mr. Anh's acts violated the spirit of article 29 of the Universal Declaration of Human Rights, as they infringed on the rights of others and on the legitimate common interests of society, and threatened national security and public order, under article 19 (3) of the Covenant. Therefore, his acts cannot be considered as a legitimate exercise of the right to freedom of expression.

69. The Government submits that article 117 of the Penal Code has clear provisions that determine offences, and that it will only deal with acts propagandizing information and with documents that distort the truth and are against the State. It asserts that the Working Group only took into account the form of the acts of exercise of the right to freedom of expression (spreading information) and ignored the nature and purpose of such acts (posting and spreading information that distorts the truth, with a view to overthrowing the people's Government).

70. The Government rejects the claim that Mr. Anh was held incommunicado. Pursuant to the legal provisions on cases concerning infringement upon national security, the investigative agency decided not to allow Mr. Anh to receive visits from his relatives, but he still received gifts from them. From 31 August 2018 to 8 January 2020, he received gifts from his relatives on 28 occasions. After the completion of the investigative process, the detention centre allowed Mr. Anh's relatives to meet him 10 times, according to the regulations.

71. On 6 June 2019, the People's Court of Ben Tre Province held the first instance trial, in accordance with the applicable legal procedures. On the basis of the evidence and the litigation processes, the trial panel sentenced Mr. Anh to six years in prison and five years of probation, under article 117 of the Penal Code.

72. After his trial, Mr. Anh filed an appeal and requested that lawyers defend him. On 7 November 2019, the High Court in Ho Chi Minh City held the appellate hearing of the case and upheld the judgment at first instance.

73. During his pretrial detention, Mr. Anh wrote a letter refusing to hire a defence lawyer and affirming his intention to defend himself. Not asking for a lawyer was Mr. Anh's right and decision. On 31 October 2019, the investigative security agency and the temporary detention centre of the police of Ben Tre Province allowed a lawyer to meet and defend Mr. Anh. The authorities did not limit the time or Mr. Anh's ability to access his lawyer; Mr. Anh and his lawyer were fully prepared for the trial.

74. The Government submits that during the appellate hearing, Mr. Anh and his lawyer did not complain about the arrest or about the decision concerning his temporary detention. Mr. Anh affirmed that he had not been forced to make coerced statements, or tortured or beaten, during the pretrial detention.

75. According to the Government, Mr. Anh is in stable health and is eligible to serve the sentence. Due to the complicated developments regarding COVID-19, in order to protect the health of persons held in custody as well as of their family members, detention facilities must temporarily suspend visits and meetings with all people in custody, not only with Mr. Anh.

Further comments from the source

76. The source reiterates its submission that there is no legal basis for the arrest, detention and trial of Mr. Anh, that he was held incommunicado and did not receive a fair trial and that he is being denied basic rights while in detention, concluding that the arrest and detention of Mr. Anh are arbitrary under categories I, II, III and V.

Discussion

77. The Working Group thanks the source and the Government for their submissions. As a preliminary matter, the Working Group notes the Government's submission that the Working Group only took into account the form of the acts of exercise of the right of freedom of expression and ignores the nature and purpose of the acts. The Working Group wishes to clarify that in its communication to the Government dated 2 February 2022, it was merely transmitting the source's submissions and did not make any assessment of the allegations therein.¹²

78. In determining whether Mr. Anh's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of 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.¹³

¹² See also opinion No. 35/2022, para. 60.

¹³ A/HRC/19/57, para. 68.

Category I

79. The source alleges that on 30 August 2018, Mr. Anh was arrested near his home and that no arrest warrant was read out or provided to him at the time of arrest. The Government refutes this allegation on the basis that it complied with domestic law. The Working Group observes that the Government has not provided sufficiently detailed information about the arrest warrant. In contrast, the source has detailed the circumstances surrounding the arrest and the procedures followed regarding the arrest and the search warrant and has confirmed this information in its additional submissions. While the Government submits that the arrest warrant was approved by the People's Procuracy, pursuant to domestic legislation, this does not indicate that the arrest warrant was properly executed during the arrest. In addition, the People's Procuracy is not an independent judicial authority under article 9 (3) of the Covenant.¹⁴

80. Having examined the submissions of both parties, the Working Group finds that no arrest warrant was read out or provided to Mr. Anh at the time of arrest, 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.¹⁵ Mr. Anh was not informed of the reasons for his arrest at the time of arrest, in violation of article 9 (2) of the Covenant and article 9 of the Universal Declaration of Human Rights.¹⁶

81. The Government does not dispute the source's submission that Mr. Anh was not brought before a judge during his pretrial detention of 10 months. The Working Group recalls the right to be brought promptly before a judicial authority to challenge detention, within 48 hours of the arrest barring absolutely exceptional circumstances, in accordance with the international standard set out in the Working Group's jurisprudence.¹⁷ The right to bring proceedings before a court so that the court may decide without delay on the lawfulness of a detention is protected by article 9 of the Universal Declaration of Human Rights, article 9 (3) of the Covenant, and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

82. Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.¹⁸ As the Working Group has found, inability to challenge detention before a court also violates the right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant, placing the individual outside the protection of the law, in violation of the 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.

83. The Working Group refers to article 9 (3) of the Covenant and recalls the view of the Human Rights Committee that pretrial detention should be an exception and as short as possible, and 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. Courts must examine whether alternatives to pretrial detention, such as bail, or other conditions, would render detention unnecessary in the particular case.¹⁹

84. The Working Group concludes that an individualized determination of Mr. Anh's circumstances was absent and, as a result, his detention lacked a legal basis and was in violation of article 9 (3) of the Covenant and principles 38 and 39 of the Body of Principles

¹⁴ E/CN.4/1995/31/Add.4, para. 57 (c); 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; and Human Rights Committee, general comment No. 35 (2014), para. 32. See also CCPR/C/VNM/CO/3, para. 26; and CAT/C/VNM/CO/1, paras. 24–25.

¹⁵ Opinions No. 36/2018, paras. 39–40; No. 46/2018, para. 48; No. 44/2019, para. 52; and No. 45/2019, para. 51.

¹⁶ Opinions No. 10/2015, para. 34; and No. 46/2019, para. 51; and CAT/C/VNM/CO/1, para. 16.

¹⁷ Opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; and No. 30/2019, para. 30.

¹⁸ Opinions No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64; and A/HRC/30/37, para. 3.

¹⁹ See the Committee's general comment No. 35 (2014), para. 38.

for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group notes that the Government did not submit any specific information to suggest that such a determination took place or to rebut the source's submissions.

85. The source alleges that Mr. Anh was held incommunicado for six months. The Government rejects the claim that he was held incommunicado but does not substantiate this denial. Instead, the Government argues that although Mr. Anh could not receive family visits, he was allowed to receive "gifts". The source acknowledges that while Mr. Anh's family members were allowed to regularly bring food to him, they were not allowed to speak to him and did not know whether he was dead or alive.

86. The Working Group finds that Mr. Anh was held incommunicado for the relevant period. 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)²⁰ and (4)²¹ of the Covenant. Incommunicado detention, especially during the early stage of the 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.²² 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 under articles 1 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²³ The Working Group will refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

87. The Working Group observes that receiving "gifts" does not satisfy the right to communicate with the outside world. The Working Group recalls that a detainee must also be allowed to communicate with and receive visits from family members. Restrictions and conditions in regard to such contact must be reasonable. On this matter, the Working Group observes that as well as during his initial six-month detention – according to the source's un rebutted submission – Mr. Anh was denied family visits for approximately three months after his conviction. As the Human Rights Committee has observed, giving prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention.²⁴ Accordingly, the Working Group finds that Mr. Anh's right to contact with the outside world was denied, in violation of rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)²⁵ and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

88. The Government refers to article 117 of the Penal Code as the legal basis for the detention of Mr. Anh, and denies that it criminalizes the spread of information. Instead, it argues that article 117 has clear provisions for determining offences. The source claims that Mr. Anh was arrested, detained and convicted pursuant to article 117 of the Penal Code, which contains overly broad language and undefined key terms.

89. The Working Group has raised the issue of prosecution under vague penal laws with the Government on several occasions,²⁶ specifically article 117 of the Penal Code.²⁷ The principle of legality requires that laws be formulated with sufficient precision so that

²⁰ *Ibid.*, para. 35.

²¹ See opinions No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

²² General Assembly resolution 68/156, para. 27. See [A/56/156](#), para. 39 (f); and Human Rights Committee, general comment No. 35 (2014), paras. 35 and 56.

²³ Human Rights Committee, general comment No. 35 (2014), para. 35; and [A/56/156](#), para. 39 (f).

²⁴ See the Committee's general comment No. 35 (2014), para. 58; and opinions No. 84/2020, para. 69; and No. 34/2021, para. 77.

²⁵ Opinions No. 35/2018, para. 39; No. 44/2019, paras. 74–75; and No. 45/2019, para. 76.

²⁶ Opinions 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.

²⁷ Opinions No. 11/2021, paras. 67, 73–74 and 96; No. 36/2021, paras. 73–74, 77–78 and 103; No. 40/2021, paras. 69, 73–75 and 99; and No. 35/2022, paras. 76 and 79–81.

individuals can access and understand the law and regulate their conduct accordingly.²⁸ In the Working Group's view, article 117 of the Penal Code does not meet this standard. It is thus incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant and cannot be considered "prescribed by law" and as "defined with sufficient precision" due to its vague and overly broad language.²⁹ The Working Group considers that the charge on which Mr. Anh is being detained is so vague that it is impossible to invoke a legal basis for his detention. He could not have foreseen that his Facebook posts and livestreams would amount to criminal conduct.

90. For these reasons, the Working Group finds that the Government failed to establish a legal basis for Mr. Anh's arrest and detention. His detention is arbitrary under category I.

Category II

91. In relation to category II, the source alleges that Mr. Anh's detention and conviction are to punish him for the exercise of his fundamental rights guaranteed by the Covenant and the Universal Declaration of Human Rights. The Government refutes this, arguing that he was arrested for violating Vietnamese law, namely article 117 of the Penal Code.

92. The Working Group considers that charges and convictions under article 117 of the Penal Code for the peaceful exercise of rights are inconsistent with the Universal Declaration of Human Rights and the Covenant. The Working Group has considered the application of vague and overly broad provisions of the criminal laws of Viet Nam in numerous opinions.³⁰ The Working Group came to a similar conclusion during its visit to Viet Nam in October 1994, noting that vague national security offences did not distinguish between violent acts capable of threatening national security and the peaceful exercise of rights.³¹

93. In May 2017, the United Nations country team in Viet Nam recommended the repeal or revision of numerous articles of the Penal Code, including article 117, on the basis of their incompatibility with human rights obligations under the Covenant. Article 117 was highlighted as being vague and broad, and not defining which actions or activities were prohibited, nor the constitutive elements of the prohibited offences. The country team also noted that these provisions did not differentiate between the use of violent means, which should be prohibited, and legitimate peaceful activities of protest, including criticism of the Government's policies and actions, or advocacy for any kind of changes, including of the political system, which directly fall under the rights to freedom of opinion, expression and assembly and to participation in public life.³²

94. The Human Rights Committee has called on Viet Nam 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.³³ It has found that the vague and broadly formulated offences in various articles of the Penal Code, including article 117, 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, do not appear to comply with the principles of legal certainty, necessity and proportionality.³⁴

95. There is nothing to suggest that the permissible restrictions set out in article 19 (3) of the Covenant apply in the present case. The Working Group is not convinced that prosecuting Mr. Anh is necessary to protect a legitimate interest under this article of the Covenant, nor that Mr. Anh's arrest and detention is a necessary or proportionate response to his activities.

²⁸ 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.

²⁹ Human Rights Committee, general comment No. 34 (2011), para. 25.

³⁰ See opinions No. 26/2017, No. 27/2017, No. 75/2017, No. 8/2019, No. 44/2019 and No. 45/2019; and A/HRC/41/7, paras. 38.73, 38.171, 38.175, 38.177, 38.183–184, 38.187–191 and 38.196–198.

³¹ E/CN.4/1995/31/Add.4, paras. 58–60; and CCPR/C/VNM/CO/3, para. 45 (d).

³² Available from <https://vietnam.un.org/en/14681-un-recommendations-2015-penal-code-and-criminal-procedural-code-viet-nam>, p. 1.

³³ CCPR/C/VNM/CO/3, para. 46.

³⁴ Ibid., para. 45 (a).

Importantly, there is nothing to suggest, as alleged by the Government, that his peaceful online activism on Facebook was intended or had the potential to incite violent behaviour.

96. In addition, according to 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 (Declaration on Human Rights Defenders), 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.³⁵ The Working Group has affirmed the right of human rights defenders to investigate, gather information regarding and report on human rights violations.³⁶

97. The Human Rights Committee has also 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 Government without fear of interference or punishment.³⁷ The imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny; the Working Group has recognized the necessity of subjecting interventions against individuals who may qualify as human rights defenders to particularly intense review.³⁸ This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.³⁹

98. Considering this wealth of relevant international human rights standards, the Working Group is convinced that Mr. Anh’s conduct falls within the right to freedom of opinion and expression protected under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. Similarly, the Working Group is of the view that Mr. Anh was detained for exercising his 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.⁴⁰ The Working Group thus refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

99. The Working Group thus concludes that Mr. Anh’s detention is arbitrary and falls under category II.

Category III

100. Given its finding that Mr. Anh’s detention was arbitrary under category II, the Working Group emphasizes that no trial should have taken place. However, Mr. Anh was tried and convicted, and is serving his sentence after his appeal.

101. The source alleges that Mr. Anh’s right to communicate with legal counsel was violated, noting he was held incommunicado for six months until his trial, which denied him prompt access to a lawyer. 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 that such access is to be provided without delay.⁴¹ The failure to provide Mr. Anh with access to a lawyer during the investigation violated his right under article 14 (3) (b) of the Covenant to adequate time and facilities to prepare his defence. The Government refers to domestic legislation, however any law that purports to remove the right to counsel is contrary to international human rights standards.⁴²

³⁵ General Assembly resolution 53/144, annex, arts. 1 and 6 (c); see also resolution 74/146, para. 12.

³⁶ Opinion No. 8/2009, para. 18.

³⁷ *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

³⁸ Opinions No. 21/2011, para. 29; and No. 62/2012, para. 39.

³⁹ Opinions No. 21/2011, para. 29; and No. 39/2012, para. 43.

⁴⁰ Human Rights Committee, general comment No. 25 (1996), para. 8; and opinions No. 45/2018, No. 46/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

⁴¹ A/HRC/30/37, annex, principle 9 and guideline 8; Human Rights Committee, general comment No. 35 (2014), para. 35; and A/HRC/45/16, paras. 50–55. See also A/HRC/27/47, para. 13.

⁴² CCPR/C/VNM/CO/3, paras. 25–26 and 35–36.

102. Although the Government submits that Mr. Anh waived his right to legal representation, the Working Group is unconvinced that he did so freely.⁴³ In this regard, the Working Group refers to the source's submission that Mr. Anh was told not to instruct a lawyer, should he want a more lenient sentence. The Working Group refers to many instances of mistreatment reportedly experienced by Mr. Anh, his apparent unwillingness to discuss injuries sustained due to fear, the death threats received from a cellmate who appeared to be incentivized to kill him, and the subsequent assault by a cellmate, for which Mr. Anh was denied adequate medical assistance. Despite the Government's denial of coercion, these cumulative factors lead to the Working Group's view that Mr. Anh was subjected to physical violence to intimidate him into restricting his exercise of his fundamental due process and fair trial rights, including his right to an appeal. The Working Group also refers to the source's submissions on the limited and heavily monitored family visits which reportedly prevented him from providing a full account of his situation.

103. In addition, Mr. Anh was reportedly held in solitary confinement from early October until his unsuccessful appeal on 7 November. The Working Group notes that according to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, must be subject to independent review and must be authorized by a competent authority. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 days may amount to torture as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁴⁴ Taking these factors into account, the Working Group finds that the violations linked to Mr. Anh's conditions of detention significantly undermined his ability to properly defend himself.

104. Furthermore, the source submits, and the Government does not deny, that Mr. Anh was not given access to prosecution evidence against him to prepare his defence, and that the lawyer was only allowed limited access to his case file during the appeal and was not allowed to use his laptop in the courtroom. The Working Group notes that the present case is another example of the denial or limitation of legal representation, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in Viet Nam.⁴⁵

105. The Working Group finds that the constrained access to legal assistance violated Mr. Anh'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, Mr. Anh was not afforded his rights to adequate time and facilities for the preparation of his defence and to communicate with counsel, as guaranteed under article 14 (3) (b) of the Covenant.

106. The source argues that Mr. Anh was not afforded his right to be tried without undue delay, given that 10 months elapsed before he was tried. The Government has not disputed this time period, nor justified the delay. 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.⁴⁶

107. The Working Group finds that the delay in bringing Mr. Anh to trial is unacceptably long, in violation of articles 9 (3) and 14 (3) (c) of the Covenant and of principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. 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 is denied bail

⁴³ Opinion No. 44/2019, para. 72.

⁴⁴ A/56/156, paras. 14 and 39 (f); A/63/175, para. 56; and A/66/268, para. 61. See also Human Rights Committee, general comment No. 35 (2014), paras. 35 and 56.

⁴⁵ See opinions No. 35/2018; No. 46/2018; No. 9/2019; No. 44/2019, para. 72; and No. 45/2019; and CAT/C/VNM/CO/1, paras. 16–17.

⁴⁶ Human Rights Committee, general comments No. 35 (2014), para. 37, and No. 32 (2011), para. 35. See also CCPR/C/VNM/CO/3, paras. 35–36.

by the court, he or she must be tried as expeditiously as possible.⁴⁷ The Working Group recalls its findings that Mr. Anh's pretrial detention was not reviewed by an independent judicial authority.

108. Although the trial was ostensibly open to some members of the public, the source reports that when Mr. Anh or his lawyer spoke, the quality of the picture on the television deteriorated and the audio went silent, which in the Working Group's view rendered the trial effectively closed. While the right to a public hearing is not absolute, the Government does not provide any explanation for these occurrences, leading to the conclusion that Mr. Anh's right to a public hearing under article 14 (1) of the Covenant was violated.

109. The source submits that Mr. Anh was convicted after a short trial of four hours, in which very little evidence was presented by the prosecution and the judge reportedly deliberated for 15 minutes before sentencing him to six years of imprisonment and five years of probation/house arrest. The Government denies that the trial was too short noting, that it was held in accordance with legal procedures. As the Working Group has previously observed, a short trial suggests that the guilt and sentence had been determined prior to the hearing.⁴⁸ This conclusion is reinforced in present case, which involved 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 investigations had been completed. In addition, as the Working Group has found, a large police presence – in the present case, a court building guarded heavily by scores of police – also indicates predetermined guilt.⁴⁹ As such, the Working Group finds that Mr. Anh's right to the presumption of innocence guaranteed under article 14 (2) of the Covenant and article 11 of the Universal Declaration of Human Rights has been violated.

110. The Working Group concludes that the above-mentioned violations of the right to a fair trial are of such gravity as to give Mr. Anh's detention an arbitrary character under category III.

Category V

111. The Working Group considers that Mr. Anh was targeted because of his activities as a human rights defender and environmental activist. It recalls with concern the source's submissions that prior to his detention, he and his family received harassing phone calls and were physically monitored. Such intimidation is consistent with an apparent pattern in Viet Nam of harassing and detaining environmental activists and human rights defenders for their work.⁵⁰

112. The Working Group has found to be arbitrary the detention of environmental activists based on their status as human rights defenders.⁵¹ The Working Group recalls the concluding observations of the Human Rights Committee concerning Viet Nam, in which the Committee expressed concerns at reports that persons, particularly human rights defenders, activists and religious leaders, may face arbitrary arrests, detention and incommunicado detention without charges.⁵²

113. In this context, the Working Group finds that Mr. Anh's arrest, conviction and lengthy sentence were an attempt to silence and punish him for sharing his views, an activity that is expressly protected by international law. As such, the Working Group established in the discussion above that Mr. Anh's detention had resulted from the peaceful exercise of his rights under international law. When detention has resulted from the active exercise of civil and political rights, there is a strong presumption that it also constitutes a violation of international law on the grounds of discrimination based on political or other views.⁵³

⁴⁷ Human Rights Committee, general comment No. 32 (2007), paras. 27 and 35.

⁴⁸ See opinions No. 75/2017 and No. 36/2018.

⁴⁹ Opinions No. 40/2016, para. 41; and No. 36/2020, para. 68.

⁵⁰ See opinions No. 45/2018, No. 46/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

⁵¹ See opinions No. 35/2018, No. 81/2020 and No. 82/2021.

⁵² [CCPR/C/VNM/CO/3](#), para. 25.

⁵³ Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.

114. The Working Group thus finds that Mr. Anh was deprived of his liberty on discriminatory grounds, owing to his status as a human rights defender, and because of his political or other opinions. His 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.⁵⁴ The Working Group refers the case to the Special Rapporteur on the situation of 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

115. The Working Group is alarmed by Mr. Anh's conditions of detention and the apparent reprisals against him for raising this matter. The Government did not specifically deny these allegations. The Working Group recalls that according to article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including by being allowed to enjoy the same standards of health care available. In addition, rule 22 of the Nelson Mandela Rules stipulates that adequate food and drinking water is to be made available, which is reportedly being denied to Mr. Anh.

116. The present case is one of a number of cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty of persons, particularly human rights defenders, in Viet Nam.⁵⁵ Many of these cases follow a familiar pattern of arrest that does not comply with international norms, lengthy detention pending trial with no access to judicial review, restricted access to legal counsel, incommunicado detention, prosecution under vaguely worded criminal offences for the peaceful exercise of human rights, a brief closed trial at which due process is not observed, disproportionate sentencing, and denial of access to the outside world and to medical treatment. The Working Group is concerned that this pattern indicates a systemic problem with arbitrary detention in Viet Nam which, if it continues, may amount to a serious violation of international law.⁵⁶

117. 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

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

The deprivation of liberty of Nguyen Ngoc Anh, being in contravention of articles 2, 6, 7, 8, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 15, 16, 19, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

119. The Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation of Mr. Anh 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.

120. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Anh immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the context of the global 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 and unconditional release of Mr. Anh.

⁵⁴ See opinions No. 36/2018, No. 45/2018, No. 46/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

⁵⁵ See opinions No. 45/2018, No. 46/2018, No. 8/2019, No. 9/2019 and No. 44/2019.

⁵⁶ Opinion No. 47/2012, para. 22.

121. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Anh and to take appropriate measures against those responsible for the violation of his rights.

122. The Working Group requests the Government to bring its laws, particularly article 117 of the Penal 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.

123. 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, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

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

Follow-up procedure

125. 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 Mr. Anh has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Anh;
- (c) Whether an investigation has been conducted into the violation of Mr. Anh's 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.

126. 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.

127. 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.

128. 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.⁵⁷

[Adopted on 29 August 2022]

⁵⁷ Human Rights Council resolution 42/22, paras. 3 and 7.