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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fifth session, 14–18 November 2022

Opinion No. 86/2022 concerning Do Nam Trung (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 51/8.

2. In accordance with its methods of work,¹ on 16 June 2022 the Working Group transmitted to the Government of Viet Nam a communication concerning Do Nam Trung. The Government submitted a late response on 4 October 2022. 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).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Do Nam Trung is a citizen of Viet Nam, born in 1981. He was 39 years of age at the time of his detention.

5. Mr. Trung is an activist and has been formerly imprisoned for his political views. He has a long history of activism advocating for democracy and freedom of expression in Viet Nam. In 2014, during protests opposing the action of China in the South China Sea, Mr. Trung was arrested and sentenced to 14 months in prison under article 258 of the 1999 Penal Code for calling for and participating in those protests. After his release, he continued to support democratic and human rights efforts in the country. At the time of his arrest, Mr. Trung worked for a trucking company.

6. On 6 July 2021, Mr. Trung was arrested in Dong Da district, in Hanoi, while driving to work. The warrant for his arrest was issued by the authorities in Nam Dinh Province. However, the source notes that Mr. Trung's permanent residence is in the Nghia Hung district of Nam Dinh. It is unclear whether it was Public Security Forces of Nam Dinh Province who carried out the arrest, or the local police in Hanoi. The authorities showed an arrest warrant to Mr. Trung at the time of the arrest.

7. While Mr. Trung was being arrested on his way to work, at around 7.30 a.m., approximately two dozen police officers entered his home in order to search the property. The police reportedly disabled all Internet and phone connections. They confiscated a number of items, including memory sticks, business cards and driving licences. The authorities reportedly showed the search and arrest warrant to a member of his family.

8. On 4 July 2021, two days prior to his arrest, Mr. Trung was reportedly followed by plain clothes police officers.

9. On 7 July 2021, one day after his arrest, the Investigation Security Agency of Nam Dinh issued a statement confirming that it had authorized the decision to arrest Mr. Trung and to search his property. The statement confirmed that Mr. Trung had been arrested for the crime of spreading information intended to oppose the State of Viet Nam under article 117 of the 2015 Penal Code. No further details were provided in the statement.

10. The source specifies that article 117 of the 2015 Penal Code prohibits making, storing and spreading information, materials or items for the purpose of opposing the State of Viet Nam. The article mandates prison sentences of between 5 and 12 years for the spreading of distorted or fabricated information to cause dismay among the people or psychological warfare. Prison sentences ranging between 10 and 20 years are to be applied to serious cases, while sentences of between 1 and 5 years are to be applied for preparation to commit the offense.

11. Upon his arrest, Mr. Trung was immediately transferred to Bat Di prison in Nam Dinh, as this is the province where the warrant for his arrest was issued. Mr. Trung's family had received the court's notice that Mr. Trung was being temporarily detained for four months by the Nam Dinh police. The authorities did not give any specific reasons for holding Mr. Trung other than a generic statement saying that he had violated article 117 of the 2015 Penal Code.

12. Since Mr. Trung's arrest, his family has been regularly contacted by the police to discuss his activism. Some family members have been invited several times by the police to meetings in Nam Dinh and Hanoi to discuss Mr. Trung's activities. In addition, family members were asked to provide financial statements to prove that they had not helped Mr. Trung to receive money from overseas.

13. During the investigation, Mr. Trung faced prolonged incommunicado detention and denial of family visits. He was only allowed to see his lawyer on 11 November 2021. Mr. Trung's health was reportedly stable, and he was neither physically abused nor pressured to confess.

14. After his arrest, the first time Mr. Trung came before a judge was on the date of his trial, on 16 December 2021. On the same day, the People's Court of Nam Dinh Province

found Mr. Trung guilty of violating article 117 of the 2015 Penal Code and sentenced him to 10 years in prison, with a further 4 years of probation. The source specifies that Mr. Trung was sentenced for six Facebook video clips which the prosecution claimed violated article 117 of the 2015 Penal Code.

15. The source specifies that the authorities restricted access to the courtroom during the trial, which was initially announced to be public. Only a few members of his family were allowed to attend the trial. The police reportedly cited precautions related to the coronavirus disease (COVID-19) pandemic as the justification for restricting access. During the hearing, there were approximately 70 police officers inside the courtyard and outside on the street. The authorities reportedly installed signal-cancelling devices to prevent the public from transmitting updates on the progress of the trial.

16. On 4 January 2022, Mr. Trung's request to appeal his conviction was approved. However, his lawyer did not receive the court's notice until 21 January 2022, more than two weeks later.

17. The source notes that the process for appealing the conduct of authorities in accordance with article 44 of the 2015 Law on Enforcement of Custody and Temporary Detention is procedurally flawed, and in practice does not allow an independent review of the arrest and detention.

18. On 3 February 2022, Mr. Trung's family visited Bat Di prison to give him money and food, which was allowed on that occasion. Mr. Trung's lawyers and his family had not been allowed to see him since the trial.

19. On 24 March 2022, the appeals hearing of Mr. Trung took place at the People's Court of Nam Dinh Province. His family was allowed to attend the hearing in the courtroom. The Court upheld Mr. Trung's sentence of 10 years in prison for posting video clips that opposed the Government of Viet Nam.

20. Mr. Trung was allowed to see two of his lawyers on 9 March 2022, under the surveillance of Bat Di prison officials. The source also indicated that Mr. Trung had no unrestricted confidential access to lawyers that would allow him to prepare for the appeal.

21. The source considers Mr. Trung's arrest to be arbitrary and submits that he has been convicted on the basis of his political opinions. It notes that Mr. Trung has been politically engaged for several years, and the evidence offered at his trial relates to opinions he expressed on video and uploaded to Facebook.

22. In this context, the source also recalls that in May 2014, Mr. Trung was arrested while recording a demonstration in Dong Nai Province. In February 2015, he was found guilty of abusing democratic freedoms under article 258 of the 1999 Penal Code and sentenced to 14 months in prison. In 2016, Mr. Trung participated in protests in connection with the environmental damage caused by the spill at the Formosa steel plant. In 2018, Mr. Trung participated in protests against the controversial bills on cybersecurity and the establishment of special economic zones. He has also protested against build-operate-transfer toll roads and campaigned against the alleged government corruption on social media.

23. Furthermore, between March 2019 and February 2020, Mr. Trung spent 11 months traveling overseas to take part in training courses on human rights and advocacy. In October 2019, he was invited to a human rights conference and made a presentation on the human rights situation in Viet Nam.

24. The source also notes that Mr. Trung's Facebook account has been blocked on several occasions. According to the source, this was likely to be the result of a coordinated attempt by the authorities to silence him by triggering Facebook's community standards on mass reporting.

Response from the Government

25. On 16 June 2022, 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 detailed information about the situation of Mr. Trung 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. Trung's physical and mental integrity.

26. On 9 August 2022, the Government requested an extension in accordance with paragraph 16 of the methods of work, which was granted with a new deadline of 15 September 2022. The Government submitted a late response on 4 October 2022, that is, after the deadline given by the Working Group. The reply is therefore considered late, and the Working Group cannot accept the response as if it had been presented within the time limit.

Discussion

27. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

28. In determining whether the deprivation of liberty of Mr. Trung 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 international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.² In the present case, the Government has chosen not to challenge in a timely fashion the prima facie credible allegations made by the source.

Category I

29. In its late reply, the Government does not dispute the source's submission that, following his arrest on 6 July 2021, Mr. Trung was not brought before a judge until 16 December 2021, when he was tried and convicted. 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.³ The right to bring proceedings before a court so that the court may decide without delay on the lawfulness of detention is protected under article 9 of the Universal Declaration of Human Rights, article 9 (3) of the International Covenant on Civil and Political Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

30. Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.⁴ As the Working Group has found, the inability to challenge the lawfulness of 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.

31. 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.⁵ 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. The Working Group concludes that an individualized determination of Mr. Trung'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

² [A/HRC/19/57](#), para. 68.

³ Opinions No. 57/2016, paras. 110 and 111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; and No. 30/2019, para. 30.

⁴ 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.

⁵ Human Rights Committee, general comment No. 35 (2014), para. 38.

the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

32. The source alleges, and the Government does not refute, that Mr. Trung was held incommunicado until 11 November 2021, which is more than four months after his arrest, when he was allowed to see his lawyer. The Working Group therefore finds that Mr. Trung was held incommunicado for that 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 articles 9 (3)⁶ and 9 (4) of the Covenant.⁷

33. The source submits that following his trial in December 2021, Mr. Trung's family was only allowed to visit him in February 2022. The Government, in its late reply, does not address this allegation specifically but states that he was entitled to visit with his relatives, receive gifts, food and cash, and have regular medical check-ups. The Working Group recalls that a detainee must also be allowed to communicate with and receive visits from family members. Restrictions on and conditions of such contact must be reasonable. In this regard, the Working Group observes that, in addition to his initial four-month detention, according to the source's un rebutted submission, Mr. Trung was denied family visits for approximately two months after his conviction. As the Human Rights Committee has observed, giving prompt and regular access to family members, as well as independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention.⁸ Accordingly, the Working Group finds that Mr. Trung's right to contact with the outside world was denied, contrary to rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)⁹ and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

34. The Government and the source concur that article 117 of the Penal Code is the legal basis for the detention of Mr. Trung. However, the Government denies that it criminalizes the spread of information and argues that article 117 has clear provisions with respect to determining offences.

35. The Working Group has considered the application of vague and overly broad provisions of the criminal laws of Viet Nam in numerous opinions,¹⁰ specifically article 117 of the Penal Code.¹¹ 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.¹² 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 defined with sufficient precision owing to its vague and overly broad language.¹³ The Working Group considers that the charge on which Mr. Trung 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 could amount to criminal conduct.

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

⁶ Ibid., para. 35.

⁷ See opinions No. 45/2017, No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

⁸ General comment No. 35, para. 58; and opinions No. 84/2020, para. 70; and No. 34/2021, para. 77.

⁹ Opinions No. 35/2018, para. 39; No. 44/2019, paras. 74 and 75; and No. 45/2019, para. 76.

¹⁰ Opinions No. 26/2017; No. 27/2017; No. 75/2017; No. 46/2018, para. 62; No. 8/2019, para. 54; No. No. 9/2019, para. 39; No. 44/2019, para. 55; and No. 45/2019, para. 54; and [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.

¹¹ 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; No. 35/2022, paras. 76 and 79–81; and No. 43/2022, para. 89.

¹² Opinions No. 41/2017, paras. 98–101; and No. 62/2018, paras. 57–59; and general comment No. 35, para. 22.

¹³ Human Rights Committee, general comment No. 34 (2011), para. 25.

Category II

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

38. The Working Group considers that charges and conviction 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 came to a similar conclusion during its visit to Viet Nam in October 1994, noting that the characterization of offences as crimes against national security did not distinguish between violent acts that could threaten national security and the peaceful exercise of rights.¹⁴

39. 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 its incompatibility with human rights obligations under the Covenant. Article 117 was highlighted as being vague and broad without defining which action or activities are prohibited or the constitutive elements of the prohibited offences. It also noted that those provisions did not differentiate between the use of violent means, which should be prohibited, and legitimate peaceful activities to protest, including criticism of the Government's policies and actions or advocacy for any kind of change, including of the political system, which directly fall under the rights to freedom of opinion, expression and assembly and to participation in public life.¹⁵

40. Furthermore, 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.¹⁶ It found that the vague and broadly formulated offences in various articles of the Penal Code, including 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, did not appear to comply with the principles of legal certainty, necessity and proportionality.¹⁷ In the light of these numerous statements from a variety of human rights bodies, the Working Group urges the Government to reconsider its view that article 117 is compatible with article 19 (3) of the Covenant.

41. 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 the prosecution of Mr. Trung was necessary to protect a legitimate interest under that article of the Covenant, nor that Mr. Trung's arrest and detention was a necessary or proportionate response to his activities. Importantly, there is nothing to suggest that through his peaceful online activism on Facebook he had the intention of overthrowing the Government, as claimed by the Government in its late reply.

42. 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, 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.¹⁸ The Working Group has affirmed the right of human rights defenders "to investigate, gather information regarding and report on human rights violations".¹⁹ The imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny; the Working Group has recognized the necessity to subject "interventions against individuals who may qualify as human rights

¹⁴ E/CN.4/1995/31/Add.4, paras. 58–60. See also CCPR/C/VNM/CO/3, para. 45 (d).

¹⁵ See <https://vietnam.un.org/en/14681-un-recommendations-2015-penal-code-and-criminal-procedural-code-viet-nam>, p.1.

¹⁶ CCPR/C/VNM/CO/3, para. 46.

¹⁷ Ibid. para. 45 (a).

¹⁸ General Assembly resolutions 53/144, annex, articles 1 and 6 (c), and 74/146, para. 12.

¹⁹ Opinion No. 8/2009, para. 18; and A/HRC/13/30/Add.1, opinion No. 8/2009, para. 18.

defenders to particularly intense review”.²⁰ This heightened standard of review by international bodies is especially appropriate where there is a pattern of harassment by national authorities targeting such individuals.²¹

43. The Working Group is not convinced that the Government has substantiated the submissions made in its late reply that Mr. Trung was circulating “videos on social networks with false and slanderous contents to distort about activities of State agencies; mutilating and distorting information in order to propagate, distort and defame the people’s administration as well as offend the nation, great people, leaders, celebrities, national heroes; spreading false information which seriously offended the prestige, honour and dignity of some organizations and individuals for the purpose of opposing the State of the Socialist Republic of Viet Nam, dividing the national solidarity bloc, weakening the bond among the key pillars of the society, and infringing upon the national security”.

44. In this regard, the Working Group refers to the Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, adopted in Vienna on 3 March 2017, in which several experts, including the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, stated that general prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective” information, are incompatible with international standards for restrictions on freedom of expression and should be abolished.²²

45. The Working Group thus finds that Mr. Trung’s conduct falls within the right to freedom of opinion and expression protected under articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. 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. Mr. Trung’s detention is therefore arbitrary and falls under category II.

Category III

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

47. The source alleges that Mr. Trung’s right to communicate with legal counsel was violated, noting he was held incommunicado for more than four months until his trial and denied prompt access to a lawyer. In addition, he was allowed to see two of his lawyers once, on 9 March 2022, under official surveillance, before his appeal hearing on 24 March 2022.

48. 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 shall be provided without delay.²³ While the Government, in its late reply, refers to article 74 of the Criminal Procedure Code, any law that purports to remove the right to counsel is contrary to international human rights standards.²⁴ In addition, the source submits that Mr. Trung was not granted unrestricted confidential access to his counsel to prepare his appeal. The confidentiality of lawyer-client communications must be respected as an essential fair trial guarantee.²⁵ The failure to provide Mr. Trung prompt and confidential access to a lawyer violated his right to adequate time and

²⁰ Opinions No. 21/2011, para. 29; and No. 62/2012, para. 39.

²¹ Ibid.

²² See <https://www.ohchr.org/Documents/Issues/Expression/JointDeclaration3March2017.doc>. See also opinions No. 21/2011, para. 29; No. 39/2012 para. 43; No. 46/2020, para. 54; and No. 77/2020, para. 73.

²³ 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 (A/HRC/30/37), principle 9 and guideline 8; general comment No. 35, para. 35; and A/HRC/45/16, paras. 50–55. See also A/HRC/27/47, para. 13.

²⁴ CCPR/C/VNM/CO/3, paras. 25, 26, 35 and 36; and opinion No. 40/2022, paras. 83 and 84.

²⁵ United Nations Basic Principles and Guidelines, principle 9, para. 15, and guideline 8, para. 69; and the Nelson Mandela Rules, rule 61 (1). See also opinion No. 83/2018, paras. 62 and 63.

facilities to prepare his defence under article 14 (3) (b) of the Covenant. The Working Group notes that this 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.²⁶

49. The Working Group also finds that the constraints on access to legal assistance violated Mr. Trung's right to equality of arms and to a fair hearing by an independent and impartial tribunal under article 14 (1) of the Covenant. The Working Group also notes the source's submission that Mr. Trung was tried and convicted the first time he saw a judge.

50. The source submits that the authorities restricted access to the courtroom during the trial, which was initially announced to be public. Only a few members of his family were allowed to attend the trial. As the Human Rights Committee has stated, criminal trials are to be conducted in public unless one of the exceptional circumstances outlined in article 14 (1) of the Covenant justifies the closure of a trial, that is for reasons of morals, public order or national security, to warrant the exceptional step of holding a closed trial. In its late response, the Government does not address this issue specifically nor does it provide any justification as to why the trial was closed.

51. According to the source, the authorities referred to the COVID-19 pandemic as the basis for restricting access. The Working Group notes that the authorities installed signal-cancelling devices to prevent the public from transmitting updates on the trial's progress. The Working Group has raised the issue of the lack of public hearings in Viet Nam previously.²⁷ Furthermore, it recalls that the introduction of blanket measures restricting access to courts in the context of a public health emergency cannot be justified and could render the deprivation of liberty arbitrary.²⁸ Accordingly, the Working Group finds that Mr. Trung did not have a public hearing, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

52. In addition, the source submits that the process for appealing the conduct of the authorities in accordance with the article 44 of the 2015 Law on Enforcement of Custody and Temporary Detention is procedurally flawed and in practice does not allow an independent review of the arrest and detention. The Government, in its late reply, submits that Mr. Trung's crime has been fully, objectively and independently reviewed by judicial authorities in two first-instance and appellate trials with sufficient evidence. Owing to insufficient information, the Working Group is unable to determine if the right to an independent and genuine review of his convictions under article 14 (5) of the Covenant was violated.

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

Category V

54. The Working Group considers that the present detention and conviction of Mr. Trung follows a pattern of harassment and detention due to his activities as a human rights defender and environmental activist. In this context, it recalls that a number of United Nations special procedures mandate holders have raised concerns with the Government about the treatment of Mr. Trung previously.²⁹ Moreover, it notes that, two days prior to his arrest, Mr. Trung was reportedly followed by plain clothes police officers. In addition, the source submits that his family members have been subjected to harassment, intrusive requests and monitoring. In this regard, the Working Group recalls the source's submission that over 70 police officers were present in the vicinity of the courtroom when Mr. Trung was being tried. Such intimidation is consistent with an apparent pattern in Viet Nam of harassing and detaining

²⁶ Opinions No. 35/2018; No. 46/2018; No. 9/2019; No. 44/2019, para. 72; No. 45/2019; and No. 43/2022; and [CAT/C/VNM/CO/1](#), paras. 16 and 17.

²⁷ Opinions No. 81/2021, paras. 84 and 85; and No. 43/2022, para. 108.

²⁸ Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, para. 21.

²⁹ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26688>.

human rights defenders and environmental activists for their work.³⁰ The Working Group has found to be arbitrary the detention of environmental activists based on their status as human rights defenders.³¹ The Working Group recalls the concluding observations by the Human Rights Committee concerning Viet Nam, expressing concern “at reports that persons, particularly human rights defenders, activists and religious leaders, may face arbitrary arrests, detention and incommunicado detention without charges”.³²

55. In this context, the Working Group finds that Mr. Trung’s arrest, conviction, and lengthy sentence is an attempt to silence and punish him for sharing his views, an activity that is expressly protected by international law. The Working Group recalls the Government’s submission that, despite having been warned earlier by the Government, Mr. Trung continued to carry out his illegal acts and that therefore his arrest and trial were necessary to ensure the rule of law in Viet Nam.

56. The Working Group has established above, under category II that Mr. Trung’s detention 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.³³

57. The Working Group thus finds that Mr. Trung 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.³⁴ The Working Group refers the case to the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on human rights and the environment.

Concluding remarks

58. 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.³⁵ 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, 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.³⁶

59. 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 its earlier requests to undertake a country visit and will continue to seek a positive response.

Disposition

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

The deprivation of liberty of Do Nam Trung, being in contravention of articles 2, 6, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9,

³⁰ Opinions No. 45/2018; No. 46/2018; No. 9/2019; No. 44/2019; No. 45/2019, para. 73; and No. 36/2020, para 68.

³¹ Opinions No. 35/2018 and No. 81/2020.

³² [CCPR/C/VNM/CO/3](#), para. 25.

³³ Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.

³⁴ Opinions No. 36/2018, No. 45/2018, No. 46/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

³⁵ Opinions No. 45/2018, No. 46/2018, No. 8/2019, No. 9/2019 and No. 44/2019.

³⁶ Opinion No. 47/2012, para. 22.

14, 15, 16, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

62. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Trung immediately and accord him 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 release of Mr. Trung.

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

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

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

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

Follow-up procedure

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

68. 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.

69. 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.

70. 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.³⁷

[Adopted on 18 November 2022]

³⁷ Human Rights Council resolution 51/8, paras. 6 and 9.