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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15-19 November 2021

Opinion No. 82/2021 concerning Ms. Đinh Thị Thu Thủy (Viet Nam)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,¹ on 4 August 2021 the Working Group transmitted to the Government of Viet Nam a communication concerning Ms. Đinh Thị Thu Thủy. The Government replied to the communication on 4 November 2021. 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 D);

(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. Đinh Thị Thu Thủy is a citizen of the Socialist Republic of Viet Nam, usually residing in Ngã Bảy City, Hậu Giang Province, Viet Nam. She was 39 years of age at the time of her detention.

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

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

7. It is reported that relatives of Ms. Đinh received notification of her detention from the police two days later. She was charged with violating article 117 of the 2015 Vietnamese Penal Code (previously article 88 (c) of the 1999 Vietnamese Penal Code), which punishes the "making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Vietnam." Forces holding her in custody are reported to be the Procuracy of Hậu Giang Province and Security Investigations Office of the Police, Department of Hậu Giang Province.

8. Ms. Đinh was initially held in Hậu Giang Police Detention Center, Hậu Giang Province. Ms. Đinh was reportedly held *incommunicado* for nearly eight months after her arrest and was not permitted to consult with an attorney until one month before her court date on 20 January 2021. After a short trial, which lasted just four hours, Ms. Đinh was sentenced to seven years in prison. She is currently detained in An Phước Prison, Phú Giáo district, Bình Dương Province.

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

10. The source specifies that the Working Group has found detentions arbitrary under category I when any of the following conditions are present: (1) the government has held an individual *incommunicado* for a period of time; and (2) vague laws are used to prosecute an individual.² In this context, the source recalls that Ms. Đinh was held *incommunicado* for many months after her arrest. In addition, she was convicted under article 117 of the 2015 Vietnamese Penal Code, legislation which the source alleges is too vague to provide a legal basis for detention.

11. The source specifies that the Human Rights Committee has determined that *incommunicado* detention inherently violates article 9(3) of the Covenant.³ This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights, such as freedom from torture. It further recalls that the prohibition against *incommunicado* detention is also articulated by Principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the "Body of Principles"), which prohibits the denial of communication between a detainee

² See Opinions No. 3/2013, paras. 30-314 and No. 60/2013, para. 22.

³ Human Rights Committee, General Comment No. 35 (2014), para. 35.

and his or her family or counsel for more than a few days. The source thus states that Ms. Đinh was not permitted to see her family for seven months, or to consult with an attorney for eight months after her arrest, resulting in *incommunicado* detention that clearly constitutes a violation of category I.

12. Moreover, the source recalls that article 15(1) of the Covenant and article 11(2) of the Universal Declaration of Human Rights both guarantee individuals the right to know what the law is and what conduct violates the law. These articles protect citizens from prosecution for any criminal offense which did not constitute an offense, under national or international law, at the time when it was committed. The Human Rights Committee has stated that “[a]ny 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.”⁴

13. In this context, the source submits that article 117 of the 2015 Vietnamese Penal Code defines the crime of “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Vietnam” so vaguely as to make it impossible for any individual to reasonably foresee and anticipate what behaviour is criminal. No instruction or clarification is provided as to what constitutes “distorted information,” “fabricated information,” or “psychological warfare” in the law. The source states that article 117 gives individuals no fair notice of what conduct is prohibited. It thus argues that Ms. Đinh was arbitrarily prosecuted under article 117 for acts that are both unforeseeable as criminal and protected under the Covenant, the Universal Declaration of Human Rights, and other international norms and standards. It submits that because the crime of “making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Vietnam” is so vague as to be meaningless, such a law cannot support the basis for Ms. Đinh’s detention resulting from her conviction on such a charge.

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

15. In this context, the source notes that the freedoms of opinion and expression are protected by international instruments and include the freedom to seek, receive, and impart information of all kinds, either orally or in writing. Article 19(2) of the Covenant provides that “everyone shall have the right to freedom of expression.” Article 19 of the Universal Declaration of Human Rights provides an analogous guarantee of freedom of opinion and expression. The Human Rights Committee has clarified that article 19 of the Covenant “protects all forms of expression and the means of their dissemination.” This includes “all forms of audio-visual as well as electronic and internet-based modes of expression.”⁵

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

17. Furthermore, it is noted that the Human Rights Committee has also specifically recognized that article 19(2) protects the work of activists and “includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.”⁷ In fact, the imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny. The Working Group has

⁴ Human Rights Committee, General Comment No. 35 (2014), para. 35.

⁵ Human Rights Committee, General Comment No. 34 (2011), para. 12.

⁶ See Opinion No. 8/2009, para. 18.

⁷ *De Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, para. 6.7.

recognized the necessity to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review.”⁸ This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.⁹

18. The source submits that in the present case, the authorities have arbitrarily harassed, detained and prosecuted Ms. Đinh under article 117 as a direct result of her speech as an environmental activist and a human rights defender. Thus, the authorities have deprived Ms. Đinh of her liberty under a law that is itself incompatible with the rights to freedom of opinion and expression guaranteed under the Universal Declaration of Human Rights and the Covenant.

19. It is furthermore argued that Ms. Đinh was imprisoned for criticizing the Government, violating her rights to freedom of opinion and expression both *de jure* and *de facto*. Ms. Đinh’s arrest, conviction and lengthy sentence was an attempt to silence her and to punish her for sharing her views, an activity that is expressly protected by international law.

20. Moreover, the source submits that Ms. Đinh was convicted for exercising her freedom of association. It is noted by the source that article 20(1) of the Universal Declaration of Human Rights provides that “[e]veryone has the right to freedom of peaceful assembly and association.” Article 22(1) of the Covenant provides that “[e]veryone shall have the right to freedom of association with others”.

21. The source recalls that the Human Rights Council has specifically called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views and human rights defenders.¹⁰ Moreover, the source notes that in General Comment No. 25 to the Covenant, the Human Rights Committee noted that “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25 [right to participate in public affairs].”¹¹

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

23. The source further notes that none of the restrictions to freedom of expression and association enumerated under articles 19(3) and 22(2) of the Covenant apply to the prosecution and detention of Ms. Đinh. It specifies that article 20 of the Covenant requires states to prohibit “propaganda for war” and “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” However, the Human Rights Committee has confirmed that limitations on expression that a state attempts to justify on the basis of article 20 must also comply with article 19(3) of the Covenant.¹²

24. The source also recalls that pursuant to article 19(3) of the Covenant, freedom of expression and opinion may be restricted only as necessary for the protection of national security or public order, health, or morals. The Human Rights Committee has emphasized the narrowness of the limitations set forth in article 19(3) of the Covenant by noting that “when a State party imposes [a limitation] on the exercise of freedom of expression, [it] may not put in jeopardy the right itself.”¹³

⁸ Opinion No. 62/2012, para. 39.

⁹ Opinion No. 39/2012, para. 43.

¹⁰ G.A Res. 15/21, U.N. Doc. A/HRC/RES/15/21.

¹¹ U.N. Doc. CCPR/C/21/Rev.1/Add.7.

¹² Human Rights Committee, General Comment No. 34 (2011), para. 50.

¹³ *Id.* at para. 21.

25. Article 22(2) of the Covenant provides that “no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.” Any limitation on the freedoms of expression and association “must meet a strict test of justification.”¹⁴ As guidance, the Human Rights Committee has established three requirements for any limitation on the right to freedom of expression and association. A permissible limitation must be (1) “provided by law,” (2) for the protection of national security, public order, or public health and morals, and (3) “necessary” to achieve one of these enumerated purposes.¹⁵

26. The source argues that the limitation on Ms. Đinh’s freedom of expression and association fails to meet the second requirement as the Government’s restrictions on the right to freedom of expression and association were not for a proper purpose. None of Ms. Đinh’s articles called directly or indirectly for violence or could reasonably be considered to threaten national security, public order, public health or morals. The source submits that the authorities have used the term of “conducting propaganda” as a pretext to silence her criticism, which is not an acceptable purpose under article 19(3) of the Covenant. It notes that to the contrary, political discourse and discussion of human rights have all been explicitly recognized as protected speech.¹⁶ The source concludes that because Ms. Đinh’s advocacy is protected expression under article 19(2), and because the limitation on these do not fall within the exceptions contained in articles 19(3), her continued detention is arbitrary under category II.

27. In relation to category III, the source firstly submits that the authorities violated Ms. Đinh’s right to *habeas corpus* and her right to release pending trial. Under article 9(3) of the Covenant, a detainee shall “be brought promptly before a judge or other officer authorized by law to exercise judicial power” to challenge the legality of his continued detention (right to *habeas corpus*, also incorporated in article 9(4) for non-criminal defendants). The Human Rights Committee has interpreted the term “promptly” to be within about 48 hours, except in exceptional circumstances, and has noted that this right shall be observed “even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”¹⁷ Moreover, *incommunicado* detention inherently violates article 9(3) of the Covenant.¹⁸ The right to *habeas corpus* is reiterated in Principles 4, 11, 32(1) and 37 of the Body of Principles. Aside from acting as a check on arbitrary detention, these provisions also safeguard other related rights, such as freedom from torture.¹⁹

28. In addition to the right to *habeas corpus*, article 9(3) of the Covenant also enshrines the right to an individual’s release pending trial, providing that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody.” The Human Rights Committee has found that “[d]etention pending trial must be based on an individualized determination that [such detention] 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 . . . Pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”²⁰ Principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.

¹⁴ *Park v. Republic Korea*, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, para. 10.3.

¹⁵ *Shin v. Republic of Korea*, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000, para. 7.2.

¹⁶ Human Rights Committee, General Comment No. 34 (2011), para. 11.

¹⁷ Human Rights Committee, General Comment No. 35 (2014), para. 32.

¹⁸ *Id.* at para. 35.

¹⁹ Human Rights Committee, General Comment No. 35 (2014), at para. 34.

²⁰ *Id.* at para. 38.

29. The source recalls that Ms. Đinh was never brought before a judge to determine the legality of her arrest and continuing detention. There was never a bail hearing or any publicly-released individualized determination made about why such extended pre-trial detention was necessary. Ms. Đinh's entire pre-trial detention period was completely unauthorized by any judicial officer. The source concludes that by refusing to bring Ms. Đinh promptly before a judge to challenge the legality of her detention, and by denying her release pending trial, the authorities violated article 9(3) and 9(4) of the Covenant, and Principles 11, 32, 37, 38 and 39 of the Body of Principles.

30. The source further argues that the authorities have violated Ms. Đinh's right to family visits. It notes that Principle 19 of the Body of Principles provides that "detained or imprisoned persons shall have the right to be visited by and to correspond with, in particular, members of his family . . . subject to reasonable conditions and restrictions as specified by law or lawful regulations." Similarly, this right is protected by the Mandela Rules, notably Rule 43 stating that "[d]isciplinary sanctions or restrictive measures shall not include the prohibition of family contact," Rule 58 stating that "[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals," and Rule 106 stating that "[s]pecial attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both."

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

32. It is further argued that Ms. Đinh's right to be tried without undue delay was also violated. The source recalls that article 14(3)(c) of the Covenant guarantees that every defendant shall have the right to "be tried without undue delay." "An important aspect of the fairness of a hearing is its expeditiousness,"²¹ and "in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible."²² In addition, this right relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal. The right to be tried without undue delay is reiterated in the Body of Principles,²³ and guaranteed under article 31 of the Vietnamese Constitution.

33. The reasonable amount of time in which a trial must be held must be "assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities."²⁴ Further, "in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible."²⁵

34. The source argues that more than nine months elapsed before Ms. Đinh was tried. During this entire time, Ms. Đinh was held in custody with the authorities never providing an explanation as to why Ms. Đinh's trial necessitated such a delay. The need for trial without undue delay was exacerbated by the fact that, as mentioned above, Ms. Đinh was never given a bail hearing and was forced to remain in detention for the entire time before trial, much of which was *incommunicado*. The source concludes that by refusing to provide Ms. Đinh a bail hearing, and by unnecessarily delaying her trial, the authorities have violated article 14(3)(c) of the Covenant, Principle 38 of the Body of Principles and article 31 of the Vietnamese Constitution.

35. It is further submitted that the authorities have violated Ms. Đinh's right to communicate with her legal counsel. In this context, it recalls that article 14 (3) (b) and (d)

²¹ Human Rights Committee, General Comment No. 32 (2007), para. 27.

²² Id. at para. 35.

²³ Body of Principles, Principle 38.

²⁴ Human Rights Committee, General Comment No. 32 (2007), at para. 30.

²⁵ Id. at para 35.

of the Covenant guarantees that an individual may “defend himself in person or through legal assistance of his own choosing” and “have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.” Such a guarantee “requires that the accused is granted prompt access to counsel,”²⁶ and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”²⁷ Principle 18 of the Body of Principles further provides for the right of a detainee to communicate and consult with his legal counsel, and Rule 119 of the Mandela Rules also provides for the right to access legal advice. Likewise, the Vietnamese Constitution guarantees a detained or criminally charged individual’s right to choose a defence counsel.

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

37. Finally, the source argues that Ms. Đinh’s right to a fair hearing was also violated. It notes that article 14 of the Covenant guarantees the right “to a fair and public hearing” and that this is an absolute requirement not capable of limitation. It also argues that one of the key tenets of a fair hearing is the principle that “each side be given the opportunity to contest all the arguments and evidence adduced by the other party.”²⁸ Notably, article 14(3)(e) of the Covenant provides that every defendant shall have the right “[t]o examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.” Articles 7 and 10 of the Universal Declaration of Human Rights guarantee these same rights. In the present case, Ms. Đinh’s attorneys were not permitted to examine witnesses who had concluded that her writings constituted propaganda. Moreover, the duration of Ms. Đinh’s trial was very short, lasting only four hours, which, according to the source clearly establishes that her guilt had been determined prior to the hearing, and thus denying her the right to be presumed innocent guaranteed under article 14(2) of the Covenant.

38. The source concludes that given that Ms. Đinh’s arrest, trial and pre-trial confinement have been characterized by violations of her due process rights, it is unlikely that any appeal of Ms. Đinh’s conviction would result in her release or a lighter sentence.

Response from the Government

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

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

41. The Government submits that the right to freedom of expression is not an absolute right and the exercise of this right is subject to limits provided by the laws as affirmed in article 19(3) of the Covenant and article 29 of the Universal Declaration of Human Rights. Accordingly, the right to freedom of expression is not composed of acts propagandizing information that distorts the truth with a view to infringing the lawful rights and interests of individuals and organizations in society. The Government notes that in order to ensure a

²⁶ Id. at para 32.

²⁷ Id. at para 34.

²⁸ Human Rights Committee, General Comment No. 32 (2007), para. 13.

democratic and civilized society, the exercise of the right to freedom of expression must come with the responsibility of each individual with respect to the information which these individuals spread. Any individual abusing the right to freedom of expression as well as other rights to freedom and democracy to conduct activities violating the laws must be dealt with.

42. The Government submits that while it encourages its citizens to exercise the right to freedom of expression to express their opinions and criticisms on the policies of the State, the exercise of this right needs to comply with legal provisions and be based on a constructive spirit and good faith in order to point out the shortcomings, thus contributing to the construction and development of the country. The Government submits that the acts of abusing the rights to freedom and democracy, criticism and human rights defending to propagandize information which distorts the truth, incites hate and causes division in the society with the purpose of overthrowing the people's government by the use of force, are rigidly prohibited.

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

44. The Government submits that article 117 of the Penal Code of 2015 has clear provisions in determining offences and will only deal with acts propagandizing information and documents that distort the truth and are against the State of the Socialist Republic of Viet Nam. It asserts that the Working Group on Arbitrary Detention only takes into account forms of acts exercising the right to freedom of expression (spreading information) and ignores the nature and purpose of such acts (posting and spreading information which distorts the truth with a view to overthrowing the people's government). This arguably leads to an incorrect assessment of the legal system and judicial activities of Viet Nam. The Government submits that article 117 is fully compatible with article 19 (3) of the Covenant.

45. The Government submits that the warrants for arrest and temporary detention of Ms. Đinh were approved by the People's Procuracy, the judicial agency empowered to examine the legality of criminal procedural activities carried out by investigative agencies, and that this is consistent with article 9(3) of the Covenant. According to the Government, article 117 of the Penal Code of 2015 belongs to the group of offences infringing the national security. Based on the Criminal Procedure Code (article 74) and Law on Temporary Detention and Custody (article 22), the competent authorities issued the decision at the time when 3 defence lawyers were allowed to take part in legal proceedings and meeting relatives was permitted after the investigative phase had been over in order to ensure the confidentiality of the investigative process of cases infringing the national security. After the investigative phase had been over, Ms. Đinh and her defence lawyers were allowed to prepare for her defence, such as accessing and copying documents in the record of the case. The Government submits that there was no limitation with respect to the number and length of the meetings between Ms. Đinh and her defence lawyers, per article 14(3) of the Covenant.

46. The Government submits that the arrest and adjudication of Ms. Đinh fully complied with Viet Nam's criminal procedural provisions. It asserts that the execution of the arrest warrant against Ms. Đinh was published and witnessed by the local authority and the relatives of the accused person. It submits that the execution of the arrest warrant against

Ms. Đinh was recorded in the written document signed by all relevant parties. Therefore, the allegation that the arrest warrant was not shown at the time of the arrest is untrue.

47. The Government submits that the trial of Ms. Đinh was held publicly, fairly and complied with Viet Nam's legal provisions on criminal procedures and all phases provided by Vietnamese laws, including her right to defend herself and to be assisted by a defence counsel during the trial. The Government submits that the timing of the trial depends on clarifying evidence and the acts of the accused person in accordance with legal provisions. Further, as no treaty specifies a requirement for the timing of a trial, the Government submits that basing the allegation that Ms. Đinh's guilt was pre-determined before trial merely on the duration of the trial is groundless.

Further comments from the source

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

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

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

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

Discussion

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

53. In determining whether the deprivation of liberty of Ms. Đinh is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.²⁹

i. Category I

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

55. While the Government submits that the arrest warrant was published and witnessed by the local authority and Ms. Đinh's sister, it has not provided sufficiently detailed information about the arrest warrant. In contrast, in light of the detailed submissions of the source on the circumstances surrounding the arrest, the Working Group considers that it has presented a credible *prima facie* case that the authorities did not present an arrest warrant at the time of Ms. Đinh's arrest.³⁰ Moreover, in a series of recent cases, the Working Group

²⁹ A/HRC/19/57, para. 68.

³⁰ See Opinion No.45/2018, para. 40-42.

has found that an arrest warrant was not presented at the time of the arrest, suggesting that the source's claims are credible.³¹

56. The Working Group finds that Ms. Đinh was arrested without an arrest warrant, in violation of article 9(1) of the Covenant. It is not sufficient that there is a law which authorises the arrest. The authorities must invoke that legal basis and apply it through an arrest warrant.³² An arrest is arbitrary when carried out without informing the arrested person of the reasons for the arrest.³³ Ms. Đinh was not informed of the reasons for her arrest at the time of arrest, and not promptly informed of the charges, in violation of article 9(2) of the Covenant and article 9 of the Universal Declaration of Human Rights.

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

58. The Government does not dispute the source's submission that Ms. Đinh was not brought before a judge during her entire pre-trial detention, most of which she spent *incommunicado*. The Working Group therefore finds that she was not brought promptly before a judicial authority to challenge her detention, in violation of article 9(3) of the Covenant. The Government submits that the arrest warrants were approved by the People's Procuracy, pursuant to domestic legislation. However, as the Working Group has previously stated, the Procuracy is not an independent judicial authority.³⁴

59. Moreover, as the Working Group and other human rights mechanisms have stated, holding persons *incommunicado* violates their right to challenge the lawfulness of their detention before a court under article 9(3)³⁵ and 9(4) of the Covenant.³⁶ *Incommunicado* detention, especially during the early stage of the investigation, is a conducive environment to torture, 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.³⁷ It may also be considered as amounting in itself to a form of torture or ill-treatment, prohibited under article 7 of the Covenant, and articles 1 and 16 of the Convention Against Torture.³⁸

60. Judicial oversight of detention is a fundamental safeguard of personal liberty³⁹ and is essential in ensuring that detention has a legal basis. Given that Ms. Đinh was unable to challenge her detention before a court, her right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2(3) of the Covenant has been violated. She was also placed outside the protection of the law, in violation of her right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant. The Working Group also finds that

³¹ Opinions No. 36/2021 para.68; 40/2021, para. 62; 45/2019, para. 50; No. 44/2019, para. 51; No. 9/2019, para. 29; No. 8/2019, para. 49; No. 46/2018, para. 48; No. 45/2018, para. 40; No. 36/2018, para. 39; No. 35/2018, para. 26; and No. 75/2017, para. 35.

³² Opinions Nos. 45/2019, para. 51; 44/2019, para. 52; 46/2018, para. 48; 36/2018, paras. 39-40.

³³ Opinions Nos 46/2019, para. 51; 10/2015, para. 34. CAT/C/VNM/CO/1, para. 16.

³⁴ E/CN.4/1995/31/Add.4, para. 57(c); Opinions Nos. 45/2019, para. 52; 44/2019, para. 53; 46/2018, para. 50; 35/2018, para. 37; 75/2017, para. 48; Human Rights Committee, General Comment No. 35 (2014), para. 32. See also CCPR/C/VNM/CO/3, para. 26; CAT/C/VNM/CO/1, paras. 24-25.

³⁵ Human Rights Committee, General Comment No. 35 (2014), para. 35.

³⁶ Opinions Nos. 45/2019, 44/2019, 9/2019, 35/2018, 46/2017, 45/2017.

³⁷ GA RES 68/156, para. 27. See report of the Special Rapporteur on torture, A/56/156, para. 39 (f), and Human Rights Committee, General Comment no. 35, paras 35 and 56.

³⁸ See Human Rights Committee, General Comment no. 35 (2014), para. 35; Special Rapporteur on Torture, report A/56/156, par. 39 (f).

³⁹ UN 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, para. 3; CAT/C/VNM/CO/1, para. 24.

Ms. Đinh's right to contact with the outside world under Rules 43(3) and 58(1) of the Mandela Rules, and Principles 15 and 19 of the Body of Principles have been violated.

61. The Government refers to article 117 of the Penal Code as the legal basis for the detention of Ms. Đinh, submitting that it has clear provisions in determining offences and addresses acts propagandizing information and documents that distort the truth and are against the state. It submits that the Working Group does not consider the purpose of the underlying acts which is to overthrow the Government. The source argues that article 117 of the Penal Code defines the crime of "making, storing, or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Vietnam" so vaguely as to make it impossible for any individual to reasonably foresee and anticipate what behaviour is criminal. No instruction or clarification is provided as to what constitutes "distorted information," "fabricated information," or "psychological warfare" in the law. It thus argues that Ms. Đinh was arbitrarily prosecuted under article 117 for acts that are both unforeseeable as criminal and protected under the Covenant and the Universal Declaration of Human Rights.

62. The Working Group considers that the charge on which Ms. Đinh is being detained is so vague that it is impossible to invoke a legal basis for her detention. Ms. Đinh was arrested and detained under article 117 of the Penal Code for "conducting propaganda". The source submits that no instruction or clarification is provided as to what constitutes "distorted information," "fabricated information," or "psychological warfare" in the law. She therefore could not have foreseen that campaigning for the environment would amount to criminal conduct.

63. The Working Group has raised the issue of prosecution under vague penal laws with the Government on several occasions,⁴⁰ specifically article 117 of the Penal Code.⁴¹ 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.⁴² 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.⁴³ The Human Rights Committee has called on Viet Nam, to urgently take all necessary steps, including revising legislation relating to vague and broadly formulated offences in various articles of the Penal Code, including article 117, to end violations of the right to freedom of expression offline and online, and ensure that restrictions do not go beyond the strictly defined limitations set forth in article 19 of the Covenant, taking into account the Committee's General Comment No. 34 (2011) on the freedoms of opinion and expression.⁴⁴

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

ii. Category II

65. In relation to category II, the source submits that Ms. Đinh's arrest, detention and prosecution are a direct result of the exercise of her fundamental freedoms of opinion, expression and association guaranteed by the Covenant and the Universal Declaration of Human Rights. The Government argues that she was arrested for violating Vietnamese law, namely article 117 of the Penal Code.

⁴⁰ Opinion Nos. 45/2019, para. 54; 44/2019, para. 55; 9/2019, para. 39; 8/2019, para. 54; 46/2018, para. 62; 36/2018, para. 51; 35/2018, para. 36; 79/2017, para. 54; 75/2017, para. 40; 27/2017, para. 35; 26/2017, para. 51; 40/2016, para. 36; 45/2015, para. 15; 26/2013, para. 68; 27/2012, paras 38-41; 20/2003, para. 19; 13/1999, para. 12; 27/1998, para. 9; 21/1997, para. 6.

⁴¹ See eg: Opinions No. 40/2021, paras 69, 73-75, 99; No. 36/2021, paras 73-74, 77-78, 103; No. 11/2021, paras 67, 73-74, 96.

⁴² Opinion No. 41/2017, paras. 98-101. See also Opinion No. 62/2018, paras. 57-59; Human Rights Committee, General comment No. 35 (2014), para. 22.

⁴³ Human Rights Committee, General comment No. 34 (2011), para. 25.

⁴⁴ CCPR/C/VNM/CO/3, paras. 45(a), 46.

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

67. The Working Group considers that charges and convictions under article 117 of the Penal Code for the peaceful exercise of rights cannot be regarded as consistent with the Universal Declaration of Human Rights or the Covenant. The Working Group has considered the application of vague and overly broad provisions of Viet Nam’s criminal laws in numerous opinions.⁴⁵ The Working Group came to a similar conclusion during its visit to Viet Nam in October 1994, noting that vague national security offences do not distinguish between violent acts capable of threatening national security and the peaceful exercise of rights.⁴⁶

68. In May 2017, the UN 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.⁴⁷ Along with other provisions, article 117 was highlighted as being vague and broad without defining which action or activities are prohibited, and the constitutive elements of the prohibited offences.⁴⁸ The UN Country Team in Viet Nam also noted that these provisions do not differentiate between the use of violent means, which should be prohibited, and legitimate peaceful activities to protest, express one’s opinion, including criticism of the Government’s policies and actions, or advocacy for any kind of changes, including of the political system, which directly fall under the rights to freedom of expression, opinion, assembly, religion as well as participation in public life, and as such should be guaranteed and protected in accordance with international human rights law (articles 18, 19, 21 and 25 of the Covenant).⁴⁹

69. The Human Rights Committee has called on Viet Nam to end violations of the right to freedom of expression offline and online, and ensure that restrictions do not go beyond the strictly defined limitations set forth in article 19 of the Covenant.⁵⁰ It 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.⁵¹

70. There is nothing to suggest that the permissible restrictions on these rights set out in articles 19(3) of the Covenant apply in the present case. The Working Group is not convinced that prosecuting Ms. Đinh is necessary to protect a legitimate interest under these articles of the Covenant, nor that Ms. Đinh’s arrest and detention is a necessary or proportionate response to her peaceful activities. Importantly, there is nothing to suggest, as alleged by the Government, that the purpose of her environmental activism was to overthrow the Government.

71. The Working Group considers that Ms. Đinh’s conduct relating to environmental activism falls within the right to freedom of opinion, expression and association protected under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the Covenant. Similarly, the Working Group is of the view that Ms. Đinh’s was detained for exercising her right to take part in the conduct of public affairs in violation of

⁴⁵ Opinion Nos. 45/2019, 44/2019, 8/2019, 75/2017, 27/2017, 26/2017, 26/2013, 27/2012, 24/2011, 6/2010, 1/2009, 1/2003; A/HRC/41/7, paras. 38.73, 38.171, 38.175, 38.177, 38.183-4, 38.187-91 38.196-8.

⁴⁶ E/CN.4/1995/31/Add.4, paras. 58–60. See also CCPR/C/VNM/CO/3, para. 45(d).

⁴⁷ <https://vietnam.un.org/en/14681-un-recommendations-2015-penal-code-and-criminal-procedural-code-viet-nam>, p.1.

⁴⁸ Human Rights Council Resolution 19/36.

⁴⁹ <https://vietnam.un.org/en/14681-un-recommendations-2015-penal-code-and-criminal-procedural-code-viet-nam>, p.1.

⁵⁰ CCPR/C/VNM/CO/3, para. 46.

⁵¹ Ibid. para. 45(a).

article 21 of the Universal Declaration of Human Rights and article 25(a) of the Covenant.⁵² The Working Group thus refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

72. According to the UN 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.⁵³ The Working Group has confirmed the right of human rights defenders “to investigate, gather information regarding and report on human rights violations.”⁵⁴ The Human Rights Committee has also specifically recognized that article 19(2) of the Covenant protects the work of journalists and “includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.”⁵⁵ 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 defenders to particularly intense review.”⁵⁶ This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.⁵⁷ The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.⁵⁸

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

iii. Category III

74. Given its finding that Ms. Đinh’s detention was arbitrary under category II, the Working Group emphasizes that no trial should have taken place. The source submits, and the Government does not dispute, that Ms. Đinh was tried on 20 January 2021. She was sentenced to seven years in prison.

75. The source argues that Ms. Đinh was not afforded her right to be tried without undue delay given that nine months elapsed before she was tried. The Government has not disputed this nine-month period. Her detention was not reviewed by a judicial authority. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the authorities.⁵⁹ The delay in bringing Ms. Đinh to trial is unacceptably long, in violation of articles 9(3) and 14(3)(c) of the Covenant and Principle 38 of the Body Principles. The Human Rights Committee has stated that “An important aspect of the fairness of a hearing is its expeditiousness,” and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”⁶⁰ The delay in this case is exacerbated by the

⁵² Human Rights Committee, General comment No. 25 (1996), para. 8. Opinion Nos. 45/2019, 44/2019, 9/2019, 46/2018, 45/2018, 36/2018, 35/2018, 40/2016, 26/2013, 42/2012, 46/2011, 13/2007.

⁵³ GA RES 53/144 annex, articles 1 and 6(c). See also GA RES 74/146, para. 12.

⁵⁴ Opinion No. 8/2009, para. 18, UN Doc. A/HRC/13/30/Add.1, para. 18 (2010).

⁵⁵ *De Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, para. 6.7 (March 29, 2005).

⁵⁶ Opinions No. 62/2012, para. 39; No. 21/2011, para. 29.

⁵⁷ Opinions No. 39/2012, para. 43; No. 21/2011, para. 29.

⁵⁸ Opinions No. 45/2019, No. 44/2019, No. 9/2019, No. 46/2018, No. 45/2018, No. 36/2018, No. 35/2018, No. 79/2017, No. 75/2017.

⁵⁹ Human Rights Committee, General comment No. 35 (2014), para. 37 and General comment No. 32 (2007), para. 35. See also CCPR/C/VNM/CO/3, paras. 35-36.

⁶⁰ Human Rights Committee, General Comment No. 32 (2007), paras 27, 35.

source's submission that she was not given a bail hearing. International standards require that non-custodial measures be prioritized for women.⁶¹

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

77. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access shall be provided without delay.⁶² The Working Group finds that the failure to provide Ms. Đinh access to a lawyer during the investigation violated her right to adequate time and facilities to prepare her defence under article 14(3)(b) of the Covenant. Any legislation that purports to remove the right to counsel is inherently contrary to international human rights standards.⁶³ The Working Group notes that this case is another example of instances when legal representation was denied or limited for individuals facing serious charges, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in Viet Nam.⁶⁴

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

79. The Working Group notes that the right to equality before courts and tribunals and to a fair trial, entails strict obligations to respect the right to have witnesses admitted that are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.⁶⁵ In the present case, that right was denied to Ms. Đinh and she was not allowed to properly defend herself in the proceedings. The Working Group finds that these failings constitute serious violations of article 14(3)(e) of the Covenant and articles 7 and 10 of the Universal Declaration of Human Rights.

80. The source submits that Ms. Đinh was convicted after a short trial of 4 hours and sentenced to 7 years in prison. The Government argues that the source's submissions relating to the length of the trial are insufficient to conclude that her guilt had been pre-determined, noting that no treaty specifies the duration of the trial. While the Working Group agrees that the length of a trial is not specified in a treaty, as it has previously observed, a short trial suggests that the guilt and sentence were determined prior to the hearing.⁶⁶ This conclusion is reinforced in this 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 completion of investigations. Moreover, as discussed above, the failure to permit the

⁶¹ Section III of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). See also the Working Group's Deliberation No. 12 on women deprived of their liberty, A/HRC/48/55, Annex I, paras. 7-9.

⁶² UN Basic Principles and Guidelines, principle 9 and guideline 8; Human Rights Committee, General comment No. 35 (2014), para. 35; A/HRC/48/55, para. 56 and para. 8 of the annex (Deliberation No. 12 on women deprived of their liberty); A/HRC/45/16, paras 50-55. See also A/HRC/27/47, para. 13

⁶³ CCPR/C/VNM/CO/3, paras. 25-26, 35-36.

⁶⁴ Opinions No. 45/2019, No. 44/2019, No. 9/2019, No. 46/2018, No. 35/2018, No. 79/2017, No. 75/2017, No. 27/2017, No. 26/2017, No. 40/2016. See also CAT/C/VNM/CO/1, paras. 16-17.

⁶⁵ Human Rights Committee, General Comment No. 32 (2007), para. 39.

⁶⁶ See e.g. Opinions No. 36/2018, No. 75/2017.

examination of prosecution witnesses is a further factor. As such, the Working Group finds that Ms. Đinh'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.

81. In light of the due process violations throughout Ms. Đinh's arrest, trial and pre-trial detention, the source submits that it is unlikely that any appeal against her conviction would result in a lighter sentence. The Working Group is unable to reach any findings on Ms. Đinh's right to appeal based on the source's submissions on this matter that it considers contains insufficient detail.

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

iv. Category V

83. The Working Group considers that Ms. Dinh was targeted because of her activities as an environmental activist. The Working Group observes an apparent pattern in Viet Nam of harassing and detaining environmental activists and human rights defenders for their work.⁶⁷ The Working Group notes the Concluding Observations by the Human Rights Committee concerning Viet Nam, in which the Committee expressed its concerns "at reports that persons, particularly human rights defenders, activists, and religious leaders, may face arbitrary arrests, detention, and incommunicado detention without charges."⁶⁸ The Working Group has found to be arbitrary the detention of environmental activists based on their status as human rights defenders.⁶⁹

84. The Working Group finds credible the source's submission that Ms. Đinh's arrest, conviction, and lengthy sentence were an attempt to silence and punish her for sharing her views, an activity that is expressly protected by international law. As such, in the discussion above concerning category II, the Working Group established that Ms. Đinh's detention resulted from the peaceful exercise of her rights under international law. When detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.⁷⁰

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

v. Concluding Remarks

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

Disposition

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

⁶⁷ Opinions No. 45/2019, No. 44/2019, No. 9/2019, No. 46/2018, No. 45/2018, No. 36/2018, No. 35/2018, 79/2017, 75/2017, No. 27/2017. See also CCPR/C/VNM/CO/3, para. 25.

⁶⁸ CCPR/C/VNM/CO/3 para. 25. See also footnote 55 above.

⁶⁹ See e.g., Opinions No. 81/2020 and No. 35/2018.

⁷⁰ Opinion No. 59/2019, para. 79; No. 13/2018, para. 34; No. 88/2017, para. 43.

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

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

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

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

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

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

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

Follow-up procedure

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

- (a) Whether Ms. Đinh has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Đinh;
- (c) Whether an investigation has been conducted into the violation of Ms. Đinh rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Viet Nam with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

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

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

97. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁷¹

[Adopted on 19 November 2021]

⁷¹ Human Rights Council resolution 42/22, paras. 3 and 7.