
Advance Unedited Version

Distr.: General
18 October 2021

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-first session, 6-10 September 2021

Opinion No. 40/2021 concerning Pham Doan Trang (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 work¹, on 26 April 2021, the Working Group transmitted to the Government of Viet Nam a communication concerning Pham Doan Trang. The Government replied to the communication on 22 July 2021. Viet Nam 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. **Ms. Pham Doan Trang** is a citizen of Viet Nam, born in 1978. She usually resides in Ho Chi Minh City. The source informs that Ms. Trang is an author, blogger, journalist and pro-democracy activist. She is the editor of the online magazine *Luât Khoa* and the founder of the Liberal Publishing House. As a journalist, she contributes regularly to several independent news sites. As an author, she wrote many books, including one defending the rights of Vietnam's LGBT communities. She was awarded the Reporters Without Borders 2019 Press Freedom Prize for Impact.

5. According to the source, on 6 October 2020, at about 11.30 pm, Ms. Trang was arrested by the Investigation Bureau of the Ha Noi Police at her home in Ho Chi Minh City. The authorities did not show her an arrest warrant or other decision by a public authority. Ms. Trang was subsequently charged with "making, storing, distributing or disseminating information, documents and items against the Socialist Republic of Vietnam" under article 117 of the Penal Code. The source notes that if convicted, she could face up to 20 years in prison.

6. The source notes that Ms. Trang's arrest occurred a few hours after the annual US-Vietnam Human Rights Dialogue in Hanoi. The meeting addressed several human rights issues, including the rule of law, freedom of expression and association, religious freedom, and labour rights.

7. The source further submits that Ms. Trang was later transferred to Detention Center No. 1 in Hanoi's Tu Liem District. Authorities that ordered the detention is the People's Court of the Ho Chi Minh City Province. Since her arrest, she has been detained *incommunicado* and has had no access to a lawyer.

8. The source notes that prior to her current detention, since 2009, Ms. Trang has been subjected to arrests, violent physical attacks, and other acts of harassment by the authorities on numerous occasions. She was first arrested in August 2009 for her advocacy against bauxite mining projects. In May 2016, the police arrested her in Ninh Binh Province to prevent her from attending a meeting with then-US President in Hanoi. In February and May 2018, she was briefly detained by the police on two separate occasions. In August 2018, she was severely beaten by the police because of her activities as an online journalist.

9. The source notes that according to article 74 of the Criminal Procedure Code, when confidentiality of investigations into national security breach is vital, the head of the Procurate is authorized to sanction defence counsels' engagement in legal proceedings after the completion of investigations. The source also states that article 88 (amended as article 117) of the Penal Code fall under the national security chapter and therefore access to lawyers is not guaranteed. Even if a lawyer is granted permission to assist Ms. Trang, his or her access to the accused, in practice, is not always guaranteed.

10. The source adds that according to article 22 of the Law on Temporary Detention and Custody, family visitation depends on the decision of the head of the detention facility. If the investigative agency requests the detention facility not allow the detainee to meet with relatives, the facility head may accept the request, and Ms. Trang will not be able to see her family before trial. The source notes that it is unlikely the facility head would reject such a request by the police.

11. The source informs that Pham Doan Trang remains in *incommunicado* detention. The People's Procuracy of Ha Noi has yet to issue an indictment prosecuting Ms. Trang. No trial has yet commenced. It is expected to be conducted by the provincial-level People's Court of Ha Noi.

12. The source notes that, if the verdict is appealed, the case will go up to the People's High Court in Ha Noi. It asserts that it would not be possible for the case to reach the People's Supreme Court, the highest tribunal of the land, as it requires motions filed by either the Prosecutor General or the Chief Justice, who lack independence.

13. The source asserts that Ms. Trang's arrest and detention is arbitrary and falls under categories I, II and III of the Working Group. In the context of the category I, the source notes that the Working Group has found detentions arbitrary under this category, when some of the following violations are present: (1) when the Government has held an individual *incommunicado* for a period of time; (2) when the Government has arrested an individual without a warrant and without judicial authorization for such deprivation of liberty; and (3) when vague laws are used to prosecute individuals.²

14. The source notes that Ms. Trang was held *incommunicado* since her arrest and was not brought before a judge to adjudicate the legality of her pre-trial detention. In addition, she is facing charges under the article 117 of the 2015 Penal Code (former article 88 of the 1999 Penal Code revised in 2017), a law which is too vague to provide a legal basis for prosecution.

15. The source recalls that article 9(3) of the Covenant calls for "anyone arrested or detained on a criminal charge [to] be brought promptly before a judge or other officer authorized by law to exercise judicial power". This obligation for a *habeas corpus* hearing "without delay" is reiterated in article 9(4) of the Covenant.

16. It is also recalled that the Human Rights Committee has determined that *incommunicado* detention inherently violates article 9(3) of the Covenant. This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights, such as freedom from torture. The 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 ("Body of Principles"), which prohibits the denial of communication between a detainee and his family or counsel for more than a few days.³

17. In this connection, the source reiterates that Ms. Trang was arrested on 6 October 2020. She was never brought before a judge to confirm the legal basis for her arrest or for her continuing pre-trial detention. Ms. Trang's indictment for the offense of conducting propaganda against the Government was not issued yet. Since her detention, she was held entirely *incommunicado* and was not permitted to receive any family visits or visits from her defence lawyer.

18. The source also points to the overly broad and vague wording of the Criminal Code. It notes that the article 15(1) of the Covenant and article 11(2) of the Universal Declaration of Human Rights (the "Universal Declaration") 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 states 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

19. The source also recalls that the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has explained that the standard for legal certainty requires framing laws "in such a way that [...] the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and [that] the law [be] formulated with sufficient precision so that the individual can regulate his or her conduct."⁵

20. The source notes that article 117 of the 2015 Penal Code defines the crime of conducting propaganda so vaguely as to make it impossible for any individual to reasonably foresee what behaviour is criminal. No instruction is given as to what constitutes defaming the administration, propagating psychological warfare, fomenting confusion, or

² See Opinion No. 3/2013 and Opinion No. 60/2013.

³ Body of Principles, Principle 15.

⁴ General Comment No. 35.

⁵ A/HRC/28/28, para 48.

documents/products that are against the Government. There is no intent component and no measure of what a prosecutor must prove to convict.

21. The source asserts that for Ms. Trang and others, article 117 of the 2015 Penal Code have resulted in arbitrary prosecutions for acts that are both unforeseeable as criminal and protected under the Covenant, and the Universal Declaration, and other international norms and standards. The source reiterates that because the crime of “conducting propaganda” is so vague, such provision cannot supply the legal basis for detention resulting from conviction on such charge.

22. The source further asserts that the detention of Ms. Trang falls under the category II of the Working Group because it resulted from her exercise of fundamental freedoms of opinion, expression, and association guaranteed by the Universal Declaration and the Covenant.

23. In this context, the source recalls that 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.⁶ 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.

24. The source notes that the Human Rights Committee has clarified that article 19 of the Covenant “protects all forms of expression and the means of their dissemination”.⁷ This includes “all forms of audio-visual as well as electronic and internet-based modes of expression.” The source argues that the article 19 of the Covenant is of special importance for human rights defenders and journalists working on reporting of human rights abuses are explicitly recognized 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.”⁸ The Human Rights Committee has also specifically recognized that article 19(2) protects the work of journalists⁹ and “includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.”¹⁰

25. The source notes that the imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny,¹¹ especially where there is a “pattern of harassment” by national authorities targeting such individuals.¹²

26. The source argues that in the present case, the Government has detained and prosecuted Ms. Trang as a direct result of her activity as a citizen journalist. It is argued that the charge of “conducting propaganda” under article 117 of the 2015 Penal Code violates an individual’s freedom of expression because it vaguely criminalizes a broad swath of speech and information-sharing acts. Thus, no matter whether the underlying factual allegations are true, the Government has deprived Ms. Trang of her liberty under a law which is itself incompatible with right to freedom of expression guaranteed under the Universal Declaration and the Covenant.

27. The source asserts that Ms. Trang was targeted for her independent reporting and her detention thus violated her right to freedom of expression both *de jure* and *de facto*. The source informs that Ms. Trang posted articles on blogs and social media pages which reported on instances of corruption and advocated for plural democracy, de-politization of the military, free elections and press freedoms.

⁶ A/HRC/30/69, para. 8(b).

⁷ Human Rights Committee, General Comment No. 34, CCPR/C/G/34 at para. 12.

⁸ Opinion No. 8/2009, A/HRC/13/30/Add.1, para. 18.

⁹ *Movlonov et. al. v. Uzbekistan*, UN Human Rights Committee, Communication No. 1334/2004, CCPR/C/95/D/1334/2004.

¹⁰ *De Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, CCPR/C/83/D/1128/2002, para. 6.7.

¹¹ Opinion No. 62/2012, A/HRC/WGAD/2012/62, para. 39, Opinion No. 21/2011, A/HRC/WGAD/2011/21, para. 29.

¹² Opinion No. 21/2011, A/HRC/WGAD/2011/21, para. 29, Opinion No. 39/2012, para. 43.

28. The source argues that Ms. Trang’s detention is an attempt to silence her and punish her for sharing pro-democracy and anticorruption information as an independent reporter, an activity which is expressly protected as free expression. The source submits that Ms. Trang’s detention for her critical expression also fits into the pattern of the Government attempting to silence journalists by detaining them.

29. Furthermore, the source submits that Ms. Trang has been detained because she exercised her rights to freedom of association and assembly under article 20(1) of the Universal Declaration. Similarly, article 22(1) of the Covenant provides that “[e]veryone shall have the right to freedom of association with others”. The source notes 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.¹³

30. It is noted that the national legislation ensures the right to freedom of association, and article 25 of the Constitution affirms that citizens have the right to “assemble, form associations and hold demonstrations.”

31. The source argues that the Government has criminalized and imprisoned individuals for associating with other journalists and political organizations that are critical of the Government, as evidenced by the treatment of Ms. Trang who attended a meeting on human rights after which she was detained on the grounds of anti-State propaganda.

32. The source submits that Ms. Trang has the right to associate with political groups of her choice and express her political opinions through such organizations and that nevertheless, the Government has targeted her as a means to punish her involvement and communication with people and organizations that are critical of the Government. By punishing Ms. Trang for communication and association with pro-democracy bloggers, the authorities violated her right to freedom of association in violation of article 20(1) of the Universal Declaration, article 22(1) of the Covenant and article 25 of the Constitution.

33. In relation to category III of the Working Group, the source recalls that the minimum international standards of due process applicable in this case are established by the Covenant, the Universal Declaration, the Body of Principles and the UN Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”). The Constitution also guarantees certain due process rights, including the right not to be arrested without a prior authorization (article 20), the right to a presumption of innocence (article 31(1)), the right to a prompt, impartial and public trial for anyone charged with a criminal offense (article 31(2)), and the right to the assistance of defence counsel (article 31(4)).

34. The source submits that Ms. Trang’s right to *habeas corpus* and her right to release pending trial have been violated, noting article 9(3) of the Covenant, and 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 circumstances¹⁴ 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”.¹⁵ Moreover, *incommunicado* detention inherently violates article 9(3) of the Covenant.¹⁶ 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.¹⁷

35. The source further recalls that 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

¹³ A/HRC/RES/15/21 and General Comment No. 25, U.N. Doc. CCPR/C/21/Rev.1/Add.7.

¹⁴ General Comment No. 35, para. 33.

¹⁵ Id. at para. 32.

¹⁶ Id. at para. 35.

¹⁷ General Comment No. 35, para. 34. Other rights that may be at risk are those guaranteed by Articles 6, 7, 10 and 14 of the Covenant. Id. at para. 35.

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.”¹⁸ 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.

36. The source states that since her arrest, Ms. Trang was not brought to a judge to determine the legality of her arrest and continuing detention. Although the Information and Communication Department did not issue its determination regarding whether her posts constituted propaganda and Ms. Trang was not formally indicted until the date of communication, she was nevertheless held in detention without access to her family or an attorney throughout the entire period. There was never any bail hearing or any publicly-released individualized determination made about why such extended pre-trial detention was proper. Ms. Trang’s entire pre-trial detention period was not authorized by a judicial officer.

37. The source concludes that by refusing to bring Ms. Trang 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.

38. The source asserts that the authorities violated Ms. Trang’s right to be visited by family and to communicate with the outside world. It notes that the 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.”

39. The source reiterates that Ms. Trang was held *incommunicado* since her arrest and her family was prohibited from meeting her during the entire period of the pre-trial detention. The source thus argues that by detaining Ms. Trang *incommunicado* prior to her trial, the authorities have violated Principle 19 of the Body of Principles as well as Rules 43, 58, and 106 of the Mandela Rules.

40. Moreover, it is submitted by the source that the authorities violated Ms. Trang’s right to be tried without undue delay. It quotes article 14(3)(c) of the Covenant which guarantees that every defendant shall have the right to “be tried without undue delay.”¹⁹ 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 by the Body of Principles and the same is guaranteed in article 31 of the Constitution.

41. The source recalls that the trial of Ms. Trang is pending. The authorities did not explain the reasons for such a delay. The source asserts that such circumstances do not exist. The source also argues that the need for trial without undue delay was exacerbated by the fact that Ms. Trang was never given a bail hearing and was forced to remain in detention after her arrest. The source concludes that the authorities have thus violated article 14(3)(c) of the Covenant, Principle 38 of the Body of Principles and article 31 of the Constitution.

42. Finally, it is asserted by the source that the authorities violated Ms. Trang’s right to communicate with and have assistance of counsel according to articles 14(3)(d) and 14(3)(b) of the Covenant. Such guarantees requires that the accused is granted prompt access to counsel and in this regard the Human Rights Committee has noted that “[c]ounsel should be

¹⁸ General Comment No. 35, para. 38.

¹⁹ Human Rights Committee, General Comment No. 32: Article 14, CCPR/C/GC/32, para. 27, para 35.

able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality.²⁰ Principle 18(3) of the Body of Principles further provides for the right of a detainee to be assisted by and communicate with his legal counsel without delay or censorship and in full confidentiality and that such right may not be suspended or restricted save in exceptional circumstances.

43. The source states that in the present case, Ms. Trang was not allowed to meet with her lawyer since her detention. It therefore argues that the authorities thus violated and continue to violate article 14(3)(b) of the Covenant and Principle 18(3) of the Body of Principles.

Response from the Government

44. On 26 April 2021, the Working Group transmitted the source's allegations to the Government under its regular communication procedure, requesting the Government to provide detailed information by 25 June 2021 about Ms. Trang and clarify the legal provisions justifying her continued detention, as well as its compatibility with Vietnam's obligations under international human rights law, and in particular with regard to the treaties ratified by the State.

45. On 22 June 2021, the Government requested an extension of the deadline for its response. The extension was granted, with a new deadline of 26 July 2021.

46. In its response, dated 22 July 2021, the Government emphasizes that Ms. Trang's arrest, investigation and prosecution was not for the exercise of fundamental freedoms that are recognised by Vietnamese law and international human rights law. The Government asserts that competent authorities arrested Ms. Trang to investigate her acts violating Vietnamese laws, not because she had exercised the fundamental freedoms or she had been a "human rights defender". The Government submits that the arrest and investigation of Ms. Trang were carried out on sound legal grounds and supervised by competent authorities.

47. The Government submits that any person violating Vietnamese laws will be brought to trial in order to ensure the strictness of the laws. These are regular legal proceedings in any rule-of-law state to clarify the nature of the case, collect evidences in order to determine the seriousness of the violations of the laws and relevant peoples...and ensure that charges, investigation, prosecution, adjudication and sentence enforcement apply to the exact entities precisely for what they commit according to the laws.

48. The Government submits that on 07 October 2020, Ha Noi City Police in collaboration with relevant units executed a temporary detention warrant and a search warrant against Ms. Trang to investigate violations of article 88 of the Criminal Code of 1999 and Article 117 of the Criminal Code of 2015. It notes that the filing of criminal charges against Ms. Trang and her temporary detention were approved by competent authorities and were carried out in compliance with procedures and formalities as defined by Vietnamese laws. The Government submits that the arrest and temporary detention of Ms. Trang are necessary to investigate and clarify her acts which breach the laws; the arrest and temporary detention warrants were approved by the People's Procuracy (the judicial agency is empowered to supervise criminal procedural activities as stipulated in articles 107 and 109 of the 2013 Constitution and relevant laws). It notes that the filing of criminal charges against perpetrators of criminal acts to investigate is a regular legal proceeding clearly provided in the Criminal Code of 2015 and conducted based on the principle of presumption of innocence.

49. According the Government, the arrest of Ms. Trang is to investigate violations of the laws, abuse of social networks and the internet to post fake news and information that distorts the truth with a view to causing public anxiety, slandering and harming the reputation of individuals and organizations. It submits that these acts were conducted for the purpose of overthrowing the State. The Government clarifies that Ms. Trang was neither a "journalist" nor "human rights defender", but a normal citizen whose acts violated laws.

50. The Government submits that Ms. Trang is being temporarily detained in the Temporary Detention Centre of Ha Noi City Police. Her health is in the normal condition and is being regularly monitored. She has received the gifts from her family on numerous

²⁰ General Comment No. 32, at para. 34.

occasions. Her rights are upheld in accordance with the legal provisions and competent authorities supervise the temporary detention and ensure the rights of Ms. Trang.

51. The Government rejects the allegations that Ms. Trang has been detained incommunicado. It submits that Article 74 of the Criminal Code of 2015 provides that defence counsels engage in legal proceedings upon the prosecution of suspects. It notes that with regard to national security offences, due to the seriousness and complicatedness of these offences, the Criminal Code of 2015 provides that “the head of the Procuracy is authorized, when confidentiality of investigations into national security breach is vital, to sanction defense counsels’ engagement in legal proceedings after investigations end.” “...If no grounds for termination of detention exist in a special case of extremely severe felony of national security breach, the head of the Supreme People’s Procuracy shall decide to maintain detention until the investigation closes” (paragraph 5, article 173). It submits that per article 173(7), if detention in force is deemed unnecessary, the investigation authority must request the Procuracy to terminate the detention to discharge the detainee in timely manner; and the detainee must be discharged when the detention expires.

52. The Government submits that Ms. Trang’s defence counsels will be granted the access to the record of the case and defend for her after the investigations end. Moreover, Ms. Trang is entitled to appeal.

53. The Government rejects the allegation that it has criminalized and imprisoned individuals and organizations exercising the right to freedom of expression and the right to freedom of peaceful assembly. It submits that the exercise of the legitimate and lawful right to freedom of expression carries with it special duties and responsibilities as provided by the laws of countries and may be subject to certain restrictions including the protection of national security or of public order, or of public health or morals. It argues that these are consistent with article 19(3) of the Covenant and article 29 of the Universal Declaration. The Government always respects and protects the rights to freedom of expression and freedom of the press, as stipulated in the Constitution (Articles 25 and 28) and in other legal documents such as Press Law, Publishing Law, Law on Access to Information and Law on Referendum. Press agencies of Viet Nam are active in expressing their opinions on the policies and plans of the Government as well as on draft laws. Through the mass media, people are free to express their aspirations, opinions on political, economic, social issues.

54. Finally, the Government submits that no one will be arrested for exercising the right to freedom of expression, contribution to building policies, directions, laws of Viet Nam. It clarifies that article 88 of the Criminal Code of 1999 and article 117 of the Criminal Code of 2015 have clear provisions in determining offences and will only deal with acts seriously infringing national security and legitimate rights and interests of individuals and organizations. The allegations made by the source on the legal and judicial system of Viet Nam are biased and contain negative preconceived ideas about Viet Nam because they only take into account forms of acts and ignore the nature and purpose of acts.

Further comments from the source

55. The source notes that the Government bears the burden of proof to rebut the allegations and that it has failed to do so. It resubmits that the detention of Ms. Trang is arbitrary and that she should be released immediately.

Discussion

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

57. As a preliminary matter, the Working Group refers to the Government’s submission that Ms. Trang’s case is currently in the investigation process. The Government argues that on the basis of ensuring that the investigation process is conducted in compliance with the laws and the principle of presumption of innocence and respecting the rights and interests of Ms. Trang, competent authorities cannot provide detailed information regarding this case to the press and irrelevant parties. The Government requests that the Special Procedures not to make the assessments when the final conclusions of the investigation agencies have not been available or based on unverified information.

58. As the Working Group has previously stated in its jurisprudence it is not sufficient for the Government to argue that its national legislation prevents it from providing a detailed explanation of the actions of the national authorities.²¹ The Working Group was created to serve the needs of victims of arbitrary arrests and detention worldwide and for Member States to hold each other accountable; Member States must therefore have intended for the mechanism to resolve the disputes brought by victims. That was also the motivation of the Human Rights Council when it reminded States to cooperate fully with the Working Group in its resolution 33/30. The Government's contention that its national legislation prevented it from providing detailed information is incompatible with that requirement.²²

59. In determining whether Ms. Trang's detention 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 requirements 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 (A/HRC/19/57, para. 68).

60. While the Government requests that the Working Group refrains from making assessments before the conclusion of the investigation or based on unverified information, the Working Group would like to clarify that there is no provision in the methods of work that prevents it from considering communications due to the lack of exhaustion of domestic remedies or processes in the country concerned, such as an ongoing investigation in this case.

i. Category I

61. The source alleges that Ms. Trang was arrested on 6 October 2020, at about 11.30 pm in her home by the Investigation Bureau of Ha Noi Police. The Government states that she was arrested on 7 October 2020, one day later. The Working Group considers that this inconsistency in dates does not materially affect its findings. According to the source, the arresting officers did not show Ms. Trang an arrest warrant at the time of her arrest, or any other decision by a public authority. The Government does not rebut this allegation. Instead, it merely asserts that a temporary detention warrant and search warrant were executed against her, providing no information on whether she was shown these documents during her arrest.

62. The Working Group therefore considers that the source has presented credible *prima facie* case that the authorities did not present an arrest warrant at the time of Ms. Trang's arrest. Moreover, the source submits that she has not been brought before a judge to confirm the legal basis of her arrest or her continuing pre-trial detention and that she was subsequently charged with "making, storing, distributing or disseminating information, documents and items against the Socialist Republic of Vietnam" under article 117 of the Vietnam's Penal Code and offences that carries a penalty of up to 20 years in prison upon conviction. The source noted that her indictment for the offence of conducting propaganda against the Government has not been issued yet.

63. The Working Group finds that the source has presented a credible case that Ms. Trang was not informed of the reasons for her arrest when she was arrested, nor was she promptly informed of the charges against her. The purpose of prompt notification of charges is to facilitate the determination of whether detention is appropriate.²³ This requirement has not been met in this case, particularly when the Government has not demonstrated that it provided reasons for the arrest at the time of arrest²⁴ or, as discussed below, that it complied with article 9(3) of the Covenant.²⁵

²¹ Opinion No. 70/2018, para. 32; No. 59/2020, para. 53.

²² Ibid, paras. 32–33. See also Human Rights Council resolution 42/22, paras. 7 and 9, and A/HRC/36/38, para. 15.

²³ Ibid. CAT/C/VNM/CO/1, paras. 16-17.

²⁴ CCPR/C/GC/35, para. 30. Human Rights Committee, Communication No. 712/1996, para. 10.3.

²⁵ Human Rights Committee, Communication No. 702/1996, para. 5.9.

64. Ms. Trang 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.²⁶ She 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. An arrest is arbitrary when carried out without informing the arrested person of the reasons for the arrest.²⁷

65. The source alleges that Ms. Trang was held *incommunicado* throughout her detention that has now lasted over a year. She has not been permitted any visits by her family or lawyers. Although the Government rejects the allegation of *incommunicado* detentions, it appears to confirm that Ms. Trang is being held *incommunicado*. The Government relies on Article 74 of the Criminal Code of 2015 which permits defence counsel's engagement in legal proceedings when the investigations ends. As the investigation is ongoing and no indictment has been issued, it follows that Ms. Trang has not, by the Government's own admission, been allowed to meet with her lawyers.

66. The Government does not dispute the source's submission that Ms. Trang has not been brought before a judge during her entire pre-trial detention. The Working Group therefore finds that Ms. Trang has not been brought promptly before a judicial authority to challenge his 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 stated, the Procuracy is not an independent judicial authority.²⁸ Moreover, as the Working Group and other human rights mechanisms have stated, holding persons *incommunicado* violates their right to challenge the lawfulness of detention before a court under article 9(3)²⁹ and 9(4) of the Covenant.³⁰ *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.³¹ It may also be considered as amounting in itself to a form of torture or ill-treatment, prohibited under article 7 of the Covenant, articles 1 and 16 of the Convention Against Torture.³²

67. Judicial oversight of detention is a fundamental safeguard of personal liberty³³ and is essential in ensuring that detention has a legal basis. Given that Ms. Trang has been unable to challenge her detention before a court, her right to an effective remedy under article 8 of the Universal Declaration and article 2(3) of the Covenant has been violated. She has also been 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 and article 16 of the Covenant.

68. While the Government refers to article 88 (amended as article 117) of the Penal Code as the legal basis for the detention of Ms. Trang, the Working Group considers that the charge on which she is being detained is so vague that it is impossible to invoke a legal basis for her detention. Ms. Trang was arrested and detained under article 117 of the Criminal Code 2015

²⁶ Opinions Nos. 45/2019, para. 51; 44/2019, para. 52; 46/2018, para. 48; 36/2018, paras. 39-40.

²⁷ Opinions Nos 46/2019, para. 51; 10/2015, para. 34. CAT/C/VNM/CO/1, para. 16.

²⁸ 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, para. 32. See also CCPR/C/VNM/CO/3, para. 26; CAT/C/VNM/CO/1, paras. 24-25.

²⁹ Human Rights Committee, General Comment No. 35, para. 35.

³⁰ Opinions Nos. 45/2019, 44/2019, 9/2019, 35/2018, 46/2017, 45/2017.

³¹ 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 on article 9 (CCPR/C/GC35), par. 35 and 56.

³² See Human Rights Committee, General Comment no. 35 on article 9 (CCPR/C/GC/35) para. 35; Special Rapporteur on Torture, report A/56/156, par. 39 (f).

³³ 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.

for “conducting propaganda”. The source submits that no instruction is given as to what constitutes defaming the administration, propagating psychological warfare, fomenting confusion, or documents/products that are against the Government. There is no intent component and no measure of what a prosecutor must prove to convict. Ms. Trang therefore could not have foreseen that campaigning for democracy and human rights as a journalist or defending the rights of Vietnam’s LGBT communities would amount to criminal conduct. The Working Group observes with concern that she was arrested a few hours after the annual US-Vietnam Human Rights dialogue.

69. The Working Group has raised the issue of prosecution under vague penal laws with the Government on several occasions.³⁴ 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.³⁵ In the Working Group’s view, article 117 of the Criminal Code 2015 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.³⁶ The Human Rights Committee has called on Vietnam, 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 117.³⁷

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

ii. Category II

71. The source alleges that Ms. Trang has been detained for peacefully exercising her rights to freedom of opinion, expression and association and to take part in the conduct of public affairs under articles 19 and 21 of the Universal Declaration and articles 19 and 25 of the Covenant. The Government argues that she was arrested for violating Vietnamese law, namely article 117 of the Criminal Code 2015.

72. In the present case, the source reports that Ms. Trang is a prize-winning author, blogger, journalist and pro-democracy activist. According to the source, her detention is an attempt to silence and to punish her. The Government submits that she was arrested, not because she is a journalist nor human rights defender but because she is an ordinary citizen whose acts seem to have indicated violations of Vietnamese law.

73. The Working Group considers that charges and conviction under Article 117 of the Criminal Code for the peaceful exercise of rights cannot be regarded as consistent with the Universal Declaration of Human Rights or the Covenant. The Working Group has considered the application of vague and overly broad provisions of Viet Nam’s criminal laws in numerous opinions.³⁸ 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.³⁹

³⁴ 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, para. 41; 24/2011, para. 24; 20/2003, para. 19; 13/1999, para. 12; 27/1998, para. 9; 21/1997, para. 6.

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

³⁶ Human Rights Committee, General comment No. 34, para. 25.

³⁷ CCPR/C/VNM/CO/3, paras. 45(a), 46.

³⁸ 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.

³⁹ E/CN.4/1995/31/Add.4, paras. 58–60. See also CCPR/C/VNM/CO/3, para. 45(d).

74. In May 2017, the UN Country Team in Viet Nam recommended the repeal or revision of numerous articles of the Vietnamese Criminal Code 2015, including Article 117, on the basis of its incompatibility with human rights obligations under the Covenant.⁴⁰ 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.⁴¹ 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).⁴²

75. The Human Rights Committee has called on Vietnam 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.⁴³ It found that the vague and broadly formulated offences in various articles including article 117 of the Penal Code 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 do not appear to comply with the principles of legal certainty, necessity and proportionality.⁴⁴

76. Article 19(2) of the Covenant applies to everyone, including normal citizens and includes political discourse, commentary on public affairs, discussion of human rights, and journalism.⁴⁵ It protects the holding and expression of opinions, including those which are not in line with government policy.⁴⁶ The exercise of the freedom of expression on the Internet, in this case through social media, presents significant differences compared to traditional means of communication. For example, the distribution and receipt of information through the Internet is faster, more extensive and more easily accessed locally and globally.⁴⁷

77. The Working Group considers that Ms. Trang's conduct falls within the right to freedom of opinion, expression and association protected under articles 19 and 20 of the Universal Declaration and articles 19 and 22 of the Covenant. Similarly, the Working Group is of the view that Ms. Trang engaged in reporting relating to democracy and anti-corruption in Viet Nam, and was detained for exercising her right to take part in the conduct of public affairs in violation of article 21 of the Universal Declaration and article 25(a) of the Covenant.⁴⁸ 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 and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

78. 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.⁴⁹ The Working Group has confirmed the right of human rights defenders "to investigate, gather

⁴⁰ <https://vietnam.un.org/en/14681-un-recommendations-2015-penal-code-and-criminal-procedural-code-viet-nam>, p.1.

⁴¹ Human Rights Council Resolution 19/36.

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

⁴³ CCPR/C/VNM/CO/3, para. 46.

⁴⁴ *Ibid.* para. 45(a).

⁴⁵ Human Rights Committee, General comment No. 34, para. 11.

⁴⁶ Opinion Nos. 8/2019, para. 55; 79/2017, para. 55.

⁴⁷ Opinions No. 80/2019, para. 93; and No. 39/2019, paras. 93–96. See also E/CN.4/2006/7, para. 36.

⁴⁸ Human Rights Committee, General comment No. 25, 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.

⁴⁹ GA RES 53/144 annex, articles 1 and 6(c). See also GA RES 74/146, para. 12.

information regarding and report on human rights violations.”⁵⁰ 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.”⁵¹ 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.”⁵² This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.⁵³

79. The source has demonstrated that Ms. Trang was detained for the exercise of her rights under the Declaration for sharing information as an independent reporter. 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.⁵⁴

80. The Working Group concludes that Ms. Trang’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 was 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

81. Given its finding that Ms. Trang’s detention is arbitrary under category II, the Working Group emphasizes that no trial should take place in future.

82. Ms. Trang has been held in pre-trial detention since October 2020 and has not been tried for over a year. Under article 9(3) of the Covenant, detention pending trial should be the exception rather than the rule. In the present case, there appears to have been no individualised review of Ms. Trang’s situation or consideration of alternatives to her detention. Her pre-trial detention was not properly constituted or reviewed.⁵⁵

83. The source alleges that Ms. Trang has not been permitted visits by the defence lawyers since her arrest. The Government asserts that, due to the serious and complicated nature of her case, and the need to maintain confidentiality during the investigation, defence lawyers could take part in the proceedings only after the investigation phase in accordance with article 74 of the Criminal Procedure Code.

84. 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.⁵⁶ The failure to provide Ms. Trang 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

⁵⁰ Opinion No. 8/2009, para. 18, UN Doc. A/HRC/13/30/Add.1, para. 18 (2010).

⁵¹ *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).

⁵² Opinion No. 62/2012, A/HRC/WGAD/2012/62, para. 39, Opinion No. 21/2011, A/HRC/WGAD/2011/21, para. 29.

⁵³ Opinion No. 39/2012, para. 43; Opinion No. 21/2011, A/HRC/WGAD/2011/21, para. 29. The Working Group also notes that Pham Doan Trang’s and other journalists and human rights activists were the subjects of allegation letters sent by the Working Group and other Special Procedures mandate holders on 17 September 2020 (AL VNM 3/2020) and 10 November 2020 (AL VNM 5/2020). The Working Group acknowledges the Government’s responses of 29 December 2020 and 4 February 2021.

⁵⁴ Opinion Nos. 45/2019, 44/2019, 9/2019, 46/2018, 45/2018, 36/2018, 35/2018, 79/2017, 75/2017.

⁵⁵ Human Rights Committee, General comment No. 35, para. 37.

⁵⁶ UN Basic Principles and Guidelines, principle 9 and guideline 8; Human Rights Committee, General comment No. 35, para. 35.

remove the right to counsel is inherently contrary to international human rights standards.⁵⁷ This case is another example of legal representation being denied or limited for individuals facing serious charges, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in Viet Nam.⁵⁸

85. The source argues that Ms. Trang was not afforded her right to be tried without undue delay given that she has now been held without trial for over a year. Her detention does not appear to have been 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. Trang to trial is unacceptably long, in violation of articles 9(3) and 14(3)(c) of the Covenant and Principle 8 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 source’s submission that she has not been given a bail hearing. International standards require that non-custodial measures be prioritized for women.⁶¹

86. While the Government submits that Ms. Trang’s fair trial rights and the presumption of innocence are preserved through her ability to appeal any verdict, the source notes that, if the verdict is appealed, it would not be possible for the case to reach the People’s Supreme Court, the highest tribunal of the land, as it requires motions filed by either the Prosecutor General or the Chief Justice, who lack independence. As the source offers no further information on this allegation, which is general and lacking detail, the Working Group is unable to make any observations in relation to it.

87. The Working Group thus concludes that these violations of the right to a fair trial are of such gravity as to give Ms. Trang’s detention an arbitrary character under category III.

iv. Category V

88. The source submits that Ms. Trang was targeted because of her activities as a journalist and human rights defender, and that this is not the first time that the authorities have sought to prevent her from her activities.⁶²

89. While the Government denies these allegations, the Working Group finds them to be credible due to the details provided in relation to Ms. Trang and an apparent pattern in Viet Nam of harassing and detaining human rights defenders for their work.⁶³ The Working Group notes the Concluding Observations by the Human Rights Committee concerning Viet Nam, where 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.”⁶⁴

90. In the discussion above concerning category II, the Working Group established that Ms. Trang’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

⁵⁷ CCPR/C/VNM/CO/3, paras. 25-26, 35-36.

⁵⁸ Opinion Nos. 45/2019, 44/2019, 9/2019, 46/2018 35/2018, 79/2017, 75/2017, 27/2017, 26/2017, 40/2016. See also CAT/C/VNM/CO/1, paras. 16-17.

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

⁶⁰ Human Rights Committee, General Comment No. 32: Article 14 (, CCPR/C/GC/32, para. 27, para 35.

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 See para.8 above.

⁶³ Opinion Nos. 45/2019, 44/2019, 9/2019, 46/2018, 45/2018, 36/2018, 35/2018, 79/2017, 75/2017, 27/2017, See also CCPR/C/VNM/CO/3, para. 25.

⁶⁴ CCPR/C/VNM/CO/3 para. 25. See also footnote 53 above.

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.⁶⁵

91. The Working Group thus finds that Ms. Trang 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 according to category V. The Working Group refers the case to the Special Rapporteur on the situation of human rights defenders.

v. Concluding remarks

92. According to the source, Ms. Trang has not been permitted to contact her family since her arrest. While the Government states that Ms. Trang received gifts from her family, this cannot substitute her right to receive family visits. This violates the 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. The Government states that while in detention, Ms. Trang is in normal health and is being regularly monitored in accordance with the law and her rights. Nonetheless, the Working Group notes that Ms. Trang has been detained incommunicado for over 11 months and urges the Government to immediately and unconditionally release her.

93. The present case is one of many cases brought before the Working Group in recent years concerning arbitrary detention in Viet Nam. 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; denial of access to legal counsel; incommunicado detention; prosecution under vaguely worded criminal offences for the peaceful exercise of human rights; and denial of access to the outside world.⁶⁶ 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.⁶⁷

94. The Working Group would welcome the opportunity to work constructively with the Government 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

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

The deprivation of liberty of Pham Doan Trang, being in contravention of articles 2, 6, 7, 8, 9, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 15, 16, 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

96. The Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation of Ms. Trang 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.

97. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release her 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 release of Ms. Trang.

⁶⁵ Opinion Nos. 59/2019, para. 79; 13/2018, para. 34; 88/2017, para. 43.

⁶⁶ Opinion Nos. 45/2019, 44/2019, 9/2019, 8/2019, 46/2018, 45/2018, 36/2018, 35/2018, 79/2017, 75/2017, 27/2017, 26/2017, 40/2016, 46/2015, 45/2015.

⁶⁷ See eg Opinion Nos. 47/2012, para. 22; 81/2020, para.91, No. 15/2020, para.86.

98. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention of Ms. Trang, and to take appropriate measures against those responsible for the violation of her rights.

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

100. In accordance with paragraph 33(a) of its methods of work, the Working Group refers this 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 rights to freedom of peaceful assembly and of association (iii) the Special Rapporteur on the situation of human rights defenders, for appropriate action.

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

Follow-up procedure

102. 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. Trang has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Trang;
- (c) Whether an investigation has been conducted into the violation of Ms. Trang 's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonise 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.

103. 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.

104. 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.

105. 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.⁶⁸

[Adopted on 10 September 2021]

⁶⁸ Human Rights Council resolution 42/22, paras. 3 and 7.