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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016****Opinion No. 40/2016 concerning Nguyen Dang Minh Man (Viet Nam)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.
2. In accordance with its methods of work (A/HRC/30/69), on 20 June the Working Group transmitted a communication to the Government of Viet Nam concerning Nguyen Dang Minh Man. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation or disability or other status, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. Ms. Nguyen Dang Minh Man (hereafter Ms. Minh Man) is a 31-year-old Vietnamese citizen. On 19 April 1989, when Ms. Minh Man was only four years old, she left Viet Nam with her family and stayed in a refugee camp run by the UN High Commissioner for Refugees in Thailand. In October 1996, she returned to Viet Nam and started her education. She finished high school by 2006 and continued her education at the Pharmacy School in Tra Vinh Province.

5. Shortly before her arrest, Ms. Minh Man worked primarily for a Vietnamese radio station, Radio Chan Troi Moi (Radio New Horizon), as a freelance photojournalist. Ms. Minh Man's photos were also used by overseas media outlets for reporting news in Viet Nam, and her work was published on her Facebook page. Through her photojournalism, Ms. Minh Man reported on events not covered by the state-run media in Viet Nam and, by publishing her photography online, provided an alternative news source for those inside and outside of Viet Nam.

6. According to the source, Ms. Minh Man was particularly critical of China's annexation of the Paracel and Spratly islands, which are claimed by Viet Nam. The Paracel and Spratly islands dispute was a much-debated subject in Viet Nam and a trend had developed of writing the "HS.TS.VN" (or "Paracel and Spratly islands belong to Vietnam") slogan on buildings across Viet Nam in protest. Many Vietnamese citizens resorted to spraying graffiti as a way of spreading awareness of the dispute and promoting open public debate on the annexation. Between April 2010 and July 2011, Ms. Minh Man photographed this graffiti as a way of fuelling public debate. She also travelled to places where political protests and civil unrest occurred, photographed those events, and published the photos online. For example, on 5 June 2011, she took photos of the anti-China protests in Ho Chi Minh City. However, according to the source, Ms. Minh Man was never a participant in protests or demonstrations, other than as a photographer. The source claims that her photojournalism was a form of activism in itself, and points to the fact that her contribution to journalism has been recognised by the Assembly of Delegates of PEN International.

7. On 31 July 2011, Ms. Minh Man was arrested at Tan Son Nhat Airport in Ho Chi Minh City by plainclothes policemen from the Security and Investigation Department of the Ministry of Public Security. The authorities did not present a warrant, but only verbally stated the reason for Ms. Minh Man's temporary arrest due to her involvement with Viet Tan, an organisation banned in Viet Nam. The source alleges that Ms. Minh Man was kept in an isolated room at the airport for two days and questioned each day for a number of hours by four or five interrogators in the absence of any legal representation. The source also claims that, despite the fact that Ms. Minh Man was detained since her arrest on 31 July 2011, the first official document recognising her arrest was issued on 2 August 2011 and that was deemed to be the starting date of her temporary detention.

8. The source further reports that, on 2 August 2011, Ms. Minh Man's home was searched and a number of items were confiscated by the police, including her camera and other photojournalistic materials. Following the search of her home, she was brought to Tra Vinh Camp for a few hours. She was then moved to the B-34 Centre in Ho Chi Minh City, a prison in the south of Viet Nam that is reportedly used primarily to detain political prisoners, and is reported to be hot and humid and with minimal sanitation. Ms. Minh Man was detained there for a 12-month period. On 12 August 2012, she was moved to the B-14 Centre in Hanoi, located in the far north of Viet Nam. She remained there for a five-month period from 12 August 2012 to 5 January 2013. This transfer made it harder for her family to visit her since they live in Tra Vinh city in the southern part of Viet Nam.

9. In total, between 4 August 2011 and 5 January 2013, nine detention orders and orders for the extension of temporary detention were issued in relation to Ms. Minh Man by three different authorities: the first three by the Security Investigation Agency of the Ministry of Public Security, the following four by the Supreme People's Procuracy, and the last two by the People's Court of Nghe An Province. Ms. Minh Man had been detained for over 16 months before the "decision to go to trial" was formally issued on 17 December 2012.

10. The offences she allegedly committed were deemed to be a serious threat to national security and she was not granted bail prior to her trial. The reason for prolonging the detention was that she was alleged to be an "active participant" in criminal activities aimed at "overthrowing the people's administration" pursuant to article 79(1) of Viet Nam's Penal Code. This article provides that those who "carry out activities, establish or join organisations with intent to overthrow the people's administration shall be subject to the following penalties: (1) Organizers, instigators and active participants or those who cause serious consequences shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment; (2) Other accomplices shall be subject to between five and fifteen years of imprisonment."

11. According to the source, during Ms. Minh Man's temporary detention, the authorities managed to gather sparse pieces of evidence to secure a conviction against her. The authorities mainly relied on her alleged membership of Viet Tan, participation in three seminars held in Thailand and two in Cambodia on "non-violent methods of struggle", and the writing of the slogan "HS.TS.VN" on a building (a public school).

12. The source states that, on 5 January 2013, Ms. Minh Man and 13 co-defendants were transferred separately to Vinh City during the night to avoid publicity. Ms. Minh Man's trial was held on 8 and 9 January 2013 in Vinh City, Nghe An Province, almost a year and a half after her arrest. During her trial, she was detained in Nghe An prison camp.

13. Even though there were 14 co-defendants, the trial itself reportedly only lasted two days. The source claims that the Government sent over 1,200 policemen with armoured vehicles to barricade Vinh City for the duration of the trial to prevent foreign observers and journalists from accessing the courtroom. This was despite the fact that the "decision to go to trial" clearly stated that the trial was to be held in public. The police temporarily detained and manhandled a number of bloggers who attempted to attend the trial. The courtroom itself was filled with police officers, while international journalists and observers were refused access.

14. The source states that Ms. Minh Man's father was dissuaded by a local police inspector from seeking legal support or representation for his daughter. On the morning of the trial, she was appointed a public legal representative. This was the first time since her arrest that she was offered any legal representation. However, she refused his service due to lack of time to prepare a defence, as well as a lack of trust that her interests would be properly represented by the public legal representative.

15. According to the source, Ms. Minh Man was given five minutes to address the judge during her trial. She could only answer questions put to her with “yes” or “no” answers. If she tried to say any more, she was gagged by court officers. She was also not allowed to summon or examine her own witnesses. Ms. Minh Man and her co-defendants experienced technical difficulties with their microphones during the course of the hearing, while the prosecution’s microphones worked without disruption.

16. On 9 January 2013, Ms. Minh Man was sentenced to eight years’ imprisonment followed by five years of house arrest as an “active participant” in committing “criminal activities aimed at overthrowing the people’s administration” pursuant to article 79(1) of the Penal Code. The judgment made reference to her photojournalism, most notably her photographs of “HS.TS.VN” graffiti and the anti-China protest in Ho Chi Minh City. The judgment accused her of being a member of Viet Tan, and accused her of distributing her photographs to the organisation. The judgment also referred to the non-violent and peaceful methods of Viet Tan.

17. The source states that Ms. Minh Man did not appeal her conviction and sentence, as she was warned that if she filed an appeal, she would risk an additional six months of detention. This has significantly impeded her ability to pursue a domestic remedy and has essentially rendered the pursuit of such domestic remedies ineffective.

18. Since 8 January 2013, Ms. Minh Man has been detained in Camp 5, Yen Dinh, Thanh Hoa rehabilitation camp. The source claims that she is forced to undertake physical labour. Even though political prisoners are detained alongside other prisoners, the prison authorities attempt to maintain an environment that ensures the social isolation of political prisoners. If prisoners are seen to be developing a friendly relationship with Ms. Minh Man, they are called to the prison office and issued with a warning.

19. According to the source, on 16 November 2014, Ms. Minh Man and three other female prisoners were transferred to the “disciplinary zone” of the detention site, a newly constructed building with walls consisting of three layers of concrete and a locked gate. The innermost zone of this building is wired, similar to high-security detention facilities. Ms. Minh Man and the three other detainees were kept in rooms with two prisoners each for 24 hours per day, seven days per week. Ms. Minh Man started a hunger strike on 28 November 2014 in protest against the unfair treatment she was experiencing in detention. She was able to alert her family of this situation during a five-minute, monitored phone call on 5 December 2014.

20. According to updated information received from the source, Ms. Minh Man still remains isolated in this high-security detention zone, where conditions of solitude are severe. Ms. Minh Man is effectively cut off from the rest of the prison population. Interaction with non-political prisoners is not possible, and Ms. Minh Man is not entitled to participate in any group activities organised by the other prisoners, such as sports, arts and music programs.

21. Ms. Minh Man is reported to be the only female currently held in the high-security zone. This leaves her vulnerable to abuse, and is a source of great concern to her family. Ms. Minh Man’s visitation rights remain limited, compounding the psychological effects of her isolation. Despite the fact that her family travels over 1,500 kilometres every month to see her, they are sometimes denied access to her without reason. When access is permitted, visitors can only communicate with Ms. Minh Man via a telephone, with a sheet of glass physically separating them from her. These telephone visits are never allowed to be over an hour in length and are conducted in the presence of four or five guards, one of whom listens in on the call. There is a concern that supplies left by her family with the guards are not delivered to her once handed over. The prison authorities also do not allow for the personal practice of religious belief. As a result, bibles sent by Ms. Minh Man’s family have been

confiscated on numerous occasions, and Christian priests seeking to give her religious sacraments have been denied access.

22. Ms. Minh Man has been in detention for over five years since her arrest on 31 July 2011.

Submissions regarding arbitrary detention

23. The source submits that the deprivation of liberty of Ms. Minh Man is arbitrary in accordance with categories II and III of the categories applied by the Working Group.

24. In relation to category II, the source submits that the deprivation of liberty of Ms. Minh Man resulted from the exercise of her rights to freedom of opinion and expression, and her right to association under articles 19 and 20 of the UDHR and articles 19 and 22 of the ICCPR.

25. The source points to the fact that Ms. Minh Man was arrested while pursuing a career as a freelance photojournalist, and that her work was often critical of government policy and gave publicity to contested political issues such as land seizures and the Paracel and Spratly islands dispute. Further, when Ms. Minh Man was charged, one of the activities listed in her indictment was her photojournalism work and her photojournalism materials were confiscated following her arrest and not returned. The source notes the ongoing trend in Viet Nam of detaining bloggers and human rights activists and argues that, although the charges related to Ms. Minh Man's alleged involvement in Viet Tan and the spraying of graffiti on a public school, the real purpose of her detention was to punish her for peacefully exercising her rights and to deter others from doing so. Finally, the judgment of the People's Court referred to Ms. Minh Man's photography, including of the "HS.TS.VN" slogan and the anti-China march in Ho Chi Minh City. Her arrest occurred less than two months after her coverage of the protest in Ho Chi Minh City.

26. The source recalls that all forms of opinion are protected by article 19(1) of the ICCPR, including views which are critical of a political regime, and that the right to freedom of opinion is absolute and cannot be derogated from in any circumstance. Criminalising the holding of an opinion, or to intimidate, arrest or detain an individual for reasons of the opinions they may hold, is incompatible with article 19(1) of the ICCPR. Further, the right to freedom of expression can only be restricted under very limited circumstances, but never to muzzle advocacy of multi-party democracy and human rights. Restrictions on the right to freedom of expression must be provided by law and strictly necessary. The penalisation of a journalist solely for being critical of the government or the social system espoused by the government can never be a necessary restriction of the freedom of expression.

27. The source submits that article 79(1) of the Penal Code is vague and overly broad because it does not delineate with certainty what activities are capable of falling within this provision. It should not have included Ms. Minh Man's photojournalism, as no violence occurred as a direct result of her work. Instead, Ms. Minh Man's work was intended to raise social awareness and promote public debate on issues which she believed were important to Vietnamese society, as a vitally important alternative to the state-run media in Viet Nam. Further, the source submits that the arrest and detention of Ms. Minh Man did not pursue a legitimate aim, and that the Government has failed to demonstrate the necessity and proportionality of the arrest and detention to the stated aim of protecting national security.

28. In addition, the source argues that Ms. Minh Man's arrest and detention were linked to her association with other individuals who opposed government policy and promoted democratic principles in a peaceful manner. She was charged for her alleged involvement with an organisation called Viet Tan, an opposition party that seeks to empower the

Vietnamese people to seek social justice and defend their rights through non-violent civic action, but has been accused by the Government of being a terrorist organisation. The source submits that there has been no clear link between the activity of Ms. Minh Man and acts of violence or threats to national security. In fact, the judgment of the People's Court notes the "non-violent" activity of Viet Tan in general.

29. In relation to category III, the source points to several instances of the non-observance of the right to a fair trial under articles 9, 10 and 11 of the UDHR and articles 9 and 14 of the ICCPR. According to the source, these include:

(a) Denial of the right to a public hearing. There were no special circumstances set out in article 14(1) of the ICCPR which allowed for limited public access to the proceedings. The People's Court stated that the hearing would be conducted in public, but access to the courtroom during Ms. Minh Man's hearing was severely limited by the authorities. The Government sent over 1,200 policemen to restrict public access to the trial, filled the courtroom with police officers, and detained bloggers who wanted to attend the trial;

(b) Denial of the right to a competent, independent and impartial tribunal. A tribunal cannot be considered independent if executive power is able to control or direct the Judiciary. Given the reported lack of independence and impartiality in the Vietnamese court system, Ms. Minh Man's hearing was not held by a competent, independent and impartial tribunal;

(c) Denial of the right to be presumed innocent. Ms. Minh Man and her co-defendants were surrounded by an overwhelming number of police officers. Presenting the defendants in this way indicated that the authorities believed the defendants to be dangerous. Further, the trial of 14 persons lasted only two days, during which Ms. Minh Man was only able to address the judge for five minutes, suggesting that the outcome of her trial had been pre-determined;

(d) Denial of the right to adequate time and facilities for the preparation of a defence and to communicate with counsel of her choosing. Ms. Minh Man was questioned every day for hours by four or five interrogators while she was in pre-trial detention following her arrest. She had no access to legal counsel for the whole year in which the investigation was conducted. A public legal representative was appointed on the morning before her trial, but Ms. Minh Man refused these services as she believed that she would not be adequately represented. By having a legal representative appointed so late, and having been denied the opportunity to choose her own counsel, Ms. Minh Man could not access the proceedings or participate meaningfully in them;

(e) Denial of the right to equality of arms, including the right to examine witnesses against her and to obtain the attendance and examination of witnesses on her behalf. Ms. Minh Man was not granted the same procedural rights as the prosecution as she was only given five minutes in which she could address the court and could only respond to questions put to her with a "yes" or "no" answer. She was gagged if she tried to elaborate on her defence and experienced technical difficulties with her microphone, while the prosecution presented its case without interruption. She was not permitted to call witnesses which put her at a substantial disadvantage to the prosecution;

(f) Denial of the right to be tried without undue delay. Ms. Minh Man was detained for nearly 18 months from 31 July 2011 to 8 January 2013 without trial. She was charged under article 79 of the Penal Code which is considered a particularly serious offence that threatens national security, and was therefore denied bail.

30. The source submits that the appropriate remedy would be for the Government to release Ms. Minh Man and withdraw the charges against her, or ensure that the charges are

determined by an independent and impartial tribunal in proceedings conducted in strict compliance with the provisions of the ICCPR. The source also submits that the Government should provide just compensation to Ms. Minh Man for the arbitrary detention that she has suffered, and take the necessary steps to prevent further violations of her rights to freedom of expression and association as recognised and guaranteed by the ICCPR and the UDHR.

Response from the Government

31. On 20 June 2016, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 20 August 2016 about the current situation of Ms. Minh Man, including any comment on the source's allegations. The Working Group also requested the Government to clarify the legal grounds justifying Ms. Minh Man's continued detention, and to provide details regarding the conformity of the proceedings against her with international law, particularly international human rights treaties to which the Socialist Republic of Viet Nam is a party.

32. The Working Group regrets that it did not receive a response from the Government to this communication. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

33. In the absence of a response from the Government, the Working Group has decided to render this Opinion in conformity with paragraph 15 of its methods of work.

34. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹ In this case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

35. This case again raises the issue of the compatibility of article 79 of Viet Nam's Penal Code with the right to freedom of opinion and expression, and the right to association, enshrined in international human rights law, including the UDHR and ICCPR. Article 79(1) criminalises activities which are carried out with intent to "overthrow the people's administration".

36. In its previous jurisprudence, the Working Group has considered the application of this provision (see, for example, Opinion Nos. 26/2013, 27/2012 and 46/2011). In these cases, the Working Group found that article 79 of Viet Nam's Penal Code is so vague and imprecise that it could result in penalties being imposed not only on persons using violence for political ends, but also on persons who have merely exercised their legitimate rights to freedom of opinion or expression. The Working Group also pointed out in those cases that the Government did not allege or provide evidence of any violent action on the part of the petitioners, and that in the absence of such information, their convictions could not be regarded as consistent with the UDHR or ICCPR.² Finally, the Working Group recalled

¹ See, for example, Report of the Working Group, A/HRC/19/57, 26 December 2011, para. 68, and Opinion No.52/2014.

² The Working Group has, in relation to other provisions of Viet Nam's national security legislation, made the same point over many years about the need for a clear distinction between armed and violent acts that endanger national security and the peaceful exercise of the rights to freedom of opinion and expression: see, for example, Opinion Nos. 42/2012, 20/2003, 13/1999, 27/1998, 21/1997, 3/1996, 7/1994 and 14/1993. The Working Group

that the holding and expressing of opinions, including those which are not in line with government policy, is protected under article 19 of the ICCPR.

37. As the source points out, several of Ms. Minh Man's co-defendants filed a petition with the Working Group which resulting in a finding in Opinion No. 26/2013 that their deprivation of liberty was arbitrary according to categories II, III and V of the categories applied by the Working Group. Like Ms. Minh Man, they were convicted on the basis of their alleged involvement with the Viet Tan. A similar conclusion was reached in another case involving alleged membership of the Viet Tan, where some of the allegedly subversive activities also included attending seminars on non-violent struggle in Thailand and Cambodia and producing and disseminating signs bearing the "HS.TS.VN" logo (Opinion 46/2011). Given the similarity between these cases and the present case, the Working Group has a strong basis to conclude that Ms. Minh Man has been arbitrarily deprived of her liberty.

38. In the present case, the Working Group considers that Ms. Minh Man's photojournalism in Viet Nam falls within the boundaries of opinions and expression protected by article 19 of the UDHR and article 19 of the ICCPR. In the absence of any information indicating that Ms. Minh Man had engaged in violent activity, or that her work directly resulted in violence, the Working Group concludes that her arrest and detention was not because of any threat to national security. Rather, she was detained in order to restrict the dissemination of material that was critical of the Government and which drew attention to issues of current interest. Similarly, Ms. Minh Man's affiliation with Viet Tan falls within the right to freedom of association protected by article 20 of the UDHR and article 22 of the ICCPR, and the right to take part in the conduct of public affairs under article 21 of the UDHR and article 25 of the ICCPR.

39. There was no submission from the Government that any of the permitted restrictions on the freedom of expression and association found in articles 19(3) and 22(2) of the ICCPR apply in this case. It follows that Ms. Minh Man was detained solely for the peaceful exercise of her rights and that her case falls within category II of the categories applied by the Working Group.

40. The Working Group notes that others have expressed concern about the use of national security legislation in Viet Nam to restrict the exercise of human rights. In the Universal Periodic Review conducted by the Human Rights Council in relation to Viet Nam in February 2014, thirty recommendations were made by delegations to improve enjoyment of the freedom of opinion and expression and the freedom of association in Viet Nam, with some of those relating specifically to amendment of vague provisions regarding national security in the Penal Code (including article 79), the release of political prisoners, and the need to implement the Opinions of the Working Group on Arbitrary Detention. Given the ongoing concern relating to Viet Nam's national security legislation, the Government may consider it an appropriate time to work with international human rights mechanisms to bring these laws into conformity with the UDHR and ICCPR. The Working Group would welcome an invitation to conduct a country visit to follow-up its initial visit in 1994 and to constructively assist in this process.

41. The Working Group also finds that the facts presented by the source, which have not been contested by the Government, demonstrate serious violations of the right to a fair trial. In particular, the Working Group has taken into account: (a) the large police presence at

also made this point during its last country visit to Viet Nam in 1994: E/CN.4/1995/31/Add.4, 21 December 1994, paras. 58-60, 77.

Ms. Minh Man's trial,³ (b) the summary nature of a two-day trial involving 14 defendants, (c) numerous procedural irregularities, particularly in addressing the court and in not being able to call witnesses, that put Ms. Minh Man at a disadvantage compared to the prosecution, (d) the lack of access to legal assistance throughout the entire pre-trial detention and trial periods (the trial judgment states that some of the other defendants were represented at trial by lawyers from law firms), (e) the delay of nearly 18 months between Ms. Minh Man's arrest and trial for which the Government offered no justification, and (f) the denial of bail during this period.⁴ The Working Group considers that Ms. Minh Man should have been tried more expeditiously, particularly given that the trial judgment indicates that Ms. Minh Man demonstrated an "acceptable level of cooperation during the investigation" and therefore did not contribute to the delay. Further, the numerous extension orders for Ms. Minh Man's pre-trial detention referred to her detention as being "necessary for the investigation", without considering whether alternatives, such as bail, were appropriate. Article 9(3) of the ICCPR requires that pre-trial detention be reasonable and necessary taking into account all the circumstances, and should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.⁵

42. The Working Group concludes that Ms. Minh Man was denied the right to a public hearing by a competent, independent and impartial tribunal. The Government did not advance any argument as to why this trial would fall within any of the exceptions in article 14(1) of the ICCPR which would allow it to be closed to the public. She was also denied the right to the presumption of innocence, the right to adequate time and facilities for the preparation of a defence and to communicate with counsel of her choosing, the right to equality of arms, and the right to be tried without undue delay, in violation of article 9(3) and article 14(1), (2), (3)(b), (c), (d) and (e) of the ICCPR. These violations of the right to a fair trial are of such gravity as to give Ms. Minh Man's deprivation of liberty an arbitrary character according to category III of the categories applied by the Working Group.

43. The Working Group wishes to record its grave concern about Ms. Minh Man's physical and mental well-being since her arrest and detention in July 2011. The Working Group refers in particular to the allegations made by the source that Ms. Minh Man is the only female subject to prolonged isolation in harsh conditions within a high-security detention zone where she is not able to participate in any group activities, has limited visitation rights, and is not permitted to practise her religion. The Working Group considers that this treatment violates Ms. Minh Man's right under article 10(1) of the ICCPR to be treated with humanity and respect for her inherent dignity, and falls significantly short of the requirements of the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).⁶ It may also amount to torture or other cruel, inhuman or degrading treatment or punishment under article 7 of the ICCPR.

44. The Working Group notes that the source sought a recommendation that Ms. Minh Man be released and the charges withdrawn, or that the charges against her be determined by an independent and impartial tribunal in proceedings conducted in accordance with the

³ In its General Comment No. 32, the Human Rights Committee stated that defendants should not be presented to the court in a manner indicating that they may be dangerous criminals as this violates the presumption of innocence, CCPR/C/GC/32, 23 August 2007, para. 30.

⁴ The Working Group reaffirmed in two recent cases involving Viet Nam (Opinion Nos. 45/2015 and 46/2015) that pre-trial detention should be an exception and should be as short as possible. In those two cases, the length of pre-trial detention was eight months and six months, respectively.

⁵ See Human Rights Committee, General Comment No. 35, CCPR/C/GC/35, 16 December 2014, para. 38.

⁶ GA Res. 70/175, A/RES/70/175, 8 January 2016. See, for example, rules 1, 3, 23, 43-45, 58-59, 65-66, 105, 119-120.

ICCPR. However, the Government has not provided any information to indicate a link between Ms. Minh Man's photojournalism and a threat to national security which would warrant another trial. Moreover, Ms. Minh Man has already been detained for five years for spraying graffiti on a public school, well beyond the range of a proportionate penalty for minor property damage. The Working Group considers that there is no reason to recommend another trial, and recommends the immediate and unconditional release of Ms. Minh Man from detention.

Disposition

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

The deprivation of liberty of Nguyen Dang Minh Man was arbitrary, being in contravention of articles 9, 10, 11, 19, 20 and 21 of the UDHR and articles 9, 10, 14, 19, 22 and 25 of the ICCPR, and falls within categories II and III of the categories applied by the Working Group.

46. The Working Group requests the Government to take the necessary steps to remedy the situation of Ms. Minh Man without delay and bring it into conformity with the standards and principles in the UDHR and ICCPR.

47. Taking into account all the circumstances of the case, especially the risk of harm to Ms. Minh Man's physical and mental integrity, the Working Group considers that the adequate remedy would be to release Ms. Minh Man immediately, and accord her an enforceable right to compensation in accordance with article 9(5) of the ICCPR.

48. The Working Group urges the Government to bring relevant legislation, particularly laws such as article 79(1) of the Penal Code which is vague and overly broad and has been used to restrict the exercise of human rights, into conformity with the recommendations made in this Opinion and with Viet Nam's commitments under international human rights law.

49. In accordance with paragraph 33(a) of its methods of work, the Working Group refers Ms. Minh Man's case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

Follow-Up Procedure

50. 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 follow-up action taken on the recommendations made in this Opinion, including:

- (a) whether Ms. Minh Man has been released, and if so, on what date;
- (b) whether compensation or other reparations have been made to Ms. Minh Man;
- (c) whether an investigation has been conducted into the violation of Ms. Minh Man'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 Government's laws and practices with its international obligations in line with this Opinion, and
- (e) whether any other action has been taken to implement this Opinion.

51. The Government is further invited to inform the Working Group of any difficulties which it may have encountered in implementing the recommendations made in this

Opinion, and whether further technical assistance is required, for example, through a Working Group visit.

52. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of this Opinion. However, the Working Group reserves the possibility of undertaking its own follow-up of this Opinion if new concerns in relation to this case are brought to its attention. This follow-up procedure will enable the Working Group to keep the Human Rights Council informed of the progress made in implementing its recommendations, as well as any failure to take action.

53. The Working Group recalls that the Human Rights Council has called for all States to cooperate with the Working Group, 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.⁷

[Adopted on 26 August 2016]

⁷ Human Rights Council Resolution 24/7, A/HRC/RES/24/7, 8 October 2013, para. 3.