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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023**

### **Opinion No. 16/2023 concerning Nguyen Tuong Thuy (Viet Nam)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,<sup>1</sup> on 2 December 2022, the Working Group transmitted to the Government of Viet Nam a communication concerning Nguyen Tuong Thuy. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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<sup>1</sup> [A/HRC/36/38](#).

## Submissions

### *Communication from the source*

4. Nguyen Tuong Thuy, born in 1950, is a citizen of Viet Nam. He usually resides in Thành Phố Hồ Chí Minh City. He is a human rights activist, blogger and journalist. As part of his journalistic work, he has written about human rights issues in the country and has also advocated for press freedom and freedom of expression.

5. According to the source, Mr. Nguyen Tuong is also a 22-year military veteran who retired from the Vietnamese army in 1992. He blogged on civil rights and freedom of expression issues for the Vietnamese service of Radio Free Asia for six years. In 2014, he visited the United States of America to testify before the House of Representatives on the well-documented issues regarding media freedom in Viet Nam.

6. The source notes that Mr. Nguyen Tuong is a member of the Brotherhood for Democracy and the Vice-Chair of the Independent Journalists' Association of Viet Nam, a civil society organization of more than 70 journalists. The Association publishes articles on human rights abuses, including systemic corruption, widespread pollution and the Government's response to various environmental disasters in the country. Mr. Nguyen Tuong has sought to exercise his right to freedom of expression and the right to participate in public affairs through his membership of the Association.

### Context

7. According to the source, in 2018 Mr. Nguyen Tuong was prevented from leaving his home to meet with representatives of the United Nations. He was also subjected to surveillance by plain clothes police officers, who would sit outside the family home to monitor his movements. Between 2011 and 2020, he was regularly summoned to the police station for questioning. In 2020, he was summoned to attend the police station on three separate occasions. On 13 March 2020, he was summoned by the Hanoi public security forces. The reason for the summons related to the case of a prominent journalist who was also charged under article 117 of the 2015 Penal Code for "producing, storing, and disseminating" documents, and sentenced to 15 years in prison. Mr. Nguyen Tuong declined to meet with the security forces, citing the coronavirus outbreak and his health condition.

### Arrest and detention

8. The source submits that on 23 May 2020, Mr. Nguyen Tuong was arrested by State authorities at his home in Hanoi. Several police officers forced their way into his home, read from a document that they claimed was an arrest warrant and detained him. Members of his family were also present in the house. During the arrest, his family requested a copy of the document the police officers claimed was an arrest warrant but the police officers denied the request.

9. The police officers then conducted a search of Mr. Nguyen Tuong's home and seized two mobile phones and a laptop. As of the date of the present submission, none of the items that were seized have been returned to the family.

10. Mr. Nguyen Tuong was charged under article 117 of the 2015 Penal Code for allegedly "making, storing, spreading information, materials and items for the purpose of opposing the State of the Socialist Republic of Viet Nam".<sup>2</sup> The provision carries a penalty of 5–12 years' imprisonment which can be increased to a term of between 10 and 20 years in "extremely serious" cases.

11. Following his arrest, Mr. Nguyen Tuong was taken to Chi Hoa detention centre where he was held in pretrial detention until on or around 26 January 2021. He was then moved to

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<sup>2</sup> See

[https://www.policinglaw.info/assets/downloads/2015\\_Criminal\\_Code\\_of\\_Vietnam\\_\(English\\_translation\).pdf](https://www.policinglaw.info/assets/downloads/2015_Criminal_Code_of_Vietnam_(English_translation).pdf).

Bo La detention centre in Binh Duong province, where he remained until on or around 26 March 2021. He was then moved to prison camp An Phuoc, where he is currently detained.

12. Mr. Nguyen Tuong's family have been allowed limited visits with him since his arrest in 2020. They were allowed to visit him for the first time in April 2021. No further visits took place until January 2022. Since January 2022, the family have been allowed to visit him once a month. The visits are monitored through the presence of security guards in the room, audio recordings and photographs of those attending the visiting room, thereby severely restricting the conversation between Mr. Nguyen Tuong and his family.

13. Mr. Nguyen Tuong's lawyer was only permitted to visit him twice prior to his trial, having only received the necessary paperwork authorizing legal visits in November 2020.

14. The source submits that during Mr. Nguyen Tuong's pretrial detention, the authorities failed to produce him before any tribunal to assess the legal basis of his detention. In addition to the fact that the detention of Mr. Nguyen Tuong cannot have a legal basis as it flows from the legitimate exercise of his rights, his pretrial detention appears to lack a legal basis on other grounds. He was not informed of basic information, including the alleged criminal activities that underpinned the charge against him, the dates for his court hearing and the likely duration of his detention.

15. Additionally, Mr. Nguyen Tuong was unable to judicially review his six-month pretrial detention. In that context, the source recalls that pretrial detention should be an exception and should be as short as possible. Additionally: "Detention pending trial must be based on an individualized determination that is reasonable and necessary in all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime."<sup>3</sup> An order for Mr. Nguyen Tuong's temporary detention was signed on 12 November 2020, extending his detention for a further 3 months and 15 days.

#### Trial and sentencing

16. According to the source, Mr. Nguyen Tuong's trial took place on 5 January 2021 at the People's Court of Ho Chi Min City. Aside from one of Mr. Nguyen Tuong's close family members, the trial proceedings were closed to the public and many of Mr. Nguyen Tuong's family and friends, including his son, who had travelled to attend the trial proceedings, were not permitted to attend. Mr. Nguyen Tuong's one close family member was only permitted inside the court because of being listed as a witness in the proceedings.

17. Mr. Nguyen Tuong was tried, alongside two other members of the Independent Journalists' Association of Viet Nam, in proceedings that lasted approximately five hours.

18. Following the trial, Mr. Nguyen Tuong was convicted and sentenced to 11 years' imprisonment and a further 3 years under house arrest. He has maintained throughout his detention and trial that his actions stemmed from the legitimate exercise of his right to freedom of expression and opinion. He has also maintained that some of the documents or articles attributed to him by the prosecution were not written by him.

19. Following his trial, neither Mr. Nguyen Tuong nor his lawyer were served with the relevant and necessary prosecution documents that would allow him to appeal his conviction in accordance with the relevant legal procedures. When he was finally provided with the relevant documents and completed the appeal form, the authorities sought to prevent him from filling out the form, insisting that he complete it according to their instructions. Because of this, he never appealed his conviction and sentence.

#### Conditions of detention and health

20. According to the source, the conditions of Mr. Nguyen Tuong's detention in Chi Hoa detention centre were extremely difficult. He was detained in a small cell which impacted his breathing and sleeping. He had no window in his cell but only a small hole that allowed in a little light. During his detention at Chi Hoa detention centre he was not permitted outside his cell except when he was being questioned by the authorities.

<sup>3</sup> Human Rights Committee, general comment No. 35 (2014), para. 38.

21. Reportedly, Mr. Nguyen Tuong has refused to speak about the conditions in the detention centres he was transferred to from Chi Hoa detention centre. The source infers that his refusal is due to the fact that he is unable to have a full and frank conversation with his lawyers or his family because of the conditions of surveillance imposed on him by the prison authorities.

22. Mr. Nguyen Tuong is suffering from various health conditions, including back pain, high blood pressure, scabies and inflammatory bowel disease, for the latter of which he is required to take daily medication. In addition, he has complained of pain from osteoarthritis. In a recent medical visit he was informed that he had issues with his kidneys, but as he is not showing any symptoms medical staff did not prescribe any medication for this.

23. Mr. Nguyen Tuong has suffered significant weight loss since his arrest and subsequent detention. There is concern that due to his age and the conditions of his detention there is a real risk his health will decline further. The prison authorities have refused family requests to send him outside the facility for medical treatment.

#### Analysis of violations

24. The source submits that Mr. Nguyen Tuong's deprivation of liberty is arbitrary under categories I, II, III and V.

##### i. Category I

25. The source recalls that according to article 9 (1) of the International Covenant on Civil and Political Rights, a person's deprivation of liberty will only be justified where it is derived from a ground "established by law". Furthermore, according to article 15 (1) of the Covenant and article 11 (2) of the Universal Declaration of Human Rights, individuals are entitled to know what the law is and what conduct violates the law. The Human Rights Committee has noted that "no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. Any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application".<sup>4</sup>

26. The source submits that Mr. Nguyen Tuong has been charged under article 117 of the 2015 Penal Code, which criminalizes dissemination of "distorted information", "fabricated information" or information disseminated in order to "cause psychological warfare". Notably, the language used is overly broad and fails to define key terms allowing individuals to regulate their behaviour and to ensure it is in accordance with the law. The source recalls that the Working Group considered that a charge under article 117 was so "vague that it is impossible to invoke a legal basis for detention".<sup>5</sup> It has expressly noted that article 117 does not meet the standard of the principle of legality due to its "vague and overly broad language".<sup>6</sup>

27. The source argues that in the absence of any definitions and parameters to regulate the use of the provision, there is a significant risk that this law will be arbitrarily applied, as has happened in the present case.

28. For the reasons set out above, the source submits that article 117 does not comply with the legal certainty principle under international law and that there is no legal basis justifying the deprivation of liberty of Mr. Nguyen Tuong. As a result, his detention falls within category I.

##### ii. Category II

29. According to the source, Mr. Nguyen Tuong's arrest, detention and conviction stem from his legitimate exercise of his right to freedom of expression and opinion, as protected by article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. His conviction and onerous sentence were in retaliation for his public criticism of government

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<sup>4</sup> Human Rights Committee, general comment No. 35 (2014), para. 22.

<sup>5</sup> Opinion No. 11/2021, para. 67.

<sup>6</sup> Ibid.

policy and his active participation in journalistic work. In addition, his conviction and sentence serve as a deterrent to others who may express critical views of the State. Under article 19 (3) of the Covenant, any restriction imposed on the right to freedom of expression must satisfy three requirements: the restriction must be “provided by law”, must be designed to achieve a legitimate aim and must meet the requirements of necessity and proportionality.

30. The source recalls that for a legislative provision to be characterized as a law within the meaning of article 19 (3) of the Covenant, it must be formulated with sufficient precision to enable an individual to regulate his conduct accordingly.<sup>7</sup> As noted above, article 117 of the 2015 Penal Code criminalizes a broad range of activities associated with the dissemination of information critical of the Government. The language is overly broad and there is no guidance as to what constitutes the elements of the stated offences. The United Nations has recommended that article 117 be repealed on the basis that the restriction it imposes on freedom of expression is not compatible with the country’s international human rights obligation under the Covenant.<sup>8</sup> It has further recommended that Viet Nam should consider adopting a new provision establishing clear restrictions on the exercise of the right to freedom of expression strictly in line with articles 19 and 20 of the Covenant.<sup>9</sup>

31. The source therefore submits that the restriction fails the first part of the test under article 19 (3) of the Covenant, due to its lack of clarity and its potential for arbitrary application.

32. The source recalls that article 19 (3) notes that the restriction may only be imposed for the achievement of one of the specified aims namely “respect of the rights or reputation of others” or “the protection of national security or of public order (*ordre public*), or of public health or morals”.

33. The source submits that during the course of Mr. Nguyen Tuong’s criminal prosecution, the State failed to specify which of those legitimate aims they were seeking to achieve. At no point during the trial proceedings did the authorities establish that his activities and expressions were conducive to violence or that his prosecution was necessary to maintain public order and/or national security. Instead, Mr. Nguyen Tuong was convicted after he published commentaries on democracy and advocated for freedom of expression.<sup>10</sup>

34. The source submits that Viet Nam routinely arrests, detains and convicts those expressing critical views of the Government. For example, in December 2021 an independent journalist and human rights defender was sentenced to nine years in prison. She was arrested and charged under article 88 of the 1999 Penal Code for her journalistic work concerning environmental and human rights issues in Viet Nam. In March 2022, the People’s Court of Hanoi convicted another journalist under article 117 of the 2015 Penal Code and sentenced him to five years in prison and a further five years on probation for allegedly defaming the Communist Party when he uploaded a number of videos between 2017 and 2018. The source recalls that the Working Group has on “several occasions raised with the Government the issue of prosecution under vague penal laws”.<sup>11</sup>

35. The source argues that Mr. Nguyen Tuong has been convicted for the legitimate exercise of his right to freedom of expression online. Accordingly, the restriction fails the second part of the test under article 19 (3) of the Covenant.

36. The source notes that the final requirement of article 19 (3) provides that any restrictions must be necessary and proportionate to achieve the stated aim(s) and that they “must be the least intrusive instrument amongst those which might achieve their protective function”.<sup>12</sup> The Human Rights Committee has emphasized that the form of expression is

<sup>7</sup> Human Rights Committee, general comment No. 34 (2014), para. 25.

<sup>8</sup> “UN recommendations on the 2015 Penal Code and Criminal Procedural Code of Viet Nam” (17 May 2017).

<sup>9</sup> Ibid.

<sup>10</sup> See OHCHR, “Viet Nam: arrests send chilling message before key Party meeting – UN experts” (14 January 2021).

<sup>11</sup> Opinion No. 11/2021, para. 67.

<sup>12</sup> Human Rights Committee, general comment No. 34, para. 34.

relevant in assessing whether a restriction is proportionate.<sup>13</sup> As stipulated by the Human Rights Council in its resolution 2/16, the following types of expression should never be subject to restrictions: discussion of government policies and political debate; reporting on human rights, government activities and corruption in Government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expressions of opinion and dissent, including by persons belonging to minorities or vulnerable groups.<sup>14</sup>

37. The source argues that the measures imposed on Mr. Nguyen Tuong are disproportionate. The Human Rights Committee and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression have criticized the use of criminal sanctions on individuals exercising their right to freedom of expression.<sup>15</sup> The state's reliance on article 117 of the Penal Code has resulted in the arbitrary prosecution of Mr. Nguyen Tuong for acts that are both unforeseeable as criminal and protected under the Covenant, the Universal Declaration of Human Rights and other international norms and standards.

38. The source submits that Mr. Nguyen Tuong's work as a journalist and human rights defender falls squarely within the forms of expression which should never be restricted by State authorities. His writing has contributed to public discussion of civil rights and issues of freedom of expression within Viet Nam. His arrest, detention, conviction and sentence for his journalistic work is wholly disproportionate. His arrest and detention was therefore neither necessary nor proportionate within the meaning of article 19 (3) of the Covenant and falls within category II.

Deprivation of liberty resulting from the exercise of his right to take part in the conduct of public affairs

39. According to the source, Mr. Nguyen Tuong's arrest, conviction and detention were carried out to punish him for exercising his right to take part in the conduct of public affairs as part of a wider effort by the Vietnamese authorities to suppress any criticism of the Government.

40. Article 25 of the Covenant and article 21 of the Universal Declaration of Human Rights protect the freedom of each citizen to take part in the conduct of public affairs. The Human Rights Committee has defined this conduct to include "exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves".<sup>16</sup> This freedom is to be applied equally to all citizens, regardless of their political opinion and should only be restricted by a reasonable and objective measure.

41. The sources submits that Mr. Nguyen Tuong was targeted by the State authorities for several years prior to his arrest. Through his online reporting, he has contributed to efforts to hold the Government to account. His right to participate in the conduct of public affairs has been restricted as a result of his political activities. These restrictions were unlawful. Given the above, the detention of Mr. Nguyen Tuong falls within category II under article 25 of the Covenant and article 21 of the Universal Declaration of Human Rights.

### iii. Category III

42. The source argues that Mr. Nguyen Tuong's criminal prosecution and his pretrial detention were in contravention of article 14 (1) of the Covenant, article 10 of the Universal Declaration of Human Rights and principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. He was denied a fair trial and was not afforded the same procedural rights as the prosecuting party, resulting in a clear disadvantage in presenting his defence. In addition, he was not afforded a fair and public hearing by a competent, independent and impartial tribunal. Further, he was prevented by the authorities from pursuing an appeal against his conviction and sentence.

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<sup>13</sup> Ibid.

<sup>14</sup> See also [A/HRC/14/23](#), para. 81 (i).

<sup>15</sup> Ibid., para. 83.

<sup>16</sup> Human Rights Committee, general comment No. 25 (1996), para. 8.

43. The source recalls that article 14 of the Covenant mandates a right to a fair hearing by a competent, independent, and impartial tribunal. It also provides the minimum guarantees an accused individual is entitled to when facing a criminal prosecution, which include the right to equality before courts and tribunals. Any distinction should be based on law and should be justified on objective and reasonable grounds.

44. Mr. Nguyen Tuong was only permitted two meetings with his lawyer prior to his trial. Following his trial, he was effectively prevented from appealing the decision of the first instance court within the time provided by law.

45. The source submits that Mr. Nguyen Tuong was convicted and sentenced after a short trial lasting approximately five hours, alongside two other co-defendants, in circumstances where the court failed to consider the evidence impartially. The trial proceedings were not public. Public trials ensure that proceedings are at least transparent, which provides some protection against abuse and the arbitrary application of the law. Viet Nam has faced widespread criticism for its failure to uphold due process and basic fair trial guarantees. As in Mr. Nguyen Tuong's case, criminal prosecutions of journalists and human rights defenders in the country often fail to uphold international standards of fairness and of trial proceedings, which are frequently rushed, with little or no time being afforded to the defence to present their arguments.<sup>17</sup> Mr. Nguyen Tuong's defence was placed at a significant disadvantage and not afforded equality of arms. For the reasons set out above, his trial was in contravention of article 14 (1) of the Covenant, article 10 of the Universal Declaration of Human Rights and principles 10 and 11 of the Body of Principles.

46. According to the source, article 14 (5) of the Covenant provides for the right of everyone convicted of a crime to have their conviction and sentence reviewed by a higher tribunal, according to the law. This provision protects the right to appeal and requires that the State party substantively review the conviction and sentence, based on the sufficiency of both the evidence and the law, in a way that allows for due consideration of the case. Mr. Nguyen Tuong was entitled to a review of the formal and legal aspects of his conviction, as well as of the facts of the case, the allegations against him and the evidence submitted at trial, as referred to in the appeal. Moreover, article 331 of the 2015 Criminal Procedure Code grants the defendant the right to appeal judgments of first instance courts and article 332 of the Code requires that the authority in charge of the detention facility facilitate a person's right of appeal by forwarding the written appeal to the proper court. Mr. Nguyen Tuong was denied his right of appeal.

#### Right to be tried without undue delay

47. The source submits that for approximately the first six months of Mr. Nguyen Tuong's pretrial detention he was held incommunicado. In addition, for the duration of his pretrial detention, he was never brought before a judge for a determination of his entitlement to pretrial release, in contravention of article 14 (3) (c) of the Covenant, article 10 of the Universal Declaration of Human Rights and principle 11 of the Body of Principles.

48. The source recalls that article 14 (3) (c) of the Covenant states that an accused's trial must be held without undue delay. In addition, article 9 (3) of the Covenant states that: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge ... and shall be entitled to a trial within a reasonable time or to release." Article 9 (3) further notes "it shall not be the general rule that persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for trial".

49. The Human Rights Committee notes that under article 9 of the Covenant, the meaning of the term "promptly" should be understood to be within 48 hours. In the view of the Committee, "any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances".<sup>18</sup> It has also commented that unless there is evidence to the contrary, there is a general presumption in favour of bail. Circumstances where pretrial

<sup>17</sup> Opinion No. 36/2021, para. 87.

<sup>18</sup> Human Rights Committee, general comment No. 35 (2014), para. 33.

detention has been deemed necessary include a real likelihood of the accused absconding, compromising evidence or intimidating a witness.

50. According to the source, Mr. Nguyen Tuong did not benefit from a judicial review of his pretrial detention. In addition, none of the factors to justify withholding bail were present in his case and the State failed to produce any evidence to justify his ongoing detention. Mr. Nguyen Tuong's trial took place approximately eight months after his arrest. No reasons were provided for the delay. In the absence of any explanation, his right to be tried without undue delay has clearly been violated in contravention of article 14 (3) (c) of the Covenant, article 10 of the Universal Declaration of Human Rights and principle 11 of the Body of Principles.

Right to communicate with the outside world, particularly with his family

51. The source notes that Mr. Nguyen Tuong was detained for approximately eight months prior to his trial. For approximately the first six months he was held in incommunicado detention and had no access to the outside world, including to his family. He was first permitted to see a lawyer in November 2020. Thereafter, he was only permitted one more visit from his legal counsel before he stood trial.

52. Mr. Nguyen Tuong was finally allowed to meet with his family in April 2021, 11 months after his arrest, but he was not permitted to meet with his family again until January 2022. According to his family, their visits were heavily monitored by prison guards, including through being audio-recorded and photographed so that Mr. Nguyen Tuong was and remains unable to discuss his conditions of detention and any mistreatment he may have suffered.

53. The source recalls that principles 15 and 19 of the Body of Principles provide that communication with the outside world, particularly with family, "shall not be denied for more than a matter of days" (principle 15) and that a detained person shall have the right to be visited by and communicate with members of his family and be given adequate opportunity to communicate with the outside world (principle 19). The Working Group has previously determined that incommunicado detention is in contravention of principles 15 and 19.<sup>19</sup>

54. In view of the above, the source submits that the conditions of Mr. Nguyen Tuong's detention are contrary to principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and fall within category III.

iv. Category V

55. The source submits that Mr. Nguyen Tuong was targeted because of his activities as a journalist and for advocating for press freedom and human rights, particularly in respect of his critical reporting on human rights abuses in the country and issues with freedom of expression. He was arrested, convicted and sentenced to 11 years in prison and a further 3 years of house arrest. His sentence is wholly disproportionate and reflects the attitude of the State authorities in targeting those who engage in peaceful activism. The source recalls that the Working Group has consistently noted the systematic pattern of State authorities in Viet Nam detaining human rights defenders for their online reporting on human rights issues.

56. The source argues that Mr. Nguyen Tuong was deprived of his liberty on discriminatory grounds, owing to his status as a human rights defender, and on the basis of his political views critical of the Government's actions. His deprivation of liberty constitutes a violation of article 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant and falls within category V.

*Response from the Government*

57. On 2 December 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide detailed information by 31 January 2023 about the situation of Mr. Nguyen Tuong and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Viet Nam under international human rights law, and in particular with regard to the treaties ratified by the State.

<sup>19</sup> Opinion No. 35/2022, para. 69.

Furthermore, the Working Group called upon the Government to ensure Mr. Nguyen Tuong's physical and mental integrity.

58. On 26 January 2023, the Government requested an extension in accordance with paragraph 16 of the methods of work, which was granted with a new deadline of 28 February 2023.

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

### Discussion

60. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 16 of its methods of work.

61. In determining whether the detention of Mr. Nguyen Tuong 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 of a breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>20</sup> In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

#### *Category I*

62. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without a legal basis.

63. The source argues that Mr. Nguyen Tuong was not brought before a judge to determine the legality of his arrest and pretrial detention, neither did Mr. Nguyen Tuong have a bail hearing.

64. The Working Group recalls the right to be brought promptly before a judicial authority to challenge detention, within 48 hours of the arrest, barring absolutely exceptional circumstances, in accordance with the international standard set out in the Working Group's jurisprudence.<sup>21</sup> The right to bring proceedings before a court so that the court may decide without delay on the lawfulness of the detention is protected by article 9 of the Universal Declaration of Human Rights, article 9 (3) of the Covenant and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

65. Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.<sup>22</sup> As the Working Group has found, the inability to challenge detention before a court also violates the right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant, placing the individual outside the protection of the law, in violation of the right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

66. Article 9 (3) of the Covenant provides that "it shall not be the general rule that persons awaiting trial shall be detained in custody". The Working Group recalls the view of the Human Rights Committee that pretrial detention should be an exception and be as short as possible, and must be based on an individualized determination that it is reasonable and necessary, taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Courts must examine whether

<sup>20</sup> A/HRC/19/57, para. 68.

<sup>21</sup> Opinions No. 57/2016, paras. 110 and 111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; and No. 30/2019, para. 30.

<sup>22</sup> Opinions No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64. See also United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 3.

alternatives to pretrial detention, such as bail or other conditions, would render detention unnecessary in the particular case.<sup>23</sup>

67. In the present case, absent any Government response, the Working Group concludes that an individualized determination of Mr. Nguyen Tuong's circumstances did not occur and as a result, his detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant and principles 38 and 39 of the Body of Principles.

68. The source submits that following his arrest on 23 May 2020, Mr. Nguyen Tuong was held incommunicado for 6 months and was not permitted to see his family members for 11 months. He was then permitted to see his family in April 2021 and no further visits took place until January 2022. In finding that Mr. Nguyen Tuong was held incommunicado, the Working Group recalls that holding persons incommunicado prevents prompt presentation before a judge, as provided in article 9 (3) of the Covenant,<sup>24</sup> and violates the right under article 9 (4) to challenge the lawfulness of the detention before a court.<sup>25</sup>

69. The source submits that Mr. Nguyen Tuong's right to family visits was violated. A detainee must also be allowed to communicate with and receive visits from family members. Restrictions and conditions in regard to such contact must be reasonable. As the Human Rights Committee has observed, giving prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention and infringement of personal security.<sup>26</sup> According to Mr. Nguyen Tuong's family, visits were heavily monitored by prison guards including through being audio-recorded and photographed so that Mr. Nguyen Tuong was and remains unable to discuss his conditions of detention and any mistreatment he may have suffered. In the Working Group's view, such monitoring constitutes unreasonable restrictions on and conditions to family contact. The Working Group thus finds that the right of Mr. Nguyen Tuong to contact with the outside world was denied, in violation of rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)<sup>27</sup> and principles 15 and 19 of the Body of Principles.

70. The source claims that Mr. Nguyen Tuong was arrested, detained and convicted pursuant to article 117 of the 2015 Penal Code, which contains overly broad language. It submits that he has been charged under article 117 of the Code, which criminalizes dissemination of "distorted information", "fabricated information" or information disseminated in order to "cause psychological warfare". Notably, the language used is overly broad and fails to define key terms allowing individuals to regulate their behaviour and to ensure it is in accordance with the law. The Working Group has raised the issue of prosecution under vague penal laws with the Government on several occasions,<sup>28</sup> specifically in relation to article 117 of the Penal Code.<sup>29</sup> 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.<sup>30</sup> In the Working Group's view, article 117 of the Penal Code does not meet this standard. It is thus incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant and cannot be considered "prescribed by law" and as "defined with sufficient precision" due to its vague and overly broad language.<sup>31</sup> The Working Group considers that the charge on which Mr.

<sup>23</sup> Human Rights Committee, general comment No. 35 (2014), para. 38.

<sup>24</sup> *Ibid.*, para. 35.

<sup>25</sup> See opinions No. 35/2018, No. 9/2019, No. 44/2019, No. 45/2019 and No. 25/2021.

<sup>26</sup> See the Committee's general comment No. 35 (2014), para. 58, and opinion No. 84/2020, para. 69.

<sup>27</sup> Opinions No. 35/2018, para. 39; No. 44/2019, paras. 74 and 75; and No. 45/2019, para. 76.

<sup>28</sup> Opinions No. 46/2018, para. 62; No. 8/2019, para. 54; No. 9/2019, para. 39; No. 44/2019, para. 55; and No. 45/2019, para. 54.

<sup>29</sup> Opinions No. 11/2021, paras. 67, 73, 74 and 96; No. 36/2021, paras. 73, 74, 77, 78 and 103; No. 40/2021, paras. 69, 73–75 and 99; and No. 35/2022, paras. 76 and 79–81.

<sup>30</sup> Opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59, and Human Rights Committee, general comment No. 35 (2014), para. 22.

<sup>31</sup> Human Rights Committee, general comment No. 34 (2011), para. 25.

Nguyen Tuong is being detained is so vague that it is impossible to invoke a legal basis for his detention.

71. For these reasons, the Working Group finds that the Government failed to establish a legal basis for Mr. Nguyen Tuong's arrest and detention. His detention is arbitrary and falls within category I.

#### *Category II*

72. In relation to category II, the source submits that Mr. Nguyen Tuong's arrest, detention and conviction stem from the legitimate exercise of his fundamental rights that are guaranteed by the Covenant and the Universal Declaration of Human Rights and are in retaliation to his public criticism of government policy.

73. The Working Group considers that charges and convictions under article 117 of the Penal Code for the peaceful exercise of rights are inconsistent with the Universal Declaration of Human Rights and the Covenant. The Working Group came to a similar conclusion during its visit to Viet Nam in October 1994, noting that vaguely defined national security offences did not distinguish between violent acts capable of threatening national security and the peaceful exercise of rights.<sup>32</sup>

74. In May 2017, the United Nations country team in Viet Nam recommended the repeal or revision of numerous articles of the Penal Code, including article 117, on the basis of their incompatibility with human rights obligations under the Covenant. Article 117 was highlighted as being vague and broad, and not defining which actions or activities were prohibited, nor the constitutive elements of the prohibited offences. The country team also noted that these provisions did not differentiate between the use of violent means, which should be prohibited, and legitimate peaceful activities of protest, including criticism of the Government's policies and actions, or advocacy for any kind of changes, including of the political system, which fall directly under the rights to freedom of opinion and expression and of assembly and participation in public life.<sup>33</sup>

75. The Human Rights Committee has called on Viet Nam to end violations of the right to freedom of expression offline and online, and to ensure that restrictions do not go beyond the strictly defined limitations set forth in article 19 of the Covenant.<sup>34</sup> It has found that the vague and broadly formulated offences in various articles of the Penal Code, including article 117, their use to curtail freedom of opinion and expression, and the definition of certain crimes related to national security to encompass legitimate activities, such as exercising the right to freedom of expression, do not appear to comply with the principles of legal certainty, necessity and proportionality – for instance, arbitrary arrests and detention, and unfair trials and criminal convictions, including of human rights defenders, journalists, bloggers and lawyers, for criticizing State authorities or policies, including online.<sup>35</sup>

76. Considering Mr. Nguyen Tuong's role as a human rights advocate, the Working Group recalls that, according to the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights, and to draw public attention to the observance of human rights.<sup>36</sup> The Working Group has affirmed the right of human rights defenders to investigate, gather information regarding and report on human rights violations.<sup>37</sup> The imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny; the Working Group has recognized the necessity of subjecting interventions against individuals who may qualify as human rights defenders to particularly

<sup>32</sup> E/CN.4/1995/31/Add.4, paras. 58–60.

<sup>33</sup> "UN recommendations on the 2015 Penal Code and Criminal Procedural Code of Viet Nam", p. 1.

<sup>34</sup> CCPR/C/VNM/CO/3, para. 46.

<sup>35</sup> Ibid., para. 45 (a) and (d).

<sup>36</sup> Articles 1 and 6 (c) of the Declaration. See also General Assembly resolution 74/146, para. 12.

<sup>37</sup> Opinion No. 8/2009, para. 18.

intense review.<sup>38</sup> This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.<sup>39</sup>

77. Article 19 (2) of the Covenant protects the holding and expression of opinions, including those which are not in line with government policy.<sup>40</sup> The Human Rights Committee has 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.<sup>41</sup> The Human Rights Committee has emphasized that the form of expression is highly relevant in assessing whether a restriction is proportionate. As stipulated by the Human Rights Council, certain types of expression should never be subject to restrictions, such as discussion of government policies and political activities, including for peace or democracy.<sup>42</sup> The Council has called upon States to refrain from imposing restrictions under article 19 (3) that are not consistent with international human rights law.<sup>43</sup>

78. The permitted restrictions to this right may relate either to respect for the rights or reputations of others or to the protection of national security, public order (*ordre public*) or public health or morals. As the Human Rights Committee has stipulated: “Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.”<sup>44</sup> There is nothing to suggest that the permissible restrictions set out in article 19 (3) of the Covenant apply in the present case. The Government did not provide any argument to invoke any of these limitations, nor has it demonstrated why bringing charges against Mr. Nguyen Tuong was a legitimate, necessary and proportionate response to his online activities. As such, the Working Group is not convinced that prosecuting Mr. Nguyen Tuong is necessary to protect a legitimate interest under this article of the Covenant, nor that Mr. Nguyen Tuong’s arrest and detention is a necessary or proportionate response to his activities. Importantly, there is no indication that his peaceful online activism was intended or had the potential to incite violent behaviour.

79. In addition, the Working Group finds credible the source’s submission that Mr. Nguyen Tuong was detained for exercising his right to take part in the conduct of public affairs, in violation of article 21 of the Universal Declaration of Human Rights and article 25 (a) of the Covenant.<sup>45</sup> 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.<sup>46</sup> The Human Rights Committee notes that: “The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25.”<sup>47</sup>

80. For these reasons, the Working Group concludes that Mr. Nguyen Tuong’s detention resulted from his exercise of his right to freedom of opinion and expression and participation in public affairs, contrary to articles 19, 20, 21 of the Universal Declaration of Human Rights and articles 19, 22 and 25 (a) of the Covenant. The Working Group thus finds that his arrest and detention is arbitrary and falls within category II. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

<sup>38</sup> Opinions No. 21/2011, para. 29; No. 62/2012, para. 39; and No. 82/2021, para. 72.

<sup>39</sup> Opinions No. 39/2012, para. 45 and No. 82/2021, para. 72.

<sup>40</sup> Opinions No. 79/2017, para. 55; and No. 8/2019, para. 55.

<sup>41</sup> *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

<sup>42</sup> A/HRC/14/23, para. 81 (i).

<sup>43</sup> Human Rights Council resolution 12/16, para. 5 (p).

<sup>44</sup> See general comment No. 34 (2011), para. 22.

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

<sup>46</sup> Human Rights Council resolution 15/21.

<sup>47</sup> General comment No. 25, para. 26.

*Category III*

81. Given its finding that the deprivation of liberty of Mr. Nguyen Tuong is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, Mr. Nguyen Tuong has been tried and convicted. In the light of the above, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give Mr. Nguyen Tuong's deprivation of liberty an arbitrary character, such that it falls within category III.

82. The source contends that Mr. Nguyen Tuong's right to communicate with legal counsel was violated, noting that he was held incommunicado for approximately six months after his arrest. He was then permitted two meetings with counsel prior to his trial. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by a counsel of their choice at any time during their detention, including immediately after their apprehension, and such access is to be provided without delay.<sup>48</sup> The Working Group finds that the extremely limited access to legal assistance granted to Mr. Nguyen Tuong violated his right to equality of arms and to a fair hearing by an independent and impartial tribunal under article 14 (1) of the Covenant.<sup>49</sup> Moreover, Mr. Nguyen Tuong was not afforded his rights to adequate time and facilities for the preparation of his defence and to communicate with counsel, as guaranteed under article 14 (3) (b) of the Covenant. The Working Group notes that the present 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.<sup>50</sup>

83. The source argues that Mr. Nguyen Tuong was not afforded his right to be tried without undue delay, given that almost eight months elapsed between the date of his arrest (23 May 2020) and the date of his trial (5 January 2021). Under articles 9 (3) and 14 (3) (c) of the Covenant, anyone arrested or detained on a criminal charge is entitled to trial within a reasonable time and without undue delay. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the authorities.<sup>51</sup> The Human Rights Committee has stated that an important aspect of the fairness of a hearing is its expeditiousness and that in cases where the accused is denied bail by the court, he or she must be tried as expeditiously as possible.<sup>52</sup> The delay in the present case was exacerbated, as Mr. Nguyen Tuong was not given a bail hearing and his detention was not reviewed by a judicial authority, as discussed above.

84. Given the Working Group's finding that Mr. Nguyen Tuong's detention was arbitrary under category II because it resulted from the peaceful exercise of his rights, any delay in trying his case was unreasonable.<sup>53</sup> The Working Group considers that Mr. Nguyen Tuong's pretrial detention of almost eight months was unacceptably long and was in violation of articles 9 (3) and 14 (3) (c) of the Covenant and principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>48</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8; Human Rights Committee, general comment No. 35 (2014), para. 35; [A/HRC/45/16](#), paras. 50–55; and [A/HRC/48/55](#), para. 56. See also [A/HRC/27/47](#), para. 13.

<sup>49</sup> Opinions No. 18/2018, para. 53; No. 78/2018, paras. 78 and 79; and No. 43/2020, para. 84.

<sup>50</sup> See Opinions No. 46/2018, No. 9/2019, No. 44/2019, No. 45/2019, No. 82/2021, No. 13/2022, No. 35/2022, No. 40/2022, No. 43/2022 and No. 86/2022. See also [CAT/C/VNM/CO/1](#), paras. 16 and 17.

<sup>51</sup> Human Rights Committee, general comments No. 35 (2014), para. 37, and No. 32 (2007), para. 35. See also [CCPR/C/VNM/CO/3](#), paras. 35 and 36.

<sup>52</sup> See general comment No. 32 (2007), paras. 27–35.

<sup>53</sup> Opinions No. 8/2020, para. 75; No. 16/2020, para. 77; and No. 10/2021, para. 78.

85. The Working Group considers that these violations of due process and fair trial rights substantially undermined Mr. Nguyen Tuong's capacity to defend himself in the judicial proceedings.<sup>54</sup>

86. The source further submits Mr. Nguyen Tuong was convicted after a brief trial of approximately five hours, during which he was tried alongside two co-defendants in circumstances where, according to the source, the court failed to consider the evidence impartially. In Mr. Nguyen Tuong's case, as in other prosecutions of journalists and human rights defenders, the trial proceedings were rushed, with little time afforded to the defence to present their arguments.<sup>55</sup> The source submits that Mr. Nguyen Tuong's defence was placed at a significant disadvantage and not afforded equality of arms. As the Working Group has noted previously, a short trial for a serious criminal offence which carries a heavy sentence (11 years of imprisonment and 3 years of house arrest in the present case) supports the conclusion that Mr. Nguyen Tuong's guilt was determined prior to the trial.<sup>56</sup> In the absence of an explanation from the Government, the Working Group finds that these factors undermine Mr. Nguyen Tuong's right to the presumption of innocence, guaranteed in article 14 (2) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights.

87. In addition, the source submits that the trial was closed to the public. As the Human Rights Committee has stated, criminal trials are to be conducted in public unless one of the exceptional circumstances outlined in article 14 (1) justifies a closed trial.<sup>57</sup> In the present case, the Government has not provided any information to justify the exceptional step of holding a closed trial. Accordingly, the Working Group finds that Mr. Nguyen Tuong has not received a public hearing, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

88. Finally, on the source's submission that Mr. Nguyen Tuong was prevented from appealing his conviction, the Working Group finds a violation of article 14 (5) of the Covenant. In that regard it recalls that "article 14, paragraph 5, imposes on States a duty substantially to review conviction and sentence both as to sufficiency of the evidence and of the law".<sup>58</sup> Absent a submission from the Government, the Working Group concludes that this duty was violated in Mr. Nguyen Tuong's case.

89. For the reasons enumerated above, the Working Group concludes that the numerous violations of Mr. Nguyen Tuong's right to a fair trial and due process mentioned above are of such gravity as to render his deprivation of liberty arbitrary, falling within category III.

#### *Category V*

90. The source submits that Mr. Nguyen Tuong was targeted because of his activities as a journalist and for advocating for press freedom and human rights, particularly in respect of his critical reporting on human rights abuses in the country and issues with freedom of expression. He was arrested, convicted, and sentenced to 11 years in prison and a further 3 years of house arrest. The source further submits that this sentence is wholly disproportionate and reflects the attitude of the State authorities in targeting those engaged in peaceful activism.

91. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention. These include the following: the deprivation of liberty was part of a pattern of persecution against the detained person, including, for example, through previous detention; other persons with similarly distinguishing characteristics have

<sup>54</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 (paras. 12 and 15) and guideline 8 (paras. 67 and 71).

<sup>55</sup> Opinion No. 36/2021, para. 87.

<sup>56</sup> Opinions No. 75/2017, para. 53; No. 36/2018, para. 55; and No. 82/2021, para. 80.

<sup>57</sup> Human Rights Committee, general comment No. 32 (2007), para. 29.

<sup>58</sup> *Bandajevsky v. Belarus* (CCPR/C/86/D/1100/2002), para. 10.13.

also been persecuted; or the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.<sup>59</sup>

92. According to the source, Mr Nguyen Tuong has been targeted by the State authorities for several years. He has been subjected to surveillance by plain clothes police sitting outside the family home and between 2011 and 2020 he was regularly summoned to a police station for questioning. The discrimination faced by Mr. Nguyen Tuong reflects a broader pattern in Viet Nam of harassing and detaining human rights defenders for their work that the Working Group has observed.<sup>60</sup> The Working Group notes the Human Rights Committee's concluding observations on Viet Nam, in which the Committee expressed its concerns at reports that persons, particularly human rights defenders, activists and religious leaders, might face arbitrary arrests, detention and incommunicado detention without charges.<sup>61</sup> A number of United Nations human rights experts have expressed concern about the alleged arbitrary detention of four journalists affiliated to the Independent Journalists' Association of Viet Nam, including Mr. Nguyen Tuong.<sup>62</sup> The Working Group has also issued opinions finding that the arbitrary detention of other members of the Independent Journalists' Association and the Brotherhood for Democracy also falls under category V.<sup>63</sup>

93. In that context, the Working Group is convinced that Mr. Nguyen Tuong's arrest, conviction and sentence were an attempt to silence and punish him for sharing his views, an activity that is expressly protected by international law. As such, in the discussion above concerning category II, the Working Group established that Mr. Nguyen Tuong's detention had resulted from the peaceful exercise of his fundamental freedoms. When detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>64</sup>

94. The Working Group thus finds that Mr. Nguyen Tuong's deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on political or other opinion, owing to his status as a human rights defender. His detention violates articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and is arbitrary, falling within category V. The Working Group refers the case to the Special Rapporteur on the situation of human rights defenders.

#### *Concluding remarks*

95. The Working Group is concerned by the source's submission that Mr. Nguyen Tuong, suffers a host of medical issues. Some of these medical issues have allegedly been caused by Mr. Nguyen Tuong's extremely poor conditions of detention. The Working Group is compelled to remind the Government that according to article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and dignity, including receiving appropriate medical care.<sup>65</sup> The Working Group also urges the Government to ensure that Mr. Nguyen Tuong's right to family contact is respected.

96. The present case is one of a number of cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty of persons, particularly human

<sup>59</sup> A/HRC/36/37, para. 48.

<sup>60</sup> See opinions No. 9/2019, No. 44/2019, No. 45/2019, No. 16/2020, No. 40/2020, No. 81/2020, No. 11/2021, No. 36/2021, No. 40/2021, No. 13/2022, No. 43/2022 and No. 86/2022. See also CCPR/C/VNM/CO/3, para. 25.

<sup>61</sup> CCPR/C/VNM/CO/3, para. 25. See also Declaration on Human Rights Defenders, arts. 1 and 6 (c); and General Assembly resolution 74/146, para. 12.

<sup>62</sup> See communication by special procedure mandate holders, AL VNM 3/2020, 17 September 2020. See also opinion No.11/2021 relating to another member of the Independent Journalists' Association of Viet Nam.

<sup>63</sup> See, for example, opinions No. 26/2017, No. 46/2018, No. 9/2019 and No. 40/2022.

<sup>64</sup> Opinions No. 13/2018, para. 34; No. 59/2019, para. 79; No. 11/2021, para. 87; No. 40/2021, para. 90; and No. 82/2021, para. 84.

<sup>65</sup> Opinion No. 26/2017, para. 66.

rights defenders, in Viet Nam.<sup>66</sup> Many of these cases follow a familiar pattern of arrest that does not comply with international norms, lengthy detention pending trial with no access to judicial review, denial of or limited access to legal counsel, incommunicado detention, prosecution under vaguely worded criminal offences for the peaceful exercise of human rights, a brief closed trial at which due process is not observed, disproportionate sentencing and denial of access to the outside world. The Working Group is concerned that this pattern indicates a systemic problem with arbitrary detention in Viet Nam which, if it continues, may amount to a serious violation of international law.<sup>67</sup>

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

### **Disposition**

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

The deprivation of liberty of Nguyen Tuong Thuy, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 15, 16, 19, 22, 25 (a) and 26 of the International Covenant on Civil and Political Rights is arbitrary and falls within categories I, II, III and V.

99. The Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation of Mr. Nguyen Tuong 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.

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

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

102. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Independent Expert on the enjoyment of all human rights by older persons, for appropriate action.

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

### **Follow-up procedure**

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

- (a) Whether Mr. Nguyen Tuong has been released and, if so, on what date;

<sup>66</sup> See, for example, opinions No. 45/2018, No. 46/2018, No. 8/2019, No. 9/2019 and No. 44/2019.

<sup>67</sup> Opinion No. 47/2012, para. 22.

(b) Whether compensation or other reparations have been made to Mr. Nguyen Tuong;

(c) Whether an investigation has been conducted into the violation of Mr. Nguyen Tuong's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Viet Nam with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

105. 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.

106. 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.

107. 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.<sup>68</sup>

*[Adopted on 29 March 2023]*

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<sup>68</sup> Human Rights Council resolution 51/8, paras. 6 and 9.