United Nations A/HRC/WGAD/2019/44

General Assembly

Distr.: General
10 September 2019

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 August 2019

Opinion No. 44/2019 concerning Nguyễn Văn Hoá (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 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 20 March 2019, the Working Group transmitted to the Government of Viet Nam a communication concerning Nguyễn Văn Hoá. The Government replied to the communication on 20 June 2019. Viet Nam is a party to the International Covenant on Civil and Political Rights.

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

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

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

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

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

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

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Submissions

Communication from the source

4. Nguyễn Văn Hoá is a 24-year-old Vietnamese citizen. Before his arrest, Mr. Hoá worked as a journalist, blogger, environmental activist and digital security trainer. He regularly contributed to Radio Free Asia. He usually resides in Hà Tĩnh Province, Viet Nam.

Background information

5. In April 2016, Viet Nam experienced one of its worst environmental disasters, during which a large number of fish were killed and fishing communities were devastated in the country's 200-kilometre central coastal region. Hundreds of people are believed to have fallen ill from eating poisoned fish. The fish deaths were later linked to a toxic spill caused by a new steel factory owned by a company based in Taiwan Province of China, the Formosa Hà Tĩnh Steel Corporation, which reportedly flushed cyanide and other chemicals through its waste pipeline. The Government's support for the steel plant and its failure to respond to the disaster led to widespread protests. The Government responded to the crisis with a major crackdown on the protests, during which many activists were detained.

6. The source reports that Mr. Hoá, who is from Quảng Ích, a village in the Xã Kỳ Khang Commune, Kỳ Anh District, Hà Tĩnh Province, one of the areas most severely affected by the toxic spill, covered stories about the disaster and the subsequent protests. During the crisis, Mr. Hoá released videos that he had shot during the protests and that were subsequently published by media outlets. He also assisted families affected by the disaster, including by helping affected fishermen to obtain compensation and seek environmental justice. The source alleges that, shortly after his coverage of the protests was picked up internationally, and while he was on assignment for Radio Free Asia in Hà Tĩnh, on 19 November 2016, police officers beat Mr. Hoá and confiscated his equipment, including his mobile phone. Mr. Hoá then went into hiding, fearing more reprisals.

Arrest, detention and trial

7. The source reports that, on 11 January 2017, Mr. Hoá was arrested in Hà Tĩnh Province, reportedly without being provided with an arrest warrant or detention warrant at the time of his arrest. His family was not informed of his arrest and searched for him for days. On 17 January, they wrote a letter to the Kỳ Anh and Xã Kỳ Khang police departments, informing them that Mr. Hoá had been missing for eight days and asking them to investigate his disappearance.

8. According to the source, on 23 January, the police informed Mr. Hoá's family that he had been "temporarily detained" under article 258 of the Vietnamese Penal Code for "abusing democratic freedoms to infringe upon the interests of the State and the legitimate rights and interests of organizations and/or citizens", which carries a maximum sentence of seven years of imprisonment. The family was not allowed to visit Mr. Hoá as he was held incommunicado at Hà Tĩnh detention centre for approximately two months. The source claims that the police recommended Mr. Hoá not to instruct a lawyer. His family did not have access to his case file.

9. In April 2017, the Deputy Director of the Hà Tĩnh police publicly announced the charges against Mr. Hoá. According to the indictment, Mr. Hoá had set up accounts on multiple social media networks to slander the party and to smear, distort information about, incite people against and slander the Government. The same month, the Vietnamese authorities released a video of Mr. Hoá "apologizing" for his reporting of the protests, in an apparent attempt to dissuade the public from participating in peaceful civic action. The source alleges that Mr. Hoá did not script the video himself, as the wording of the confession mirrors the wording used in video recordings of other activists' confessions.

10. On 7 June 2017, the Hà Tĩnh police department formally changed the charges to "conducting propaganda against the Socialist Republic of Viet Nam", under article 88 of the Penal Code, which carries a maximum sentence of 20 years of imprisonment.

11. Mr. Hoá's trial took place on 27 November 2017 and lasted two-and-a-half hours. Mr. Hoá was not represented by legal counsel and his family had not been informed that the trial would take place, which prevented them from attending. He was convicted of "conducting propaganda against the State", under article 88 of the Penal Code, and sentenced to seven years of imprisonment followed by three years of house arrest. He did not appeal the judgment. In February 2018, Mr. Hoá was transferred to An Diem detention centre in Đại Lộc District, Quang Nam Province, approximately 500 kilometres from his home town, where he is currently detained.

12. While Mr. Hoá's arrest did not take place immediately after his reporting on the Formosa disaster, his arrest was part of a wider crackdown by the Vietnamese authorities to quell further protests and social unrest following the disaster.[1] The source recalls that several special procedures mandate holders criticized Mr. Hoá's detention and called for his release.[2]

Conditions of detention

13. The source recalls that, while Mr. Hoá was held incommunicado for approximately two months, he was not allowed to have any contact with his family or a lawyer. Thereafter, Mr. Hoá was allowed to receive visits from his family, but these visitation rights were still limited in practice. Mr. Hoá's family has visited only four times since his arrest, as the detention centres are far from his home town, the trip is costly and his mother is not in good health. According to the source, Mr. Hoá is not allowed to speak about the prison conditions and his health. Furthermore, he can only speak with his family over the telephone once a month for five minutes. Incommunicado detention for an extended period is conducive to torture and may amount to torture in itself, in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Viet Nam ratified in February 2015.

14. The source alleges that Mr. Hoá has suffered grave abuse in detention, including being coerced into testifying against environmental activist Lê Đình Lượng, who was sentenced to 20 years of imprisonment. During the trial, Mr. Hoá recanted his testimony before the judge, stating that it had been extracted under torture. According to the source, upon his return to detention, Mr. Hoá was severely beaten in retaliation for recanting his testimony. He has also been pressured to cooperate in unrelated cases, under threat of prosecution if he refuses.

15. The source reports that Mr. Hoá's health remains of concern and that he is not receiving adequate medication and treatment. Mr. Hoá had surgery for a tumour on his leg, and his health has since deteriorated. Since 22 February 2019, Mr. Hoá has been on a hunger strike in protest against the refusal by the prison authorities to allow him to lodge an appeal against his arrest, his mistreatment in detention and the arbitrary use of rules and regulations against him.

Submissions

16. The source submits that Mr. Hoá's deprivation of liberty is arbitrary according to categories II and III.

Deprivation of liberty resulting from the exercise of the right to freedom of expression

17. In relation to category II, the source argues that Mr. Hoá was arrested, detained and convicted in order to punish him for exercising his rights under article 19 of the Covenant,

[1] The source refers to the cases of bloggers Nguyễn Văn Oai and Trần Thị Nga, who were detained within days of Mr. Hoá's arrest. In October 2016, prominent environmental human rights defender "Mother Mushroom" (Nguyễn Ngọc Như Quỳnh) was detained on charges of spreading propaganda against the Government online and sentenced to 10 years of imprisonment. Her appeal was rejected in November 2017. Ms. Nga and Ms. Quỳnh were the subjects of opinions No. 75/2017 and No. 27/2017, respectively.

[2] See Office of the United Nations High Commissioner for Human Rights (OHCHR), "Viet Nam: UN rights experts urge release of activists jailed for protesting toxic spill", 23 February 2018.

to silence him during his detention and to deter others from speaking out against the State. Mr. Hoá is detained because of his reporting on and activism in the context of the Formosa disaster. This constitutes an interference with his right to freedom of expression under article 19.

18. The source recalls that article 19 (3) of the Covenant provides that any restriction imposed on the right to freedom of expression must satisfy three requirements, namely, the restriction must be "provided by law", designed to achieve a legitimate aim and imposed in accordance with the requirements of necessity and proportionality.[3] The source submits that Mr. Hoá's arrest, detention and conviction fail to satisfy those requirements.

19. The source submits that the arrest, detention and conviction of Mr. Hoá was not "provided by law". 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 individuals to regulate their conduct accordingly. Furthermore, the provision cannot confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.[4] Mr. Hoá's arrest and detention was based on articles 88 and 258 of the Vietnamese Penal Code, which are overly broad and do not enable individuals to regulate their conduct.

20. In addition, a restriction may only be imposed for the achievement of one of the aims specified in article 19 (3), namely, respect for the rights or reputations of others, or the protection of national security, public order, public health or morals. The Human Rights Committee has stated that article 19 (3) may never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, be compatible with article 19.[5] The arrest and detention of Mr. Hoá aimed at limiting his peaceful exercise of the right to freedom of expression and did not pursue a legitimate aim.

21. In accordance with article 19 (3), any restriction must be necessary and proportionate to achieve the stated aims and must be the least intrusive instrument among those that might achieve their protective function.[6] The Human Rights Committee has emphasized that the form of expression is relevant in assessing whether a restriction is proportionate.[7] In paragraph 5 (p) (i) of its resolution 12/16, the Human Rights Council stated that certain types of expression should never be subject to restrictions, namely, 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 expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.[8] Mr. Hoá was arrested and detained for reporting on the Formosa disaster and subsequent protests against the Government. Given the gravity of the disaster, the protests that followed and the Government's response are issues of public interest. It is not necessary or proportionate in a democratic society to imprison a blogger for covering such issues.

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

22. The source submits that Mr. Hoá was arrested and detained for exercising his right to take part in the conduct of public affairs under article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant. The Human Rights Committee has defined this conduct by citizens to include exerting influence through public debate and dialogue

[3] Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 22.
[4] Ibid., para. 25. See also A/HRC/14/23, para. 79 (d).
[5] Human Rights Committee, general comment No. 34, para. 23.
[6] Ibid., para. 34. See also A/HRC/14/23, para. 79 (g) (iv).
[7] Human Rights Committee, general comment No. 34, para. 34.
[8] A/HRC/14/23, para. 81 (i).

with their representatives or through their capacity to organize themselves.[9] No distinctions are permitted among citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[10] Only objective and reasonable restrictions on this freedom are permissible. Mr. Hoá was arrested and detained because of his participation in actions concerning environmental issues and his involvement in political issues as an activist, blogger and citizen video journalist. These restrictions are neither objective nor reasonable.

Right to a fair and public hearing by an independent and impartial tribunal

23. In relation to category III, the source recalls that article 14 (1) of the Covenant provides for the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. The requirement of competence, independence and impartiality of the tribunal under article 14 (1) is an absolute right that is not subject to exceptions. All trials in criminal matters must in principle be conducted orally and publicly, which ensures the transparency of proceedings and provides an important safeguard for the individual and society at large. Courts must make information regarding the time and venue of the hearings available to the public and provide adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account the potential interest in the case and the duration of the hearing.[11]

24. Mr. Hoá was not given a fair and public hearing by an independent tribunal. According to the source, Viet Nam has faced widespread criticism for its failure to uphold due process and basic fair trial guarantees. Mr. Hoá's trial had all the characteristics of a sham trial. His family was unable to attend the trial, as they were not notified of its occurrence, and the trial lasted only two-and-a-half hours, while the charge against Mr. Hoá and the sentence imposed on him are severe.

Rights to equality before the courts, to adequate time and facilities for the preparation of a defence and to communicate with counsel without restriction

25. The source recalls that article 14 (1) of the Covenant provides that all persons shall be equal before the courts. This right ensures the equality of arms, so that the same procedural rights are to be provided to all parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant. Article 14 (3) (b) of the Covenant provides that the required guarantees for a fair hearing include adequate time and facilities for the preparation of a defence and the right of the accused to communicate with counsel of his or her own choosing. The source refers to principles 15 and 18 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, as well as article 7 of the Basic Principles on the Role of Lawyers, which provides that access to a lawyer shall not be granted later than 48 hours from the time of arrest or detention.

26. Mr. Hoá was held incommunicado for approximately two months, and reportedly received a recommendation from the police not to instruct a lawyer. He was unable to consult a lawyer immediately after his arrest, during the investigation and while he was held in lengthy pretrial detention, in preparing for his trial and in obtaining advice on filing an appeal. He did not have adequate time and facilities to prepare his defence and to communicate with counsel of his own choosing. The court failed to observe Mr. Hoá's right to equality of arms by proceeding with his trial in the fundamentally unequal situation in which Mr. Hoá, a 24-year-old blogger with no legal background, was facing a very serious charge and lengthy imprisonment without legal representation.

[9] Human Rights Committee, general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 8.

[10] Ibid., para. 3. See also articles 2 and 25 of the International Covenant on Civil and Political Rights.

[11] Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 28.

Right to communicate with the outside world

27. The source recalls that the Body of Principles provides that communication with the outside world, in particular with family members, shall not be denied for more than a matter of days (principle 15), and that a detained or imprisoned person shall have the right to be visited by and communicate with family members, and to be given adequate opportunity to communicate with the outside world (principle 19).

28. Mr. Hoá was held in incommunicado pretrial detention for approximately two months. After his conviction, he was transferred to a prison so far away from his home town that his family has de facto been prevented from visiting him regularly. During the visits that have taken place, it has not been possible for Mr. Hoá to speak openly about his case, his prison conditions or his health. This has undermined his opportunity to exercise his fair trial rights.

Response from the Government

29. On 20 March 2019, 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 May 2019 about the current situation of Mr. Hoá. The Working Group also requested the Government to clarify the legal provisions justifying his detention, as well as its compatibility with the obligations of Viet Nam under international human rights law. In addition, the Working Group called upon the Government to ensure Mr. Hoá's physical and mental integrity.

30. On 16 May, the Government requested an extension of the deadline for response. The extension was granted with a new deadline of 20 June 2019. The Government submitted its response on 20 June 2019.

31. In its response, the Government denies the source's allegations, noting that Mr. Hoá's arrest and trial were based on legal grounds and were in accordance with the law. The decision to initiate criminal proceedings against Mr. Hoá, the detention warrant and the decision to extend the detention period were issued by the competent authorities and approved by the People's Procuracy of Hà Tĩnh Province. During the investigation, prosecution and trial, Mr. Hoá's rights were fully ensured, as required by law.

32. In Viet Nam, no one is prosecuted for exercising their right to freedom of expression, which is protected under article 25 of the Vietnamese Constitution of 2013. However, the exercise of the right to freedom of expression must be in accordance with the law. Article 19 (3) of the Covenant stipulates that the exercise of this right includes duties and responsibilities and may be subject to such restrictions as respect for the rights or reputations of others and the protection of national security, public order, or of public health or morals. Article 88 of the Penal Code does not prohibit the exercise of the right to freedom of expression and is consistent with the international human rights instruments to which Viet Nam is a party, including the Covenant.

33. The Government confirms that Mr. Hoá resided in Hà Tĩnh Province. He was detained on 11 January 2017 and tried and sentenced to seven years of imprisonment and three years under mandatory supervision by the People's Court of Hà Nam Province for "conducting propaganda against the State". Mr. Hoá was transferred to An Diem detention centre on 5 February 2018.

34. On 11 January 2017, Mr. Hoá turned himself in and submitted a confession letter to the Investigation Security Unit of the police of Hà Tĩnh Province. The Government alleges that, being aware of his illegal acts, Mr. Hoá expressed the desire to write a confession letter in which he described all his wrongdoings with the aim of seeking the leniency of the law. The Investigation Security Agency created a record of the meeting with Mr. Hoá, which shows that it received the confession letter, took his statement and verified the information given. According to the confession letter, from 2013 to 2017, Mr. Hoá created, registered and used social media accounts to connect and exchange information with Lê

Đình Lượng, Nguyễn Ngọc Như Quỳnh, Hoàng Đức Binh[12] and others. On a social media network, he shared posts, videos and images that distorted the truth, incited people to disrupt public order, called for illegal gatherings and defamed the authorities.

35. From April 2016 to January 2017, Mr. Hoá took advantage of the environmental incident in the central provinces of Viet Nam to collect information and record videos about gatherings of people in the affected area. He disseminated that information on social media with the aim of inciting people to disrupt public order and distorting information about the State's policies. The Ministry of Information and Communications examined the documents created by Mr. Hoá and concluded that they contained distorted information defaming the administration, propagating hatred and violence, causing confusion among the people and casting doubts upon and stirring up dissatisfaction with the State.

36. On the basis of Mr. Hoá's statements and the initial verification of the facts, it was considered that his acts amounted to the offence of "abusing democratic rights and freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens". The Investigation Security Agency issued a decision on the temporary detention of Mr. Hoá for three days from 11 January 2017 to continue to investigate his violations. On 14 January, the Agency issued a decision on the first three-day extension of Mr. Hoá's detention, which was approved by the People's Procuracy of Hà Tĩnh Province. On 17 January, the Agency issued a decision on the second three-day extension of Mr. Hoá's detention, which was also approved by the People's Procuracy of Hà Tĩnh Province.

37. On 20 January, the Investigation Security Agency issued a decision on instituting criminal proceedings against Mr. Hoá, as well as a decision on his detention for three months to investigate the charge under article 258 of the Penal Code. Both decisions were approved by the People's Procuracy of Hà Tĩnh Province. Following the investigation, it was considered that Mr. Hoá's acts amounted to "conducting propaganda against the State" under article 88 of the Penal Code. The Investigation Security Agency of the Hà Tĩnh Department of Public Security then issued a decision on instituting criminal proceedings against Mr. Hoá for "conducting propaganda against the State", which was approved by the People's Procuracy of Hà Tĩnh Province and superseded the previous decision.

Access to legal counsel and notification to family members of the trial

38. At the meeting with the police on 11 January 2017, the police officer in charge explained to Mr. Hoá all his rights and obligations, including the right to legal counsel. Mr. Hoá refused to engage a lawyer and wrote a letter stating that he did not want either that defence counsel be hired by his mother or his family members, that he was well aware of his violations of the law and that he believed that he had the capability and enough legal knowledge to defend himself. On 21 January, he wrote another letter in which he requested that no legal counsel be hired to defend him or represent him free of charge.

39. On 3 February, after being notified that a law firm had requested the Investigation Security Agency to certify defence counsel to represent him, Mr. Hoá wrote another letter stating that he had not hired or asked for legal counsel and that he refused any legal representation.

40. On 13 February, after being informed that the law firm had requested to meet him in person, Mr. Hoá wrote another letter requesting that no legal counsel be hired or appointed to represent him free of charge.

41. On 8 June, Mr. Hoá wrote a letter stating the following: "During the investigation phase, I will confess honestly all illegal acts conducted by me, therefore I will not hire or ask for any legal counsel to defend me and I will refuse any legal counsel that is hired or asked to represent me by my family. I will defend myself for the acts that I conducted. I do not accept any legal counsel." In accordance with articles 49 (2) (e) and 57 (1) of the Criminal Procedure Code, and article 27 (4) (a) of the Law on Lawyers of 2012, the agencies conducting criminal proceedings against Mr. Hoá had no basis for issuing a

[12] Mr. Binh was the subject of opinion No. 45/2018.

certification of defence counsel to any lawyer who wanted to represent him or for organizing a meeting for him with counsel.

42. On 27 November, the People's Court of Hà Tĩnh Province heard Mr. Hoá's case. A large number of people, as well as media outlets, attended and reported on the hearing. Family members of Mr. Hoá, namely, his older sister and his younger cousin, were invited to attend the trial. When asked about the issue of defence counsel at the court, Mr. Hoá replied the following: "I am aware of my violations of the law and find myself capable of and have enough legal knowledge to represent and defend myself and therefore refuse any legal counsel."

Conditions of detention

43. According to the Government, Mr. Hoá has never been subject to torture or ill-treatment during his detention. He has been given standard treatment as required by law in relation to his accommodation, clothes, meals and daily activities, including as a detainee, an accused person and a convicted prisoner. He receives family visits and is permitted telephone calls with family members. He also receives medical treatment. From 5 February 2018 to May 2019, Mr. Hoá met with his family members on 10 occasions. The Government provided a schedule of Mr. Hoá's family visits, telephone calls and sending of letters and receipt of packages in 2018 and 2019.

44. The Government notes that, upon transfer to An Diem detention centre, Mr. Hoá was diagnosed with a tumour on his left thigh. On 19 October 2018, he was sent to hospital for surgery and is currently in good health. From 22 February to 5 March 2019, Mr. Hoá refused to have meals supplied by the detention centre but bought food at the canteen and ate food sent by his family.

Additional comments from the source

45. The Government's assertion that no one in Viet Nam is arrested, detained and prosecuted for exercising their right to freedom of expression is wrong. The source refers to Working Group opinions that document the prosecution of individuals who exercised this right. Similarly, the source rejects the suggestion that Mr. Hoá's arrest and detention were in accordance with the law. The Government's characterization of Mr. Hoá's activities amounts to an admission that he is being detained because of his coverage of the Formosa disaster.

46. The source reiterates that Mr. Hoá was denied access to legal counsel. According to the source, the authorities threatened Mr. Hoá with reprisal if he instructed a lawyer and told him that, without legal representation, he would receive a lighter sentence if convicted. Mr. Hoá was severely beaten until he produced letters confirming that he did not require legal counsel. The authorities did not inform Mr. Hoá that his family had instructed a law firm to represent him.

47. According to the source, Mr. Hoá's sister and cousin were the only individuals permitted to attend his trial because they were defence witnesses. His family was informed of the trial the evening before proceedings commenced. In addition, Mr. Hoá has been subject to torture and ill-treatment. Mr. Hoá's contact with the outside world remains limited. He ended his hunger strike after 12 days, but has since been placed in isolation.

Discussion

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

49. In determining whether the deprivation of liberty of Mr. Hoá is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of the international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

50. The source reports that Mr. Hoá was arrested in Hà Tĩnh Province on 11 January 2017 and that, as far as the source is aware, Mr. Hoá was not provided with an arrest warrant or detention warrant at the time of his arrest. In its response, the Government appears to acknowledge that there was no arrest warrant, asserting that Mr. Hoá turned himself in on that date and submitted a confession letter "in which he described all his wrongdoings" to the police of Hà Tĩnh Province. The Government does, however, refer to the "arrest" of Mr. Hoá throughout its response. According to the Government, Mr. Hoá's "arrest and trial" were carried out in accordance with the law. The decision to initiate criminal proceedings against Mr. Hoá, the detention warrant and the decisions to extend the detention were issued by the competent authorities and approved by the People's Procuracy.

51. Having examined the submissions from both parties, the Working Group considers that the source's version of events is the most credible. According to the source, Mr. Hoá's family was not informed of his arrest and searched for him for days. On 17 January 2017, Mr. Hoá's family wrote a letter to the Kỳ Anh and Kỳ Khang police departments informing them that Mr. Hoá had been missing for eight days and asking them to investigate his disappearance.[13] The Working Group considers it likely that Mr. Hoá's family would have known if he intended to turn himself in to the authorities. Indeed, his family was so convinced that Mr. Hoá was missing that they took the extraordinary step of posting a notice of his disappearance. Moreover, the Working Group notes that other human rights and environmental activists, including those who have been the subject of its previous opinions, were arrested at around the same time as Mr. Hoá,[14] in what appears to be a concerted effort by the authorities to deter and punish peaceful civic action. Finally, the Working Group has found in several cases that an arrest warrant was not presented at the time of the arrest, which suggests that the source's claims are credible and that this case is part of a pattern of failing to comply with arrest procedures.[15] Accordingly, the Working Group finds that Mr. Hoá was arrested on 11 January 2017 and that an arrest warrant was not presented at that time.

52. In accordance with article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. In this case, Mr. Hoá was arrested without an arrest warrant. In order for a deprivation of liberty to have a legal basis, it is not sufficient that there be a law that authorizes the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.[16]

53. Furthermore, it is clear from the Government's response that Mr. Hoá was not brought promptly before a court to challenge his detention. The Government states that the Investigation Security Agency issued decisions on the initial temporary detention of Mr. Hoá on 11 January 2017, on the two three-day extensions to his temporary detention, on 14 and 17 January, respectively, and on his detention for three months, from 20 January. While the Government states that those decisions were approved by the People's Procuracy of Hà Tĩnh Province, the Working Group considers that the Procuracy is not an independent judicial authority.[17] This means that Mr. Hoá was held for at least 10 days, from 11 January to 20 January 2017, without being brought before a court. This period without judicial review was likely longer than 10 days, as the parties make no reference to any court hearing before Mr. Hoá's trial on 27 November 2017. According to the Human Rights Committee, 48 hours is ordinarily sufficient to bring an individual before a judicial authority, and any longer delay must remain absolutely exceptional and be justified under the circumstances.[18]

[13] The source provided a translation of the letter dated 17 January 2017 from Mr. Hoá's family, in which the family noted that it had posted a notice of disappearance in relation to Mr. Hoá.

[14] See footnote 1.

[15] See, for example, opinions No. 9/2019, para. 29; No. 8/2019, para. 49; No. 46/2018, para. 48; No. 45/2018, para. 40; No. 36/2018, para. 39; No. 35/2018, para. 26; and No. 75/2017, para. 35.

[16] See, for example, opinions No. 46/2018, para. 48; and No. 36/2018, para. 40. See also opinions No. 75/2017 and No. 46/2017.

[17] E/CN.4/1995/31/Add.4, para. 57 (c). See also opinions No. 46/2018, para. 50; No. 35/2018, para. 37; and No. 75/2017, para. 48.

[18] Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 33.

No justification was presented by the Government. The Working Group finds that Mr. Hoá was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant.

54. In addition, the source alleges that Mr. Hoá was held incommunicado at Hà Tĩnh detention centre for approximately two months following his arrest. The Government does not deny this allegation.[19] As the Working Group has consistently argued, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant.[20] Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty (A/HRC/30/37, para. 3) and is essential in ensuring that detention has a legal basis. Given that Mr. Hoá was unable to challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

55. Finally, the Working Group considers that the charges on which Mr. Hoá was initially detained and ultimately convicted are so vague and overly broad that it is impossible to invoke a legal basis for his deprivation of liberty. Mr. Hoá was initially charged with "abusing democratic freedoms to infringe upon the interests of the State and the rights and legitimate interests of organizations and/or citizens", under article 258 of the Penal Code, and subsequently convicted of "conducting propaganda against the State", under article 88 of the same Code. The Working Group has raised the issue of prosecution under vague and overly broad penal laws with the Government on several occasions.[21] In addition, the principle of legality requires that laws be formulated with sufficient precision so that individuals may have access to and understand the law, and regulate their conduct accordingly.[22] Articles 88 and 258 of the Vietnamese Penal Code[23] do not meet this standard. Mr. Hoá could not have foreseen that releasing videos of the protests following the Formosa disaster and assisting those affected with obtaining compensation would amount to criminal conduct.

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

57. Furthermore, the source alleges that Mr. Hoá has been deprived of his liberty as a result of peacefully exercising his right to freedom of opinion and expression under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant, and his right to take part in the conduct of public affairs under article 21 of the Universal Declaration of Human Rights and article 25 (a) of the Covenant. The Government argues that Mr. Hoá was imprisoned for violating the law.

58. Mr. Hoá was convicted of "conducting propaganda against the State" under article 88 of the Penal Code. Article 88 prescribes a sentence of 3 to 12 years of imprisonment for anyone guilty of: (a) conducting propaganda against, distorting information about and/or defaming the people's administration; (b) propagating psychological warfare and spreading fabricated news in order to foment confusion among people; or (c) making, storing and/or circulating documents and/or cultural products with contents against the State. Persons

[19] The schedule of family visits that the Government provided relates only to 2018 and 2019, and not to the period immediately following Mr. Hoá's arrest, in early 2017.

[20] See, for example, opinions No. 46/2017 and No. 45/2017.

[21] Opinions No. 9/2019, para. 39; No. 46/2018, para. 62; No. 36/2018, para. 51; No. 35/2018, para. 36; No. 79/2017, para. 54; No. 40/2016, para. 36; No. 45/2015, para. 15; No. 20/2003, para. 19; No. 13/1999, para. 12; No. 27/1998, para. 9; and No. 21/1997, para. 6. In relation to article 258 of the Penal Code, see opinions No. 45/2018, para. 54; No. 24/2011, para. 24; and No. 1/2009, para. 38. In relation to article 88 of the Penal Code, see opinions No. 75/2017, para. 40; No. 27/2017, para. 35; No. 26/2017, para. 51; No. 26/2013, para. 68; and No. 27/2012, para. 41.

[22] See, for example, opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59; and Human Rights Committee, general comment No. 35, para. 22.

[23] According to the source, on 20 June 2017, the Vietnamese National Assembly enacted a revised penal code that came into force on 1 January 2018. Articles 88 and 258 were renumbered and remained in effect as articles 117 and 331, respectively. The former provisions were however applied to Mr. Hoá's case, as he was prosecuted before the revised code came into effect.

found guilty of more serious propaganda offences are liable to 10 to 20 years of imprisonment.

59. The Working Group has considered the application of article 88 in numerous opinions relating to Viet Nam, finding that convictions under this provision for the peaceful exercise of rights cannot be regarded as consistent with the Universal Declaration of Human Rights or the Covenant.[24] The Working Group came to a similar conclusion during its visit to Viet Nam in October 1994, noting that vague and imprecise national security offences did not distinguish between violent acts capable of threatening national security and the peaceful exercise of the right to freedoms of opinion and expression (E/CN.4/1995/31/Add.4, paras. 58–60).

60. In the present case, the source argues that Mr. Hoá was convicted under article 88 to punish him for his coverage of the protests that followed the Formosa disaster and the Government's response to the disaster. According to the source, the detention of Mr. Hoá not only silenced him but serves as a deterrent to others from speaking out against the State. In its response, the Government refers to the criminal acts allegedly committed by Mr. Hoá between 2013 and 2017 – acts that the Government claims were included in a confession letter written by Mr. Hoá after he turned himself in to the authorities. These include: (a) creating social media accounts to connect and exchange information with other activists; (b) sharing posts, videos and images on social media that distorted the truth, incited others to disrupt public order, called for illegal gatherings and defamed the State; and (c) collecting information and recording videos about gatherings of people in the area affected by the disaster, and disseminating them on social media with the aim of inciting people to disrupt public order and distorting information about the State's policies.

61. The Working Group recalls that article 19 (2) of the Covenant provides that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his [or her] choice." This right includes political discourse, commentary on public affairs, discussion of human rights, and journalism.[25] It protects the holding and expression of opinions, including those that are critical of, or not in line with, government policy.[26] The Working Group considers that Mr. Hoá's conduct falls within the right to freedom of opinion and expression protected under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. Similarly, the Working Group is of the view that Mr. Hoá engaged in advocacy relating to government environmental policies in Viet Nam and was detained for exercising his right to take part in the conduct of public affairs under article 21 of the Universal Declaration of Human Rights and article 25 (a) of the Covenant.[27]

62. There is nothing to suggest that the permissible restrictions on these rights set out in articles 19 (3) and 25 of the Covenant would apply in the present case. While the Government referred to article 19 (3), it did not explain how prosecuting Mr. Hoá was necessary to protect a legitimate interest under that article, nor how Mr. Hoá's conviction and sentence were a proportionate response to his activities. In any event, the Human Rights Council has called upon States to refrain from imposing restrictions under article 19 (3) that are not consistent with international human rights law.[28] The Working Group refers

[24] See opinions No. 8/2019, No. 75/2017, No. 27/2017, No. 26/2017, No. 26/2013, No. 27/2012, No. 24/2011, No. 6/2010, No. 1/2009 and No. 1/2003. See also A/HRC/41/7, paras. 38.73, 38.171 and 38.188; and OHCHR, "Press briefing notes on Vietnam and Venezuela", press briefing, 28 July 2017.

[25] Human Rights Committee, general comment No. 34, para. 11.

[26] Opinions No. 8/2019, para. 55; and No. 79/2017, para. 55.

[27] According to the Human Rights Committee, citizens may take part in the conduct of public affairs by exerting influence through public debate. See also Human Rights Committee, general comment No. 25, para. 8, and opinions No. 9/2019, No. 46/2018, No. 45/2018, No. 36/2018, No. 35/2018, No. 40/2016, No. 26/2013, No. 42/2012, No. 46/2011 and No. 13/2007.

[28] See Human Rights Council resolution 12/16, para. 5 (p), in which the Council called upon States to refrain from imposing restrictions inconsistent with article 19 (3) of the Covenant, including on discussion of government policies and political debate and on reporting on human rights, government activities and corruption in government.

this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

63. In accordance with 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, 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.[29] The source has demonstrated that Mr. Hoá was detained for the exercise of his rights under the Declaration as a human rights defender. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.[30]

64. The Working Group concludes that Mr. Hoá's deprivation of liberty resulted from the peaceful exercise of his rights to freedom of expression and to take part in the conduct of public affairs, and was contrary to article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. His deprivation of liberty is arbitrary under category II.

65. Given its finding that Mr. Hoá's deprivation of liberty was arbitrary under category II, the Working Group emphasizes that no trial of Mr. Hoá should have taken place. However, he was tried, convicted and sentenced on 27 November 2017. The information submitted by the source discloses violations of Mr. Hoá's right to a fair trial during those proceedings.

66. According to the source, Mr. Hoá was held in detention for more than 10 months, from his arrest on 11 January 2017 to his trial on 27 November 2017. In accordance with article 9 (3) of the Covenant, detention pending trial should be the exception rather than the rule, and as short as possible. In the present case, there appears to have been no individualized review of Mr. Hoá's situation or consideration of alternatives to detention, a shortcoming that constitutes a breach of article 9 (3) of the Covenant. His pretrial detention was not properly constituted or reviewed, and his rights between arrest and the first instance judgment were not respected.[31] As noted above, although the Investigation Security Agency extended Mr. Hoá's detention on 14, 17 and 20 January 2017, there was no independent judicial oversight of his case. If Mr. Hoá could not be tried within a reasonable time, he was entitled to release under article 9 (3) of the Covenant.

67. In addition, the source alleges that Mr. Hoá was held in pretrial incommunicado detention for approximately two months, which means that he was not able to challenge his detention and was therefore placed outside the protection of the law. This violated his 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. According to the General Assembly, prolonged incommunicado detention can facilitate the perpetration of torture and other ill-treatment and can in itself constitute a form of such treatment.[32]

68. Furthermore, the source alleges that Mr. Hoá has suffered grave abuse in detention, including being coerced into testifying against another activist. According to the source, Mr. Hoá recanted that testimony before a judge, stating that it had been extracted under torture. He was severely beaten for doing so, and is reportedly being pressured into cooperating in other cases. The Government asserts that Mr. Hoá has never been subject to torture or ill-

[29] See articles 1 and 6 (c) of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (General Assembly resolution 53/144, annex). See also General Assembly resolution 70/161, para. 8, in which the Assembly called upon States to take concrete steps to prevent and put an end to the arbitrary arrest and detention of human rights defenders, and strongly urged the release of persons detained or imprisoned for exercising their human rights and fundamental freedoms.

[30] See, for example, opinions No. 9/2019, No. 46/2018, No. 45/2018, No. 36/2018, No. 35/2018, No. 79/2017 and No. 75/2017.

[31] Human Rights Committee, general comment No. 35, para. 37.

[32] General Assembly resolution 68/156, para. 27.

treatment during his detention, but provides no information to support this claim. The Working Group considers that the source has presented a prima facie case that Mr. Hoá has been subjected to torture and ill-treatment, in violation of the absolute prohibition of torture as a peremptory norm of international law, and of article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2 and 16 of the Convention against Torture. The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

69. The source further alleges that, in April 2017, the authorities released a video of Mr. Hoá "apologizing" for reporting on the protests. According to the source, Mr. Hoá did not script the video himself, as the wording mirrors that used in video recordings of other activists' confessions. The Government does not address this allegation directly, but states that Mr. Hoá wrote a confession letter after turning himself in to the authorities. The Working Group recalls that the burden is on the Government to prove that Mr. Hoá's statement, both in the video recording and in the confession letter that he allegedly wrote, was given of his own free will,[33] and it has not done so. In any event, the release of such a video prior to Mr. Hoá's trial compromised his presumption of innocence. As a result, Mr. Hoá's right to be presumed innocent under article 14 (2) of the Covenant and his right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant were violated.

70. The source reports that Mr. Hoá's trial lasted only two-and-a-half hours. The Government does not deny this allegation. Even if, as the Government alleges, Mr. Hoá had written a confession letter, this was still a very brief hearing. Following the trial, a heavy sentence of seven years of imprisonment and three years of house arrest was imposed on Mr. Hoá. As the Working Group has observed,[34] a short trial for a serious criminal offence suggests that Mr. Hoá's guilt and the sentence had been determined prior to the hearing. The Working Group considers that this was a further example of the denial of Mr. Hoá's right to the presumption of innocence guaranteed under article 14 (2) of the Covenant.

71. In addition, the source alleges that Mr. Hoá was told by the police not to instruct a lawyer, and he remained unrepresented throughout the proceedings. He was not able to consult a lawyer immediately after his arrest, in the context of the investigation against him, with regard to his lengthy detention pending trial, to prepare adequately for his trial and to obtain advice on filing an appeal. The Government denies this allegation, noting that the police officer in charge explained to Mr. Hoá all his rights, including the right to legal counsel. According to the Government, Mr. Hoá refused to engage a lawyer and wrote five letters stating that he did not want defence counsel, that he was aware of his violations of the law and believed that he had enough legal knowledge to defend himself. The Government states that, in two of those letters, Mr. Hoá requested that no legal counsel be hired to represent him, even free of charge, and that he repeated his wish not to be represented during his trial.

72. Having examined the submissions from both parties, the Working Group considers that the source's version of events is the most credible. The Working Group considers it implausible that a 24-year-old blogger with no legal background would be prepared to face a serious charge and lengthy imprisonment after multiple attempts were made by a law firm to represent him, even if free representation was provided. Moreover, the Working Group has found that, in several cases, access to legal representation has been denied or limited for individuals facing serious charges, suggesting that there is a systemic failure to provide access to legal counsel during criminal proceedings in Viet Nam.[35]

73. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and that such access shall be provided without

[33] Human Rights Committee, general comment No. 32, para. 41.

[34] See, for example, opinions No. 46/2018, No. 45/2018, No. 36/2018 and No. 75/2017.

[35] See opinions No. 9/2019, No. 46/2018, No. 35/2018, No. 79/2017, No. 75/2017, No. 27/2017, No. 26/2017 and No. 40/2016. A similar claim that a detainee had written a letter declining a lawyer was made in another case (opinion 46/2018, para. 64).

delay.[36] The lack of legal assistance violated Mr. Hoá's right to equality of arms and to a fair hearing by an independent and impartial tribunal under article 14 (1) of the Covenant. Moreover, Mr. Hoá was not afforded his rights, under article 14 (3) (b) of the Covenant, to adequate time and facilities for the preparation of his defence and to communicate with counsel, and, under article 14 (3) (d), to defend himself through legal assistance of his own choosing. The absence of legal representation also prevented Mr. Hoá from exercising his right under article 14 (5) of the Covenant to seek a review of his conviction and sentence.

74. Finally, the source alleges that Mr. Hoá's contact with his family has been limited. According to the source, Mr. Hoá's family was notified of his trial the evening before it commenced. Only his sister and cousin were allowed to attend, as defence witnesses. After his conviction, Mr. Hoá was transferred to a prison approximately 500 kilometres from his home town, and his family has not been able to visit regularly. During the visits that have taken place, Mr. Hoá was not allowed to speak about his case, his prison conditions or his health. The Government confirms that Mr. Hoá was transferred to An Diem detention centre in February 2018. The Government claims that a large number of people and media outlets were present at Mr. Hoá's trial, and that his sister and cousin were invited to attend. According to the Government, Mr. Hoá receives family visits and can call family members. The Government provided a list of family visits and calls, but did not provide any evidence to support its claims, and did not deny that visits are conducted under restricted conditions.

75. The Working Group finds that the Government has not refuted the source's allegations. The ongoing limitation of Mr. Hoá's contact with his family amounts to a violation of the right to have contact with the outside world under rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principles 15, 19 and 20 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

76. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give Mr. Hoá's deprivation of liberty an arbitrary character under category III.

77. In addition, the Working Group considers that Mr. Hoá was targeted because of his activities as a human rights defender, in particular his reporting on the Formosa disaster and assistance to families in seeking compensation. The source alleges, and the Government does not deny, that, shortly after his coverage of the protests following the disaster, Mr. Hoá was beaten by the police and his equipment was confiscated. Mr. Hoá was also sentenced to seven years of imprisonment and three years of house arrest, which is a disproportionate sentence for an individual who was engaged in peaceful activism in his community.

78. As the Working Group has observed, there appears to be a pattern of detaining human rights defenders for their work, including activists who have attempted to raise awareness about the Formosa Steel Plant, in Viet Nam. The Working Group has made findings to this effect in recent years,[37] and finds the present case to be another example.

79. The Working Group finds that Mr. Hoá was deprived of his liberty on discriminatory grounds, that is, owing to his status as a human rights defender, and on the basis of his political or other opinion in challenging the Government's actions. His deprivation of liberty violates articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and is arbitrary according to category V. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders.

80. The Working Group is concerned about Mr. Hoá's health, which is reportedly poor. According to the source, Mr. Hoá was on hunger strike for 12 days from 22 February 2019. The Government states that Mr. Hoá receives medical treatment and is in good health, and

[36] 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.

[37] See, for example, opinions No. 45/2019, No. 9/2019, No. 46/2018, No. 45/2018, No. 35/2018, No. 79/2017 and No. 27/2017.

that, while Mr. Hoá refused to have meals supplied by the detention centre, he bought food at the canteen and ate food sent by his family. The Working Group recalls the standards set out, inter alia, in rules 1, 24, 25, 27 and 42 of the Nelson Mandela Rules. Given that Mr. Hoá has been detained for more than 2.5 years, the Working Group urges the Government to release him immediately and unconditionally and ensure that he receives medical care.

81. 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, in particular human rights defenders, in Viet Nam.[38] The Working Group notes that 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 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 and to medical treatment. The Working Group is concerned that this pattern indicates a systemic problem with arbitrary detention in Viet Nam that, if it continues, may amount to a serious violation of international law.[39]

82. The Working Group would welcome the opportunity to work constructively with the Government to address the arbitrary deprivation of liberty in Viet Nam. A significant period has passed since its most recent 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, to which it looks forward to receiving a positive response. As the human rights record of Viet Nam was reviewed during the third cycle of the universal periodic review, in January 2019, the Government may wish to seize the present opportunity to demonstrate its commitment to the recommendations made by strengthening its cooperation with the special procedures of the Council.

Disposition

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

> The deprivation of liberty of Nguyễn Văn Hoá, being in contravention of articles 2, 6, 7, 8, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights and articles 2 (1), 2 (3), 9, 14, 16, 19, 25 (a) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

85. The Working Group considers that, taking into account all the circumstances of the case, in particular the risk of harm to Mr. Hoá's health, the appropriate remedy would be to release Mr. Hoá immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

86. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Hoá, including the allegations that he was tortured, and to take appropriate measures against those responsible for the violation of his rights.

87. The Working Group requests the Government to bring its laws, in particular articles 88 and 258 of the Penal Code (now articles 117 and 331 of the revised code), into conformity with the recommendations made in the present opinion and with the commitments made by Viet Nam under international human rights law.

[38] See, for example, opinions No. 45/2019, No. 9/2019, No. 8/2019, No. 46/2018, No. 45/2018, No. 36/2018, No. 35/2018, No. 79/2017, No. 75/2017, No. 27/2017, No. 26/2017, No. 40/2016, No. 46/2015 and No. 45/2015.

[39] See, for example, opinion No. 47/2012, para. 22.

88. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to: (a) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; (b) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and (c) the Special Rapporteur on the situation of human rights defenders, for appropriate action.

89. The Working Group encourages the Government to incorporate the *Model Law for the Recognition and Protection of Human Rights Defenders* into its domestic legislation, and to ensure its implementation.[40]

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

Follow-up procedure

91. 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. Hoá has been released and, if so, on what date;

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

(c) Whether an investigation has been conducted into the violation of Mr. Hoá'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.

92. 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.

93. The Working Group requests the source and the Government to provide the aforementioned 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.

94. 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 that they have taken.[41]

[*Adopted on 15 August 2019*]

[40] The Model Law was developed in consultation with more than 500 human rights defenders from around the world and 27 human rights experts.

[41] Human Rights Council resolution 33/30, paras. 3 and 7.