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## 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. 45/2019 concerning Le Dinh Luong (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 12 April 2019 the Working Group transmitted to the Government of Viet Nam a communication concerning Le Dinh Luong. The Government replied to the communication on 11 July 2019. 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).



## Submissions

### *Communication from the source*

4. Le Dinh Luong is a 53-year-old Vietnamese citizen. Prior to his arrest, Mr. Luong was a journalist and an environmental and political activist. He is a veteran of the 1979 Sino-Vietnamese War and a member of the Viet Nam Reform Party (known as Viet Tan), a peaceful and pro-democracy organization. He is also the uncle of a prominent human rights lawyer and blogger who was imprisoned in 2013.<sup>1</sup>

5. The source reports that Mr. Luong has exercised his right to freedom of expression in relation to a range of topical and controversial issues through his participation in peaceful activities. He has written about human rights issues in Viet Nam and commented on reforms needed in the country, and his work has been published. He has campaigned against laws that are used to restrict freedom of expression, such as article 258 of the Penal Code of Viet Nam, which criminalizes the abuse of democratic freedoms. He has also peacefully campaigned for the rights of political prisoners, some of whom he visited upon their release.

6. According to the source, Mr. Luong has been targeted previously as a result of his reporting on the human rights situation in Viet Nam. In August 2015, his home was placed under surveillance by State agents. A few weeks later, Mr. Luong and other activists were attacked by men in civilian clothes after having visited another activist who had been released from prison. The source alleges that they were dragged off a bus and violently beaten. Mr. Luong was beaten repeatedly on the face, ribs and head. The men stole and destroyed Mr. Luong's computer, which contained work that he had produced as a journalist. The perpetrators knew the identities of their victims when carrying out the attack. The source considers that the attack was in response to Mr. Luong's work highlighting current issues in the region.

7. The source claims that several individuals associated with Mr. Luong and Viet Tan have also been arbitrarily detained in the past as a result of the exercise of their human rights. For example, in 2013, 14 activists associated with Viet Tan were convicted by the Viet Nam Supreme People's Court under article 79 of the Penal Code, following a trial that lasted two days. The activists were ordered to serve sentences ranging from 3 to 13 years of imprisonment. In May 2016, Mr. Luong publicly called for a boycott of the national elections. In 2016, the Government designated Viet Tan as a terrorist organization.

#### a. Background information

8. In April 2016, a company from Taiwan Province of China, Formosa Ha Tinh Steel, released cyanide and other toxic chemicals into the ocean through drainage pipes, killing tons of fish and destroying the livelihood of thousands of fishermen along a 120-mile coastline. The incident was sensitive for Viet Nam, as the company is one of the country's biggest foreign investors.

9. The disaster prompted a large social movement calling for environmental rights to be protected. Demonstrations took place in several cities. Viet Tan criticized Formosa Ha Tinh Steel for its failure to comply with environmental regulations and called for compensation for the fishermen. In response to the Formosa campaign, the police claimed that Viet Tan had "instigated" people to join demonstrations and had taken advantage of the incident to provoke protests. According to the source, the authorities targeted environmental activists, arresting approximately 40 people, and forcing dozens to flee the country.

10. Mr. Luong campaigned for fishermen to receive compensation, and joined protests against Formosa Ha Tinh Steel. His advocacy included writing posts on social media calling for the Government to compensate the victims of the toxic spill. He also signed a petition against bauxite mining in the Central Highlands.

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<sup>1</sup> The source refers to Le Quoc Quan, who was the subject of the Working Group's opinion No. 33/2013.

## b. Arrest and detention

11. According to the source, on 24 July 2017 at approximately 4 p.m. Mr. Luong and a fellow activist were arrested by plain-clothes police officers while they were travelling on a motorcycle. They had been visiting the family of a former political prisoner. The source alleges that Mr. Luong was beaten and then forced into a vehicle, with no arrest warrant being read or produced at any time. In the absence of any valid police identification being produced, Mr. Luong was initially reported to the authorities as having been kidnapped.

12. Mr. Luong's family became aware of his detention when the Security Police issued a public statement acknowledging that Mr. Luong was being held on suspicion of violating article 79 of the Penal Code for "conducting activities aimed at overthrowing the people's administration". According to the source, it was claimed in the statement that in the period leading up to his arrest, Mr. Luong participated in activities aimed at overthrowing the State, causing security issues and disorder at the local level. The statement indicated that the police had issued a warrant for that same day and confirmed that the arrest had been executed at around 4 p.m. The statement also indicated that Mr. Luong was being detained pending criminal proceedings.

13. The source alleges that the Government stated on its website that Mr. Luong was a particularly dangerous member of Viet Tan. According to Radio Free Asia, the Government also publicly criticized Mr. Luong's call for an election boycott, and accused him of taking advantage of the Formosa disaster to disrupt public order and provoke protesters.

14. The source also alleges that, following Mr. Luong's arrest, his family members were subjected to harassment and mistreatment. On 28 July 2017, four days after the arrest, three of Mr. Luong's relatives (including one minor) were detained and taken to the police station in Ward 8, Go Vap District, where the two adults were beaten.

15. On 18 August 2017, fifteen of Mr. Luong's relatives appeared at the Department of Public Security in Nghe An Province demanding information, as they had not been officially notified of the initial arrest. According to the source, any knowledge that the family members had was received through social media posts and news reports online. There were elderly persons and pregnant women in the group. The police detained 6 of the 15 individuals for nine hours. The source alleges that while in detention, two of the six detainees were badly beaten, resulting in physical injuries and permanent scarring. Throughout the detention, the authorities yelled religious slurs at the family members, and they destroyed their mobile telephones by placing them in acid. The authorities demanded that the family members sign forms accepting that they had caused a public disturbance. When they refused, they were beaten all over their bodies, including on their heads, and the authorities sometimes used clubs or books to carry out the beatings.

16. According to the source, after nine hours, the police released all six family members. They were forced to sign documentation stating that all of their property, including their broken mobile telephones, had been returned to them. One of the female detainees was stripped naked just before her release and was threatened that if she did not disclose the information that the authorities were requesting, she would be injected with HIV. The detained family members were also made to sign false statements that they had not been physically harmed or beaten during their detention.

17. The source claims that Mr. Luong was held in pretrial detention for over 12 months. During this period, the authorities failed to bring Mr. Luong before a court in order to assess the legal grounds for his deprivation of liberty. As a result, Mr. Luong's detention was not reviewed and he was not informed of the basis on which he was being held. In addition, the source alleges that during the pretrial stage, Mr. Luong was held in incommunicado detention for almost a year. He was denied access to any legal representation for most of his pretrial detention and was only permitted to meet one of his lawyers on one occasion, shortly before his original trial date on 30 July 2018. Mr. Luong has been held in Nghi Kim Detention Centre.

18. The source recalls that a joint communication sent to the Government by several special procedures mandate holders expressed serious concern at the arrest and incommunicado detention of Mr. Luong and other human rights activists.<sup>2</sup> The communication noted that the arrests took place during a crackdown on human rights defenders in 2017. The mandate holders expressed concern that the arrests were based on charges that criminalized the peaceful exercise of the rights to freedom of expression and of association. The Working Group acknowledges the Government's response of 5 January 2018.<sup>3</sup>

c. Trial and appeal proceedings

19. Mr. Luong's trial took place on 16 August 2018 before the People's Court of Nghe An Province. The hearing lasted just over five hours, starting at 7.30 a.m. and concluding at approximately 1 p.m. The source alleges that the trial proceedings were closed to the public, including Mr. Luong's family and the media. Mr. Luong's wife was the only person permitted to observe the trial.

20. According to the source, Mr. Luong's lawyer stated that Mr. Luong had been convicted on the basis of forced witness statements obtained from two other environmental and human rights activists,<sup>4</sup> both of whom had been beaten and forced to testify falsely against Mr. Luong. The source alleges that on the day of the hearing, the two activists were present in the courthouse and were due to give testimony when they retracted their witness statements against Mr. Luong. After they made their retractions, court officials ushered them out of the courtroom, saying that they could not continue to provide testimony due to throat problems and stomach pain. As a result, both activists were removed from the building and the defence counsel was not able to cross-examine them. However, the witness statements were still admitted as evidence during the criminal trial and were used to convict Mr. Luong, despite the fact that the defence counsel had challenged their reliability.

21. In addition, the source alleges that throughout the short trial, Mr. Luong's lawyer continually asserted that the prosecutors had presented no evidence to justify the allegations that Mr. Luong had sought to overthrow the Government. When the defence counsel challenged the assertions made by the prosecution, those arguments were ignored and not taken into consideration.

22. The prosecution sought a term of imprisonment of 17 years. However, Mr. Luong was sentenced to 20 years' imprisonment, followed by 5 years' probation. According to the source, the sentence imposed by the judge was not only longer than the term sought by the prosecution, but it is the most severe sentence imposed on a political prisoner in the last five years. Mr. Luong was returned to Nghi Kim Detention Centre after he was sentenced, on the same day of the trial.

23. The defence appealed against the conviction and the sentence. The source alleges that prior to his appeal hearing, Mr. Luong was denied access to his family and was prevented from communicating with anyone in the outside world. Furthermore, his family reported that they had not been allowed to send Mr. Luong the medications he required. On 18 October 2018, the Higher People's Court of Nghe An Province upheld the original sentence of 20 years' imprisonment and 5 years' probation. The appeal hearing lasted for approximately four hours. The source alleges that Mr. Luong was only permitted to consult with his lawyer for 45 minutes on the day before the appeal hearing. His lawyer's visit was scheduled to last one hour but was cut short when the police intervened and ended the consultation.

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<sup>2</sup> Allegation letter VNM 6/2017 dated 21 September 2017. The letter is available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23338>.

<sup>3</sup> The Government's response is available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33851>.

<sup>4</sup> The source alleges that one of the activists was Nguyen Van Hoa, who was the subject of the Working Group's opinion No. 44/2019.

## d. Conditions of detention

24. Following his appeal, Mr. Luong was transferred to Nam Ha Prison Camp in Ha Nam Province, which is located approximately 250 kilometres away from his family home. He is permitted one social visit per month, of 60 minutes, which is always supervised by prison wardens. Mr. Luong and his visitors are separated by a glass partition and have to communicate by telephone. The source claims that the visits are often cut short by the authorities when they forcibly intervene, removing the telephone. Apart from the monthly visits, Mr. Luong is prohibited from engaging in any other communication with his family, including telephone calls and the sending and/or receiving of letters. He has been told that the restrictions on his communications have been imposed because he maintained his innocence at trial and after his conviction.

25. The source reports that Mr. Luong's treatment and conditions of detention remain of concern. Mr. Luong is suffering from various medical problems, including high blood pressure, pain from osteoarthritis, and gout. He is reliant on medication only provided to him by his family, and he has not been seen by a medical practitioner despite having raised his health concerns with the prison authorities. In addition, the prison authorities continue to seize all books that are sent to him and they are refusing visitation rights to a local Catholic priest. Mr. Luong is also prevented from participating in any religious activities in the prison.

## e. Submissions

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

## i. Category II

27. In relation to category II, the source argues that Mr. Luong was arrested, detained and convicted in order to punish him for exercising his right to freedom of expression under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant, and to deter other dissidents and activists from exercising these rights. The source argues that Mr. Luong's situation is not uncommon in Viet Nam, as evidenced by the frequent detention of political figures and human rights activists with similar backgrounds. In this case, Mr. Luong has been vocal in expressing his views on the state of human rights in his country. Prior to the Formosa disaster, he participated in a number of protests to highlight various social problems. This included protesting against very high school fees and exorbitant product taxes. Mr. Luong has also publicly supported other political prisoners and their families.

28. The source recalls that in article 19 (3) of the Covenant it is stated that any restriction imposed on the right to freedom of expression must satisfy three requirements. The restriction must be "provided by law". It must be designed to achieve a legitimate aim, and be imposed in accordance with the requirements of necessity and proportionality.<sup>5</sup> The source submits that Mr. Luong's arrest, detention and conviction under article 79 of the Penal Code (for "carrying out activities aimed at overthrowing the people's administration") fails to satisfy these requirements.

29. The source argues that the arrest, detention and conviction of Mr. Luong 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 clear and precise in its wording in order to enable an individual to regulate his or her conduct accordingly. Furthermore, the provision cannot confer unfettered discretion for those charged with its execution to restrict freedom of expression.<sup>6</sup> Article 79 of the Penal Code is overly broad, as there is no definition or guidance on what constitutes "activities". Conviction under this provision can lead to a sentence of life imprisonment or the death penalty.

<sup>5</sup> See Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 22.

<sup>6</sup> Ibid., para. 25.

30. In addition, article 19 (3) of the Covenant requires that any restriction of freedom of expression only be imposed for the achievement of specific legitimate purposes. However, at no point during Mr. Luong's arrest, detention and trial proceedings did the State provide any evidence to substantiate the claim that the deprivation of liberty was necessary in order to maintain public order or protect national security or to achieve any of the other legitimate aims listed in article 19 (3).

31. The source recalls that the Human Rights Committee has emphasized that the form of expression is highly relevant in assessing whether a restriction is proportionate.<sup>7</sup> In its resolution 12/16, the Human Rights Council stated that the following types of expression should never be subject to restrictions: (a) discussion of government policies and political debate; (b) reporting on human rights, government activities and corruption in government; (c) engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and (d) expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups (see para. 5 (p) (i)). Mr. Luong's activism surrounding the Formosa disaster, including through his social media posts and participation in public protests, falls into the category of reporting on human rights and government activities. They are forms of expression that should never be subject to restriction. As such, the arrest, detention and lengthy custodial sentence imposed upon Mr. Luong are neither necessary nor proportionate.

32. Mr. Luong's detention resulted directly from the legitimate exercise of his right to free expression in the form of political protest against the Government, and was in breach of the obligations of Viet Nam under international human rights law.

ii. Category III

33. In relation to category III, the source claims that Mr. Luong was detained for a period of over 12 months prior to his trial. During this period, he was prevented from accessing legal counsel and had no contact with the outside world, including his family. Mr. Luong was denied contact with his family from the time of his arrest in July 2017 until after his appeal hearing in October 2018. In addition, Mr. Luong was only allowed to meet once with one of his lawyers, shortly before his trial. He met with his second lawyer on two further occasions, but both of those consultations were brief and took place after the trial proceedings had started. Similar limitations on access to legal counsel occurred during the appeal proceedings, with Mr. Luong only being allowed a short meeting with one of his lawyers the day before the hearing. The source submits that this amounts to a violation of principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Incommunicado detention violates principles 15 and 19.

34. The source submits that Mr. Luong's right to the presumption of innocence has also been violated. In addition to international standards, the presumption of innocence is enshrined in the Constitution of Viet Nam, which states in its article 31 that a "defendant shall be regarded as innocent until the crime is proved". The presumption of innocence requires all authorities to refrain from publicly prejudging the outcome of a trial. The vague charges against Mr. Luong had no legal basis and the authorities detained him without evidence of any wrongful conduct, indicating their belief in his guilt prior to his trial. Furthermore, subsequent to his arrest and prior to his conviction, the Government released a number of statements saying that Mr. Luong was "actively propagandizing" and was a "dangerous" member of Viet Tan.

35. In addition, Mr. Luong's incommunicado detention prior to his trial violated article 10 of the Universal Declaration of Human Rights, article 14 of the Covenant, and principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. During this period, Mr. Luong was never brought before a judge for the determination of his rights, including his right to pretrial release. The source adds that the detention of Mr. Luong is also contrary to article 48 (2) (a) of the Vietnamese Criminal

<sup>7</sup> Ibid., para. 34.

Procedure Code, which provides that a person in custody has the right to be informed of the reasons for the deprivation of liberty.

36. Moreover, Mr. Luong's trial hearing on 16 August 2018 was closed to all persons, including the media and the general public. The authorities prevented the two prosecution witnesses from attending the hearing and took steps to forcibly remove them from the courthouse on the day of the trial. Public access was prohibited, limiting the available information about the conduct of the proceedings. The source submits that Mr. Luong did not benefit from a public trial, in violation of article 14 (1) of the Covenant.

37. The source argues that the minimum standards of a fair trial were not met in Mr. Luong's case. The incommunicado detention of Mr. Luong prior to his trial prevented him from meeting with his lawyers. He was afforded a brief consultation with one of his lawyers on or around 30 July 2018, shortly before his original trial date, and it lasted no more than an hour. These elements, along with the extremely short length of the trial proceedings, the removal of purportedly key prosecution witnesses and subsequent reliance on their statements, and the lack of any prosecution evidence to substantiate the charges against Mr. Luong, indicate that fair trial guarantees were not observed. Mr. Luong was not afforded a fair trial before an impartial tribunal, nor was he allowed to put forward his defence, in violation of article 11 of the Universal Declaration of Human Rights, article 14 (1) of the Covenant, and principles 10 and 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

#### *Response from the Government*

38. On 12 April 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 11 June 2019 about the current situation of Mr. Luong. 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. Moreover, the Working Group called upon the Government to ensure Mr. Luong's physical and mental integrity.

39. On 7 June 2019, the Government requested an extension of the deadline for it to respond. The extension was granted, with a new deadline set of 11 July 2019. The Government submitted its response on 11 July 2019.

40. In its response, the Government confirms that Mr. Luong was arrested by the Investigation Security Agency of Nghe An Province on 24 July 2017 on a charge of "conducting activities to overthrow the people's administration", under article 79 of the Penal Code. On 26 July 2017, the Investigation Security Agency issued a decision to detain Mr. Luong for four months in order to investigate the charge. The decision was approved by the People's Procuracy.

41. The Government also confirms that Mr. Luong was tried on 16 August 2018 by the People's Court of Nghe An Province. In applying article 79 (1), as well as articles 38, 39 and 92 of the Penal Code, the Court sentenced him to 20 years of imprisonment and 5 years under mandatory supervision. On 18 October 2018, the People's High Court based in Hanoi heard the appeal by Mr. Luong in Nghe An Province. The appeal court upheld the judgment at first instance.

42. The Government denies the source's allegation that Mr. Luong's trial was closed to the public. According to the Government, the trial was widely reported by the media, with detailed information and images of the courtroom. With its submission, the Government provided two screenshots of websites demonstrating that the trial was open to the public.<sup>8</sup>

43. The Government notes that this case concerned national security and the Prosecutor-General of the Supreme People's Procuracy is entitled to decide that defence counsel will

<sup>8</sup> The Government refers to a web page on Mr. Luong's trial, and notes that the images prove that the trial was open to the public and the media. See <https://vietnamnet.vn/vn/phap-luat/ho-so-vu-an/tuyen-phat-le-dinh-luong-20-nam-tu-ve-toi-hoat-dong-nham-lat-do-chinh-quyen-nhan-dan-471366.html>.

be involved in the proceedings upon the completion of the investigation, in accordance with article 58 (1) of the Criminal Procedure Code.

44. Finally, the Government reiterates that acts aimed at overthrowing the Government and/or causing harm to national security must be punished by law. Article 79 of the Penal Code is in line with the international human rights instruments to which Viet Nam is a party. The Government refers to article 14 of the Constitution of Viet Nam, of 2013, which stipulates that the rights of citizens are protected under the Constitution and other laws. Every Vietnamese citizen is ensured a safe and enabling environment to lead their life.

*Further comments from the source*

45. The Government's assertion that Mr. Luong's trial was open to the public and the media is false. The source states that, on the day of the trial, authorities present in the outskirts of the city blocked all vehicles carrying Mr. Luong's supporters and family members to the courthouse. In addition, the court building itself was subjected to strict security. The authorities restricted access to the courtroom for Mr. Luong's family members. Only members of the State media, identifiable by their uniforms, were allowed in to report on the trial. The source alleges that plain-clothes police officers were positioned in the courtroom in an attempt to give the impression that the proceedings were open. The hyperlink provided by the Government does not refute the allegation that the proceedings were closed.

46. Similarly, the source rejects the Government's statement that Mr. Luong's arrest and detention was carried out in accordance with the law. The arrest, detention and conviction of Mr. Luong was intended to penalize him for the legitimate exercise of his right to freedom of expression and amounted to an effort by the authorities to suppress any critical reporting in the aftermath of the Formosa environmental disaster. The source refers to a statement in the Government's response that Mr. Luong was part of a group that "disseminated distorted information".<sup>9</sup> The source argues that such a vague reference is not sufficient to invoke a legitimate ground for restriction of freedom of expression.

47. Finally, in relation to the Government's assertion that every Vietnamese citizen is ensured a safe and enabling environment to lead their life, the source refers to Working Group opinions that document the prosecution of journalists, bloggers and members of the independent media for exercising their right to freedom of expression.

**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. Luong 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. In the present case, the source alleges that the police did not present an arrest warrant when Mr. Luong was arrested on 24 July 2017. According to the source, later that day, the Security Police of Nghe An Province issued a public statement indicating that the police had issued a warrant on that day and that the arrest had been executed at 4 p.m. The Government did not challenge those allegations. The Working Group considers that it is not sufficient that the Security Police stated that a warrant had been issued for Mr. Luong's arrest. A warrant for Mr. Luong's arrest should have been presented at the time of his arrest, and the Government has not provided any information or evidence to show that this was the

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<sup>9</sup> This statement appears to refer principally to the conduct of other individuals named in the Government's response who were members of the Brotherhood for Democracy.



case.<sup>10</sup> The Working Group has found in several recent cases concerning Viet Nam that a warrant was not presented at the time of arrest, which suggests that this case is part of a pattern of failing to comply with arrest procedures.<sup>11</sup>

51. According to 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. Luong was arrested without a warrant. In order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law which may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>12</sup>

52. Furthermore, the source alleges that Mr. Luong was held in pretrial detention for over 12 months. According to the source, during this period, the authorities did not bring Mr. Luong before a court in order to assess the legal grounds for his deprivation of liberty. In its response, the Government appears to acknowledge that Mr. Luong was not brought promptly before a court. The Government notes that, on 26 July 2017, the Investigation Security Agency issued a decision to detain Mr. Luong for four months in order to investigate the charge, and that this decision was approved by the People's Procuracy. The Working Group considers that the Procuracy is not an independent judicial authority.<sup>13</sup> 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.<sup>14</sup> No justification was presented by the Government. The Working Group finds that Mr. Luong was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant.

53. In addition, the source alleges that Mr. Luong was held in incommunicado detention for almost a year. The Government does not deny this allegation. 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.<sup>15</sup> Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty<sup>16</sup> and is essential in ensuring that detention has a legal basis. Given that Mr. Luong 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 violated.

54. Finally, the Working Group considers that the provision under which Mr. Luong was convicted is so vague and overly broad that it is impossible to invoke a legal basis for his deprivation of liberty. As the Government acknowledges, Mr. Luong was convicted of "conducting activities to overthrow the people's administration" under article 79 of the Penal Code. The Working Group has raised the issue of prosecution under vague and overly broad penal laws with the Government, including in relation to article 79 of the Penal Code.<sup>17</sup> In addition, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.<sup>18</sup> Article 79 of the Penal Code of Viet Nam<sup>19</sup> does not meet this

<sup>10</sup> The Working Group reached a similar conclusion in its opinion No. 45/2018, para. 40.

<sup>11</sup> See, for example, opinions Nos. 9/2019, para. 29; 8/2019, para. 49; 46/2018, para. 48; 45/2018, para. 40; 36/2018, para. 39; 35/2018, para. 26; and 75/2017, para. 35.

<sup>12</sup> See, for example, opinions Nos. 46/2018, para. 48; and 36/2018, paras. 39–40. See also opinions Nos. 75/2017 and 46/2017.

<sup>13</sup> E/CN.4/1995/31/Add.4, para. 57 (c). See also opinions Nos. 46/2018, para. 50; 35/2018, para. 37; and 75/2017, para. 48.

<sup>14</sup> See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 33.

<sup>15</sup> See, for example, opinions Nos. 46/2017 and 45/2017.

<sup>16</sup> See the 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.

<sup>17</sup> See opinions Nos. 9/2019, para. 39; 46/2018, para. 62; 36/2018, para. 51; 35/2018, para. 36; 40/2016, para. 36; 26/2013, para. 68; 27/2012, para. 41; and 46/2011, para. 22.

<sup>18</sup> 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.

standard. Mr. Luong could not have foreseen that peaceful activities such as calling for fishermen to receive compensation after the Formosa disaster, calling for a boycott of the elections, and protests on various social problems, would amount to criminal conduct under that provision.

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

56. Furthermore, the source alleges that Mr. Luong 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.

57. Mr. Luong was convicted under article 79 ("conducting activities aimed at overthrowing the people's administration") of the Penal Code of 1999, according to which persons found guilty of activities or of establishing or joining organizations with the intent of "overthrowing the people's administration" are subject to the following penalties: (a) in the case of organizers, instigators and active participants or those who cause "serious consequences", a sentence of between 12 and 20 years of imprisonment, life imprisonment or capital punishment; (b) in the case of other accomplices, a sentence of between 5 and 15 years of imprisonment.

58. The Working Group has considered the application of article 79 in numerous opinions relating to Viet Nam, finding that charges and 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.<sup>20</sup> 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 freedom of opinion and expression.<sup>21</sup>

59. In the present case, the source argues that Mr. Luong was convicted under article 79 in order to punish him for campaigning through social media posts for affected fishermen to receive compensation following the Formosa disaster, as well as for participating in protests against Formosa Ha Tinh Steel and on other social problems. According to the source, the detention of Mr. Luong also serves as a deterrent to others from exercising their rights. The Government has not addressed these submissions.

60. 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 choice". This right includes political discourse, commentary on public affairs, discussion of human rights, and journalism.<sup>22</sup> It protects the holding and the expression of opinions, including those which are critical of, or not in line with, government policy.<sup>23</sup> The Working Group considers that Mr. Luong'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.

61. Moreover, Mr. Luong's alleged conduct included peaceful protests and advocacy relating to government policies, including environmental protection. As such, his work concerned matters of public interest. The Working Group considers that he was detained for

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<sup>19</sup> According to the source, on 20 June 2017 the National Assembly of Viet Nam enacted a revised Penal Code, which came into force on 1 January 2018. Article 79 was renumbered and remains in effect as article 109 in the revised Code.

<sup>20</sup> See opinions Nos. 9/2019, 46/2018, 36/2018, 35/2018, 40/2016, 26/2013, 27/2012 and 46/2011. See also A/HRC/41/7, paras. 38.73 and 38.171; and [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20679&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20679&LangID=E).

<sup>21</sup> E/CN.4/1995/31/Add.4, paras. 58–60.

<sup>22</sup> See Human Rights Committee, general comment No. 34, para. 11.

<sup>23</sup> See opinions Nos. 8/2019, para. 55; and 79/2017, para. 55.

exercising his right to peaceful assembly under article 20 of the Universal Declaration of Human Rights and article 21 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.<sup>24</sup> Finally, the Working Group considers that Mr. Luong was convicted for exercising his right to freedom of association under article 20 of the Universal Declaration of Human Rights and article 22 of the Covenant, given his affiliation with Viet Tan, an organization carrying out peaceful activities aimed at enhancing democracy.<sup>25</sup> Furthermore, Mr. Luong exercised his right to association while participating in peaceful protests on the Formosa disaster and other issues.

62. There is nothing to suggest that the permissible restrictions on these rights set out in articles 19 (3), 21, 22 (2) and 25 of the Covenant would apply in the present case. The Government did not explain how prosecuting Mr. Luong was necessary to protect a legitimate interest under these provisions, nor how Mr. Luong's conviction and sentence was a proportionate response to his activities. In any event, the Human Rights Council has called on States to refrain from imposing restrictions under article 19 (3) that are not consistent with international human rights law.<sup>26</sup> 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 and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

63. According to 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, everyone has the right, individually and in association with others, to promote and strive for the protection and realization of human rights and, in doing so, to meet or assemble peacefully, and to form, join and participate in non-governmental organizations, associations or groups.<sup>27</sup> The source has demonstrated that Mr. Luong 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 to the equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.<sup>28</sup>

64. The Working Group concludes that Mr. Luong's deprivation of liberty resulted from the peaceful exercise of his rights to freedom of expression, assembly and association, 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 therefore arbitrary under category II.

65. Given its finding that Mr. Luong's deprivation of liberty was arbitrary under category II, the Working Group emphasizes that no trial of Mr. Luong should have taken

<sup>24</sup> The Human Rights Committee states that citizens may take part in the conduct of public affairs by exerting influence through public debate. See the Committee's general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 8. See also opinions Nos. 9/2019, 46/2018, 45/2018, 36/2018, 35/2018, 40/2016, 26/2013, 42/2012, 46/2011 and 13/2007.

<sup>25</sup> The Working Group has concluded that affiliation with Viet Tan alone does not justify deprivation of liberty. See opinions Nos. 75/2017, para. 43; 27/2017, para. 36; 40/2016, para. 38; 26/2013, para. 67; and 46/2011, paras. 20–22. See also <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12920&LangID=E>.

<sup>26</sup> See Human Rights Council resolution 12/16, para. 5 (p). This provision calls upon States to refrain from imposing restrictions inconsistent with article 19 (3) of the International Covenant on Civil and Political Rights, including on discussion of government policies and political debate, reporting on human rights, government activities and corruption in government, and peaceful demonstrations or political activities.

<sup>27</sup> See articles 1, 5, 8 and 12 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 calls upon States to take concrete steps to prevent and put an end to the arbitrary arrest and detention of human rights defenders, and strongly urges the release of persons detained or imprisoned for exercising their human rights and fundamental freedoms.

<sup>28</sup> See, for example, opinions Nos. 9/2019, 46/2018, 45/2018, 36/2018, 35/2018, 79/2017 and 75/2017.

place. However, he was tried on 16 August 2018 and his conviction and sentence were upheld on appeal on 18 October 2018. The information submitted by the source discloses violations of Mr. Luong's right to a fair trial during those proceedings.

66. According to the source, Mr. Luong was held in pretrial detention for over 12 months. According to article 9 (3) of the Covenant, such detention 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. Luong'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 the time of arrest and the first instance judgment were not respected.<sup>29</sup> As noted earlier, while the Investigation Security Agency issued a decision on 26 July 2017 to detain Mr. Luong for four months in order to investigate the charge, there was no independent judicial oversight of his case. If Mr. Luong 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. Luong was held in pretrial incommunicado detention for almost a year. As a result, he was not able to challenge his detention because he was being held incommunicado, 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 is conducive to torture and other cruel, inhuman or degrading treatment or punishment, and can itself constitute such treatment.<sup>30</sup>

68. Furthermore, the source alleges that the Security Police issued a public statement on the day of Mr. Luong's arrest which claimed that he had participated in activities aimed at overthrowing the State, causing security issues and disorder at the local level. According to the source, the Government accused Mr. Luong of taking advantage of the Formosa disaster to disrupt public order, and released statements saying that he was "actively propagandizing" and was a "dangerous" member of Viet Tan. The Government has not addressed these allegations. As the Human Rights Committee has stated, it is the duty of public authorities to refrain from prejudging the outcome of a trial, by abstaining from making public statements affirming the guilt of the accused.<sup>31</sup> In the present case, the authorities have breached this obligation, violating Mr. Luong's right to the presumption of innocence under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

69. According to the source, Mr. Luong was convicted on the basis of forced witness statements obtained from two activists, both of whom had been beaten and forced to testify against him.<sup>32</sup> The source alleges that, while the two activists recanted their testimony before the judge, their witness statements were admitted as evidence during Mr. Luong's trial and were used to convict him. The Government has not addressed these allegations. The Working Group has determined that the conviction of an individual based on information extracted under torture from another person is unreliable and cannot be the basis for deprivation of liberty.<sup>33</sup> The use of evidence obtained through torture or ill-treatment is a *prima facie* violation of articles 2, 12, 13, 15 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These accusations must be subjected to a thorough and independent investigation. The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

<sup>29</sup> See Human Rights Committee, general comment No. 35, para. 37.

<sup>30</sup> See General Assembly resolution 68/156, para. 27.

<sup>31</sup> See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30.

<sup>32</sup> The Working Group considered this allegation in its opinion No. 44/2019 (finding that a *prima facie* case had been established that the activist's testimony had been extracted under torture).

<sup>33</sup> See opinions Nos. 75/2018, para. 75; and 47/2017, para. 27.

70. In addition, the Working Group takes note of the use of the witness testimony despite its retraction by both activists and objections by defence counsel to its reliability, as well as of the source's allegation that the defence arguments were ignored by the trial judge. The Government did not deny these allegations. Taken together, these factors suggest that the court did not meet the standard of an independent and impartial tribunal under article 14 (1) of the Covenant. By allowing both witnesses to be removed from the courtroom after they had recanted their testimony, the court violated Mr. Luong's right under article 14 (3) (e) of the Covenant to examine the witnesses against him. The Working Group will also refer the present case to the Special Rapporteur on the independence of judges and lawyers.

71. The source reports that Mr. Luong's trial lasted five hours. The appeal hearing was of a similar length. The Government does not deny the short duration of the proceedings. Mr. Luong was sentenced to 20 years of imprisonment and 5 years of probation. As the Working Group has observed,<sup>34</sup> a short trial for a serious criminal offence suggests that Mr. Luong's guilt and the appropriate penalty had been determined prior to the hearing. The Working Group considers that this is a further example of the denial of Mr. Luong's right to the presumption of innocence.

72. Additionally, the source alleges that Mr. Luong's trial was closed to everyone except his wife. In its response, the Government provided screenshots and a hyperlink showing the crowded courtroom.<sup>35</sup> These images suggest that other people did in fact attend the trial. While the Working Group takes note of the source's submission that plain-clothes police officers were positioned in the courtroom to give the impression that the proceedings were open, this is not a matter which is evident from the images of the trial. As a result, the Working Group is not able to reach a conclusion on whether Mr. Luong's trial was open to the public.

73. However, the images provided by the Government do indicate a heavy presence of uniformed officers. As the Working Group has stated, defendants should not be presented to the court in a manner indicating that they may be dangerous criminals, as this undermines the presumption of innocence.<sup>36</sup>

74. Furthermore, the source alleges that Mr. Luong was denied access to legal representation for most of his detention pending trial and was only permitted to meet with one of his lawyers on one occasion, shortly before his trial, and with his second lawyer after the trial had started. According to the source, Mr. Luong was only permitted to consult with his lawyer for 45 minutes on the day before the appeal hearing. The lawyer's visit was scheduled for one hour but was cut short when the police ended the consultation. In its response, the Government notes that this case concerned national security and the Prosecutor-General is entitled to decide that defence counsel will be involved upon the completion of the investigation, in accordance with article 58 (1) of the Criminal Procedure Code. However, the Government does not otherwise address the allegations relating to lack of access to counsel. Moreover, the fact that restriction of access to legal counsel for a period of time may be permissible under Vietnamese law does not make such restriction acceptable under international law.

75. 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 is to be provided without delay.<sup>37</sup> In the present case, Mr. Luong did not have sufficient access to counsel before his trial or his appeal. He was not afforded his rights to adequate time and facilities for the preparation of his defence and to communicate with counsel, under article 14 (3) (b) of the Covenant,

<sup>34</sup> See, for example, opinions Nos. 46/2018, 45/2018, 36/2018 and 75/2017.

<sup>35</sup> The screenshots and the hyperlink from a website in Vietnamese show images of Mr. Luong's trial that are similar to images available on other websites, including reports in English of the trial.

<sup>36</sup> See opinions Nos. 36/2018, para. 55; 79/2017, para. 62; and 40/2016, para. 41. See also Human Rights Committee, general comment No. 32, para. 30.

<sup>37</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.

and to present an effective defence through legal assistance of his choosing, under article 14 (3) (d).

76. Finally, the source alleges that Mr. Luong was denied contact with his family from the time of his arrest in July 2017 until after his appeal hearing in October 2018. Following his appeal, he was transferred to Nam Ha Prison Camp, 250 kilometres away from his family home. He is allowed one social visit per month, of 60 minutes, but the visits are often cut short by the authorities. Mr. Luong is prohibited from other communication with his family, including telephone calls and letters. The restrictions on his communications have reportedly been imposed because he maintained his innocence at trial and after his conviction. The Government did not deny these allegations. The Working Group finds that the ongoing limitation of Mr. Luong's contact with his family amounts to a violation of the right to have contact with the outside world under rules 43 (3) and 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.

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

78. In addition, the Working Group considers that Mr. Luong was targeted because of his peaceful activities as a human rights defender, including his posts on social media calling for affected fishermen to receive compensation following the Formosa disaster and his protests against Formosa Ha Tinh Steel. The source alleges, and the Government does not deny, that the sentence imposed on Mr. Luong has been the most severe sentence imposed on a political prisoner in the past five years. Moreover, the source alleges that Mr. Luong has been targeted previously for his human rights work. In August 2015, his home was placed under surveillance by State agents. A few weeks later, Mr. Luong and other activists were violently beaten by persons believed to have known the identity of the victims, and Mr. Luong's computer containing his work as a journalist was destroyed. The Government does not deny these allegations. Mr. Luong's conviction and sentence appear to be part of an ongoing pattern by the authorities of seeking to curtail his peaceful advocacy.

79. As the Working Group has observed, there also appears to be a broader pattern in Viet Nam of detaining human rights defenders for their work, including activists who have attempted to raise awareness about the Formosa steel plant. The Working Group has made findings to this effect in recent years,<sup>38</sup> and finds the present case to be another example.

80. The Working Group finds that Mr. Luong 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 actions of the Government. 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.

81. The Working Group wishes to express its concern about Mr. Luong's deteriorating health and the restrictions reportedly placed on his ability to practise his religion. According to the source, Mr. Luong is suffering from high blood pressure, pain from osteoarthritis, and gout. He is reliant on medication only provided to him by his family, and he has not been seen by a medical practitioner despite having raised his health concerns with the prison authorities. The prison authorities continue to seize books that are sent to him. The authorities have refused visitation rights to a Catholic priest and Mr. Luong is prevented from participating in religious activities in the prison. The Government did not deny these allegations. The Working Group considers that the source has established a *prima facie* violation of the standards set out, *inter alia*, in rules 1, 24, 25, 27, 30, 31, 42, 65 (3) and 66 of the Nelson Mandela Rules. Given that Mr. Luong has been deprived of his

<sup>38</sup> See, for example, opinions Nos. 44/2019, 9/2019, 46/2018, 45/2018, 35/2018, 79/2017 and 27/2017.

liberty for over two years, the Working Group urges the Government to immediately and unconditionally release him, and to ensure that he receives appropriate medical care.

82. The Working Group wishes to comment on other serious allegations made in the present case. The source alleges that Mr. Luong's family members have suffered serious human rights violations as a result of his deprivation of liberty:

(a) On 28 July 2017, four days after Mr. Luong's arrest, three of his relatives (including one minor) were detained and taken to the police station in Ward 8, Go Vap District, where the two adults were beaten.

(b) On 18 August 2017, fifteen of Mr. Luong's relatives (including elderly persons and pregnant women) went to the Department of Public Security in Nghe An Province to seek information about Mr. Luong's arrest. The police detained six of them for nine hours. While in detention, the six detainees were subjected to abuse: (a) two of the six were badly beaten, resulting in permanent scarring; (b) the authorities made religious slurs and destroyed the detainees' mobile telephones; (c) the detainees were beaten, sometimes with clubs and books, when they refused to sign forms accepting that they had caused a public disturbance; (d) one of the female detainees was stripped naked and threatened that if she did not disclose information, she would be injected with HIV; and (e) the detainees were forced to sign false statements that they had not been physically harmed during their detention.

83. The Working Group is alarmed at these allegations and notes with concern that the Government did not address them. While the Working Group was not asked to consider the alleged detention of Mr. Luong's family members, it regards their deprivation of liberty for nine hours as a matter that should be investigated further by the authorities. The Working Group also expresses its serious concern at the allegations relating to beatings and other ill-treatment of the above-mentioned individuals, including a minor, elderly persons and pregnant women. The Working Group urges the Government to conduct a thorough investigation into these alleged incidents and, if the investigation reveals the allegations to be well founded, to prosecute the offenders. The Working Group has decided to include these allegations in its referral of the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

84. 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 rights defenders, in Viet Nam.<sup>39</sup> 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 which, if it continues, may amount to a serious violation of international law.<sup>40</sup>

85. The Working Group would welcome the opportunity to work constructively with the Government to address the problem of 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, and 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.

<sup>39</sup> See, for example, opinions Nos. 44/2019, 9/2019, 8/2019, 46/2018, 45/2018, 36/2018, 35/2018, 79/2017, 75/2017, 27/2017, 26/2017, 40/2016, 46/2015 and 45/2015.

<sup>40</sup> See, for example, opinion No. 47/2012, para. 22.

**Disposition**

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

The deprivation of liberty of Le Dinh Luong, being in contravention of articles 2, 6, 7, 8, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14, 16, 19, 21, 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.

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

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

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

90. The Working Group requests the Government to bring its laws, particularly article 79 of the Penal Code of Viet Nam (now article 109 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.

91. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present 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 the rights to freedom of peaceful assembly and of association, (c) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, (d) the Special Rapporteur on the independence of judges and lawyers and (e) the Special Rapporteur on the situation of human rights defenders, for appropriate action.

92. 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.<sup>41</sup>

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

**Follow-up procedure**

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

- (a) Whether Mr. Luong has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Luong;
- (c) Whether an investigation has been conducted into the violation of Mr. Luong'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;

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<sup>41</sup> Developed in consultation with more than 500 human rights defenders from around the world and 27 human rights experts. See [www.ishr.ch/sites/default/files/documents/model\\_law\\_full\\_digital\\_updated\\_15june2016.pdf](http://www.ishr.ch/sites/default/files/documents/model_law_full_digital_updated_15june2016.pdf).



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

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

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

97. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>42</sup>

*[Adopted on 15 August 2019]*

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<sup>42</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.