



General Assembly

Distr.: General

29 May 2020

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020

Opinion No. 16/2020 concerning Ngô Văn Dũng (Viet Nam)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 4 October 2019 the Working Group transmitted to the Government of Viet Nam a communication concerning Ngô Văn Dũng. The Government replied to the communication on 3 January 2020. 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).



Submissions

Communication from the source

4. Ngô Văn Dũng is a 50-year-old citizen of Viet Nam. He is a blogger and activist. He usually resides in Dak Lak Province, Viet Nam.

5. Since June 2017, Mr. Dũng has written posts and posted live and recorded videos on social media in order to promote democratic freedoms. He is a member of Reviving Viet Nam Campaign, a pro-democracy movement that advocates for a free press in Viet Nam, as well as the *Hien Phap* constitutional rights group, which aims to educate citizens about their legal rights. According to the source, both organizations have been targeted by the authorities for their activism against the Government.

6. Prior to his detention, Mr. Dũng had frequently covered events through Internet platforms. These activities have ranged from filming numerous protests to actively commenting on them. Mr. Dũng has also posted online a video criticizing the conviction of blogger Tran Thi Nga.¹ Mr. Dũng had also peacefully participated in and filmed a protest in Ho Chi Minh City organized by *Hien Phap* against the Government's plans to approve bills on cybersecurity and the creation of special economic zones. The source reports that the security forces began to target *Hien Phap* members through a series of arrests carried out to suppress further demonstrations.

Arrest and detention

7. In March 2018, Mr. Dũng was arrested and detained for several hours before being released. According to the source, the arrest was carried out in retaliation for Mr. Dũng's activities as a human rights activist and blogger. The arrest came after Mr. Dũng had filmed a demonstration in his home province of Dak Lak involving school teachers who had been dismissed from employment. During the detention, Mr. Dũng's mobile telephone, which had been used to film the demonstration, was confiscated and Mr. Dũng was interrogated for several hours. He was released later on the same day and fined 2 million Vietnamese dong for "causing public disorder".

8. On 4 September 2018, Mr. Dũng was again arrested by police officers when he was livestreaming a protest in Ho Chi Minh City. Seven other members of *Hien Phap* were also arrested on or around 4 September 2018. The arresting officers did not provide a copy of the arrest warrant to Mr. Dũng at the time of his arrest. According to the source, the arrest warrant was dated 21 September 2018 and was received by Mr. Dũng's family on 5 October 2018. The arrest warrant states that Mr. Dũng was arrested pursuant to article 118 of the Criminal Code of 2015 for the offence of "disruption of security", which is punishable with 15 years of imprisonment.

9. Several hours after the arrest, Mr. Dũng's family was informed through his social media page that Mr. Dũng had been arrested and was being held in Ben Nghe Ward, District 1. As the information about Mr. Dũng's whereabouts had not been confirmed by the authorities, Mr. Dũng's family resorted to searching for him by visiting multiple police stations. The source alleges that Mr. Dũng's family has been sending food regularly to No. 4 Bin Hai Ward Prison, where they believe he is being held, but have no confirmation that he is receiving the food. Since his arrest, Mr. Dũng has remained in incommunicado detention and has had no contact with his family or access to legal counsel. Mr. Dũng's family know nothing of his health condition or the conditions of his detention, nor the specifics of the charge against him.

Analysis of violations

10. The source submits that Mr. Dũng's arrest and detention are arbitrary under categories I, II and III.

¹ Ms. Nga is the subject of Working Group opinion No. 75/2017.

Category I

Arrest without a warrant and without being promptly informed of the charges

11. The source alleges that Mr. Dững was arrested without an arrest warrant and was not informed promptly of the reasons for his arrest and that the authorities failed to charge him at the time of his arrest. The arrest warrant provided to Mr. Dững's family was issued on 21 September 2018, 17 days after his arrest, which suggests that no arrest warrant existed on the day of his arrest and that Mr. Dững was not informed about the charges against him, in violation of article 9 (2) of the Covenant.

Charges under a vague and overly broad provision

12. Mr. Dững was arrested and detained under article 118 (1) of the Criminal Code, which reads: "Any person who, for the purpose of opposing the people's government, incites, persuades, gathers other people to disrupt security, resists law enforcement officers in the performance of their duties, obstructs the operation of agencies or organizations shall face a penalty of 5–15 years' imprisonment, except for the cases specified in Article 112 hereof."² This provision fails to define what is meant by disruption of security and uses broad language such as "incites", "persuades" and "gathers" without definition. The United Nations has already recommended the repeal or revision of numerous articles of the Vietnamese Criminal Code, including article 118, on the basis of its incompatibility with the human rights obligations assumed by Viet Nam under the Covenant.

13. The arrest warrant issued against Mr. Dững states that he was accused of "causing public disorder", in violation of article 118 of the Criminal Code. Notably, what constitutes "causing public disorder" is not defined in the provision or elsewhere in the Criminal Code. In addition, the difference between the wording of article 118 ("disrupt security") and the nature of the alleged offence detailed on Mr. Dững's arrest warrant ("causing public disorder") demonstrates the arbitrary manner in which the provision has been applied in the present case.

14. Article 118 of the Criminal Code is incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant and cannot be considered "prescribed by law" or "defined with sufficient precision" due to its vague and overly broad language.³

Category II

Detention resulting from the exercise of the right to freedom of expression

15. The source submits that Mr. Dững was detained for exercising his right to freedom of expression under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.

16. Under article 19 (3) of the Covenant, any restriction imposed on the right to freedom of expression must be provided by law, must be designed to achieve a legitimate aim and must be imposed in accordance with the requirements of necessity and proportionality.⁴ Mr. Dững's arrest and detention fails to satisfy these requirements.

17. The arrest and detention of Mr. Dững was not "provided by law".⁵ For a legislative provision to be characterized as a "law" within the meaning of article 19 (3) of the Covenant, it must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.⁶ Furthermore, the provision cannot confer unfettered discretion for the

² Article 112 of the Criminal Code sets out the penalties for the offence of engaging in armed activities or using violence against the Government.

³ Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 25.

⁴ Ibid., paras. 21–36.

⁵ Ibid., para. 22.

⁶ Ibid., para. 25.

restriction of freedom of expression on those charged with its execution.⁷ Article 118 of the Criminal Code is incompatible with article 19 (3) of the Covenant because it is vague and overly broad. In failing to define what is meant by “disruption of security” or to circumscribe the scope of prohibited activities, the provision has no discernible scope or limitation, disregards the principle of legal certainty and prevents individuals from regulating their actions in accordance with the law. Restrictions on the freedom of expression should not put in jeopardy the right itself.⁸ The Human Rights Committee has recommended that article 118 be revised to encompass a clear definition of the prohibited activities. That recommendation has not yet been implemented.

18. The potential for an abusive and arbitrary application of article 118 of the Criminal Code is evident from the nature of the provision. Wording such as “for the purpose of opposing the people’s government” can be interpreted widely by the authorities. The failure of the provision to define the prohibited activity carries the risk of the law being interpreted to criminalize the exercise of fundamental freedoms. In failing to explicitly define what activities are prohibited under article 118, the authorities are able to use this piece of legislation to suppress political dissent and to punish individuals whose behaviour might pose a threat to the authorities.

19. Article 19 (3) of the Covenant requires that any restriction of the freedom of expression must only be imposed for specific legitimate purposes, namely the protection of national security, public order, public health or morals. Mr. Dũng was detained under article 118, which criminalizes activity that results in the “disruption of security”. This suggests that the underlying motive for the arrest might be the protection of national security, which is a legitimate aim recognized under article 19 (3) (b) of the Covenant. However, the scope of this ground is limited. It is not compatible with paragraph 3 to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists for having disseminated such information.⁹ Furthermore, article 19 (3) of the Covenant must not be used by Governments for the muzzling of any advocacy of democracy by journalists.¹⁰ Under no circumstances 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, torture, threats to life and killing, be compatible with article 19.¹¹

20. Mr. Dũng disseminated social media posts criticizing the Government and live streamed videos of a peaceful protest against the creation of special economic zones. Expression that “advocates non-violent change of government policy or the Government itself” or “constitutes criticism of, or insult to, the nation, the State or its symbols, the Government, its agencies or public officials”¹² is not considered a threat to national security. There is no evidence that Mr. Dũng presented a threat to national security or to any of the other legitimate interests enumerated in article 19 (3) of the Covenant. Mr. Dũng was exercising his right to freedom of expression by reporting on protests and expressing his views on current issues through social media. The authorities have failed to produce any evidence showing Mr. Dũng to be a threat and therefore are not pursuing a legitimate aim through his arrest and detention.

21. Any restriction on the right to freedom of expression must be a necessary and proportionate means of achieving a legitimate aim, meaning that it must be the least intrusive instrument among those which might achieve their protective function.¹³ In assessing proportionality, the form of expression is highly relevant: the Covenant places a particularly

⁷ Ibid.

⁸ Ibid., para. 21.

⁹ Ibid., para. 30. See also E/CN.4/1995/32, para. 48.

¹⁰ Human Rights Committee, general comment No. 34, para. 23.

¹¹ Ibid. In its general comment No. 34, the Human Rights Committee also notes that journalists are frequently subjected to such threats, intimidation and attacks because of their activities.

¹² Johannesburg Principles on National Security, Freedom of Expression and Access to Information (E/CN.4/1996/39, annex), principle 7.

¹³ Human Rights Committee, general comment No. 34, para. 34. See also A/HRC/14/23, para. 79 (g) (iv).

high value on uninhibited expression in the context of debate on figures in the public and political domain.¹⁴ Mr. Dũng's reporting on social media does not demonstrate any evidence of inciting or engaging in violent behaviour. The matters he raised through his activism fall within the forms of expression that should never be restricted.

22. In addition, Mr. Dũng's incommunicado detention is disproportionate and cannot be justified as the least intrusive instrument amongst those which might achieve their protective function.¹⁵ Mr. Dũng poses no threat to national security. His arrest and incommunicado detention cannot be considered proportionate in the circumstances.

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

23. The source submits that Mr. Dũng 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 of the Covenant.

24. The Human Rights Committee has interpreted this guarantee as encompassing the right of citizens to exert influence through public debate and dialogue through their capacity to organize themselves.¹⁶ The activities of Mr. Dũng, specifically his criticism of and opposition to the Government, his campaigning for democracy through the dissemination of copies of the Constitution and his livestreaming of peaceful demonstrations and protests, is protected and should not be subjected to unreasonable restrictions.

25. In accordance with article 2 (1) of the Covenant, this right must be respected and ensured to all citizens without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Mr. Dũng was arrested while filming a public protest. The circumstances of his arrest and detention are likely a direct result of his involvement in the demonstration and his political activism. By arresting and detaining Mr. Dũng, the authorities have distinguished him from other citizens on the grounds of his political opinion and denied him the right to participate in public affairs.

26. Any restrictions on the right enshrined in article 25 of the Covenant must be objective and reasonable.¹⁷ Mr. Dũng was targeted by the State authorities on the basis of his activism for the protection of constitutional rights and democracy. On the day of his arrest, Mr. Dũng was filming the demonstrations in a peaceful manner and did not pose a threat to the State. He was legitimately exercising his right under article 25. That right was not restricted by the authorities on the basis of reasonable and objective criteria.

Category III

Right to be informed of the nature and cause of the charge

27. The conditions of Mr. Dũng's arrest and detention violated his right to be informed of the nature and cause of the charge against him. That right is set out in article 14 (3) (a) of the Covenant and is reiterated in principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The right to be informed promptly of the charge requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law.¹⁸ There is no evidence that the arrest warrant was provided or shown to Mr. Dũng at the time of arrest, nor any indication that he was promptly informed of the charge and his rights at the time of his arrest.

¹⁴ Human Rights Committee, general comment No. 34, para. 34. See also Human Rights Council resolution 12/16, para. 5 (p).

¹⁵ Human Rights Committee, general comment No. 27 (1999) on freedom of movement, para. 14.

¹⁶ Human Rights Committee, general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 8.

¹⁷ Ibid., para. 4.

¹⁸ Human Rights Committee, general comment No. 32 (2007) on the right to equality before the courts and tribunals and to a fair trial, para. 31.

28. Mr. Dững's family was not provided with the arrest warrant until 5 October 2018, approximately a month after his arrest. Article 14 (3) (a) of the Covenant provides the family of a detained individual with the right to be informed of the nature and cause of the charge. This right has been violated. Neither Mr. Dững nor his family were promptly informed of the nature and cause of the charge, contrary to article 14 (3) (a) of the Covenant.

Right to communicate with counsel and family members

29. There is no evidence that Mr. Dững has had access to legal counsel since his arrest. Failure to provide access to legal counsel violates principle 11 of the Body of Principles, by which a person shall be given an opportunity to be heard promptly and shall have the right to defend himself or be assisted by counsel.¹⁹ The availability or absence of legal assistance often determines whether a person can access proceedings or participate in them in a meaningful way.²⁰ The lack of access to legal counsel is severely detrimental to the procedural fairness of Mr. Dững's detention.

30. Mr. Dững is being held incommunicado and has been unable to communicate with his family or the outside world, contrary to principles 15 and 16 of the Body of Principles. Mr. Dững's family has been unable to communicate with him and has had no further information from or communication with the authorities since 4 September 2018. In line with principle 15 of the Body of Principles, communication with the outside world should not be denied for more than a matter of days. At least 10 months have passed and Mr. Dững has not been allowed to communicate with his family or legal counsel since his arrest in September 2018. His incommunicado detention violates principle 16 of the Body of Principles, according to which either the detainee or a competent authority should notify family members of the detainee's conditions of arrest, detention or imprisonment and where he or she is being held. Mr. Dững's rights to communicate with legal counsel and his family have been gravely impaired, in violation of article 11 of the Universal Declaration of Human Rights, article 14 (3) (b) of the Covenant and principles 15, 18 (2) and 19 of the Body of Principles.

Right to a fair hearing, especially the right to be tried without undue delay

31. Article 14 (3) (c) of the Covenant guarantees the right to be tried without undue delay. Expeditious trials are important to ensure that detention does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice.²¹ Mr. Dững has been detained since his arrest on 4 September 2018. To date, there has been no indication that a trial has taken place or that one is due to take place in the near future. Furthermore, it appears that the pretrial detention period of four months permitted under domestic law lapsed in January 2019.

32. Article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant guarantee the right to a fair and public hearing by an independent and impartial tribunal. Mr. Dững's family has not been provided with a trial date or a report of proceedings. If Mr. Dững has been tried, this has not been made public. There has been a lack of transparency by the Vietnamese authorities throughout Mr. Dững's arrest and detention. The requirement of independence and impartiality of a tribunal is an absolute right.²² Other trials of bloggers imprisoned for exercising the right to freedom of expression suggest that proceedings in Viet Nam are rarely held before an impartial body.

33. The lack of information on the arrest of Mr. Dững, on the location of his detention and on the existence of a trial indicate that the Vietnamese authorities have failed to meet key procedural obligations under international human rights law.

Response from the Government

34. On 4 October 2019, the Working Group transmitted the source's allegations to the Government under its regular communication procedure, requesting the Government to

¹⁹ See also principle 7 of the Basic Principles on the Role of Lawyers.

²⁰ Human Rights Committee, general comment No. 32, para. 10.

²¹ Ibid., para. 35.

²² Ibid., para. 19.

provide detailed information by 3 December 2019 about the current situation of Mr. Dũng. The Working Group also requested the Government to clarify the legal provisions justifying Mr. Dũng's continued 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. Dũng's physical and mental integrity.

35. On 3 December 2019, the Government requested an extension of the deadline for a response. The extension was granted and a new deadline of 3 January 2020 was set. The Government submitted its response on 3 January 2020.

36. The Government emphasizes that Mr. Dũng was not arrested, investigated and prosecuted for the exercise of fundamental freedoms, which are recognized in Vietnamese law and international human rights law.

37. On 12 March 2018, Mr. Dũng and another individual interviewed teachers who were in talks with their management board about the termination of labour contracts. During those interviews, Mr. Dũng took photographs and livestreamed videos online while shouting and disrupting the public order, despite the persistent warnings of school guards. Subsequently, the Phuoc An ward police issued administrative citations with fines of 2 million Vietnamese dong each and confiscated two mobile telephones that had been used for taking unauthorized photographs, recording unauthorised films and drawing diagrams of restricted areas. Mr. Dũng was not held or arrested.

38. During the weeks leading up to the Vietnamese national day on 2 September 2018, and upon receiving reports from local people that a group of individuals was regularly meeting and conducting suspicious acts, the Ho Chi Minh City police opened an investigation and discovered that this group, which included Mr. Dũng, had contacted people overseas and been sponsored by them to carry out anti-State activities. The group was being given, by an overseas entity, substantial financial resources, as well as homemade electric whips and medicines, to be used to accomplish a plan. The group had held two meetings, on 25 and 31 August 2018, to develop its plan, assign tasks, prepare weapons (including homemade electric whips and sharpened iron hooks) and train individuals in techniques to attack the police.

39. On 4 September 2018, the police summoned the members of this group and discovered that they had spread video clips through the Internet to incite people to participate in illegal gatherings and protests and to use weapons to attack the police with the aim of provoking violence, isolating airports, railway stations and ports, and occupying government offices, in order to overthrow the Government. Mr. Dũng admitted that he had contributed the idea of burning old motorbikes to attract attention and exchanged information with others in the group on how to make gasoline bombs for distribution to other protesters to attack the police and to provoke crowd violence. A subsequent search of Mr. Dũng's social media accounts revealed many documents and video clips that defamed the people's administration, distorted State policy and incited people to hold violent protests and riots and to seize and destroy administrative offices.

40. The authorities decided to take action to prevent Mr. Dũng and his accomplices from carrying out their plan, as their acts were aimed at causing serious harm to national security, social order and the safety of ordinary people in public places.

41. On 14 September 2018, the Public Security Department of Ho Chi Minh City issued a custody warrant and an emergency arrest warrant against Mr. Dũng. These were approved by the People's Procuracy of Ho Chi Minh City. At the time of the arrest, Mr. Dũng was shown and signed the arrest warrants and was informed of the charges against him. On 21 September 2018, the Public Security Department issued a decision to initiate criminal proceedings and a detention warrant against Mr. Dũng citing the charge of "disruption of security" under article 118 of the Criminal Code. The decision had been approved by the competent People's Procuracy. All the warrants and decisions were properly communicated to Mr. Dũng, as well as to his family and local administration. The allegations that Mr. Dũng was arrested without an arrest warrant and that he was not informed of the reasons for his arrest at that time are groundless.

42. In response to the allegations that article 118 of the Criminal Code is vague and may lead to arbitrary interpretation, the Government notes that this provision makes a clear distinction between the exercise of democratic freedoms and illegal activities. It does not criminalize the exercise of freedom of expression, but only punishes those abusing this right to carry out illegal activities. Article 118 is fully in line with international human rights conventions to which Viet Nam is a party.

43. On 18 December 2018, the police investigation agency in Ho Chi Minh City sent a note to a lawyer on the participation of legal counsel in the judicial process. Due to the particularly serious nature of Mr. Dũng's case, which involved many individuals, many localities and the utmost need to maintain secrecy during the investigations, defence lawyers could take part in the proceedings only after the investigation phase, in accordance with the Criminal Procedure Code. The authorities did not interfere in the participation of lawyers.

44. Decisions on temporary detention are executed through a rigorous process set out in the Criminal Procedure Code. In the present case, each extension of the temporary detention order was approved by the People's Procuracy of Ho Chi Minh City and communicated to Mr. Dũng's family. Given the complex nature of Mr. Dũng's case, it was critical that the period of temporary detention be extended several times to allow for thorough investigations, a fair trial and sound sentencing. Mr. Dũng's trial is currently pending.

45. Shortly after arresting Mr. Dũng, the Ho Chi Minh City police informed his local administration and his family about the arrest. Mr. Dũng receives supplies from his family twice a month and was allowed to meet his wife four times between August and November 2019.

46. While in temporary detention, Mr. Dũng has never been subjected to solitary confinement. His rights with respect to food, accommodation, clothing, general living conditions, as well as other rights under the law, have been respected. Mr. Dũng has received adequate health care and medicine as required by law. Following a medical examination, his health was determined adequate for admission to the Ho Chi Minh City detention centre on 17 September 2018. In addition to attending scheduled appointments at the detention centre, Mr. Dũng was sent three times to outside hospitals, in November 2018, May 2019 and October 2019. His health is normal.

47. Mr. Dũng is currently being held at the police temporary detention centre in the Binh Thanh district of Ho Chi Minh City.

Additional comments from the source

48. The Government's version of the events confirms that Mr. Dũng was arrested and held on 12 March 2018. The Government accepts that police officers took Mr. Dũng's mobile telephone, and it is difficult to argue that such confiscation could take place without some level of physical control being exercised over him.

49. The Government is incorrect in law and fact in its assertion that the arrest, detention and prosecution of Mr. Dũng was in accordance with the law. The Government's description of Mr. Dũng's activities of highlighting human rights issues in Viet Nam as "anti-State activities" is a deliberate mischaracterization of his work. Mr. Dũng was detained because he engaged in activities that would be regarded, in any other State that complied with the rule of law, as a legitimate exercise of his right to freedom of expression.

50. The Government's claim that Mr. Dũng admitted to being involved in discussions on how to carry out violent resistance is false. Mr. Dũng vehemently denies the allegations against him and has refused to wear the prison uniform marked with the word "guilty". He has always advocated non-violent methods to facilitate democratic change. The Government has failed to produce or identify any evidence demonstrating that Mr. Dũng was involved in the dissemination of extremist violent material, including any relevant links to social media accounts connecting him to these allegations.

51. According to the Government, the Ho Chi Minh City police issued a custody and emergency arrest warrant on 14 September 2018, 10 days after Mr. Dũng had been arrested. The source points to opinions in which the Working Group has found a flagrant disregard by the Vietnamese authorities of criminal procedure, particularly a persistent failure to provide

copies of arrest warrants to journalists, bloggers and activists when arresting them. Notably, the Government does not address the allegation that Mr. Dũng and his family were not informed of the reasons for his arrest.

52. Article 118 of the Criminal Code is not fully in line with international human rights conventions. The Government fails to address the criticisms voiced by international human rights mechanisms of this provision. The Government does not specify how article 118 makes a clear distinction between the exercise of democratic freedoms and illegal activities, nor what behaviour constitutes illegal activities or how the courts are interpreting this provision.

53. The Government confirms that Mr. Dũng's lawyer was allowed to participate in the proceedings only after 18 December 2018, when the investigation was completed. There is no proper explanation as to why the present case was so serious as to justify this approach, and no information on how the investigation might have been affected had Mr. Dũng met with his lawyer. Since 4 September 2018, Mr. Dũng has been permitted only two meetings with his lawyer, one of which was on 5 January 2020. He was held incommunicado from 4 September 2018 until 2 August 2019, when he was permitted a short visit with his wife. That visit lasted only 30 minutes and not the regular 60 minutes assigned for family visits by the prison. It was heavily monitored by prison guards and Mr. Dũng's wife could speak to him only through a glass window. Since then, Mr. Dũng's wife has been permitted to visit him once a month. Mr. Dũng has received six family visits while in pretrial detention.

54. Mr. Dũng's pretrial detention has lasted over 19 months. The Government had an opportunity to explain the delay, but failed to do so. Mr. Dũng was informed that his trial would take place on 14 January 2020, but it has been adjourned and no new date has been communicated. Mr. Dũng's conditions of detention are extremely onerous and are affecting his physical and mental health.

Discussion

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

56. The Working Group has in its jurisprudence established the ways in which it deals 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).²³

57. The source alleges that Mr. Dũng was arrested on 4 September 2018 while he was livestreaming a protest in Ho Chi Minh City. According to the source, the arresting officers did not provide an arrest warrant to Mr. Dũng at the time of his arrest, did not inform him promptly of the reasons for the arrest and failed to charge him at the time of the arrest. The arrest warrant that was later produced was dated 21 September 2018, 17 days after Mr. Dũng's arrest, and was received by Mr. Dũng's family on 5 October 2018. In its response, the Government states that the Ho Chi Minh City authorities issued a custody warrant and emergency arrest warrant against Mr. Dũng on 14 September 2018. Mr. Dũng was shown and signed the warrants and was informed of the charges. The Government asserts that the source's allegations that there was no warrant and that Mr. Dũng was not informed of the reasons for his arrest are groundless.²⁴

58. The Working Group considers that the source has presented a credible *prima facie* case that the authorities did not present an arrest warrant at the time of Mr. Dũng's arrest.

²³ The Government enclosed 36 documents in Vietnamese, which is not one of the Working Group's three working languages. The Government was requested to translate the enclosures into English. On 4 February 2020, the Government provided a list of the documents in English but did not translate their content. The list includes: a custody warrant, an emergency arrest warrant, a note on the participation of defence lawyers, a document relating to a health check-up and receipts of family supplies.

²⁴ The Government does not argue that Mr. Dũng was arrested in *flagrante delicto*, which might have obviated the need for an arrest warrant.

This allegation has not been rebutted by the Government. The Government did not present any reasons why the normal arrest procedures could not have been followed. In addition, the Government did not explain the nature of a custody warrant and an emergency arrest warrant, the differences between both warrants nor the circumstances in which they would be executed. Furthermore, the source points to the Government's assertion that the warrants were issued on 14 September 2018 and could not have been shown to Mr. Dũng when he was arrested 10 days earlier.²⁵ Finally, the Working Group has found in a series of recent cases that an arrest warrant was not presented at the time of the arrest, suggesting that the source's claims are credible.²⁶

59. For similar reasons, the Working Group finds that the source has presented a credible case that Mr. Dũng was not informed of the reasons for his arrest when he was arrested on 4 September 2018 and was not promptly informed of the charges against him.²⁷ The Government asserted that these requirements were met and that a decision was made to initiate proceedings against Mr. Dũng on a charge under article 118 of the Criminal Code on 21 September 2018, 17 days after his arrest. However, the purpose of prompt notification of charges is to facilitate the determination of whether detention is appropriate.²⁸ This requirement has not been met in the present case: the Government has not demonstrated that it provided reasons for the arrest at the time of arrest²⁹ nor, as discussed below, that it complied with article 9 (3) of the Covenant.³⁰

60. 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. Article 9 (2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest and shall be promptly informed of any charges against him or her. Mr. Dũng was arrested without an arrest warrant being presented to him, in violation of article 9 (1).³¹ He was not informed of the reasons for his arrest at the time of arrest, nor was he promptly informed of the charges against him, in violation of articles 9 (2) and 14 (3) (a) of the Covenant. An arrest is arbitrary when it is carried out without informing the arrested person of the reasons for the arrest.³²

61. Furthermore, the source alleges that Mr. Dũng was held incommunicado from 4 September 2018 until 2 August 2019 and is currently held in pretrial detention which has now lasted over 19 months. The Government appears to confirm that Mr. Dũng was held incommunicado as his lawyer could not take part in the proceedings before 18 December 2018, and Mr. Dũng did not meet with his wife until 2 August 2019. There is nothing in the

²⁵ The Government appears to suggest that Mr. Dũng and others were summoned on 4 September 2018 but that the arrest took place on 14 September 2018. Even if this was the case, there is no evidence that a warrant was presented at that time. The Working Group notes that seven other *Hien Phap* members were also reportedly arrested on or around 4 September 2018.

²⁶ Opinions No. 45/2019, para. 50; No. 44/2019, para. 51; 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. While not all of these cases concerned protests, they suggest a pattern of failing to present an arrest warrant.

²⁷ Article 9 (2) of the Covenant requires prompt notification of charges, which does not necessarily mean at the time of arrest (Human Rights Committee, general comment No. 35, para. 30).

²⁸ Human Rights Committee, general comment No. 35, para. 30. See also CAT/C/VNM/CO/1, paras. 16–17.

²⁹ Human Rights Committee, general comment No. 35, para. 30. See also the Committee's Views in *Smirnova v. Russian Federation* (CCPR/C/81/D/712/1996, para. 10.3), in which the Committee found no violation of the right to prompt notification of charges when an individual had previous notice of charges and reasons had been given for the arrest.

³⁰ See *McLawrence v. Jamaica* (CCPR/C/60/D/702/1996, para. 5.9), in which the Human Rights Committee found that, so long as article 9 (3) of the Covenant is complied with, the details of the charge need not be provided upon arrest.

³¹ It is not sufficient that there is a law which authorizes the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant (opinions No. 45/2019, para. 51; No. 44/2019, para. 52; No. 46/2018, para. 48; and No. 36/2018, para. 40).

³² See, for example, opinions No. 46/2019, para. 51; and No. 10/2015, para. 34; and CAT/C/VNM/CO/1, para. 16.

submissions of either party to suggest that Mr. Dũng has been brought promptly, if at all, before a judge during his entire pretrial detention. Indeed, the Government states that extensions of Mr. Dũng's detention were approved by the People's Procuracy of Ho Chi Minh City in accordance with the Criminal Procedure Code and that his trial is pending.³³

62. The Working Group finds that Mr. Dũng was not brought promptly before a judicial authority to challenge his detention, in violation of article 9 (3) of the Covenant. As the Working Group has stated, the People's Procuracy is not an independent judicial authority and does not satisfy the criteria of article 9.³⁴ Moreover, as the Working Group and other human rights mechanisms have stated, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 (3)³⁵ and (4) of the Covenant.³⁶ Judicial oversight of detention is a fundamental safeguard of personal liberty³⁷ and is essential for ensuring that detention has a legal basis. Given that Mr. Dũng has been unable to challenge his detention before a court, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant has been violated. He was also placed outside the protection of the law, in violation of 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. Furthermore, in accordance with article 9 (3) of the Covenant, pretrial detention should be the exception and not the rule, and should be ordered for as short a time as possible.³⁸ That is, liberty is recognized under article 9 (3) as a principle and detention as an exception.³⁹ Detention pending trial must be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.⁴⁰ In the present case, there appears to have been no individualized judicial review of Mr. Dũng's situation or consideration of alternatives to detention. His pretrial detention was not properly constituted or reviewed and thus had no legal basis.

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

64. Furthermore, the source alleges that Mr. Dũng has been detained as a result of peacefully exercising his rights to freedom of opinion and expression and to take part in the conduct of public affairs under articles 19 and 21 of the Universal Declaration of Human Rights and articles 19 and 25 of the Covenant. The Government argues that Mr. Dũng was arrested for violating Vietnamese law, namely article 118 of the Criminal Code.

65. The Working Group has considered the application of vague and overly broad provisions of the criminal laws of Viet Nam in numerous opinions, finding that convictions under such provisions for the peaceful exercise of rights cannot be regarded as consistent with the Universal Declaration of Human Rights or the Covenant.⁴¹ The Working Group came to a similar conclusion during its visit to Viet Nam in October 1994, noting that vague

³³ See opinion No. 46/2018, paras. 50–51, in which the Working Group found that legislation allowing extension of detention by the People's Procuracy and purporting to deny judicial review was inconsistent with international human rights law, and CAT/C/VNM/CO/1, paras. 24–25.

³⁴ E/CN.4/1995/31/Add.4, para. 57 (c). See also opinions No. 45/2019, para. 52; No. 44/2019, para. 53; No. 46/2018, para. 50; No. 35/2018, para. 37; and No. 75/2017, para. 48. See also Human Rights Committee, general comment No. 35, para. 32; CCPR/C/VNM/CO/3, para. 26; and CAT/C/VNM/CO/1, paras. 24–25.

³⁵ Human Rights Committee, general comment No. 35, para. 35.

³⁶ Opinions No. 45/2019, No. 44/2019, No. 9/2019, No. 35/2018, No. 46/2017 and No. 45/2017.

³⁷ See principle 3 of 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 and CAT/C/VNM/CO/1, para. 24.

³⁸ A/HRC/19/57, paras. 48–58.

³⁹ Ibid., para. 54.

⁴⁰ Human Rights Committee, general comment No. 35, para. 38.

⁴¹ Opinions No. 45/2019, No. 44/2019, 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, 38.175, 38.177, 38.183–184, 38.187–191 and 38.196–198.

provisions on national security do not distinguish between violent acts capable of threatening national security and the peaceful exercise of rights.⁴² While the Government asserts that article 118 makes a clear distinction between the exercise of democratic freedoms and illegal activities, it does not specify how this distinction is achieved, nor what behaviour constitutes illegal activities.

66. In the present case, the source reports that Mr. Dũng disseminated social media posts criticizing the Government and livestreamed videos of peaceful protests. Indeed, Mr. Dũng was arrested while peacefully filming a public protest, as he reported and expressed his views on issues of public interest. According to the source, he was targeted for his activism on the protection of constitutional rights and democracy.

67. The Government claims that Mr. Dũng was involved in a group sponsored by people overseas to carry out “anti-State activities”, including spreading video clips on the Internet that incited people to participate in illegal gatherings and to use weapons to attack the police and isolate various public areas in order to overthrow the Government. According to the Government, Mr. Dũng admitted that he contributed the idea of burning old motorbikes, exchanging information with others in the group on how to make gasoline bombs for distribution to other protesters to attack the police and provoke crowd violence. A search of his social media accounts revealed documents and videos that defamed the people’s administration, distorted State policy and incited protesters to violence.

68. Article 19 (2) of the Covenant reads: “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.⁴³ It protects the holding and expression of opinions, including those that are not in line with government policy.⁴⁴ The exercise of the freedom of expression on the Internet, in the present case through social media, presents significant differences compared to traditional means of communication. For example, the distribution and receipt of information through the Internet is faster, more extensive and more easily accessed locally and globally.⁴⁵ The use of the Internet to share information is, however, no less subject to the protection of article 19 (2) of the Covenant.

69. The Working Group considers that Mr. Dũng’s conduct is protected by the right to freedom of opinion and expression enshrined in 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. Dũng engaged in advocacy relating to the promotion of democracy and in raising awareness of constitutional rights in Viet Nam, and was detained for exercising his right to take part in the conduct of public affairs in violation of article 21 of the Universal Declaration of Human Rights and article 25 (a) of the Covenant.⁴⁶

70. There is nothing to suggest that the permissible restrictions on these rights set out in articles 19 (3) and 25 of the Covenant apply in the present case. The Working Group is not convinced that prosecuting Mr. Dũng is necessary to protect a legitimate interest under the Covenant, nor that Mr. Dũng’s arrest and detention are a proportionate response to his peaceful activities. Importantly, there is no evidence to suggest that Mr. Dũng was involved in planning, inciting or carrying out violent activities or could reasonably be considered to threaten national security, the public order, public health or morals, or the rights or reputations of others. The Human Rights Council has called upon States to refrain from imposing restrictions that are not consistent with article 19 (3).⁴⁷ The Working Group refers

⁴² E/CN.4/1995/31/Add.4, paras. 58–60. See also CCPR/C/VNM/CO/3, para. 45 (d).

⁴³ Human Rights Committee, general comment No. 34, para. 11.

⁴⁴ Opinions No. 8/2019, para. 55; and No. 79/2017, para. 55.

⁴⁵ Opinions No. 80/2019, para. 93; and No. 39/2019, paras. 93–96. See also E/CN.4/2006/7, para. 36.

⁴⁶ Citizens may take part in the conduct of public affairs by exerting influence through public debate. (See Human Rights Committee, general comment No. 25, para. 8. See also opinion No. 45/2019, No. 44/2019, 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.

⁴⁷ Human Rights Council resolution 12/16, para. 5 (p).

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

71. In accordance with 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, 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.⁴⁸ The source has demonstrated that Mr. Dũng was detained for the exercise of his rights under the Declaration in promoting democracy and constitutional rights. 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.⁴⁹

72. The Working Group concludes that Mr. Dũng's detention resulted from the peaceful exercise of his right to freedom of opinion and expression, as well as the right to take part in the conduct of public affairs, and was contrary to article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. His detention is arbitrary under category II.

73. As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law and can regulate his or her conduct accordingly.⁵⁰ In the present case, the application of a vague and overly broad provision adds weight to the Working Group's conclusion that Mr. Dũng's deprivation of liberty falls within category II. Moreover, the Working Group considers that, in some circumstances, laws may be so vague and overly broad that it is impossible to invoke a legal basis justifying the deprivation of liberty.

74. Given its finding that Mr. Dũng's detention is arbitrary under category II, the Working Group emphasizes that no trial of Mr. Dũng should take place in future. At present, he is being held in pretrial detention and his trial is pending. The information submitted by the source discloses violations of Mr. Dũng's right to a fair trial during his detention to date.

75. The source alleges that Mr. Dũng has not had adequate access to his lawyer, noting the Government's confirmation that Mr. Dũng's lawyer was only allowed to participate in the proceedings after 18 December 2018, when the investigation was completed. Since 4 September 2018, Mr. Dũng has been permitted only two meetings with his lawyer, one of which was on 5 January 2020. The Government asserts that, due to the serious nature of Mr. Dũng's case, which involved many individuals, many localities and the utmost need to maintain secrecy during the investigation, defence lawyers could take part in the proceedings only after the investigation phase, in accordance with the Criminal Procedure Code.

76. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access shall be provided without delay.⁵¹ The failure to provide Mr. Dũng access to a lawyer during the investigation violated his right to adequate time and facilities to prepare his defence under article 14 (3) (b) of the Covenant. Any legislation that purports to remove the right to counsel is inherently contrary to international human rights standards.⁵² Even if such legislative provisions were acceptable, the Government has not provided an adequate explanation of why Mr. Dũng's case was so serious as to justify denial of access to legal counsel during the investigation, and no information on how the investigation might have been affected had Mr. Dũng met with his lawyer. The present case is another example of legal representation being denied or limited for individuals facing

⁴⁸ See also General Assembly resolution 74/146, para. 12.

⁴⁹ Opinions No. 45/2019, No. 44/2019, No. 9/2019, No. 46/2018, No. 45/2018, No. 36/2018, No. 35/2018, No. 79/2017 and No. 75/2017.

⁵⁰ Opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, para. 57; and Human Rights Committee, general comment No. 35, para. 22, and general comment No. 34, para. 25.

⁵¹ See principle 9 and guideline 8 of 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. See also Human Rights Committee, general comment No. 35, para. 35.

⁵² CCPR/C/VNM/CO/3, paras. 25–26 and 35–36.

serious charges, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in Viet Nam.⁵³

77. The source argues that Mr. Dũng was not afforded the right to be tried without undue delay given that he has now been held without trial for over 19 months since his arrest on 4 September 2018. According to the source, Mr. Dũng was informed that his trial would take place on 14 January 2020, but it has been adjourned and no new date has been communicated. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the authorities.⁵⁴ The delay in bringing Mr. Dũng to trial is unacceptably long, in violation of articles 9 (3) and 14 (3) (c) of the Covenant. The gravity of the present case is exacerbated by the fact that Mr. Dũng's case does not appear to have been reviewed by a judicial authority and, as noted above, it is clear to the Working Group that Mr. Dũng has been, but should not have been, detained solely for the exercise of his rights under international human rights law.⁵⁵

78. The Working Group concludes that the above-mentioned violations of the right to a fair trial are of such gravity as to give Mr. Dũng's detention an arbitrary character under category III.

79. In addition, the Working Group considers that Mr. Dũng was targeted because of his activities as a human rights defender, particularly his advocacy relating to democracy, including filming public protests, and his work in promoting awareness of constitutional rights in Viet Nam. Seven other *Hien Phap* members were also reportedly arrested in early September 2018, suggesting that the authorities are attempting to silence Mr. Dũng and his colleagues. There appears to be a pattern in Viet Nam of detaining human rights defenders for their work, and the present case is another example.⁵⁶ Moreover, in the discussion above concerning category II, the Working Group has established that Mr. Dũng's detention resulted from the peaceful exercise of his rights under international law. When detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.⁵⁷

80. Mr. Dũng 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. His detention violates articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and is arbitrary in accordance with category V. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders.

81. In addition, the Working Group notes that Mr. Dũng was not permitted to contact his family until 2 August 2019, when he was permitted a short visit from his wife. The Government confirms that such a visit took place, for the first time, on 2 August 2019. The source states that the visit lasted only 30 minutes and not the regular 60 minutes assigned for family visits. It was heavily monitored by prison guards and Mr. Dũng's wife could only speak to him through a glass window. Subsequently, Mr. Dũng's wife has been permitted to visit him once a month. Mr. Dũng has received six family visits during his pretrial detention.

82. The restrictions placed on Mr. Dũng's contact with his family violated his right to contact with the outside world under rules 43 (3) and 58 (1) of the the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any

⁵³ Opinions No. 45/2019, No. 44/2019, 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. See also CAT/C/VNM/CO/1, paras. 16–17.

⁵⁴ Human Rights Committee, general comment No. 35, para. 37, and general comment No. 32, para. 35. See also CCPR/C/VNM/CO/3, paras. 35–36.

⁵⁵ See opinion No. 46/2019, para. 63, in which the Working Group found itself unable to conclude that there was a category II violation or that a 16-month delay before the trial was unreasonable.

⁵⁶ Opinions No. 45/2019, No. 44/2019, No. 9/2019, No. 46/2018, No. 45/2018, No. 36/2018, No. 35/2018, No. 79/2017, No. 75/2017 and No. 27/2017. See also CCPR/C/VNM/CO/3, para. 25.

⁵⁷ Opinions No. 59/2019, para. 79; No. 13/2018, para. 34; and No. 88/2017, para. 43.

Form of Detention or Imprisonment. While the Government states that Mr. Dũng received supplies from his family, this cannot substitute for his right to correspond with his family and receive family visits. Moreover, the Government denies the allegation that Mr. Dũng's family was not notified of his arrest and location but has provided no information in support of its assertions. The failure to provide notification of Mr. Dũng's arrest and location to his family violated principle 16 (1) of the Body of Principles.⁵⁸ In fact, the Working Group considers that Mr. Dũng was initially detained in circumstances that amount to enforced disappearance, as his family could not locate him and the authorities do not appear to have disclosed his location.

83. The Working Group is concerned that Mr. Dũng's conditions of detention are reportedly extremely onerous and are affecting his physical and mental health. The Government states that Mr. Dũng is in normal health and that he received a medical examination before being admitted to prison, as well as ongoing care while in prison. Mr. Dũng has been detained for over 19 months, however, having been held incommunicado for nearly one year. The Working Group urges the Government to immediately and unconditionally release him and to ensure that he receives medical care.

84. The present case is one of many cases brought before the Working Group in recent years concerning arbitrary detention in Viet Nam.⁵⁹ These cases follow a familiar pattern of arrest that does not comply with international norms; lengthy detention pending trial with no access to judicial review; denial of access to legal counsel; incommunicado detention; prosecution under vaguely worded criminal offences for the peaceful exercise of human rights; and denial of access to the outside world. 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.⁶⁰

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

Disposition

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

The deprivation of liberty of Ngô Văn Dũng, 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) and (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.

87. The Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation of Mr. Dũng 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. Dũng's health, the appropriate remedy would be to release Mr. Dũng immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Dũng.

⁵⁸ See also CAT/C/VNM/CO/1, paras. 16–17.

⁵⁹ Opinions No. 45/2019, No. 44/2019, 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.

⁶⁰ Opinion No. 47/2012, para. 22.

89. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention of Mr. Dũng, 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 118 of the Criminal 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 the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and to the Special Rapporteur on the situation of human rights defenders, for appropriate action.

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

Follow-up procedure

93. 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. Dũng has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Dũng;
- (c) Whether an investigation has been conducted into the violation of Mr. Dũng's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonise the laws and practices of Viet Nam with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

94. 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.

95. 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.

96. 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.⁶¹

[Adopted on 1 May 2020]

⁶¹ Human Rights Council resolution 42/22, paras. 3 and 7.