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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020

#### Opinion No. 36/2020 concerning Đào Quang Thực (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 31 January 2020, the Working Group transmitted to the Government of Viet Nam a communication concerning Đào Quang Thực. The Government submitted a late response on 13 May 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).

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\* Seong-Phil Hong did not participate in the discussion of the present case.



## Submissions

### *Communication from the source*

4. Đào Quang Thực was born in 1960. He was a Vietnamese citizen, war veteran, retired primary schoolteacher, journalist and blogger. His usual residence was in the Nga Sơn District, Thanh Hóa Province.

5. Mr. Thực wrote about Vietnamese government policy on social media platforms. His online commentary covered a range of political issues, but his primary focus was the handling of environmental issues. Most notably, Mr. Thực joined other environmental activists and organizations in peacefully criticizing the State's response to the Formosa steel plant chemical spill in 2016. Mr. Thực also used social media to criticize how Viet Nam had approached a territorial dispute with China.

#### (a) Arrest and pretrial detention

6. According to the source, Mr. Thực was arrested at his home on 5 October 2017, soon after publishing an online post concerning the Government's handling of the South China Sea territorial dispute. He was charged under article 79 of the 1999 Penal Code with "carrying out activities aimed at overthrowing the people's administration".

7. Mr. Thực was held in pretrial detention for 11 months at the Cham Mat detention centre in Hòa Bình Province. The source alleges that, for two months, police officers ordered the detention facility to significantly limit Mr. Thực's food supply. His family was not allowed to supply food or send him money to spend at the canteen within the detention facility.

8. The source further alleges that Mr. Thực was beaten and tortured by police officers in an attempt to force him to confess to the allegations made against him. He was in good health immediately prior to his arrest. However, the injuries sustained during his pretrial detention caused severe migraines that resulted in his hospitalization for one week in April 2018. While family members were not allowed to visit Mr. Thực at the detention centre, they were granted very limited visitation rights while he was in hospital.

9. The source reports that, pursuant to the Code of Criminal Procedure of 2003, an accused person can be detained for a maximum of four months while the investigation takes place. When the case involves particularly complex circumstances and further investigation is required, an extension of the detention period may be requested. Mr. Thực's initial detention was scheduled to end on 5 February 2018. However, in late January 2018, his pretrial detention was extended for a further seven months, until the first instance trial hearing on 19 September 2018. The source claims that there was no obvious reason why such an extension would be considered necessary and there is no evidence available that might justify the extension.

10. In June 2018, Mr. Thực's family appointed and instructed legal counsel to represent him. However, Mr. Thực's lawyer was only allowed to have two short meetings with him prior to his trial, with neither meeting lasting longer than one hour.

#### (b) Trial proceedings and appeal

11. The source reports that Mr. Thực's case was heard by the trial panel of the People's Court of Hòa Bình Province on 19 September 2018. The hearing lasted from 8 a.m. to 1 p.m. At the close of proceedings, Mr. Thực was sentenced to 14 years of imprisonment and a further 5 years of house arrest.

12. According to the source, none of the 15 defence witnesses was allowed to testify during the trial, and only two close family members were granted access to the courtroom. The source alleges that Vietnamese police officers blocked the roads surrounding the People's Court of Hòa Bình Province to prevent the public from attending the trial. There was a heavy police presence in the surrounding area to discourage local activists from protesting, and media reporting shows a strong military presence inside the courtroom itself.

13. Mr. Thực appealed his conviction and sentence at a hearing held on 17 January 2019. The source states that he was granted access to his legal counsel for only two hours to prepare for the appeal. Although his conviction was upheld, Mr. Thực's custodial sentence was reduced by one year as a result of his good character and service as a primary schoolteacher for over three decades. As a result, the sentence was modified to 13 years of imprisonment followed by 5 years of house arrest. Mr. Thực was detained at prison camp No. 6, in Nghệ An Province, but it is not known when he was transferred there.

(c) Death of Mr. Thực

14. On 10 June 2019, Mr. Thực went on a hunger strike over his poor conditions of detention at prison camp No. 6. The hunger strike was a response to the removal by the prison authorities of electric fans from the cells. This happened when the temperature was soaring, having reached 40°C on some days. Mr. Thực's hunger strike lasted for over five weeks and ended when the fans were reinstalled.

15. The source reports that, during the afternoon of 3 December 2019, Mr. Thực was transferred to the Hữu Nghị Đa Khoa hospital in Nghệ An Province. His family was notified of the transfer by the authorities on the morning of 4 December 2019. They were told only that Mr. Thực was unwell, without any other details being provided. When they arrived at the hospital on the evening of 4 December 2019, Mr. Thực was in a coma. His family was told that he had suffered a brain haemorrhage and was suffering from bronchitis. Mr. Thực's family was permitted to visit only between 4 and 10 p.m., although visitation times for other patients on the ward extended from 4 p.m. to 7 a.m. On 10 December 2019, Mr. Thực's family came to the hospital in the morning. That day, at approximately 8.30 a.m., Mr. Thực was pronounced dead by the hospital staff. His family was not at his bedside and was not permitted to visit him in the emergency ward, where he had been transferred. Later that morning, his family was informed that his body had been transferred to the mortuary.

16. According to the source, during the afternoon of 10 December 2019, Mr. Thực's family met with prison guards, who confirmed that Mr. Thực would be buried on the prison grounds. When Mr. Thực's family requested that his body be returned for a private funeral nearer to their home, the guards informed them that under domestic law, the body would need to remain on the prison grounds for three years before they were entitled to recover it. Mr. Thực's family made enquiries with his lawyer to see if there was a possibility to challenge this law, but was told that nothing could be done. The prison guards also informed Mr. Thực's family that an autopsy would be carried out to establish the cause of death. Despite Mr. Thực's family not consenting to the autopsy, it was carried out in the hospital. His family has not been given the results of the autopsy.

17. Mr. Thực's funeral took place on 10 December 2019, at approximately 5 p.m., at prison camp No. 6 in Nghệ An Province. Only Mr. Thực's immediate family members attended. Most of his extended family and friends live in Thanh Hóa Province, and it takes approximately seven hours to travel by car to the prison. Many of Mr. Thực's friends and family travelled soon after hearing of his death, but were unable to attend the funeral. Mr. Thực's family was not consulted on, nor given an opportunity to provide any input into, the funeral ceremony. They requested that Mr. Thực's body be brought to the family home for a few days following his death so that the community could pay its respects. The request was denied. The source reports that Mr. Thực's family has not been permitted to visit the grave since the funeral. At the time of the funeral, his family queried whether they would be required to submit a formal request to the prison to visit Mr. Thực's grave.

18. According to the source, the authorities have given very little information about the state of Mr. Thực's health leading up to his transfer to the hospital and what, if any, medical treatment he received or was receiving while in detention. His family and friends are deeply upset and confused about the circumstances that led to his death.

19. The source alleges that Mr. Thực's health declined rapidly following his arrest. The amount of food he received was restricted while he was in pretrial detention. He was beaten and tortured by police officers and sustained injuries that caused severe migraines and led to his hospitalization for a week in April 2018. It is unclear whether those injuries were a contributing factor to his death. The source stresses that the Government must urgently carry

out a full, transparent, independent and effective investigation into the circumstances that led to the death of Mr. Thúc, including a detailed report of the steps taken, if any, by the prison authorities in its care of Mr. Thúc while he was held in detention.

(d) Analysis of violations

20. The source submits that Mr. Thúc's detention was arbitrary under categories I, II and III.

(i) Category I

21. Mr. Thúc's detention was arbitrary because it had no legal basis. Deprivation of liberty is arbitrary when an individual is prosecuted under a vague or overbroad law. Article 9 (1) of the Covenant guarantees that a person's deprivation of liberty will only be justified when it is derived from a ground established by law. If the ground justifying the individual's detention is not clearly established in domestic legislation,<sup>1</sup> it does not have a legitimate legal basis under article 9 of the Covenant.

22. Pursuant to article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant, individuals are entitled to know what the law is and what conduct violates the law. The Human Rights Committee has noted that any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.<sup>2</sup>

23. The source argues that article 79 of the 1999 Penal Code, the provision under which Mr. Thúc was arrested, detained and convicted, fails to comply with the standard of precision required by international human rights law and therefore cannot constitute a legal basis for his deprivation of liberty. Article 79 penalizes activities carried out with intent to overthrow the people's administration, without clearly defining what constitutes such intent. Moreover, article 79 does not proscribe any limits on the activities or organizations that are criminalized. This creates a significant risk that the law will be arbitrarily applied, as in Mr. Thúc's case, in violation of the principle of legality.

(ii) Category II

24. Mr. Thúc was detained for exercising his right to freedom of opinion and expression, in violation of article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. By convicting Mr. Thúc, the Government sought to create a chilling effect, deterring others from criticizing the State. Shortly before his arrest, Mr. Thúc had expressed his opposition to government policy through social media. His arrest after posting criticism of the Government online is consistent with the suppression of political activism by the Vietnamese authorities.

25. Pursuant to article 19 (3) of the Covenant, interference with an individual's right to freedom of expression is justified only in limited circumstances. The restriction of the right must be provided by law, pursue a legitimate aim, and satisfy the tests of necessity and proportionality. Mr. Thúc's arrest, conviction and detention did not meet these requirements.

26. The source argues that Mr. Thúc's detention under article 79 of the Penal Code failed to meet the "provided by law" requirement under article 19 (3) of the Covenant. As noted above, article 79 of the Penal Code fails to clarify the parameters of criminal conduct. The imprecision of this provision violates the principle of legal certainty. The vagueness of article 79 provides the Vietnamese authorities with an unfettered means of suppressing critical expression. Article 79 cannot constitute a law, and is not consistent with the international obligations of Viet Nam under article 19 of the Covenant.

27. Furthermore, the restriction of Mr. Thúc's right to freedom of expression did not serve a legitimate aim. Under article 19 (3) of the Covenant, the right to freedom of expression can be restricted only in pursuance of specified aims, namely, respect of the rights or reputations

<sup>1</sup> Human Rights Committee, *McLawrence v. Jamaica* (CCPR/C/60/D/702/1996), para. 5.5.

<sup>2</sup> General comment No. 35 (2014) on liberty and security of person, para. 22.

of others or the protection of national security, public order or public health or morals. However, the scope of these grounds, including restrictions based on national security, is limited. The Human Rights Committee has recognized that extreme care must be taken by States to ensure that treason laws and similar provisions relating to national security are crafted and applied in a manner that conforms to the strict requirements of article 19 (3).<sup>3</sup> As a result, freedom of expression may be limited for reasons relating to national security only when: (a) the expression is intended to incite imminent violence; (b) the expression is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.<sup>4</sup>

28. In order to restrict freedom of expression in pursuance of a legitimate aim, the State must demonstrate that the detained individual's activities were violent or that they incited violence. It is insufficient to merely assert that an individual was involved in activities to overthrow the Government. The Vietnamese authorities failed to establish that Mr. Thúc's expression was conducive to violence or that it posed a threat to national security. During the trial, the prosecution only produced evidence to suggest that Mr. Thúc had made online connections with like-minded people holding political views similar to his own. There is no evidence to suggest that Mr. Thúc's contacts had the intention or potential to incite violent behaviour. His online engagement with current affairs was always carried out in an individual capacity and in a peaceful manner.

29. Any restriction of free speech on the grounds of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including protecting a Government from embarrassment or exposure of wrongdoing.<sup>5</sup> The Human Rights Committee has clearly stated that the objectives of national unity and public order may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.<sup>6</sup> The source alleges that, contrary to the charges brought against him, Mr. Thúc's attempt to investigate corruption or damage to the environment does not mean he was seeking to overthrow the Government. His conviction was based on an abuse by the authorities of the broad language of article 79 of the Penal Code, which fails to circumscribe the scope of prohibited activities.

30. In addition, any restriction on the freedom of expression must be necessary and proportionate. That is, it must be the least intrusive instrument among those which might achieve their protective function.<sup>7</sup> The Human Rights Council has established that the nature of the expression is relevant when assessing whether the restriction was necessary and proportionate. In this regard, restrictions should not be imposed on the discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.<sup>8</sup>

31. The source submits that Mr. Thúc's work as a journalist falls within the above forms of expression that should not be restricted. His arrest and detention stemmed directly from his political commentary criticizing the Government's poor human rights record and environmental policy. Mr. Thúc's pretrial detention was wholly disproportionate and cannot be considered the least intrusive measure. According to the source, Mr. Thúc's case was an example of a State applying sanctions that are wildly disproportionate to any perceived harm.

32. Furthermore, Mr. Thúc's detention was arbitrary because it resulted from the exercise of 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. According to the Human Rights Committee, article 25 of the Covenant protects individuals exerting influence through

<sup>3</sup> General comment No. 34 (2011) on the freedoms of opinion and expression, para. 30.

<sup>4</sup> Johannesburg Principles on National Security, Freedom of Expression and Access to Information, principle 6.

<sup>5</sup> Ibid., principle 2 (b).

<sup>6</sup> General comment No. 34, para. 23.

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

<sup>8</sup> Human Rights Council resolution 12/16, para. 5 (p).

public debate and dialogue with their representatives or through their capacity to organize themselves. This freedom must apply equally to all citizens, irrespective of their political opinions, and can only be restricted by a reasonable and objective measure.<sup>9</sup>

33. Mr. Thục's arrest, conviction and detention were carried out as part of a wider movement by the Vietnamese authorities to suppress criticism of the Government. He was deprived of his liberty following his engagement in discussions on a range of political issues, including the Government's environmental policy. By expressing his political views online, Mr. Thục chose to directly contribute to efforts to hold the authorities to account. The restriction of his rights was based on his political dissent. The source notes that the authorities have detained many independent journalists for reporting on the Formosa steel plant disaster.

(iii) Category III

34. The source submits that Mr. Thục's detention was arbitrary because his right to the presumption of innocence was violated, in contravention of article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant. Moreover, pursuant to principle 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the restrictions placed on Mr. Thục during his arrest and detention should have been limited to what was necessary for the administration of justice. Any further restriction is prohibited, on the basis that innocence is maintained until conviction.

35. During his pretrial detention, Mr. Thục was subjected to punitive sanctions, contrary to the presumption of innocence. He was not able to receive money from his family for a significant period of his pretrial detention. In Viet Nam, detainees are generally permitted to receive money from their families and those funds are converted to prison vouchers. Restricting Mr. Thục's rights in this way did not meet any legitimate aim under principle 36 (2) of the Body of Principles, such as being necessary for the process of investigation or the maintenance of security and good order in the place of detention. Furthermore, the restrictions on Mr. Thục's communications with his family were not justifiable. There is no record of his family being involved in any criminal activity, and no evidence to suggest that family visits would have created disorder or jeopardized security at the detention centre.

36. In June 2019, Mr. Thục and other prisoners of conscience went on a hunger strike, demanding greater access to family visits. The hunger strike was also a reaction to the stifling heat that Mr. Thục had to endure in his cell, without any form of air conditioning or fans. Fans were eventually provided and the hunger strike ended after five weeks.

37. Additionally, the source claims that Mr. Thục's detention violated his right to counsel. Article 14 (3) (b) of the Covenant and principle 18 (2) of the Body of Principles guarantee that individuals charged with a criminal offence are to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. This standard is also reflected in article 11 of the Universal Declaration of Human Rights, which requires that due process guarantees be provided to accused persons.

38. In the present case, Mr. Thục was granted access to his lawyer on only two occasions in preparing for his criminal trial, and each meeting lasted no more than one hour. During his appeal, Mr. Thục was allowed access to his counsel only once, for a period of less than two hours. The limits imposed by the authorities on Mr. Thục's access to legal counsel obstructed his right to procedural fairness.

39. While the exact reasons for Mr. Thục's delayed access to counsel are unknown, the source claims that the Government has routinely postponed such access in cases involving national security offences. The source recalls that article 14 (3) (b) of the Covenant requires prompt access to counsel,<sup>10</sup> while principle 15 of the Body of Principles states that communication with counsel is not to be denied for more than a matter of days. In addition,

<sup>9</sup> General comment No. 25 (1996) on participation in public affairs and the right to vote, paras. 3–4 and 8.

<sup>10</sup> Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 34.

principle 7 of the Basic Principles on the Role of Lawyers provides that access to counsel should, in any case, be had no later than 48 hours from the time of arrest or detention.

40. Finally, the source alleges that Mr. Thực's detention violated his right to a fair and public hearing by a competent, independent and impartial tribunal established by law, under article 10 of the Universal Declaration of Human Rights article 14 (1) of the Covenant, and principle 36 of the Body of Principles.

41. The Human Rights Committee has recognized two essential requirements of a fair and public trial under article 14 (1) of the Covenant. Firstly, there must be no direct or indirect influence, pressure or intimidation or intrusion and, secondly, there must be adequate facilities for the attendance of interested members of the public.<sup>11</sup> In the present case, the presence of a significant number of military personnel at Mr. Thực's first instance hearing was unwarranted and contrary to the required absence of intimidation. According to the source, it is likely that the purpose of this military presence was to indirectly pressure or intimidate the judge, counsel and witnesses. Furthermore, despite the presence of selected media representatives during the trial, interested members of the public were prevented from attending. Only two of Mr. Thực's close family members were allowed to enter the courtroom. Although article 14 (1) of the Covenant allows for the exclusion of the public under exceptional circumstances, the People's Court failed to demonstrate that such exclusion was strictly necessary.

42. In addition, the independence and impartiality of a tribunal under article 14 (1) of the Covenant is an absolute right that is not subject to any exception. The Human Rights Committee has highlighted the importance of the actual independence of the judiciary from political interference by the executive branch and legislature.<sup>12</sup> The source claims that Vietnamese courts are seen as obedient to the Communist Party of Viet Nam. In Mr. Thực's case, it cannot be established that the threshold for independence was met. Moreover, the People's Court refused without justification to admit the evidence of defence witnesses, and in doing so, failed to convey the appearance of impartiality to a reasonable observer.

#### *Response from the Government*

43. On 31 January 2020, the Working Group transmitted the source's allegations to the Government under its regular communication procedure, requesting the Government to provide detailed information by 31 March 2020 about Mr. Thực's case. 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.

44. The Government requested an extension of the deadline for its response, which was granted, with a new deadline of 1 May 2020.

45. The Government submitted its response on 13 May 2020, 12 days after the deadline. The Working Group cannot accept the late response as if it were presented within the time limit. In accordance with paragraph 16 of its methods of work, the Working Group will render its opinion based on all the information it has obtained.

#### **Discussion**

46. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion in conformity with paragraph 15 of its methods of work.

47. As a preliminary issue, the Working Group takes note that Mr. Thực died while in custody and is therefore no longer detained. However, given that Mr. Thực was allegedly subjected to serious human rights violations, the Working Group considers that it is important to render an opinion on his case.

48. 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

<sup>11</sup> Ibid., paras. 25 and 28.

<sup>12</sup> Ibid., para. 19.

international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68).

(i) Category I

49. According to the source, Mr. Thục's pretrial detention was scheduled to end on 5 February 2018. However, in late January 2018, his pretrial detention was extended for a further seven months until his trial on 19 September 2018. There is nothing to suggest that Mr. Thục was brought before a judicial authority during this period to review the legality of his detention. Indeed, the Government appears to confirm in its late response that no such review took place, noting that in order to carry out thorough investigations, the investigating agency had twice extended Mr. Thục's temporary detention for four months each time, and the extensions were approved by the People's Procuracy. The Government did not explain why Mr. Thục's case was so complex as to warrant the extensions.

50. In its jurisprudence and practice, the Working Group has consistently found that the People's Procuracy is not an independent judicial authority and does not satisfy the criteria of article 9 of the Covenant.<sup>13</sup> Accordingly, the Working Group finds that Mr. Thục's pretrial detention was extended in the absence of judicial review of its legality, in violation of his right to be brought promptly before a judicial authority under article 9 (3) of the Covenant. In reaching this conclusion, the Working Group reiterates that while pretrial detention for four-month periods is permitted under the Vietnamese Code of Criminal Procedure of 2003, any legislative provision allowing extension of detention by the People's Procuracy and purporting to deny the right to judicial review is inconsistent with international human rights law.<sup>14</sup>

51. 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 (A/HRC/19/57, paras. 48–58). That is, liberty is recognized under article 9 (3) as a principle and detention as an exception (*ibid.*, para. 54). 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.<sup>15</sup> In the present case, it appears there was no individualized judicial review of Mr. Thục's situation or consideration of alternatives to detention while he was held in pretrial detention, a period of over 11 months, starting from his arrest on 5 October 2017 and lasting until his trial on 19 September 2018. His pretrial detention was not properly constituted or reviewed and thus had no legal basis.

52. While the source did not make any specific allegations in relation to incommunicado detention, it appears from the information submitted that Mr. Thục was held incommunicado during his pretrial detention from the time of his arrest on 5 October 2017 until at least April 2018. According to the source, Mr. Thục's family members were not allowed to visit him while he was held at Cham Mat detention centre, but were granted limited visitation rights while he was hospitalized for one week in April 2018. Moreover, the source states that in June 2018, Mr. Thục's family appointed and instructed legal counsel to represent him, which appears to be the earliest point at which he had access to counsel. The Government denied these allegations in its late response, but presented no other information or argument that rebutted the source's allegations. As a result, the Working Group is convinced that Mr. Thục was held incommunicado for a period of approximately six months.

53. As the Working Group has stated, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant.<sup>16</sup> Judicial oversight of detention is a fundamental safeguard of personal liberty<sup>17</sup> and is

<sup>13</sup> E/CN.4/1995/31/Add.4, para. 57 (c); and opinions No. 16/2020, para. 62; No. 15/2020, para. 54; 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.

<sup>14</sup> Opinion No. 46/2018, paras. 50–51. See also CAT/C/VNM/CO/1, paras. 24–25.

<sup>15</sup> Human Rights Committee, general comment No. 35, para. 38.

<sup>16</sup> See opinions No. 16/2020, No. 15/2020, No. 45/2019, No. 44/2019, No. 9/2019, No. 35/2018, No. 46/2017 and No. 45/2017.

<sup>17</sup> A/HRC/30/37, para. 3; and CAT/C/VNM/CO/1, para. 24.



essential in ensuring that detention has a legal basis. Given that Mr. Thúc was 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 was 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.

54. Finally, the Working Group considers that the provision under which Mr. Thúc was convicted is so vague and overly broad that it was impossible to invoke a legal basis for his detention. As the Government acknowledges in its late response, Mr. Thúc was convicted of “carrying out activities aimed at overthrowing the people’s administration” under article 79 of the 1999 Penal Code.<sup>18</sup> The Working Group has raised the issue of prosecution under vague and overly broad laws with the Government on numerous occasions, noting in its previous opinions that article 79 of the Penal Code does not satisfy the principle of legality.<sup>19</sup> 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>20</sup> Mr. Thúc could not have foreseen that peaceful activities such as using social media to criticize government policy in relation to the Formosa steel plant environmental disaster and the South China Sea territorial dispute would amount to criminal conduct under this provision.

55. For these reasons, the Working Group finds that the Government failed to establish a legal basis for Mr. Thúc’s detention. His detention was arbitrary under category I.

(ii) Category II

56. The source alleges that Mr. Thúc was deprived of his liberty as a result of peacefully exercising his right to freedom of opinion and expression and his right 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 (a) of the Covenant.

57. Mr. Thúc was convicted under article 79 of the 1999 Penal Code, according to which persons found guilty of activities aimed at “overthrowing the people’s administration” or of establishing or joining organizations with that intent 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 could not be regarded as consistent with the Universal Declaration of Human Rights or the Covenant.<sup>21</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 (E/CN.4/1995/31/Add.4, paras. 58–60).<sup>22</sup>

59. In the present case, the source argues that Mr. Thúc was convicted under article 79 in order to punish him for criticizing government policy through social media posts. According to the source, by convicting Mr. Thúc, the Government sought to create a chilling effect, deterring others from criticizing the State. Mr. Thúc was detained following his engagement

<sup>18</sup> On 20 June 2017, the National Assembly enacted a revised Penal Code that came into force on 1 January 2018. Article 79 was renumbered and remains in effect as article 109 in the revised Code.

<sup>19</sup> Opinions No. 45/2019, para. 54; No. 9/2019, para. 39; No. 46/2018, para. 62; No. 36/2018, para. 51; No. 35/2018, para. 36; No. 40/2016, para. 36; No. 26/2013, para. 68; No. 27/2012, para. 41; and No. 46/2011, para. 22. See also CCPR/C/VNM/CO/3, paras. 45–46.

<sup>20</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.

<sup>21</sup> See opinions No. 45/2019, No. 9/2019, No. 46/2018, No. 36/2018, No. 35/2018, No. 40/2016, No. 26/2013, No. 27/2012 and No. 46/2011. See also A/HRC/41/7, paras. 38.73 and 38.171.

<sup>22</sup> See also CCPR/C/VNM/CO/3, para. 45 (d).

in discussions on a range of political issues, including the State's environmental policy. The source alleges that, by expressing his political views online, Mr. Thục chose to directly contribute to efforts to hold the authorities to account. On the other hand, the Government asserts in its late response that Mr. Thục was a member of an overseas terrorist organization that incites hatred and connects with Viet Nam-based terrorists to carry out armed riots with a view to opposing the people's administration. According to the Government, Mr. Thục used social networks to connect with other members to incite violence and posted numerous false articles on the Internet calling for the overthrow of the Government of Viet Nam. However, the Government provided no specific details of Mr. Thục's alleged criminal activities, such as dates and times of the alleged acts, nor any further explanation of its assertions.

60. The Working Group recalls that article 19 (2) of the Covenant provides that everyone is to have the right to freedom of expression; this right is to include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice. This right includes political discourse, commentary on public affairs, discussion of human rights, and journalism.<sup>23</sup> It protects the holding and expression of opinions, including those that are critical of, or not in line with, government policy.<sup>24</sup> The Working Group considers that Mr. Thục's conduct fell 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 and that he was detained for exercising these rights. In reaching this conclusion, the Working Group takes note that Mr. Thục's arrest took place soon after publishing an online post concerning the Government's handling of the South China Sea territorial dispute.

61. Moreover, Mr. Thục's criticism of government policy through his commentary on social media and journalism concerned matters of public interest. The Working Group considers that he was detained for exercising his right to take part in the conduct of public affairs under article 21 (1) of the Universal Declaration of Human Rights and article 25 (a) of the Covenant.<sup>25</sup>

62. There is nothing to suggest that the permissible restrictions on the above rights set out in article 19 (3) and 25 of the Covenant would apply in the present case. The Working Group was not convinced that prosecuting Mr. Thục was necessary to protect a legitimate interest under these provisions, nor that Mr. Thục's conviction and lengthy sentence were a proportionate response to his activities. Importantly, there is no evidence to suggest that Mr. Thục's criticism of the Government called directly or indirectly for violence or could reasonably be considered to threaten national security, public order or public health or morals, or the rights or reputations of others. 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.

63. 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.<sup>27</sup> The source has demonstrated that Mr. Thục was detained for the exercise of his rights under the Declaration. 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

<sup>23</sup> Human Rights Committee, general comment No. 34, para. 11.

<sup>24</sup> Opinion No. 8/2019, para. 55; and No. 79/2017, para. 55.

<sup>25</sup> Human Rights Committee, general comment No. 25, para. 8 (noting that citizens may take part in the conduct of public affairs by exerting influence through public debate). See also opinions No. 16/2020, No. 15/2020, 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 and No. 46/2011.

<sup>26</sup> Resolution 12/16, para. 5 (p).

<sup>27</sup> See also General Assembly resolution 74/146, para. 12.

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. Thục'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 was arbitrary under category II.

(iii) Category III

65. Given its finding that Mr. Thục's deprivation of liberty was arbitrary under category II, the Working Group emphasizes that no trial of Mr. Thục should have taken place. However, he was tried on 19 September 2018 and his conviction was upheld on appeal on 17 January 2019, with a minor reduction of the sentence by one year. The information submitted by the source discloses violations of Mr. Thục's right to a fair trial.

66. The Working Group considers that Mr. Thục was not afforded his right to be tried without undue delay, given that more than 11 months elapsed between his arrest on 5 October 2017 and his trial on 19 September 2018. The information provided by the Government in its late response confirms the dates of arrest and trial. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the authorities.<sup>29</sup> The delay in bringing Mr. Thục to trial was unacceptably long, in violation of articles 9 (3) and 14 (3) (c) of the Covenant. As noted above, it is clear that Mr. Thục should never have been detained for the peaceful exercise of his rights under international human rights law, and that the delay in trying him was unacceptable.<sup>30</sup>

67. In addition, the source submits that Mr. Thục's detention was arbitrary because his right to the presumption of innocence was violated. According to the source, Mr. Thục was subjected to punitive treatment during his pretrial detention, including restrictions on the amount of food he was given; not being allowed to receive money from his family; limitation of his communications with his family; and having to endure stifling heat in a cell without air conditioning or fans. While these measures appear to be contrary to several of the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),<sup>31</sup> the Working Group was not convinced that these measures alone violated Mr. Thục's presumption of innocence. These measures are, however, relevant to his fair and equal treatment, discussed further below.

68. The Working Group takes note of the source's allegation, which was not challenged by the Government, that Mr. Thục's trial hearing before the People's Court of Hòa Bình Province on 19 September 2018 lasted only five hours, from 8 a.m. to 1 p.m. This was a very short hearing, particularly given the serious national security charge brought against Mr. Thục under article 79 of the Penal Code. Following the trial, a heavy penalty of 14 years of imprisonment and 5 years of house arrest was imposed, which was subsequently subject to a minor reduction on appeal. As the Working Group has observed,<sup>32</sup> a short trial for a serious criminal offence suggests that Mr. Thục's guilt had been determined prior to the hearing, in violation of his right to the presumption of innocence under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant. Moreover, the significant presence of police and military personnel at the first instance trial contributed to the denial

<sup>28</sup> See opinions No. 16/2020, No. 15/2020, 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. See also CCPR/C/VNM/CO/3, paras. 51–52.

<sup>29</sup> Human Rights Committee, general comment No. 35, para. 37, and general comment No. 32, para. 35.

<sup>30</sup> See opinion No. 46/2019, para. 63, in which the Working Group was not convinced that there had been a category II violation and was unable to find that a 16-month delay before the trial was unreasonable. See also opinions No. 16/2020 and No. 15/2020.

<sup>31</sup> Rules 13, 22, 43 (3) and 58 (1). See also Body of Principles, principles 15 and 19.

<sup>32</sup> See opinions No. 15/2020, No. 45/2019, No. 44/2019, No. 46/2018, No. 45/2018, No. 36/2018 and No. 75/2017.

of the presumption of innocence, as Mr. Thúc appears to have been presented to the court in a manner indicating that he may be a dangerous criminal warranting heavy security.<sup>33</sup>

69. Additionally, the source claims that Mr. Thúc's detention violated his right to counsel. According to the source, Mr. Thúc was granted access to his lawyer only from June 2018, on only two occasions, in preparation for his criminal trial, and each meeting lasted no more than one hour. During his appeal, Mr. Thúc was allowed access to his counsel only once for a period of less than two hours. The limitations imposed by the authorities on Mr. Thúc's access to legal counsel obstructed his right to procedural fairness. The Government denies these allegations in its late response, noting that after the investigation phase, the People's Procuracy notified Mr. Thúc's family of the procedure for appointing legal counsel, but his family did not file the required paperwork. As a result, the authorities assigned a lawyer to defend Mr. Thúc and they met on two occasions. According to the Government, Mr. Thúc's own lawyer was subsequently appointed and met with Mr. Thúc on three occasions for a sufficient amount of time, as requested by the lawyer.

70. The Working Group was not convinced by the Government's submissions, as the non-completion of paperwork is not a sufficient reason for the denial of counsel or delay in allowing a person charged with a serious criminal offence, and ultimately sentenced to 13 years of imprisonment, to have access to counsel. Moreover, the Working Group notes that the Government only refers to informing Mr. Thúc's family of the procedure after the completion of the investigation phase. 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 is to be provided without delay.<sup>34</sup> The failure to provide Mr. Thúc with immediate access to a lawyer following his arrest, and to ensure that he had adequate time to meet with his lawyer, 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 or to delay it until after the investigation phase is inherently contrary to international human rights standards (CCPR/C/VNM/CO/3, paras. 25–26 and 35–36). The present case is another example of legal representation being denied or limited for individuals facing serious charges, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in Viet Nam.<sup>35</sup>

71. Furthermore, the source alleges that Mr. Thúc's detention violated his right to a fair and public hearing by a competent, independent and impartial tribunal. According to the source, the presence of a significant number of military personnel at Mr. Thúc's first instance hearing was unwarranted and was likely intended to place pressure on the judge, counsel and witnesses. Moreover, despite the presence of selected media representatives during the trial, police officers blocked the roads surrounding the People's Court of Hòa Bình Province to prevent the public from attending the trial and to discourage local activists from protesting. Only two of Mr. Thúc's close family members were allowed to enter the courtroom. None of the 15 defence witnesses was allowed to testify during the trial. In its late response, the Government appears to deny these allegations, noting that a summons had been issued by the Court for certain witnesses and that some family members were allowed to attend the trial. The Government also noted that a police presence was needed for the logistics of securing the trial, but did not provide any further information to support or explain any of its assertions.

72. The Working Group considers that the source has established that Mr. Thúc's trial did not meet the standards of a fair and public hearing by a competent, independent and impartial tribunal, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. The source has provided credible information that there was a heavy

<sup>33</sup> Opinions No. 83/2019, para. 73; No. 36/2018, para. 55; No. 79/2017, para. 62; and No. 40/2016, para. 41. See also Human Rights Committee, general comment No. 32, para. 30.

<sup>34</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. See also Human Rights Committee, general comment No. 35, para. 35, and opinion No. 16/2020, paras. 75–76.

<sup>35</sup> See opinions No. 16/2020, No. 15/2020, 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 CCPR/C/VNM/CO/3, paras. 25–26; and CAT/C/VNM/CO/1, paras. 16–17.

security presence at the trial, and that attendance by the public was limited. There was no information to suggest that any of the exceptions to the right to a public hearing in article 14 (1) of the Covenant applied in the present case. In addition, by refusing testimony from defence witnesses, the People's Court violated Mr. Thục's right under article 14 (3) (e) of the Covenant to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. Given the serious allegations made by the source regarding the lack of independence of the People's Court of Hòa Bình Province in the present case, and more generally of the courts in Viet Nam, the Working Group has decided to refer this case to the Special Rapporteur on the independence of judges and lawyers. Finally, the Working Group considers that Mr. Thục's alleged punitive treatment during his pretrial detention, including restrictions on the amount of food he was given and limitation of his communications with his family, had an impact on his ability to defend himself and thus on the overall fairness of the proceedings against him.

73. Finally, the Working Group takes note of the source's allegations that Mr. Thục was beaten and tortured by police officers in an attempt to force him to confess to the charge against him, and that the injuries sustained resulted in his hospitalization for one week in April 2018, some five months before his trial. The provision of food to Mr. Thục was also allegedly restricted, and he was detained in poor conditions with stifling temperatures. It is not clear whether Mr. Thục actually provided a confession, nor whether the alleged torture, ill-treatment and poor conditions of detention affected his ability to participate in his own defence, both of which are factors relevant to the fairness of his trial. The Working Group is therefore unable to reach a conclusion on these allegations, all of which were denied by the Government. However, given the serious nature of the alleged treatment of Mr. Thục, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

74. The Working Group concludes that these violations of the right to a fair trial were of such gravity as to give Mr. Thục's detention an arbitrary character under category III.

(iv) Category V

75. The Working Group considers that Mr. Thục was targeted because of his peaceful activities, including joining with other environmental activists and organizations in criticizing the State's response to the Formosa steel plant chemical spill in 2016 and the Government's approach to the territorial dispute in the South China Sea. As the Working Group has previously observed, there appears to be a pattern in Viet Nam of detaining activists who have attempted to raise awareness about the Formosa steel plant environmental disaster,<sup>36</sup> and the territorial dispute in the South China Sea.<sup>37</sup> Moreover, in the discussion above concerning category II, the Working Group established that Mr. Thục's detention resulted from the peaceful exercise of his rights under international law. When detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>38</sup>

76. The Working Group finds that Mr. Thục 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 seeking to hold the authorities to account. His deprivation of liberty violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and was arbitrary according to category V. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders.

(v) Concluding remarks

77. The Working Group expresses its grave concern at the death of Mr. Thục on 10 December 2019, while he was serving the 13-year sentence that was confirmed on appeal on 17 January 2019. According to the source, Mr. Thục's health declined rapidly following his

<sup>36</sup> See opinions No. 45/2019, No. 44/2019, No. 9/2019, No. 46/2018, No. 45/2018, No. 35/2018, No. 79/2017 and No. 27/2017. See also CCPR/C/VNM/CO/3, paras. 47–48 and 51–52.

<sup>37</sup> See opinions No. 35/2018, No. 75/2017, No. 40/2016 and No. 46/2011.

<sup>38</sup> Opinions No. 59/2019, para. 79; No. 13/2018, para. 34; and No. 88/2017, para. 43.

arrest on 5 October 2017. The amount of food he received was restricted while he was in pretrial detention. He was allegedly beaten and tortured by police officers and sustained injuries that led to his hospitalization for a week in April 2018. The source further alleges that Mr. Thúc went on hunger strike for over five weeks in June 2019 to protest his conditions of detention, particularly the high temperature in his cell when electric fans were removed. It is unclear whether these factors contributed to Mr. Thúc's death. The Government denies these allegations in its late response, noting the official conclusion by the investigating agency of the police issued on 5 February 2020 that Mr. Thúc died due to certain serious medical conditions, including brain haemorrhage, and that there was no sign of injuries or criminal activity leading to his death.

78. Furthermore, the Working Group is deeply disturbed at the alleged treatment of Mr. Thúc's family prior to and following his death. This includes providing limited information to Mr. Thúc's family in relation to the circumstances of his death, refusing to return his body to his family even for a short period so that the community could pay its respects, conducting the burial on prison grounds with no input from family members on the funeral arrangements, and continuing to deny access to his grave site. The Government did not address the allegations relating to access to Mr. Thúc's body and his burial.

79. The Working Group urges the Government to urgently conduct a thorough, effective and independent investigation into the circumstances that led to the death of Mr. Thúc while in custody. The investigation must include a detailed report by an independent expert of the medical and other care provided to Mr. Thúc since his arrest, and must be conducted in a transparent manner with the full involvement of Mr. Thúc's family members and their legal and medical representatives.<sup>39</sup> The authorities must also immediately return Mr. Thúc's remains to his family,<sup>40</sup> and make any changes in the law that reportedly requires that prisoners who have died in custody be buried on prison grounds for three years before their remains can be removed. Given the uncertainty surrounding the death of Mr. Thúc, the Working Group will refer the matter to the Special Rapporteur on extrajudicial, summary or arbitrary executions.

80. The present case is one of many cases brought before the Working Group in recent years concerning arbitrary detention in Viet Nam.<sup>41</sup> These cases follow a familiar pattern of extended detention pending trial with no access to judicial review; incommunicado detention; prosecution under vaguely worded criminal offences for the peaceful exercise of human rights; denial of access to legal counsel; a brief closed trial at which due process is not observed; disproportionate sentencing; 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.<sup>42</sup>

81. 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.<sup>43</sup>

### Disposition

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

The deprivation of liberty of Đào Quang Thúc, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11, 19 and 21 (1) of the Universal Declaration of Human Rights and

<sup>39</sup> Body of Principles, principle 34.

<sup>40</sup> See opinions No. 24/2020 and No. 56/2019.

<sup>41</sup> See opinions No. 16/2020, No. 15/2020, 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.

<sup>42</sup> Opinion No. 47/2012, para. 22.

<sup>43</sup> See CAT/C/VNM/CO/1, para. 46, in which the Committee against Torture recommends that the Government issue an invitation to the Working Group to conduct a country visit.

articles 2 (1), 2 (3), 9, 14, 16, 19, 25 (a) and 26 of the International Covenant on Civil and Political Rights, was arbitrary and fell within categories I, II, III and V.

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

84. The Working Group considers that, taking into account all the circumstances of the case, in particular the death of Mr. Thực in custody, the appropriate remedy would be to immediately return Mr. Thực's remains to his family members,<sup>44</sup> and to accord his family an enforceable right to compensation and other reparations, in accordance with international law.

85. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention and death of Mr. Thực, and to take appropriate measures against those responsible for the violation of his rights.

86. The Working Group requests the Government to bring its laws, particularly article 79 of the Penal Code (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.

87. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions, for appropriate action.

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

#### **Follow-up procedure**

89. 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 compensation or other reparations have been made to Mr. Thực's family;
- (b) Whether an investigation has been conducted into the violation of Mr. Thực's rights and his death in custody, and if so, the outcome of the investigation;
- (c) 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;
- (d) Whether any other action has been taken to implement the present opinion.

90. 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.

91. 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.

<sup>44</sup> Opinion No. 56/2019, para. 102.

92. 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>45</sup>

*[Adopted on 24 August 2020]*

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<sup>45</sup> Human Rights Council resolution 42/22, paras. 3 and 7.