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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-first session, 6–10 September 2021

Opinion No. 36/2021 concerning Nguyễn Năng Tĩnh (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,¹ on 13 January 2021 the Working Group transmitted to the Government of Viet Nam a communication concerning Nguyễn Năng Tĩnh. The Government replied to the communication on 15 April 2021. The State is a party to the International Covenant on Civil and Political Rights.

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

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

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

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

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

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

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Nguyễn Năng Tĩnh is a citizen of Viet Nam, born in 1976. He usually resides in Nghe An Province.

5. Mr. Tĩnh is a prominent activist and a member of a number of civil society organizations promoting human rights, including NoU FC Vinh (Save Life), Quy Phat Trien Con Nguoi (Human Development Fund) and Truyen Thong Cong Giao (Catholic Media). He was also a music teacher at Nghe An College of Art and Culture, in Nghe An Province.

6. Through his online commentary and reporting, Mr. Tĩnh has highlighted the alleged human rights abuses not covered by the mainstream national media. He has written about the Government's response to environmental and social issues, including the Formosa environmental disaster and the country's special economic zones. Mr. Tĩnh increased his online activism following the Formosa disaster in April 2016, urging the Government to do more for those financially affected.

7. The source submits that Mr. Tĩnh has been subjected to scrutiny by police authorities since 2011 in relation to his online activism. Prior to his arrest in May 2019, he had been arrested and detained on five separate occasions by the police. Each time he was arrested, he was interrogated about his online reporting on his Facebook account, each time remaining in detention for a few hours before being released.

a. Arrest and detention

8. The source reports that on 24 November 2015, Mr. Tĩnh was allegedly kidnapped and physically assaulted by plain-clothed police officers. During the assault, Mr. Tĩnh's possessions, including his wallet, money and mobile phone, were taken. To date, none of the items seized have been returned. Additionally, police officers approached a member of Mr. Tĩnh's family with a request to dissuade him from continuing his political activities.

9. The source submits that on 29 May 2019, Mr. Tĩnh was arrested while he was with his two minor children near his home. Police officers forcibly detained both Mr. Tĩnh and his children. The arrest was made without any arrest warrant being provided or read out. Mr. Tĩnh and his two minor children were taken to the police station. After approximately two hours, police officers contacted Mr. Tĩnh's family and requested them to collect the children from the police station.

10. Following Mr. Tĩnh's arrest, the police conducted a search of his home and seized several items, including mobile phones, a laptop, money and children's toys.

11. The source reports that Mr. Tĩnh was charged under article 117 of the Criminal Code of 2015 for allegedly "making, storing or spreading information, materials and items for the purpose of opposing the State of the Socialist Republic of Viet Nam". The provision carries a penalty of 5 to 12 years' imprisonment, which can be increased to 10 to 20 years' imprisonment in some cases.

12. The source reports that following his arrest, Mr. Tĩnh was taken to Nghi Kim Detention Centre, where he was held in pretrial detention for approximately six months.

13. According to the source, during Mr. Tĩnh's pretrial detention, the authorities failed to bring him before any tribunal to assess the legal basis of his detention. The source notes that in addition to the fact that Mr. Tĩnh's detention cannot have a legal basis, as it flows from the legitimate exercise of his rights, his pretrial detention appears to lack legal basis on other grounds. He was not provided with basic information, including about the alleged criminal activities that underpinned the charge against him, or about the dates for his court hearing or the likely duration of his detention.

14. Additionally, the source states that Mr. Tĩnh was unable to seek a judicial review of his six-month pretrial detention.²

² See opinion No. 45/2015.

15. The source notes that Mr. Tĩnh was held incommunicado for the first two months of his detention. During this period, he was prevented from communicating with anyone in the outside world, including his family. Since then, he has only been permitted three short visits to meet with his family. These visits were short, lasting approximately 20 to 30 minutes, and were conducted through a glass panel, separating Mr. Tĩnh from his family. All visits were heavily monitored by prison guards; often, two guards were present on each side, monitoring the conversation.

16. Mr. Tĩnh was reportedly held in a small cell with five other detainees. He was not permitted to leave his cell and had no access to clean water to wash himself. He has experienced weight loss and is suffering from kidney stones.

17. According to the source, Mr. Tĩnh's family were permitted to send him food and a small amount of money to use for extra food coupons, three times a month. The prison has refused to accept any clothes or religious items, including his rosary beads.

18. The source reports that Mr. Tĩnh's trial took place on 15 November 2019, at the People's Court of Nghe An, in the city of Vinh in Nghe An Province. With the exception of a few members of his family, the public as well as Mr. Tĩnh's friends and his extended family were not allowed to attend the trial proceedings. Many family members who were present in the courthouse were prevented from entering the courtroom. Also, police officers were blocking the roads leading to the courthouse. Those being turned away were not provided with any reasons, other than that the measures were necessary to protect national security. The only media employees in the courtroom were from the State media, identifiable by their uniform.

19. The trial proceedings lasted approximately three and a half hours. Mr. Tĩnh was reportedly represented by lawyers that his family had instructed. Prior to his trial, Mr. Tĩnh was permitted two short meetings with his lawyers; the first was in mid-October 2019, at a time just before his trial was originally scheduled to take place, and again a day before his trial in November 2019.

20. In court, Mr. Tĩnh's lawyers were only permitted to bring in pens and plain paper. They were prevented from bringing in their laptops, mobile phones or case files. Only prosecution witnesses were called to give evidence, and Mr. Tĩnh's oral testimony was cut short when he questioned the strength of the prosecution evidence against him. After approximately three and a half hours, Mr. Tĩnh was convicted and was sentenced to 11 years in prison and five years of probation.

21. The source reports that, following his trial, Mr. Tĩnh's lawyers lodged an appeal against his conviction and sentence. On 20 April 2020, the People's Court of Nghe An Province upheld Mr. Tĩnh's conviction and sentence on appeal. The hearing lasted approximately two hours. Mr. Tĩnh was represented by two lawyers, who had to rely on pens and blank sheets of paper during the appeal proceedings, as the authorities reportedly ordered that all other documents relating to Mr. Tĩnh's case remain outside the courtroom. It is submitted that Mr. Tĩnh's lawyers were not given sufficient time to prepare a defence. Submissions by Mr. Tĩnh's lawyers, including those relating to the failure of the prosecution to provide any evidence to prove the charges against their client, were ignored by the court in its judgment.

22. The source notes that, apart from Mr. Tĩnh's two family members, all family members and friends were refused entry to the courthouse. They were informed that this was due to coronavirus disease (COVID-19) regulations. Only State media were allowed to report on the proceedings. This was evident from images of Mr. Tĩnh's appeal that appeared on State media sites immediately after the hearing concluded. There was no reporting from independent media sources on the conduct of the appeal.

23. It is also reported that following the conclusion of the appeal hearing, Mr. Tĩnh was taken back to Nghi Kim Detention Centre in Nghe An Province. On 23 May 2020, he was transferred to Prison Camp No. 5 in Yen Dinh District, Thanh Hoa Province, where he remains to date.

24. The source reports that Mr. Tĩnh is being held in a small cell with one other cellmate. He is not permitted to mix with the general population in the prison. Since his arrival at Prison

Camp No. 5, Mr. Tĩnh has not been allowed to leave his cell, with rare exceptions on visiting days. On those days, he is permitted to walk to and from the visiting room. In addition, Mr. Tĩnh has, to date, been denied any visits from a pastor, despite numerous requests to see one.

25. Furthermore, according to the source, since 23 May 2020 Mr. Tĩnh has been permitted one monthly visit from his family, apart from in the month of August 2020, when the prison cancelled all visits due to COVID-19. One family member of Mr. Tĩnh lives over 1,500 kilometres from the prison and is only able to travel every two months. The journey takes approximately two days and consists of taking public transport to a main city, then boarding an aeroplane to fly to a town close to the prison. Other family members of Mr. Tĩnh live closer to the prison and visit him every month. The visits take place with a glass panel separating Mr. Tĩnh from his family. All visits are heavily monitored by prison guards on both sides, preventing Mr. Tĩnh from speaking freely.

26. The source also reports that each time family members visit the prison, they are followed by security police as they enter and leave the facility. In addition, family members of Mr. Tĩnh have been contacted by the security police a number of times since his detention and been requested to come in for questioning.

27. The source reports that Mr. Tĩnh suffers from a medical condition of the digestive system. He has requested to see a doctor but this has been refused by the prison. The prison has allowed Mr. Tĩnh's family to send him medication, which they have done since May 2020.

28. The source concludes that the arrest, detention, prosecution and conviction of Mr. Tĩnh are arbitrary and that his detention falls within categories I, II, III and V of the Working Group.

b. Legal analysis

i. Category I

29. The source argues that the arrest and detention of Mr. Tĩnh falls within category I because there is no legal basis or justification for it. The source asserts that Mr. Tĩnh was arrested without a warrant and was not promptly informed of the charges against him, in violation of article 9 (2) of the Covenant, and points out that the term "promptly" has been interpreted as meaning within 48 hours, except in exceptional circumstances.³

30. The source submits that Mr. Tĩnh was charged with an overly vague offence, in violation of article 15 (1) of the Covenant and article 11 (2) of the Universal Declaration of Human Rights.⁴

31. The source specifies that Mr. Tĩnh has been charged under article 117 of the Criminal Code of 2015, which criminalizes dissemination of "distorted information", "fabricated information" or information disseminated in order to "cause psychological warfare". It argues that the language used is overly broad and fails to define key terms allowing individuals to regulate their behaviour and to ensure that it is in accordance with the law.⁵

ii. Category II

32. The source submits that the detention of Mr. Tĩnh falls within category II because his deprivation of liberty results from the exercise of his right to freedom of opinion and expression under article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights.

33. The source argues that Mr. Tĩnh's conviction and sentence were retaliation for his public posts on his social media accounts which were critical of the Government's response to various social issues in the region. Additionally, it is submitted that the conviction of Mr.

³ Human Rights Committee, general comment No. 35 (2014), para. 33.

⁴ *Ibid.*, para. 22.

⁵ See opinion No. 45/2018.

Tinh is designed to act as a deterrent to others who may express critical views against the State online.

34. The source reiterates that article 117 of the Criminal Code of 2015 criminalizes a broad range of activities associated with the dissemination of information that is critical of the Government.

35. The source argues that the arrest and detention of Mr. Tinh does not seek to achieve a legitimate aim as set out in article 19 (3) of the Covenant.⁶ The State failed to specify what such a legitimate aim might be during Mr. Tinh's criminal prosecution.

36. According to the source, the prosecution's evidence consists of posts that Mr. Tinh had shared or made on social media sites commenting on the human rights situation in the country. Additionally, the prosecution alleged that Mr. Tinh had engaged in terrorist activities, as he was a member of Viet Tan. The source notes that the prosecution failed to support this assertion by producing any evidence, and instead had Mr. Tinh convicted for his associations with a group that the State considers to be critical of its actions.

37. In circumstances where the State may argue that Mr. Tinh's criminal prosecution was necessary to protect national security and/or preserve public order, the Working Group has made it clear that "posting material about State policy on social media" and "joining and establishing various associations ... do not amount to acts of inciting others to cause public disorder or violence".⁷ The source concludes that Mr. Tinh has been convicted for the legitimate exercise of his expression online.⁸

38. It is argued that Mr. Tinh's work as a human rights and environmental activist falls within the forms of expression which should never be restricted by State authorities. According to the source, the detention of Mr. Tinh was neither necessary nor proportionate within the meaning of article 19 (3) of the Covenant and constitutes arbitrary detention under category II of the Working Group.

39. Moreover, the source argues that the arrest and detention of Mr. Tinh constitutes arbitrary detention under category II because his deprivation of liberty results from the exercise of his right to take part in the conduct of public affairs, protected by article 25 of the Covenant and article 21 of the Universal Declaration of Human Rights.⁹

40. The source also recalls that Mr. Tinh was targeted by State authorities for several years prior to his arrest. He was interrogated in police custody on numerous occasions in connection with his political commentary on social media sites. Authorities also exerted pressure through his family to force him to stop his activism. It is claimed that through his online reporting, Mr. Tinh has contributed to efforts to hold the Government to account. His right to participate in the conduct of public affairs has been restricted because of his political dissent, such restrictions being neither reasonable nor objective. For the above reasons, his detention is arbitrary, falling under category II.

iii. Category III

41. The source argues that the detention of Mr. Tinh is arbitrary and falls under category III due to violations of his right to equality before courts and of his right to a fair trial and public hearing by a competent, independent and impartial tribunal established by law under article 14 (1) of the Covenant and article 10 of the Universal Declaration of Human Rights.

42. The source states that Mr. Tinh's lawyers were disadvantaged during his trial proceedings. His lawyers were prevented from bringing in their laptops and the case file. In addition, no defence witnesses were called to give evidence, and the court made no enquiry as to why these witnesses were not present at court, nor did the court adjourn the proceedings so that those witnesses could be summoned to attend. Mr. Tinh's own oral testimony was cut

⁶ Human Rights Committee, general comment No. 34 (2011), para. 25; and [A/HRC/14/23](#), para. 79 (d).

⁷ Opinion No. 45/2018, para. 48.

⁸ See also [A/HRC/14/23](#), para. 81 (i).

⁹ Human Rights Committee, general comment No. 25 (1996), paras. 3–4 and 8.

short when he enquired about the prosecution case against him. The source thus states that the defence team was unfairly placed at a disadvantage and not afforded equality of arms.

43. Furthermore, according to the source, Mr. Tĩnh was convicted and sentenced after a short trial in circumstances where the court failed to observe the evidence impartially and the trial proceedings were not open to the public. Public trials are important, as they help to ensure transparency of the proceedings, which provides safeguards against abuse.

44. For the first two months of Mr. Tĩnh's six-month pretrial detention, he was held incommunicado. Additionally, for the duration of his pretrial detention, he was never brought before a judge for a determination of his rights to pretrial release, in clear violation of provisions that have been mentioned above. Mr. Tĩnh did not benefit from any judicial review of his pretrial detention. Additionally, none of the factors to justify withholding bail were present in his case, and the State failed to produce any evidence to the contrary. Mr. Tĩnh's trial took place approximately six months after his arrest. No reasons were provided for the delay. In the absence of any explanation, the source concludes that Mr. Tĩnh's right to be tried without undue delay has been violated, in contravention of article 14 (3) (c) of the Covenant and article 10 of the Universal Declaration of Human Rights.¹⁰

45. The source also argues that Mr. Tĩnh's detention falls under category III as a result of the gravity of the non-observance of his right to communicate with the outside world, particularly with his family. During the first two months, he was held in incommunicado detention and had no access to the outside world, including to his family. He was first permitted to see his family during a short visit on 29 July 2019, two months after his arrest. Thereafter, he has only been permitted two short visits, both of which were heavily monitored by prison guards so that he was unable to discuss any mistreatment he may have suffered. The source submits that the conditions of Mr. Tĩnh's detention are in clear violation of principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹¹

iv. Category V

46. Finally, the source argues that the detention of Mr. Tĩnh falls under category V, because he was discriminated against on the basis of his political opinion, which opposed the Government, and his status as a human rights defender. According to the source, Mr. Tĩnh was targeted because of his activities as a human rights defender, particularly his critical reporting of the Government's response to the Formosa disaster. Following his online posts, on social media sites, he was arrested, convicted and sentenced to 11 years' imprisonment and a further five years' probation. The source argues that his sentence is disproportionate and reflects the attitude of State authorities in targeting those who engage in peaceful activism.

47. It is submitted that Mr. Tĩnh was deprived of his liberty on discriminatory grounds, owing to his status as a human rights defender, and on the basis of his political and critical views challenging the Government's actions. His deprivation of liberty is thus contrary to provisions contained in articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and is arbitrary under category V.

Response from the Government

48. On 13 January 2021, the Working Group transmitted the source's allegations to the Government under its regular communication procedure, requesting the Government to provide it, by 15 March 2021, with detailed information about Mr. Tĩnh, and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Viet Nam under international human rights law, and in particular with regard to the treaties ratified by the State. On 10 March 2021, the Government requested an extension of one month to the deadline for response. The extension was granted, with a new deadline set of 15 April 2021. The Government submitted its response on 15 April 2021.

¹⁰ Human Rights Committee, general comment No. 35 (2014), para. 32.

¹¹ See opinion No. 33/2013.

49. The Government submits that the allegations regarding Mr. Tĩnh were inaccurate and drawn from unverified information, and did not reflect the nature of this case. The competent authorities in Viet Nam had investigated and prosecuted Mr. Tĩnh because he had violated Vietnamese law, not for the exercise of fundamental freedoms. The Government argues that the investigation, prosecution, adjudication, and execution of the judgment were carried out on sound legal grounds, with strict supervision of the competent authorities and full respect for the legitimate rights and interests of Mr. Tĩnh.

50. According to the Government, on 27 May 2019 the police of Nghe An Province filed criminal charges and issued a temporary detention warrant against Mr. Tĩnh for “creating, storing, distributing or propagating information, documents and materials against the State of the Socialist Republic of Viet Nam” under article 117 of the Criminal Code of 2015. After the criminal charges and the warrant had been approved by the People’s Procuracy of Nghe An Province, the police of Nghe An Province executed the temporary detention warrant against Mr. Tĩnh, on 29 May 2019.

51. The Government submits that on 5 November 2019, the People’s Court of Nghe An Province held the first instance trial to adjudicate Mr. Tĩnh and sentenced him to 11 years in prison and five years on probation under article 117 (1) of the Criminal Code of 2015. On 20 April 2020, in Nghe An Province, the High People’s Court held an appeal trial and made a judgment which is the same as that made during the first instance trial. Mr. Tĩnh is currently serving his prison sentence and his state of health is normal.

52. The Government submits that, according to the investigation results, from 2013 to 2018 Mr. Tĩnh belonged to an extremist group to incite people to violate the law, with a view to having a detrimental effect on the public safety and order of local people; and often posted and shared information that distorted the truth, with a view to causing public anxiety, slandering and harming the reputation of individuals and organizations with the purpose of resisting the State of the Socialist Republic of Viet Nam. An examination of the documents showed that Mr. Tĩnh’s acts amounted to the offence of “creating, storing, distributing or propagating information, documents and materials against the State of the Socialist Republic of Viet Nam” under article 117 of the Criminal Code of 2015.

53. The Government refutes as baseless the allegations that Mr. Tĩnh was arrested and detained on five separate occasions by the police, and that he was “kidnapped” and “physically assaulted” and “his possessions were taken” on 24 November 2015. According to the investigation results, on 18 May 2014 the police of Le Loi Ward summoned Mr. Tĩnh from 8.50 to 10.30 a.m. to clarify the report on the disturbance of public order by him and other people at the Tam Giac Quy flower garden located in the city of Vinh, in Nghe An Province. After that meeting, Mr. Tĩnh was free to return home. Such a meeting is not a temporary detention measure, and during the meeting, the competent authorities did not take any of Mr. Tĩnh’s possessions.

54. According to the Government, the arrest, investigation, prosecution and adjudication of Mr. Tĩnh were conducted in accordance with the procedures stipulated by Vietnamese laws and were in accordance with international standards on human rights to which Viet Nam is a party, and these were necessary measures to ensure the strictness of the law. Vietnamese laws recognize and protect fundamental freedoms, but the exercise of these freedoms carries with it the responsibility of people. This is totally consistent with the Covenant, to which Viet Nam is a party. In particular, article 19 (3) of the Covenant prohibits the acts of abusing the right to freedom of expression to infringe national security, public order, public morals or the rights and interests of communities.

55. Regarding the arrest of Mr. Tĩnh on 29 May 2019, the Government notes that the allegations relating to the circumstances of Mr. Tĩnh’s arrest are inaccurate. It is submitted that on this date, the police of Nghe An Province executed the arrest warrant and a home and workplace search warrant against Mr. Tĩnh. These warrants had been approved by the People’s Procuracy of Nghe An Province and the execution was witnessed by the People’s Procuracy of Nghe An Province, the authorities of Nghi Phu commune, in the city of Vinh (where Mr. Tĩnh was residing), and people in the area where he resided. The investigative officer read out the arrest warrant and explained the rights and obligations of Mr. Tĩnh, and he was given the arrest warrant.

56. The Government submits that during the execution of the arrest warrant, Mr. Tĩnh was with his two minor children. In accordance with article 120 of the Criminal Procedure Code of 2015, regarding attention to next of kin and preservation of property for persons in temporary detainment or detention, the police of Nghe An Province contacted Mr. Tĩnh's father and arranged for the two children to be brought to his house by car, as at the time, their mother was living and working in Dong Thap Province. During this process, the two children were in good health, and there was no sign of injuries or psychological effects (which has been documented).

57. The Government refutes as baseless the allegations that following Mr. Tĩnh's arrest, the police conducted a search of his home and seized several items including mobile phones, a laptop, money and children's toys. Through the search of Mr. Tĩnh's home, the competent authorities seized some items and 70 million dong in order to investigate these. After the judgment had entered into force, the competent authorities gave back the 70 million dong and these items to Mr. Tĩnh and the material evidence was dealt with in accordance with legal provisions.

58. The Government rebuts as inaccurate and groundless the allegations that the trials of Mr. Tĩnh were not held publicly, independently and objectively. It submits that the first instance and appeal trials of Mr. Tĩnh met the standards for a public, transparent and objective trial and were in accordance with legal provisions. At the trials, Mr. Tĩnh was defended by three defence lawyers. The accused and his legal defence were permitted to present their ideas and make their oral arguments. The defence lawyers were also allowed to have discussions with the accused and to meet him freely, and to bring mobile phones, laptops and documents to the courtroom to help them make their arguments and present their defence. The judges passed the sentence on the basis of a sufficient assessment by them of the evidence, documents and ideas of the relevant parties as well as the results of the oral arguments presented at the trials. Relatives of the accused, staff of press agencies and other people attended the trials. With regard to the appeal trial held on 20 April 2020, the Government points out that because of the complicated situation with COVID-19, and in order to comply with government provisions on social distancing and pandemic prevention, the number of people allowed into the courtroom was limited, as a measure to prevent the pandemic from spreading.

59. The Government rejects as inaccurate the allegations that Mr. Tĩnh was held incommunicado and was not permitted to contact the outside world or to access legal assistance during the first two months. In particular, this is because Mr. Tĩnh was detained in a cell with other detainees; and in any case, during the first two months, his relatives did not request to meet him. After that, Mr. Tĩnh met his relatives three times under the supervision of prison officers, in accordance with article 22 (2) of the Law on Temporary Detention and Custody. In the matter of his access to legal assistance, after having received the information regarding Mr. Tĩnh's defence lawyers, the police of Nghe An Province allowed them to meet with Mr. Tĩnh without any limitation on the number of meetings or on their length. However, Mr. Tĩnh's lawyers have only met him twice.

60. According to the Government, the allegations that during his temporary detention Mr. Tĩnh had no access to water for personal hygiene and was not permitted to receive any clothes or religious items are inaccurate. During Mr. Tĩnh's temporary detention, his rights to clothes, personal sanitation (including water) and health care were ensured, as provided by law, and his temporary detention was periodically supervised by the People's Procuracy of Nghe An Province.

61. It is further submitted that while detained at the detention centre of the police of Nghe An Province from 29 May 2019 to 23 May 2020, Mr. Tĩnh was sick on 15 occasions, presenting symptoms of influenza, sore throat and toothache, among other things. Mr. Tĩnh was examined by the medical staff and provided with medicines. From 3 April 2020 to 23 May 2020, Mr. Tĩnh had toothache, and did not eat well, therefore he suffered asthenia and weight loss, and consequently was moved to the infirmary to receive health care. Thereafter, Mr. Tĩnh's health improved and his weight increased. During the temporary detention, Mr. Tĩnh received money from his family on 19 occasions, totalling 25 million dong. He has also received personal belongings and food. In addition, on 7 June 2019 Mr. Tĩnh received a

religious picture and a bracelet from his wife. On 4 March 2020, Mr. Tĩnh received books to learn English and a Bible from his father.

62. According to the Government, in Viet Nam all people serving prison sentences are treated equally before the law. The rights of Mr. Tĩnh, such as joining activities, reading the Bible, expressing religious beliefs, participating in cultural and sporting activities, watching television and reading books, have been ensured, in accordance with legal provisions. Since the beginning of his prison sentence, Mr. Tĩnh has not requested to meet with Catholic priests.

63. The Government submits that Mr. Tĩnh receives a scheduled health examination every three months, and other examinations when required, on the basis of his health conditions. During one of these examinations, Mr. Tĩnh was diagnosed with kidney stones. He presented no other health problems. Currently, his health is stable and meets the requirements for him to continue his prison sentence.

Further comments from the source

64. The source notes that the Government did not provide any substantive evidence to rebut the allegations raised. Because the Government has failed to provide information to refute the violations set out in the petition under arbitrary detention categories I, II and III, it has not met its burden of proof.

Discussion

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

66. In determining whether Mr. Tĩnh's detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of 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.¹²

Category I

67. The source alleges that on 29 May 2019, Mr. Tĩnh was arrested at his home address, while he was with his two minor children. The source also submits that no arrest warrant was provided or read out. The Government refutes this allegation.

68. Although the Government submits that the arrest of Mr. Tĩnh was conducted in a manner consistent with domestic and international law, it has not provided detailed information about the arrest warrant. In contrast, the Working Group considers that the source has presented a prima facie credible case that the authorities did not present an arrest warrant at the time of Mr. Tĩnh's arrest.¹³ Moreover, in a series of recent cases, the Working Group has found that an arrest warrant was not presented at the time of the arrest, suggesting that the source's claims are credible.¹⁴

69. The Government asserts that the allegations that Mr. Tĩnh was held incommunicado and was not permitted to contact the outside world or to have access to legal assistance during the first two months are inaccurate. However, the Working Group considers that the source has presented a prima facie credible case that the authorities held Mr. Tĩnh incommunicado for the first two months of his detention. Even if he was in a cell with others, as the Government submits, this simply means that he was not held in solitary confinement. He remained incommunicado to his family members and lawyers. Holding persons

¹² A/HRC/19/57, para. 68.

¹³ Opinion No. 45/2018, paras. 40–42.

¹⁴ 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.

incommunicado violates their right under article 9 (3)¹⁵ and (4) of the Covenant to challenge the lawfulness of their detention before a court.¹⁶

70. The source submits that Mr. Tĩnh was not brought promptly before a judge during the entire period of his pretrial detention. While the Government has argued that his arrest and detention were carried out strictly in accordance with national law, the Working Group has repeatedly stated in its jurisprudence that, even when the detention of a person is carried out in conformity with national legislation, the Working Group must ensure that the detention is also consistent with the relevant provisions of international law.¹⁷ As the Working Group has previously stated, a procuracy is not an independent judicial authority.¹⁸ Accordingly, the Working Group finds that Mr. Tĩnh's pretrial detention was undertaken in the absence of judicial review of its legality, in violation of his right under article 9 (3) of the Covenant to be brought promptly before a judicial authority.¹⁹ Furthermore, it recalls that, in accordance with article 9 (3) of the Covenant, pretrial detention should be the exception, rather than the norm, and should be ordered for the shortest period of time possible.²⁰ Liberty is recognized under article 9 (3) of the Covenant as the core consideration, with detention as an exception thereto.²¹

71. The Working Group recalls that judicial oversight of detention is a fundamental safeguard of personal liberty²² and is essential in ensuring that detention has a legal basis. Given that Mr. Tĩnh 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.

72. Mr. Tĩnh has been charged and convicted for "creating, storing, distributing or propagating information, documents or materials against the State of the Socialist Republic of Viet Nam" under article 117 of the Criminal Code of 2015. The source specifies that Mr. Tĩnh has been charged under this article, which criminalizes dissemination of "distorted information", "fabricated information" or information disseminated in order to "cause psychological warfare".

73. The Working Group considers that the charge on which Mr. Tĩnh was detained is so vague that it is impossible to invoke a legal basis for his detention. The Working Group has raised the issue of prosecution under vague penal laws with the Government on several occasions.²³ The principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law, and regulate their conduct accordingly.²⁴ Article 117 of the Criminal Code of 2015 is incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant and cannot be

¹⁵ Human Rights Committee, general comment No. 35 (2014), para. 35.

¹⁶ Opinions No. 45/2019, No. 44/2019, No. 9/2019, No. 35/2018, No. 46/2017 and No. 45/2017.

¹⁷ See, for example, opinions No. 46/2011, No. 42/2012, No. 50/2017, No. 79/2017, No. 1/2018, No. 20/2018, No. 37/2018 and No. 50/2018.

¹⁸ E/CN.4/1995/31/Add.4, para. 57 (c); 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; and Human Rights Committee, general comment No. 35 (2014), para. 32. See also CCPR/C/VNM/CO/3, para. 26; and CAT/C/VNM/CO/1, paras. 24–25.

¹⁹ Opinion No. 81/2020, para. 56.

²⁰ A/HRC/19/57, paras. 48–58.

²¹ Ibid., para. 54.

²² 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, A/HRC/30/37, para. 3; and CAT/C/VNM/CO/1, para. 24.

²³ Opinions No. 15/2020, para. 58; No. 45/2019, para. 54; No. 44/2019, para. 55; No. 9/2019, para. 39; No. 8/2019, para. 54; No. 46/2018, para. 62; No. 36/2018, para. 51; No. 35/2018, para. 36; No. 79/2017, para. 54; No. 75/2017, para. 40; No. 27/2017, para. 35; No. 26/2017, para. 51; No. 40/2016, para. 36; No. 45/2015, para. 15; No. 26/2013, para. 68; No. 27/2012, para. 41; No. 24/2011, para. 24; No. 20/2003, para. 19; No. 13/1999, para. 12; No. 27/1998, para. 9; and No. 21/1997, para. 6.

²⁴ Opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59; and Human Rights Committee, general comment No. 35 (2014), para. 22.

considered to be “prescribed by law” and as “defined with sufficient precision” due to its vague and overly broad language.²⁵ Mr. Tnh could not have foreseen that exercising his right to freedom of expression and opinion in order to communicate ideas through his peaceful activities of using social media to blog and write online postings would amount to criminal conduct under article 117.

74. The Working Group notes that the Human Rights Committee has also called upon Viet Nam to urgently take all necessary steps, including revising legislation, relating to vague and broadly formulated offences in various articles of the Criminal Code, including article 117.²⁶ Along with other provisions, article 117 was highlighted as being vague and broad, and not defining which actions or activities are prohibited, or what the constitutive elements of the prohibited offences are. Therefore, individuals are not able to regulate their actions and behaviour accordingly, as is required by the principle of legal certainty, which is essential for the rule of law.²⁷

75. For these reasons, the Working Group finds that the Government failed to establish a legal basis for Mr. Tnh’s arrest and detention. His detention is therefore arbitrary and falls within category I.

Category II

76. The Government submits that the arrest, investigation, prosecution and adjudication of Mr. Tnh were conducted in accordance with the procedures stipulated by Vietnamese laws and are consistent with international conventions on human rights to which Viet Nam is a party. The source submits that the detention of Mr. Tnh falls within category II, because his deprivation of liberty results from the exercise of his right to freedom of opinion and expression. It claims that through his online reporting, Mr. Tnh has contributed to efforts to hold the Government accountable.

77. The Working Group considers that charges and convictions under article 117 of the Criminal Code of Viet Nam for the peaceful exercise of rights are inconsistent with the Universal Declaration of Human Rights and the Covenant. The Working Group has, in numerous opinions, considered the application of vague and overly broad provisions of the criminal laws of Viet Nam.²⁸ In May 2017, the United Nations country team in Viet Nam recommended the repeal or revision of numerous articles of the Criminal Code of 2015, including article 117, on the basis of their incompatibility with human rights obligations under the Covenant, including the exercise of the right to freedom of expression strictly in line with articles 19 and 20 of the Covenant. It has also noted that these provisions do not differentiate between the use of violent means, which should be prohibited, and legitimate peaceful activities to protest, express one’s opinion, including expressing criticism of the Government’s policies and actions, or advocate for any kind of changes, including of the political system – which fall directly under the rights to freedom of expression, opinion, assembly, religion, and participation in public life, and as such should be guaranteed and protected in accordance with international human rights law (arts. 18, 19, 21 and 25 of the Covenant).²⁹ The Working Group came to a similar conclusion during its visit to Viet Nam in October 1994, noting that vague national security provisions do not distinguish between violent acts capable of threatening national security, and the peaceful exercise of rights.³⁰

²⁵ Human Rights Committee, general comment No. 35 (2014), para. 22; and Human Rights Committee, general comment No. 34 (2011), para. 25.

²⁶ [CCPR/C/VNM/CO/3](#), paras. 45 (a) and 46.

²⁷ Human Rights Council resolution 19/36.

²⁸ 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; and [A/HRC/41/7](#), paras. 38.73, 38.171, 38.175, 38.177, 38.183–184, 38.187–191 and 38.196–198.

²⁹ See <https://vietnam.un.org/sites/default/files/2019-08/UN%20Recommendations%20on%20PC%20and%20CPC%20of%20Vietnam%20-%202017%20May%202017.pdf>, p. 1.

³⁰ [E/CN.4/1995/31/Add.4](#), paras. 58–60. See also [CCPR/C/VNM/CO/3](#), para. 45 (d).

Moreover, a law should not confer, on those charged with its execution, unfettered discretion to restrict freedom of expression.³¹

78. The Human Rights Committee has called upon Viet Nam to end violations of the right to freedom of expression offline and online, and to ensure that restrictions do not go beyond the strictly defined limitations set forth in article 19 of the Covenant. It has found that the vague and broadly worded offences in various articles, including article 117 of the Criminal Code, and their use to curtail freedom of opinion and expression, and defining certain crimes related to national security so as to encompass legitimate activities, such as the exercise of the right to freedom of expression, do not appear to comply with the principles of legal certainty, necessity and proportionality.³² Neither do they appear to be the least intrusive instrument among those which might achieve their protective function.

79. Article 19 (2) of the Covenant protects the holding and expression of opinions, including those that are not in line with government policy.³³ The Human Rights Committee has emphasized that the form of expression is highly relevant in assessing whether a restriction is proportionate. As stipulated by the Human Rights Council, the following types of expression should never be subject to restrictions: discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and the expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.³⁴ It has called upon States to refrain from imposing restrictions under article 19 (3) that are not consistent with international human rights law.³⁵

80. The Working Group considers that Mr. Tinh's conduct falls within the right to freedom of opinion, expression and association protected under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the Covenant, and that he was detained for exercising those rights. Mr. Tinh's reporting on social media concerned matters of public interest. There is nothing to suggest that the permissible restrictions on these rights set out in articles 19 (3) and 22 (2) of the Covenant apply in the present case. The Working Group is not convinced that prosecuting Mr. Tinh is necessary to protect a legitimate interest under these articles of the Covenant, nor that Mr. Tinh's arrest and detention is a necessary or proportionate response to his peaceful activities.

81. Importantly, there is nothing to suggest that, as alleged by the Government, he joined an extremist group to incite people to violate the law with a view to causing ill effects on public safety with the purpose of resisting the State. The Working Group finds the Government's allegation that Mr. Tinh engaged in terrorist activities as he was a member of Viet Tan to be unsubstantiated. The Working Group has previously found that "mere association with the organization, Viet Tan, does not justify ... detention",³⁶ noting that posting material about State policy on social media and joining and establishing various associations do not amount to acts of inciting others to cause public disorder or violence.³⁷

82. The source argues and the Working Group accepts that Mr. Tinh's work as an activist contributed to public scrutiny of government policy. According to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights, and to draw public attention to the observance of human rights.³⁸ The Working Group has confirmed the right of

³¹ Human Rights Committee, general comment No. 34 (2011), para. 25.

³² [CCPR/C/VNM/CO/3](#), paras. 45 (a) and 46.

³³ Opinions No. 8/2019, para. 55; and No. 79/2017, para. 55.

³⁴ [A/HRC/14/23](#), para. 81 (i).

³⁵ Human Rights Council resolution 12/16, para. 5 (p).

³⁶ Opinions No. 27/2017, para. 36; No. 40/2016, para. 38; and No. 46/2011, paras. 20–21.

³⁷ Opinion No. 45/2018, para. 48.

³⁸ General Assembly resolution 53/144, annex, arts. 1 and 6 (c). See also General Assembly resolution 74/146, para. 12.

human rights defenders “to investigate, gather information regarding and report on human rights violations”.³⁹ The Human Rights Committee has also specifically recognized that article 19 (2) of the Covenant protects the work of journalists, and includes the right of individuals to criticize or openly and publicly evaluate their government without fear of interference or punishment.⁴⁰ The imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny; the Working Group has recognized the necessity of subjecting interventions against individuals who may qualify as human rights defenders to particularly intense review.⁴¹ This heightened standard of review by international bodies is especially appropriate where there is a pattern of harassment by national authorities targeting such individuals.⁴²

83. The Working Group concludes that Mr. Tĩnh’s detention resulted from the peaceful exercise of his rights to freedom of opinion, expression and association as well as of his 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. The right to take part in the conduct of public affairs is protected by article 25 (a) of the Covenant and article 21 of the Universal Declaration of Human Rights. The Human Rights Committee has defined this conduct to include “exerting influence through public debate and dialogue with their representatives or through their capacity to 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.⁴³

84. For these reasons, the Working Group finds that Mr. Tĩnh’s arrest and detention is arbitrary, falling within category II. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, for appropriate action.

Category III

85. Given its finding that Mr. Tĩnh’s detention was arbitrary under category II, the Working Group emphasizes that no trial of Mr. Tĩnh should have taken place. According to the Government, on 5 November 2019 the People’s Court of Nghe An Province held the first instance trial and sentenced him to 11 years in prison and five years of probation, under article 117 (1) of the Criminal Code of 2015. On 20 April 2020, the High People’s Court of Nghe An Province held the appeal trial and upheld the judgment made during the trial at first instance.

86. The source alleges that Mr. Tĩnh has not had adequate access to his lawyer, noting the Government’s confirmation that his lawyers were only allowed limited participation in the proceedings when the investigation was completed. The Government asserts that due to confidentiality concerns pertaining to the investigation against Mr. Tĩnh, defence lawyers could take part in the proceedings only after the phase of investigation of national security offences, in accordance with article 74 of the Criminal Procedure Code.

87. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and that such access is to be provided without delay.⁴⁴

³⁹ Opinion No. 8/2009, para. 18.

⁴⁰ *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

⁴¹ Opinion No. 62/2012, para. 39; and No. 21/2011, para. 29.

⁴² Opinion No. 39/2012, para. 45. The Working Group also notes that Mr. Tĩnh and other journalists were the subject of an allegation letter sent by the Working Group and other special procedure mandate holders on 17 September 2020 – AL VNM 3/2020 – which is available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25542>. The Working Group acknowledges the Government’s response of 28 December 2020.

⁴³ See the Committee’s general comment No. 25 (1996), paras. 3–4 and 8.

⁴⁴ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8; and Human Rights Committee, general comment No. 35 (2014), para. 35.

The Working Group finds that the failure to provide Mr. Tnh with 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.⁴⁵ The Working Group notes that the present case is another example of legal representation being denied or limited for individuals facing serious charges, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in Viet Nam.⁴⁶

88. The Working Group finds that the limited access to legal assistance violated Mr. Tnh's right to equality of arms and to a fair hearing by an independent and impartial tribunal under article 14 (1) of the Covenant. Moreover, Mr. Tnh was not afforded his rights, under article 14 (3) (b) of the Covenant, to adequate time and facilities for the preparation of his defence and to communicate with counsel.

89. The source submits that during the trial proceedings, only prosecution witnesses were called to give evidence, and Mr. Tnh's oral testimony was cut short when he questioned the strength of the prosecution evidence against him. The Government does not deny this allegation, but notes that the judges delivered the sentence on the basis of a sufficient assessment of the evidence, documents and ideas of the relevant parties and the results of the oral arguments at the trials. The Working Group notes that the right to equality before courts and tribunals and to a fair trial entails a strict obligation to respect the right to have witnesses admitted who are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.⁴⁷ In the present case, that right was denied to Mr. Tnh and he was not allowed to properly defend himself in the proceedings. The source also submits that the submissions by Mr. Tnh's lawyers, including those relating to the failure of the prosecution to provide any evidence to prove the charges against their client, were ignored by the court in its judgment. The Government does not specifically rebut this allegation. The Working Group notes that these are the hallmarks of a serious denial of equality of arms in the proceedings and finds a violation of article 14 (3) (e) of the Covenant.

90. The source submits that after approximately three and a half hours, Mr. Tnh was convicted and sentenced to 11 years in prison and five years of probation. At the appeal, on 20 April 2020, the High People's Court of Nghe An Province upheld Mr. Tnh's conviction and sentence. That hearing lasted approximately two hours. The Government does not deny the source's submissions relating to the length of the trials. Mr. Tnh is now serving a severe sentence of 11 years in prison and five years of probation. As the Working Group has previously observed, a short trial for a criminal offence relating to national security which by the Government's own admission is so serious as to necessitate confidentiality and the denial of legal counsel until the completion of investigations, suggests that Mr. Tnh's guilt and the sentence were determined prior to the hearing.⁴⁸ The Working Group considers that this a denial of Mr. Tnh's right to the presumption of innocence guaranteed under article 14 (2) of the Covenant and article 11 of the Universal Declaration of Human Rights.

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

Category V

92. In addition, the Working Group considers that Mr. Tnh was targeted because of his activities as a journalist and human rights defender. The evidence against him is comprised of posts that Mr. Tnh shared or made on social media sites, commenting on the human rights situation in the country. The Working Group finds credible the source's allegations that the Government has repeatedly sought to prevent Mr. Tnh from carrying out his activities since

⁴⁵ [CCPR/C/VNM/CO/3](#), paras. 25–26 and 35–36.

⁴⁶ 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.

⁴⁷ Human Rights Committee, general comment No. 32 (2007), para. 39.

⁴⁸ See, for example, opinions No. 36/2018 and No. 75/2017.

2011, as well as the allegations of harassment and intimidation relating to Mr. Tnh and his family.

93. There appears to be a pattern in Viet Nam of harassing and detaining human rights defenders for their work, and the present case is another example.⁴⁹ In particular, the Working Group recalls its jurisprudence pertaining to other human rights defenders who commented on the Formosa environmental disaster.⁵⁰ Moreover, in the discussion above concerning category II, the Working Group has established that Mr. Tnh'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.⁵¹

94. For these reasons, the Working Group finds that Mr. Tnh 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 therefore violates articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and is arbitrary under category V.⁵² The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders, for appropriate action.

Concluding remarks

95. The Working Group finds that the restrictions placed on Mr. Tnh'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 Form of Detention or Imprisonment. The Working Group is also concerned about the source's allegations relating to Mr. Tnh's conditions of detention which appear to violate rule 18 of the Nelson Mandela Rules relating to personal hygiene.

96. Moreover, the Working Group is concerned about the conflicting information on Mr. Tnh's state of health and medical treatment, as well as about his ability to exercise religious freedom in detention. The Working Group urges the Government to immediately and unconditionally release Mr. Tnh and to provide Mr. Tnh with the health care required, according to rules 24–27, 30–35 and 65 of the Nelson Mandela Rules. The Working Group also urges the Government to respect Mr. Tnh's right to religious freedom in detention under rules 65 and 66 of the Nelson Mandela Rules as well as article 18 of the Universal Declaration of Human Rights and article 18 of the Covenant.

97. The present case is one of many cases brought before the Working Group in recent years concerning arbitrary detention in Viet Nam.⁵³ 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 or limiting 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.⁵⁴

98. 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

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, No. 75/2017 and No. 27/2017. See also [CCPR/C/VNM/CO/3](#), para. 25.

⁵⁰ See, for example, opinions No. 81/2020 and No. 36/2020.

⁵¹ Opinions No. 59/2019, para. 79; No. 13/2018, para. 34; and No. 88/2017, para. 43.

⁵² 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.

⁵³ Opinions No. 81/2020, No. 16/2020, 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.

⁵⁴ Opinion No. 47/2012, para. 22.

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

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

The deprivation of liberty of Nguyễn Năng Tĩnh, being in contravention of articles 2, 6, 7, 8, 9, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16, 19, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

101. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Tĩnh immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global 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. Tĩnh.

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

103. The Working Group requests the Government to bring its laws, particularly article 117 of the Criminal Code of 2015, into conformity with the recommendations made in the present opinion and with the commitments made by Viet Nam under international human rights law.

104. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to (a) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and (b) the Special Rapporteur on the situation of human rights defenders, for appropriate action.

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

Follow-up procedure

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

107. 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.

108. 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.

109. 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.⁵⁵

[Adopted on 9 September 2021]

⁵⁵ Human Rights Council resolution 42/22, paras. 3 and 7.