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Distr.: General
1 October 2024

Original: English

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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 100th session, 26–30 August 2024

Opinion No. 39/2024 concerning Phạm Chí Dũng (Viet Nam)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,[1] on 12 March 2024 the Working Group transmitted to the Government of Viet Nam a communication concerning Phạm Chí Dũng. The Government has not replied to the communication. 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.

1. Submissions

(a) Communication from the source

(i) Context

4. Phạm Chí Dũng is a citizen of Viet Nam born on 12 October 1966. He usually resides in Ho Chi Minh City, Viet Nam.

5. The source notes that Mr. Dũng is a journalist, writer and independent analyst who works with various international news agencies. He was a co-founder of the Independent Journalists Association of Viet Nam, which publishes *The Vietnam Times*, an online publication. He is also a member of the Civil Society Forum and the Former Vietnamese Prisoners of Conscience Association.

6. The source recalls that several special procedure mandate holders have previously raised concerns in relation to the detention of Mr. Dũng and the taking down of the website and Facebook page of the Independent Journalists Association of Viet Nam.[2] Mr. Dũng was also the subject of a communication from the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association and on the situation of human rights defenders, in 2014,[3] after he had been prevented from travelling to Geneva to participate in a side event in connection with the review of Viet Nam as part of the second cycle of the universal periodic review. His case was included in the 2014 report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights.[4] Since 2012, Mr. Dũng has been detained on several occasions.

7. The source further notes that, on 13 November 2019, Mr. Dũng submitted a petition to the President and other key Members of the European Parliament, in which he explicitly laid out human rights concerns in relation to Viet Nam and called upon the European Parliament to postpone the ratification of the European Union-Viet Nam Free Trade Agreement until concrete human rights benchmarks had been met by the Government of Viet Nam.

(ii) Arrest and detention

8. The source reports that, on 16 November 2019, a member of Mr. Dũng's family received a phone call from an individual who asked whether Mr. Dũng would be detained. Mr. Dũng and his family members did not interpret the call as a warning of his future arrest and therefore did not take any precautionary measures. On 19 November 2019, Mr. Dũng attended a meeting with representatives of European civil society organizations.

9. The source notes that, on 21 November 2019, at about 7 a.m., Mr. Dũng was detained by police officers from the Ministry of Public Security at his child's school. The source clarifies that Mr. Dũng had accompanied his child to school, as he used to do every morning.

10. The source reports that officials escorted Mr. Dũng back to his place of residence, where, at approximately 2 p.m., they announced that he was under arrest. The officers did not show a warrant or other decision by a public authority. Mr. Dũng was then taken to a detention facility in Binh Thanh District, Ho Chi Minh City.

11. The source further notes that, in the aftermath of the arrest, Mr. Dũng was held incommunicado for a prolonged period. He was not allowed to communicate with his family. The source reports that, after his conviction, on 26 January 2021, Mr. Dũng was transferred to Bo La detention centre in Phu Giao District, Binh Duong Province. On 27 April 2021, Mr. Dũng was again transferred, this time to Xuan Loc prison camp. The prison management never informed Mr. Dũng's family of his whereabouts. Mr. Dũng's family members found out about these transfers only when they tried to visit him at the facility to which he had first

[2] See communication VNM 5/2019. All communications mentioned in the present document are available from https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

[3] See communication VNM 5/2014.

[4] A/HRC/27/38, para. 40.

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been taken. The source recalls that this lack of information prevented Mr. Dũng's family from providing him with basic assistance.

12. The source recalls that Mr. Dũng was not allowed to meet with his family until 22 January 2022, more than two years after his arrest. Initially, the police had denied him a meeting on the ground that he was still under investigation. However, after the conclusion of the investigation, after he had been sentenced by the court and even after the judgment had become final, the Government still did not allow his family to see him. On 4 May 2021, more than 17 months after his arrest, he was allowed by the prison management to have a first phone call with his family.

13. The source notes that, in the aftermath of the arrest, Mr. Dũng was not allowed to communicate with legal counsel of his choice. Reportedly, Mr. Dũng was able to communicate with his lawyer for the first time approximately 10 months after the arrest. This meeting was supervised by the authorities and was therefore not confidential.

14. The source states that Mr. Dũng was first brought before the judge on 5 January 2021, approximately 14 months after his arrest. Until then, Mr. Dũng had remained in detention on the basis that his case was under investigation, with no court hearing to assess his pretrial detention. During this presentation before the judge, he was accompanied by a lawyer.

(iii) Trial and sentencing

15. The source reports that, on 5 January 2021, Mr. Dũng and two of his colleagues were sentenced to a total of 46 years in prison and on probation for the charge of making, storing, distributing or disseminating information, documents and items against the State under article 117 of the 2015 Penal Code of Viet Nam, as amended in 2017.

16. Mr. Dũng was sentenced to 15 years in prison and 3 years of probation. According to the source, the court hearing was completed within one day, was not open to the public and involved due process violations. Following his conviction, Mr. Dũng filed an appeal, which was unsuccessful.

(iv) Conditions of detention and health

17. The source reports that Mr. Dũng remains in detention and has serious health concerns. From 6 to 17 January 2023, he was placed in the prison health unit after he had begun to experience throat bleeding and his blood pressure had increased. The doctor who examined Mr. Dũng concluded that he was suffering from a tear of the throat mucosa but that his internal organs were in a normal condition. However, the source notes that the medical examination was carried out without the use of any diagnostic equipment. Moreover, while Mr. Dũng was given medication to control his blood pressure, the prison medical facility did not have any medication to stop the bleeding. The source further states that Mr. Dũng had to put cigarette filters in his throat in an attempt to stop the bleeding, which lasted for three days.

18. The source notes that, during Mr. Dũng's stay in the prison medical facility, there were 19 other prisoners being treated. Mr. Dũng was the only political prisoner. In the afternoon of 17 January 2023, Mr. Dũng was allowed to call home. He informed his family that he had returned to his old cell.

(v) Legal analysis

19. The source submits that Mr. Dũng's deprivation of liberty is arbitrary under categories II and III.

a. Category II

20. In relation to category II, the source submits that Mr. Dũng has been detained because he exercised his fundamental freedoms of opinion and expression as guaranteed under the Universal Declaration of Human Rights and the Covenant, to which Viet Nam is a party.

21. The source recalls that the freedoms of opinion and expression are protected by international and regional instruments and include the freedom to seek, receive and impart information of all kinds, either orally or in writing. Article 19 (2) of the Covenant provides

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that everyone has the right to freedom of expression. The Human Rights Committee has clarified that article 19 of the Covenant protects all forms of expression and the means of their dissemination.[5] Moreover, article 19 of the Universal Declaration of Human Rights provides an analogous guarantee of freedom of opinion and expression. The source also recalls that article 25 of the Constitution of Viet Nam provides guarantees of freedom of opinion and freedom of speech.

22. The source submits that the crime of making, storing, distributing or disseminating information, documents and items against the State under article 117 of the Penal Code is inconsistent with individuals' freedom of expression, as it penalizes an overly broad array of non-violent forms of expression critical of the Government.

23. Pursuant to article 19 (3) of the Covenant, freedom of expression and opinion may be restricted only as necessary to ensure respect for the rights and reputations of others or to protect national security or public order, health or morals. The source argues that, although the offence of making, storing, distributing or disseminating information, documents and items against the State is classified in the Penal Code as a crime against national security, such permissible limitations on the right to freedom of expression do not apply in the present case.

24. The source recalls that the Human Rights Committee has emphasized the narrowness of the limitations set forth in article 19 (3) of the Covenant by noting that, when a State party imposes a limitation on the exercise of freedom of expression, it may not put in jeopardy the right itself.[6] Consequently, any limitation must meet a strict test of justification.[7] To guide States parties, the Human Rights Committee has established three requirements for any limitation on the right to freedom of expression. A permissible limitation must be "provided by law", for the protection of one of the "enumerated purposes" and "necessary" to achieve that purpose.[8]

25. The source submits that, in the case of Mr. Dũng, the limitation on his freedom of expression fails to meet the second and third requirements. In this respect, according to the source, the State cannot argue that preventing propaganda is a legitimate national security interest. Moreover, the imprisonment of an individual in connection with alleged propaganda is not necessary to safeguard national security.

26. The source notes that, although States frequently invoke such limiting principles, especially in the context of arbitrary detention, the latitude afforded to them is quite narrow. A Government may not merely invoke the national security rationale but must also specify the precise nature of the threat posed by the protected activity and then demonstrate the proportionality of the limitation by establishing a direct and immediate connection between the expression and the threat. The source concludes that general allegations claiming that an individual's expression has threatened security, without evidence of a specific threat and a proportionate response, will not meet that high burden.

27. According to the source, Mr. Dũng, as a journalist and independent author, was subjected to arrest and detention for his publications. The Government used a vague justification for the arrest and detention, namely, a threat to national security and propaganda against the Government.

28. The source submits that the Government may not invoke the national security rationale without specifying, through an individualized assessment of the circumstances, the precise nature of the threat posed by Mr. Dũng's activities. The source submits that national security and public order were not threatened, nor did the Government specify the precise nature of the perceived threat or demonstrate any connection between Mr. Dũng's statements and the perceived threat. The source concludes that the Government detained Mr. Dũng as part of its attempt to silence critical voices. His arrest and detention were therefore neither

[5] General comment No. 34 (2011), para. 12.
[6] Ibid., para. 21.
[7] *Park v. Republic of Korea* (CCPR/C/64/D/628/1995), para. 10.3.
[8] *Shin v. Republic of Korea* (CCPR/C/80/D/926/2000), para. 7.2.

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necessary nor proportionate within the meaning of article 19 (3) of the Covenant and fall within category II.

b. Category III

29. In the context of category III, the source recalls that it applies when the total or partial non-observance of international norms relating to a fair trial, as established under the Universal Declaration of Human Rights and other relevant international instruments, is of such gravity as to give the deprivation of liberty an arbitrary character. Against this backdrop, the source submits that, by denying Mr. Dũng his rights not to be subjected to arbitrary arrest, to a prompt habeas corpus review, to a hearing by an independent and impartial tribunal, to equality before the law, to presumption of innocence, to prepare a defence and be represented by counsel of his own choosing, to be released pending trial and to be tried without undue delay, the authorities failed to observe minimum international standards of due process.

30. The source notes that article 9 (1) of the Covenant, which enshrines the right to liberty and freedom from arbitrary detention, guarantees that no one may be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. This right is reiterated in article 9 of the Universal Declaration of Human Rights and principles 2 and 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Human Rights Committee has interpreted article 9 of the Covenant as requiring that procedures for carrying out legally authorized deprivation of liberty should also be established by law and that States parties should ensure compliance with their legally prescribed procedures.[9]

31. Article 9 (1) of the Covenant requires compliance with domestic rules setting out procedures for arrest, such as the rule that the officials who are authorized to make an arrest be identified. Under article 80 of the Criminal Procedure Code of Viet Nam, an arresting officer should present an arrest warrant specifying the full name and address of the arrested person and the reasons for the arrest. Such an arrest warrant must be read aloud to the arrested person. An emergency arrest without a warrant is permitted only where there is evidence that the suspect is going to commit an extremely severe felony or that the suspect is a flight risk or where there is a risk that the suspect will dispose of evidence.

32. The source submits that the arrest of Mr. Dũng did not comply with international or national law, as he was not shown an arrest warrant at the time. This failure to follow the legal arrest procedures violated Mr. Dũng's right to freedom from arbitrary arrest, as established under article 9 (1) of the Covenant, article 9 of the Universal Declaration of Human Rights and principles 2 and 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

33. Moreover, under article 14 (3) (c) of the Covenant, every defendant has the right to be tried without undue delay. This right relates not only to the period between the formal charging of the accused and the beginning of the trial but also to the time until the final judgment on appeal.

34. In this context, the source reiterates its assertion that Mr. Dũng was not given the opportunity to request bail or pretrial release. Furthermore, contrary to the guidance of the Human Rights Committee on the application of article 14 (3) (c) of the Covenant, Mr. Dũng was not tried as expeditiously as possible but was held incommunicado, in pretrial detention, for a lengthy period of time.

35. In addition, the source recalls that, under article 14 (2) of the Covenant, every criminal defendant also has the right to be presumed innocent until proven guilty. This right is reiterated in article 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Human Rights Committee has explained that the right to be presumed innocent requires that the defendant be given the benefit of the doubt and that all public

[9] General comment No. 35 (2014), para. 23.

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authorities refrain from prejudging the outcome of the trial.[10] This right is also enshrined in article 31 of the Constitution of Viet Nam.

36. The source argues that, in Mr. Dũng's case, the court was not independent and did not afford him equality of arms or the presumption of innocence. The source maintains that the national courts do not operate independently. The source further questions whether Mr. Dũng was represented by legal counsel of his choosing.

37. The source concludes that, as the authorities denied Mr. Dũng his rights to a public trial before an independent and impartial court, to equality of arms, to have the opportunity to cross-examine witnesses and to the presumption of innocence, they have violated articles 14 (1) and (2) of the Covenant, articles 7, 10 and 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

38. Lastly, the source recalls that Mr. Dũng's right to communicate with his family and the outside world has been violated, as he was held incommunicado and transferred to various detention centres without his family being notified. In this regard, the source recalls that principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that detained or imprisoned persons have the right to be visited by and to correspond with, in particular, members of their families, subject to reasonable conditions and restrictions as specified by law or lawful regulations. Moreover, this right is protected by rules 43, 58 and 106 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

(b) Response from the Government

39. On 12 March 2024, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide detailed information, by 13 May 2024, about the current situation of Mr. Dũng. The Working Group also requested the Government to clarify the legal provisions justifying his detention, as well as its compatibility with the obligations of the Government of Viet Nam under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Mr. Dũng's physical and mental integrity.

40. The Working Group regrets that it did not receive a response from the Government to the present communication. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

2. Discussion

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

42. In determining whether Mr. Dũng'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 presented a prima facie case of a breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.[11] In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

(a) Category I

43. While the source does not allege that Mr. Dũng's detention falls within category I, in the light of its submissions, the Working Group will nonetheless consider whether his detention is arbitrary under category I.

44. Pursuant to article 9 (1) of the Covenant, no one may be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law.

[10] General comment No. 32 (2007), para. 30.
[11] A/HRC/19/57, para. 68.

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The Working Group has previously stated that, for deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.[12] This is typically done through an arrest warrant or arrest order (or equivalent document).[13] Noting the source's submissions, and in the absence of a response from the Government, the Working Group finds that Mr. Dũng was not shown an arrest warrant (or equivalent document), in violation of article 9 (1) of the Covenant.

45. The source submits that Mr. Dũng was first brought before a judge approximately 14 months after his arrest. The Working Group recalls the right to be brought promptly before a judicial authority to challenge detention within 48 hours of the arrest, barring absolutely exceptional circumstances, in accordance with the international standard set out in the Working Group's jurisprudence.[14] The right to bring proceedings before a court so that the court may decide without delay on the lawfulness of the detention is protected under article 9 of the Universal Declaration of Human Rights, article 9 (3) of the Covenant and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group finds that this right was violated, as Mr. Dũng was not brought promptly before a judicial authority.

46. Article 9 (3) of the Covenant provides that it should not be the general rule that persons awaiting trial are detained in custody. The Working Group recalls the view of the Human Rights Committee that pretrial detention should be an exception and as short as possible and must be based on an individualized determination that it is reasonable and necessary, taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Courts must examine whether alternatives to pretrial detention, such as bail or other conditions, would render detention unnecessary in the particular case.[15] In the present case, in the absence of a response from the Government, the Working Group concludes that there was no individualized determination in Mr. Dũng's case and, as a result, that his detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant and principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

47. Moreover, the source submits that Mr. Dũng was held incommunicado for a prolonged period. The Working Group recalls that holding persons incommunicado prevents prompt presentation before a judge, as provided for in article 9 (3) of the Covenant,[16] and violates the right under article 9 (4) to challenge the lawfulness of the detention before a court.[17] Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.[18] Given that Mr. Dũng 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.

48. According to the source, Mr. Dũng was not permitted to contact his family for a lengthy period during this detention. He was not allowed to meet with his family until more than two years after his arrest and was not allowed to call a member of his family until more than 17 months after his arrest. A detainee must be allowed to communicate with and receive visits from family members, and any restrictions and conditions with regard to such contact must be reasonable. As the Human Rights Committee has observed, giving prompt and

[12] Opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46.
[13] Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. In cases of arrests made in flagrante delicto, the opportunity to obtain a warrant will typically not be available.
[14] Opinions No. 57/2016, paras. 110 and 111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; and No. 30/2019, para. 30.
[15] General comment No. 35 (2014), paras. 37 and 38.
[16] Ibid., para. 35.
[17] Opinions No. 35/2018, para. 27; No. 9/2019, para. 30; No. 44/2019, para. 54; No. 45/2019, para. 53; and 25/2021, paras. 46 (b) and 51.
[18] A/HRC/30/37, para. 3; and CAT/C/VNM/CO/1, para. 24.

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regular access to family members is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention and infringement of personal security.[19] Accordingly, the Working Group finds that Mr. Dũng was denied the right to have contact with the outside world, in contravention of rules 43 (3) and 58 (1) of the Nelson Mandela Rules[20] and principles 15, 16 (1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, in which it is also acknowledged that an individual must not be arrested or transferred without the chance to notify (or without the authorities being required to notify) family members or other appropriate persons about his or her whereabouts. The Working Group notes the source's unrefuted submission that Mr. Dũng was transferred between detention facilities without his family members being notified and that this lack of information impeded their ability to provide him with basic assistance.

49. In the light of the above, the Working Group concludes that Mr. Dũng's deprivation of liberty lacks a legal basis and is thus arbitrary under category I.

(b) Category II

50. The Working Group will now examine whether Mr. Dũng's detention is arbitrary under category II, in relation to which the source makes unrebutted submissions that Mr. Dũng's arrest, detention and conviction stem from his legitimate exercise of his fundamental rights as guaranteed by the Covenant and the Universal Declaration of Human Rights and are in retaliation for his public criticism of government policy.

51. The Working Group considers that charges and convictions under article 117 of the Penal Code for the peaceful exercise of rights are inconsistent with the Universal Declaration of Human Rights and the Covenant. The Working Group came to a similar conclusion during its visit to Viet Nam in October 1994, noting that vaguely defined national security offences did not allow for a distinction between violent acts capable of threatening national security and the peaceful exercise of rights.[21]

52. In May 2017, the United Nations country team in Viet Nam recommended the repeal or revision of numerous articles of the Penal Code, including article 117, on the basis of their incompatibility with human rights obligations under the Covenant. Article 117 was highlighted as being vague and broad and as not defining which actions or activities were prohibited or the constitutive elements of the prohibited offences. The country team also noted that these provisions did not differentiate between the use of violent means, which should be prohibited, and legitimate peaceful activities of protest, including criticism of the Government's policies and actions, or advocacy for any kind of changes, including of the political system, which fall directly under the rights to freedom of opinion and expression and of assembly and participation in public life.[22]

53. 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.[23] It has found that the vague and broadly formulated offences in various articles of the Penal Code, including article 117, their use to curtail freedom of opinion and expression, and the definition of certain crimes related to national security to encompass legitimate activities, such as exercising the right to freedom of expression, do not appear to comply with the principles of legal certainty, necessity and proportionality – for instance, arbitrary arrests and detention, and unfair trials and criminal convictions, including of human right defenders, journalists, bloggers and lawyers, for criticizing State authorities or policies, including online.[24]

[19] General comment No. 35 (2014), para. 58. See also opinion No. 84/2020, para. 70.
[20] Opinions No. 35/2018, para. 39; and No. 45/2019, para. 76.
[21] E/CN.4/1995/31/Add.4, paras. 58–60.
[22] See https://vietnam.un.org/sites/default/files/2019-08/UN%20Recommendations%20on%20PC%20and%20CPC%20of%20Vietnam%20-%2017%20May%202017.pdf.
[23] CCPR/C/VNM/CO/3, para. 46.
[24] Ibid., para. 45 (a) and (d).

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54. Article 19 (2) of the Covenant protects the holding and expression of opinions, including those that are not in line with government policy.[25] The Human Rights Committee has 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.[26] 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, certain types of expression, such as discussion of government policies and political activities, including for peace or democracy, should never be subject to restrictions.[27] The Council has called upon States to refrain from imposing restrictions under article 19 (3) of the Covenant that are not consistent with international human rights law.[28]

55. The permitted restrictions on this right may relate either to respect for the rights or reputations of others or to the protection of national security, public order (*ordre public*) or public health or morals. As the Human Rights Committee has stipulated, restrictions are not allowed on grounds not specified in article 19 (3) of the Covenant, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.[29] There is nothing to suggest that the permissible restrictions set out in article 19 (3) of the Covenant apply in the present case. The Government did not provide any argument to invoke any of these limitations, nor has it demonstrated why bringing charges against Mr. Dũng was a legitimate, necessary and proportionate response to his activities. As such, the Working Group is not convinced that prosecuting Mr. Dũng was necessary to protect a legitimate interest under this article of the Covenant, nor that Mr. Dũng's arrest and detention are a necessary or proportionate response to his activities. Importantly, there is no indication that his peaceful journalistic activism was intended to incite violent behaviour.

56. For these reasons, the Working Group concludes that Mr. Dũng's detention resulted from his exercise of his right to freedom of opinion and expression, contrary to article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The Working Group thus finds that his arrest and detention are arbitrary and fall 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.

(c) Category III

57. Given its finding that the deprivation of liberty of Mr. Dũng is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, Mr. Dũng has been tried and convicted. In the light of the above, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough as to give Mr. Dũng's deprivation of liberty an arbitrary character, such that it falls within category III.

58. The source contends that Mr. Dũng's right to communicate with legal counsel was violated, noting that he was held incommunicado for approximately 10 months after his arrest. He was then permitted one meeting with counsel prior to his trial. However, this meeting was supervised by the authorities and was therefore not confidential. 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.[30] The Working Group further reaffirms that

[25] Opinions No. 79/2017, para. 55; and No. 8/2019, para. 55.
[26] *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.
[27] A/HRC/14/23, para. 81 (i).
[28] Human Rights Council resolution 12/16, para. 5 (p).
[29] General comment No. 34 (2011), para. 22.
[30] 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; Human Rights Committee, general comment No. 35 (2014), para. 35; A/HRC/45/16, paras. 50–55; and A/HRC/48/55, para. 56. See also A/HRC/27/47, para. 13.

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legal counsel should be able to carry out its functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment. The authorities should respect the privacy and confidentiality of communications between detainees and legal counsel.[31]

59. Noting the source's unrefuted submissions that Mr. Dũng was granted extremely limited access to legal assistance, the Working Group finds that his rights to equality of arms and to a fair hearing by an independent and impartial tribunal under article 14 (1) of the Covenant were violated.[32] Moreover, Mr. Dũng was not afforded his rights to adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing, as guaranteed under article 14 (3) (b) of the Covenant. 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.[33]

60. The source argues that Mr. Dũng was not afforded his right to be tried without undue delay, given that approximately 14 months elapsed between the date of his arrest (21 November 2019) and the date of his trial (5 January 2021). Under article 14 (3) (c) of the Covenant, anyone arrested or detained on a criminal charge is entitled to trial within a reasonable time and without undue delay. 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.[34] The Human Rights Committee has stated that an important aspect of the fairness of a hearing is its expeditiousness and that, in cases where the accused is denied bail by the court, he or she must be tried as expeditiously as possible.[35] The delay in the present case was exacerbated, as Mr. Dũng was not given a bail hearing, and his detention was not reviewed by a judicial authority, as discussed above.

61. On the basis of the foregoing, the Working Group considers that Mr. Dũng's pretrial detention of approximately 14 months was unacceptably long and was in violation of article 14 (3) (c) of the Covenant and principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

62. The source further submits that Mr. Dũng was convicted on the same day on which he was first brought before a judge and that he had no opportunity to cross-examine witnesses.[36] He and his colleagues were sentenced to a total of 46 years in prison under article 117 of the 2015 Penal Code of Viet Nam, as amended in 2017. As the Working Group has noted previously, a short trial for a serious criminal offence that carries a heavy sentence (15 years in prison and 3 years of probation, in the present case) supports the conclusion that Mr. Dũng's guilt was determined prior to the trial.[37] In the absence of an explanation from the Government, the Working Group finds that these factors undermined Mr. Dũng's right to the presumption of innocence, as guaranteed in article 14 (2) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights.

63. In addition, the source submits that Mr. Dũng's trial was closed to the public. As the Human Rights Committee has stated, criminal trials are to be conducted in public, unless one of the exceptional circumstances outlined in article 14 (1) of the Covenant justifies the closure of a trial, that is, for reasons of morals, public order or national security.[38] In the present case,

[31] 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, para. 15.

[32] Opinions No. 18/2018, para. 53; and No. 78/2018, paras. 78 and 79.

[33] See opinions No. 46/2018, No. 9/2019, No. 44/2019, No. 45/2019, No. 82/2021, No. 13/2022, No. 35/2022, No. 40/2022, No. 43/2022, No. 86/2022 and No. 16/2023. See also CAT/C/VNM/CO/1, paras. 16 and 17.

[34] Human Rights Committee, general comments No. 32 (2007), para. 35; and No. 35 (2014), para. 37. See also CCPR/C/VNM/CO/3, paras. 35 and 36.

[35] General comment No. 32 (2007), paras. 27, 31, 35 and 37.

[36] Opinion No. 36/2021, para. 89.

[37] Opinions No. 75/2017, para. 53; No. 36/2018, para. 55; No. 82/2021, para. 80; and No. 16/2023, para. 86.

[38] General comment No. 32 (2007), para. 29.

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the Government has not provided any information to justify the exceptional step of holding a closed trial. Accordingly, the Working Group finds that Mr. Dũng did not have a public hearing, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant, which provides that "everyone shall be entitled to a fair and public hearing".

64. While the source also alleges the lack of independence of national courts in Viet Nam and questions whether Mr. Dũng was represented by legal counsel of his choosing, the Working Group does not have sufficient information to make findings on these allegations.

65. For the reasons enumerated above, the Working Group concludes that the numerous violations of Mr. Dũng's right to a fair trial and due process mentioned above are of such gravity as to render his deprivation of liberty arbitrary, falling within category III.

(d) Category V

66. While the source does not allege that Mr. Dũng's detention falls within category V, in the light of its submissions, the Working Group will nonetheless consider whether his detention is arbitrary under category V.

67. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention. These include the following: the deprivation of liberty was part of a pattern of persecution against the detained person, including, for example, through previous detention; other persons with similarly distinguishing characteristics have also been persecuted; or the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.[39]

68. With regard to these non-cumulative indicators, the Working Group notes a pattern of intimidation against Mr. Dũng in relation to his activities as an advocate for human rights. The source submits that, in the past, Mr. Dũng had already been detained on several occasions; furthermore, in 2014, he was prevented from travelling to Geneva to participate in a side event in connection with the review of Viet Nam as part of the second cycle of the universal periodic review. In addition, the authorities reportedly took down the website and the Facebook page of the Independent Journalists Association of Viet Nam, of which Mr. Dũng was a co-founder. Over the past decade, various United Nations entities have raised multiple concerns about Mr. Dũng's situation.[40] Moreover, United Nations human rights experts have expressed concerns about the alleged arbitrary detention of journalists affiliated with the Independent Journalists Association of Viet Nam, including Mr. Dũng.[41] The Working Group has also issued opinions in which it found to be arbitrary the detention of journalists associated with the Independent Journalists Association of Viet Nam.[42]

69. Furthermore, in the discussion above concerning category II, the Working Group established that Mr. Dũng'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 ground of discrimination based on political or other views.[43]

70. For these reasons, the Working Group finds that Mr. Dũng was deprived of his liberty on discriminatory grounds, on the basis of his political or other opinion. 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 under category V. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders.

(e) Concluding remarks

71. The Working Group is extremely concerned about the source's submission that Mr. Dũng has grave medical issues and its allegations regarding inadequate medical care (see

[39] A/HRC/36/37, para. 48.
[40] See communications VNM 5/2014 and VNM 5/2019. See also A/HRC/27/38, para. 40.
[41] See communications VNM 3/2020 and VNM 6/2021.
[42] See opinions No. 11/2021 and No. 16/2023.
[43] For example, opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.

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para. 17 above). The Working Group is compelled to remind the Government that, according to article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person, including by receiving appropriate medical care.[44]

72. The present case is one of a number of cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty of persons, in particular human rights defenders, in Viet Nam.[45] Many of these cases follow a familiar pattern of arrest that does not comply with international norms, lengthy detention pending trial with no access to judicial review, denial of or limited access to legal counsel, incommunicado detention, prosecution under vaguely worded criminal offences for the peaceful exercise of human rights, a brief closed trial at which due process is not observed, disproportionate sentencing and denial of access to the outside world. The Working Group is concerned that this pattern indicates a systemic problem with arbitrary detention in Viet Nam, which, if it continues, may amount to a serious violation of international law.

73. The Working Group would welcome the opportunity to work constructively with the Government of Viet Nam 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 its earlier requests to the Government to undertake a country visit and will continue to seek a positive response.

3. Disposition

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

> The deprivation of liberty of Phạm Chí Dũng, being in contravention of articles 2, 6, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

75. The Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation of Mr. Dũng without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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

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

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

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

4. Follow-up procedure

80. 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:

[44] Opinion No. 26/2017, para. 66.

[45] See, for example, opinions No. 45/2018, No. 46/2018, No. 8/2019, No. 9/2019, No. 44/2019, No. 11/2021, No. 16/2023 and No. 22/2023.

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(a) Whether Mr. Dũng has been released and, if so, on what date;

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

(c) Whether an investigation has been conducted into the violation of Mr. Dũng's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to 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.

81. 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.

82. 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 of any failure to take action.

83. 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.[46]

[*Adopted on 30 August 2024*]

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[46] Human Rights Council resolution 51/8, paras. 6 and 9.