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**Human Rights Council  
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary  
Detention at its eighty-second session, 20–24 August 2018****Opinion No. 46/2018 concerning Lê Thu Hà, Nguyen Trung Ton and  
Nguyen Trung Truc (Viet Nam)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 23 May 2018, the Working Group transmitted to the Government of Viet Nam a communication concerning Lê Thu Hà, Nguyen Trung Ton and Nguyen Trung Truc. The Government replied to the communication on 23 July 2018. Viet Nam is a party to the International Covenant on Civil and Political Rights.

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

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

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

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

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

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

## Submissions

### *Communication from the source*

4. The case presented by the source concerns three individuals who are all members of an organization known as the Brotherhood for Democracy. According to the source, the Brotherhood for Democracy is an online network largely composed of former prisoners of conscience aiming to coordinate mobilization efforts towards democracy and respect for human rights in Viet Nam.

5. The source provided the following information on each of the three individuals:

- Lê Thu Hà is a 35-year-old Vietnamese citizen. She works as a teacher, but is a lawyer by training. She has also been engaged as a translator for the United Nations. Prior to 2011, Ms. Hà was an English language tutor in Hanoi. In 2011, she began posting critical views of the Government on social media. In 2013, she joined the Brotherhood for Democracy, serving as its Secretary. In 2014, Ms. Hà began providing free English classes for students who had an interest in bringing about positive social and political change in Viet Nam. In May 2015, she was banned from travelling to Sweden for a conference and her passport was confiscated. In September 2015, Ms. Hà was arrested and detained along with five other activists for launching an independent human rights news television station linked to the Brotherhood for Democracy, known as Conscience TV, of which she was the chief editor for programming. The source states that Ms. Hà has never participated in or supported any form of violent protest.
- Nguyen Trung Ton is a 46-year-old Vietnamese citizen who resides in Thanh Hoa Province, Viet Nam. He is a Protestant pastor, human rights activist and blogger who has written about corruption and land confiscation in Viet Nam. As a pastor, Mr. Ton advocates for religious freedom and speaks about social injustice in Viet Nam. He is also the current President of the Brotherhood for Democracy, following the arrest and detention of one of the group's founders, Nguyen Van Dai.<sup>1</sup> In 2011, Mr. Ton was arrested and sentenced to 2 years' imprisonment followed by 2 years of house arrest for having "conducted propaganda against the Socialist Republic of Viet Nam", a national security offence under article 88 of the 1999 Penal Code.
- Nguyen Trung Truc is a 41-year-old Vietnamese citizen who resides in Quang Binh Province, Viet Nam. He is a fisherman, a community and human rights activist and a member and regional leader of the Brotherhood for Democracy in Quang Binh Province, which is located on the central coast of Viet Nam. Mr. Truc's work focuses on training and building the capacity of the Brotherhood for Democracy in central Viet Nam. He has also spoken out about various issues such as the corruption of State officials and the violation of citizens' rights. Recently, Mr. Truc called for justice and adequate compensation for victims of the Formosa environmental disaster that occurred in April 2016 in central Viet Nam. He was arrested and detained for 10 days in 2012.

### *Arrest and detention*

6. On 16 December 2015, Ms. Hà was arrested at her office in Hanoi. According to the source, the police arrested her after she refused to allow them to search the office. The source alleges that some days after Ms. Hà was arrested, the police issued an arrest warrant for her in relation to a charge of "conducting propaganda against the Socialist Republic of Viet Nam" under article 88 of the 1999 Penal Code. In July 2017, over 18 months after her arrest, the authorities announced that the charges against Ms. Hà had been revised to add a charge under article 79 of the Penal Code for "carrying out activities aimed at overthrowing the people's administration". The authorities also extended her pretrial detention for an additional 20 months.

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<sup>1</sup> Nguyen Van Dai was the subject of opinion No. 26/2017 adopted on 25 April 2017. According to the source, he was released on 7 June 2018, along with Ms. Hà (discussed further below).

7. On 30 July 2017, Mr. Ton was arrested at his residence in Thanh Hoa Province. Mr. Truc was arrested a few days later on 4 August 2017. Mr. Ton and Mr. Truc were allegedly arrested by agents of the Ministry of Public Security. The source claims that no arrest warrants were presented when the men were arrested, but official notifications of the charges against them under article 79 of the Penal Code were provided afterwards to their families.

8. The source claims that no information was given by the authorities regarding the acts that allegedly amounted to crimes committed by Ms. Hà, Mr. Ton and Mr. Truc under article 79 of the Penal Code. The official newspapers only referred to the fact that the activists had “met with foreigners and badmouthed the Government”. According to the source, the arrest of the three individuals is due to the fact that they are prominent members and leaders of the Brotherhood for Democracy and are associated with Mr. Dai. The source states that it is obvious that the arrests of the three individuals were coordinated.

9. In addition, the source reports that article 79 of the Penal Code is considered to be a national security offence for which a person may receive a sentence ranging from 12 years’ imprisonment to life imprisonment or capital punishment. Individuals facing charges under the “national security” chapter of the Penal Code are subject to considerably more stringent restrictions of their due process rights found in the Criminal Procedure Code, which are imposed at the discretion of the authorities.

10. According to the source, pretrial detention is a systematic practice during the entire period of investigation of so-called national security offences and is permitted under article 120 of the 2003 Criminal Procedure Code. The authorities did not present any reason or further information to justify the pretrial detention of Ms. Hà, Mr. Ton and Mr. Truc, which violates international standards. Furthermore, there is no possibility of having the lawfulness of pretrial detention reviewed by an independent judicial authority. As a result, none of the three individuals has been able to challenge their pretrial detention before a court.

#### *Trial, sentencing and appeal*

11. The source claims that Ms. Hà’s trial date was set after she had been held for 842 days (over two years and three months) in pretrial detention. She was charged under article 79 of the Penal Code for alleged subversive activities. According to the source, in an interview with a television station on 30 March 2018, one of Ms. Hà’s family members stated that she had refused to hire a lawyer to defend her. Ms. Hà reportedly considered that she had not done anything illegal, and wanted to represent herself at her trial.

12. On 5 April 2018, Ms. Hà was tried along with Mr. Ton and other members of the Brotherhood for Democracy by the People’s Court of Hanoi. The trial lasted one day and involved six activists who received sentences ranging from 7 to 15 years’ imprisonment. Ms. Hà was sentenced to 9 years’ imprisonment under article 79 of the Penal Code, followed by 2 years of probation. She did not appeal her conviction and sentence. Mr. Ton was sentenced to 12 years’ imprisonment under article 79, followed by 3 years of house arrest. On 4 June 2018, Mr. Ton’s appeal against the judgment of the trial court was heard. His appeal was denied and his sentence was upheld. Mr. Truc’s trial is pending.

13. According to the source, Ms. Hà was healthy before her detention. However, during her most recent visit with a family member, Ms. Hà appeared to have suffered a mental breakdown.

14. The source also reports that Mr. Ton is suffering from injuries sustained in a brutal assault by unknown individuals armed with special police equipment in February 2017, five months before his arrest. Both of his knees were broken and he was only able to undergo surgery on one knee before his arrest. He has been unable to walk properly since the assault. Mr. Ton’s vision is blurred in his right eye. He also has a problem with his colon and prostate, and has difficulty urinating. The source alleges that Mr. Ton has been denied medical treatment. The prison guards do not allow his family to send medication to him. In addition, the source claims that there is no electricity or light in his prison cell, and that it is very dark and extremely hot.

15. At the time of the source's submission, Ms. Hà, Mr. Ton and Mr. Truc were in detention in different locations. Mr. Ton was detained in the B14 detention centre in Hanoi, while Mr. Truc was detained in Dong Joi prison in Quang Binh. The source submits that their deprivation of liberty is arbitrary under categories II, III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

*Arbitrary detention under category II: exercise of fundamental rights*

16. The source submits that the deprivation of liberty of Ms. Hà, Mr. Ton and Mr. Truc resulted directly from the exercise of their rights to freedom of expression and association guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the Covenant. The source adds that the domestic legal framework under which the three individuals were prosecuted is not in compliance with international human rights standards.

17. The source argues that, even though rights and freedoms are not absolute, article 79 of the Penal Code is vague and overly broad as it does not define the actions or activities that are prohibited. As a result, individuals are not able to regulate their behaviour accordingly. Article 79 does not differentiate between the use of violent means to change the Government and legitimate peaceful activities aimed at changing the political system or advocating for change, in particular calling for democracy and the rule of law. Those activities clearly fall within the scope of protection of article 19 of the Covenant. According to the source, article 79 is often used to prosecute and sentence individuals for the peaceful exercise of their fundamental rights and freedoms, and provides for life imprisonment and capital punishment without any clear criteria as to the circumstances in which such penalties may be imposed.

18. In addition, the source submits that national security cannot be invoked freely as a blanket excuse to justify any form of restriction of rights and freedoms. While there is no precise definition of "threats to national security" in international law, such threats should involve actual and direct threats or use of force against the existence of the nation or its territorial integrity or political independence. It should not include hypothetical threats or local and relatively isolated threats or infringements to law and order.<sup>2</sup> The restriction of freedom of expression is not justified by the need for national security and the application of article 79 in the present case is neither necessary nor proportional.

19. The source asserts that the three individuals involved in the present case have the right to criticize or question the policies and actions of the Government and the political system, to call peacefully for political change and respect for human rights, and to be members of a peaceful online group advocating for these causes.<sup>3</sup>

*Arbitrary detention under category III: due process rights*

20. The source submits that the deprivation of liberty of Ms. Hà, Mr. Ton and Mr. Truc is arbitrary because it violates multiple international norms relating to the right to liberty and security, and the right to a fair trial, as enshrined in articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant.

21. According to the source, articles 58, 119 and 120 of the 2003 Criminal Procedure Code regulate the investigation and related pretrial detention of an individual during criminal proceedings. Those provisions allow a person who is charged with "extremely serious" national security crimes to be detained "until completion of the investigation" — that is, indefinitely. Decisions on whether to extend pretrial detention are made every four months by the Chairman of the Supreme People's Procuracy. Detainees are not entitled to challenge those decisions or request an independent judicial review of the necessity for

<sup>2</sup> The source refers to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, paras. 29–30.

<sup>3</sup> See *Marques de Morais v. Angola*, (CCPR/C/83/D/1128/2002), para. 6.7. See also Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 23, and Human Rights Council resolution 12/16.

them. In practice, in so-called national security cases, prolonged detention until the date of the trial is systematic. The source submits that those provisions clearly violate article 9 (4) of the Covenant.

22. Furthermore, although article 31 (4) of the Constitution provides that anyone who is arrested, held in custody or temporarily detained has the right to defend him- or herself in person or choose defence counsel or another person to defend him or her, Mr. Ton and Mr. Truc were denied access to legal counsel following their arrest. The source alleges that this has contributed to the violation of their right to challenge their detention. According to the source, in order to maintain the secrecy of the investigation of national security offences, the Chairman of the Supreme People's Procuracy has the authority under article 58 of the 2003 Criminal Procedure Code to allow defence lawyers to participate in the procedure once the investigation is completed. The source submits that this violates the right to a fair trial under article 14 of the Covenant.

23. The source alleges that since Mr. Ton and Mr. Truc were arrested, their families have not been given permission to visit them or to obtain information about their whereabouts and health. The source claims that this constitutes incommunicado detention and may amount to torture.

24. The source recalls that Mr. Truc is still recovering from the injuries he suffered during the assault of February 2017 that resulted in both his knees being broken, and there are serious concerns about his health. According to the source, the authorities routinely deny medical treatment to prisoners of conscience until they admit their guilt and this is a common form of torture practised in Vietnamese prisons.

*Arbitrary detention under category V: discrimination*

25. According to the source, none of the three activists has ever prepared, instigated or carried out any violent activity aiming to overthrow the Government. Their simultaneous and coordinated arrest and detention can only be considered as a form of reprisal for their peaceful work as human rights activists and members of the Brotherhood for Democracy.

26. The source recalls that the three individuals have been victims for many years of regular harassment by the Government or its proxies. They are all former prisoners of conscience and Mr. Ton has already spent several years in prison for a conviction under article 88 of the Penal Code. Their detention is part of a pattern of persecution of human rights defenders in Viet Nam.

*Communication from special procedures mandate holders*

27. Mr. Ton and Ms. Hâ and four other human rights defenders were the subject of a joint urgent appeal on 4 April 2018.<sup>4</sup> The Government has not replied to this communication. In addition, Mr. Ton and five other human rights defenders were the subject of a joint allegation letter addressed to the Government by a number of special procedures mandate holders on 21 September 2017.<sup>5</sup> The Working Group acknowledges the response received from the Government on 5 January 2018.<sup>6</sup>

28. In the letter, the special procedures mandate holders requested the Government to comment on numerous allegations, including that the arrests and incommunicado detention of the individuals had taken place in the context of a crackdown by the Government on human rights defenders, particularly during the summer of 2017, when most of the leadership of the Brotherhood for Democracy had been arrested. The experts also expressed concern that the arrests appeared to be based on legal charges that criminalized the legitimate exercise of the rights to freedom of expression, freedom of religion or belief and freedom of association and peaceful assembly. Further, the experts expressed serious

<sup>4</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23737>.

<sup>5</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23338>.

<sup>6</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=87267>.

concern that the charges under article 79 of the Penal Code (article 109 of the 2015 Penal Code) might result in the imposition of a sentence of life imprisonment or the death penalty.

29. In its response, the Government confirmed that Mr. Ton had been convicted in 2011 under article 88 of the Penal Code. After being released from prison, he became a member of the Brotherhood for Democracy and was arrested and prosecuted under article 79 of the Penal Code on 30 July 2017. He is currently in detention at the B14 Detention Centre of the Ministry of Public Security in Hanoi. The Government alleges that Mr. Ton and the other individuals “tempted people to become a member of the group” and “disseminated distorted information with a view to inciting people to overthrow the Government.” According to the Government, they also “illegally gathered people to disturb public order and made plans to overthrow the Government.” The decision to prosecute was approved by the competent authorities in accordance with national legislation. Article 79 is consistent with the obligations of Viet Nam under international human rights law.

*Response from the Government to the regular communication*

30. On 23 May 2018, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 23 July 2018 about the current situation of Ms. Hà, Mr. Ton and Mr. Truc. The Working Group also requested the Government to clarify the legal provisions justifying their continued detention, as well as its compatibility with Viet Nam’s obligations under international human rights law. Further, the Working Group called upon the Government to ensure the physical and mental integrity of the three individuals.

31. The Government responded on 23 July 2018. In its response, the Government states that the source’s allegations are untrue. Ms. Hà, Mr. Ton and Mr. Truc were investigated for violations of the law, not for the exercise of their human rights or for being human rights defenders.

32. According to the Government, on 15 December 2015 Ms. Hà was arrested and detained for investigation on the charge of “conducting propaganda against the State” under article 88 of the Criminal Code. On 30 July 2017, she was indicted on a charge of “carrying out activities aiming at overthrowing the people’s administration” under article 79 of the Criminal Code.

33. The Government also explains that, on 5 April 2018, the People’s Court of Hanoi commenced the trial of Ms. Hà, Mr. Ton and four other defendants who had been indicted by the Supreme People’s Procuracy under article 79 of the Criminal Code. According to the indictment, from March 2013 to July 2017, Mr. Ton and three other defendants established the illegal Brotherhood for Democracy. They drafted the political programme, charter, rules and regulations governing the group, and directed and managed its activities. They also induced Ms. Hà and others to join the group. According to the Government, the group’s political programme stated that “the organization is not subject to Vietnamese laws and regulations and does not need to register for operation under Vietnamese law”. All documents drafted by the group emphasized the aim of creating a group to confront the Government, contrary to the Constitution.

34. The Government alleges that the defendants associated with illegal groups and organizations within Viet Nam and sought financial support from overseas to overthrow the Government. The Brotherhood for Democracy regularly posted material and gave interviews containing fabricated information about the sociopolitical situation of Viet Nam and organized training sessions on how to incite people and how to organize protests aimed at disturbing the public order so as to disrupt the Government.

35. The Government further alleges that the Brotherhood for Democracy received \$71,726 and EUR 9,161.31 from supporting organizations and individuals abroad for its operations, including the Vietnamese Overseas Initiative for Conscience Empowerment and Former Vietnamese Prisoners of Conscience. The Government states that those organizations conduct activities against the administration.

36. According to the Government, Ms. Hà and Mr. Ton's rights under national law were fully ensured. In accordance with the Law on Temporary Custody and Detention of 2015, their rights to counsel, medical care and contact with family were fulfilled. They were never subjected to torture, extortion or corporal punishment. The proceedings against them were held in public and were conducted in accordance with national law. At the first instance trial, there were six legal counsels defending the six defendants. Their family members and most of the witnesses were present. The hearings were adversarial and the defendants and their counsel had the opportunity to speak. Local and foreign reporters and embassy representatives based in Hanoi were allowed to attend and report on the trial.

37. Following transparent and fair hearings and in accordance with the evidence, the People's Court of Hanoi sentenced Ms. Hà and Mr. Ton to 9 years' imprisonment and 2 years of probation, and 12 years' imprisonment and 3 years of probation, respectively. Ms. Hà did not appeal the decision. Her sentence was temporarily suspended and she left for Germany on 7 June 2018 for humanitarian reasons. Mr. Ton lodged an appeal. On 4 June 2018, the High Court of Hanoi heard his appeal and upheld the decision at first instance. Mr. Ton is serving his sentence at a detention centre under the Ministry of Public Security. His health is normal. The conditions at his detention centre satisfy statutory requirements.

38. In addition, the Government provides information in relation to Mr. Truc. On 4 August 2017, the Investigation Security Agency under the Public Security Department of Quang Binh Province instituted criminal proceedings against Mr. Truc under article 79 of the Criminal Code, including issuing an arrest warrant and a search warrant. The arrest and detention of Mr. Truc and the search of his house were carried out in accordance with the Criminal Procedure Code, the enforcement of which was approved and supervised by the competent authorities. Mr. Truc's rights as a detainee were fully ensured. Article 109 of the Criminal Procedure Code stipulates that detention is a preventive measure to be implemented by the authorities if it is necessary to prevent a crime, when there is a risk that the accused could impede the investigation or engage in offending, or when there is a need for detention to secure judgment execution.

39. The Government states that Mr. Truc is being detained for the purpose of investigation. During the investigation, Mr. Truc confessed that he and other members of the Brotherhood for Democracy conducted illegal acts aimed at overthrowing the Government. The investigation phase is almost complete and will be followed by the next phase of criminal proceedings. The detention of Mr. Truc is in accordance with national legislation, as well as the international human rights obligations of Viet Nam.

40. According to the Government, Mr. Truc is being detained at the Detention Centre of Quang Binh Public Security Department. His health is normal and his rights as a detainee have been fully ensured, including the right to medical treatment by health professionals, as provided for in the Law on Temporary Custody and Detention. Mr. Truc has not been visited by his family members, but he regularly receives gifts from them. During the investigation, Mr. Truc did not request legal counsel. On 7 June 2018, he sent a letter to the People's Procuracy of Quang Binh Province stating that he did not require legal counsel and would defend himself.

*Further information from the source*

41. On 8 June 2018, the source notified the Working Group that Ms. Hà had been released from detention. According to the source, Ms. Hà was taken from the B14 Detention Centre in Hanoi to the Noi Bai International Airport at midnight on 7 June 2018 to board a flight to Germany, where she will reside in future. The source provided further information on 9 August 2018, reiterating its allegations and noting that Mr. Ton's family were only permitted to visit him seven months after his arrest.

**Discussion**

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

43. The Working Group welcomes the release of Ms. Hà from detention on 7 June 2018. According to paragraph 17 (a) of its methods of work, the Working Group reserves the

right to render an opinion on whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned.

44. In the present case, the Working Group considers that it is important to render an opinion in relation to all three individuals, including Ms. Hà. Prior to her release, Ms. Hà had been detained for almost two and a half years following her arrest on 16 December 2015, most of which was spent in pretrial detention. She was subsequently tried alongside other members of the Brotherhood for Democracy and was ordered to serve a heavy sentence under the national security provisions of the Vietnamese Penal Code. During her detention, Ms. Hà allegedly suffered a mental breakdown, despite being in good health prior to her arrest. Those circumstances warrant further consideration of whether Ms. Hà's deprivation of liberty was compatible with the obligations of Viet Nam under international human rights law.

45. In determining whether the deprivation of liberty of the three individuals in this case is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of the international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (see A/HRC/19/57, para. 68).

46. The source alleges that the police did not present a warrant at the time of the arrest of Ms. Hà, Mr. Ton and Mr. Truc on 16 December 2015, 30 July 2017 and 4 August 2017, respectively. According to the source, in Ms. Hà's case, the police issued an arrest warrant "some days" after her arrest on a charge under article 88 of the Penal Code. The source also alleges that Ms. Hà was only notified of the charge against her under article 79 of the Penal Code in July 2017, over 18 months after her arrest. Given that Ms. Hà was ultimately convicted under article 79 at her trial in April 2018, the Working Group considers that she was not promptly informed of the actual charge against her. The Government did not challenge the allegations and provided no explanation for the delay in announcing the charge against Ms. Hà under article 79 of the Penal Code.

47. Furthermore, the source claims that no arrest warrants were presented when Mr. Ton and Mr. Truc were arrested, although official notifications of the charges against them under article 79 of the Penal Code were provided afterwards to their families. The Government did not deny the allegation that no arrest warrant had been presented to Mr. Ton. In Mr. Truc's case, the Government stated that criminal proceedings, including an arrest warrant and search warrant had been initiated against him in accordance with the Criminal Procedure Code on 4 August 2017, without specifying whether the warrant had been presented at the time of arrest.

48. According to article 9 (1) of the Covenant, no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law. Therefore, for deprivation of liberty to be lawful and not arbitrary, established legal procedures must be respected. In the present case, the Working Group finds that Ms. Hà, Mr. Ton and Mr. Truc were arrested without an arrest warrant and Ms. Hà was not promptly informed of the charge against her, in violation of article 9 (2) of the Covenant. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law under which the arrest may be authorized. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant and prompt notification of the charges.<sup>7</sup>

49. In addition, the source alleges that no further details were provided by the authorities on the underlying acts that allegedly amounted to the crimes committed by the three activists. The Government did not specifically deny that allegation. While the Government refers to the details of the alleged offence contained in the indictment against Mr. Ton, it is not clear whether that information was available to Mr. Ton prior to his trial on 5 April 2018. Accordingly, the Working Group considers that the lack of an explanation as to what

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<sup>7</sup> See, for example, opinions No. 46/2017, No. 75/2017, No. 35/2018 and No. 36/2018.



criminal acts Ms. Hà, Mr. Ton and Mr. Truc had allegedly committed strengthens its conclusion that they were arrested and detained without a legal basis and in violation of article 9 (2) of the Covenant. As the Human Rights Committee noted in paragraph 25 of its general comment No. 35 (2014) on liberty and security of person, the reasons given for an arrest must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act.

50. According to the source, articles 58, 119 and 120 of the 2003 Code of Criminal Procedure allow persons charged with national security offences to be detained, without the possibility of judicial review, until completion of the investigation. That can take an indeterminate length of time. As a result of those provisions, Ms. Hà and Mr. Ton were held in pretrial detention for more than two years and three months and more than eight months, respectively, while Mr. Truc remains in pretrial detention. Decisions on whether to extend pretrial detention are made every four months by the Chairman of the Supreme People's Procuracy. As the Working Group noted during its visit to Viet Nam in 1994, the Procuracy is not an independent judicial authority and this continues to be the case (E/CN.4/1995/31/Add.4, para. 57 (c)).<sup>8</sup> As discussed further below, Mr. Ton and Mr. Truc were also held incommunicado during their pretrial detention. The Government did not address those allegations, other than stating that the three individuals were detained in accordance with national law.

51. The Working Group finds that the three individuals were held for extended periods without a judicial determination of the lawfulness of their detention, and without any individualized review of their situation or consideration of alternatives to pretrial detention, contrary to article 9 (3) and (4) of the Covenant. The Working Group considers that judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty<sup>9</sup> and that it is essential to ensuring that detention has a legal basis.<sup>10</sup> Any legislative provision that purports to deny the right to judicial review of detention is inconsistent with international human rights law. Given that Ms. Hà, Mr. Ton and Mr. Truc were unable to challenge their detention, their right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was violated.

52. For those reasons, the Working Group finds that there was no legal basis for the arrest and detention of Ms. Hà, Mr. Ton and Mr. Truc. Their deprivation of liberty is arbitrary under category I.

53. The source alleges that Ms. Hà, Mr. Ton and Mr. Truc were deprived of their liberty solely for exercising their rights under the Universal Declaration of Human Rights and the Covenant. The Government denies this allegation, stating that they were detained for violation of the national law. As the Working Group has repeatedly stated in its jurisprudence, 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.<sup>11</sup>

54. The Working Group notes that Ms. Hà, Mr. Ton and Mr. Truc were charged under article 79 of the Vietnamese Penal Code which states:

“Article 79. Carrying out activities aimed at overthrowing the people's administration.

Those who carry out activities, establish or join organizations with intent to overthrow the people's administration shall be subject to the following penalties:

1. Organizers, instigators and active participants or those who cause serious consequences shall be sentenced to between 12 and 20 years of imprisonment, life imprisonment or capital punishment;

<sup>8</sup> See also opinions No. 75/2017, para. 48, and No. 35/2018, para. 37.

<sup>9</sup> See United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 3.

<sup>10</sup> See, for example, opinions No. 28/2016 and No. 46/2017.

<sup>11</sup> See, for example, opinions No. 13/2007, No. 46/2011, No. 42/2012, No. 75/2017 and No. 79/2017.

2. Other accomplices shall be subject to between 5 and 15 years of imprisonment.”<sup>12</sup>

55. The Working Group has considered the application of national security offences in Viet Nam, including article 79 of the Penal Code, on numerous occasions.<sup>13</sup> In those cases, the Working Group determined that article 79 was so vague and overly broad that it could result in penalties being imposed on individuals who had peacefully exercised their rights. The Working Group pointed out in those cases that the Government had not provided evidence of any violent action on the part of the petitioners, and that in the absence of such information, the charges and convictions could not be regarded as consistent with the Universal Declaration of Human Rights or the Covenant. The Working Group came to a similar conclusion in its report following a visit to Viet Nam in October 1994, noting that vague and imprecise offences did not distinguish between violent acts and the peaceful exercise of fundamental freedoms (see E/CN.4/1995/31/Add.4, paras. 58–60). It requested the Government to amend its laws in order to clearly define offences and to state what was prohibited without any ambiguity.

56. In the present case, the Government has not submitted any evidence beyond its assertions to demonstrate that the actions of Ms. Hà, Mr. Ton and Mr. Truc as human rights defenders were violent, or incited others to commit acts of violence, or would in any way amount to subversive activities under article 79 of the Penal Code. According to the Government, the three individuals were involved in establishing a pro-democracy group intended to challenge the Government and in seeking funds for its operation, as well as conducting training. It is not clear how any of those activities amount to violence or incitement. Rather, the Working Group finds that the arrest and detention of the three individuals was due to their peaceful advocacy and online blogging, and their membership of the Brotherhood for Democracy.

57. Accordingly, the Working Group considers that their activities in calling for democracy and respect for human rights falls within the boundaries of the freedom of expression protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.<sup>14</sup> Similarly, the Working Group finds that through their involvement with the Brotherhood for Democracy, Ms. Hà, Mr. Ton and Mr. Truc were exercising their right to freedom of association under article 20 of the Universal Declaration of Human Rights and article 22 of the Covenant.<sup>15</sup> Finally, the Working Group is of the view that the three individuals were engaging in advocacy relating directly to government policies in Viet Nam, and were deprived of their liberty as a result of exercising their right to take part in the conduct of public affairs under article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant.<sup>16</sup>

58. The permitted restrictions on the freedom of expression, association and the right to take part in the conduct of public affairs under articles 19 (3), 22 (2) and 25 of the Covenant do not apply in the present case. The Government did not present any evidence to the

<sup>12</sup> The Working Group understands that the 1999 Penal Code was amended in November 2015 and, despite some renumbering of provisions, the content of article 79 remained the same, although it appears as article 109 in the 2015 Code.

<sup>13</sup> See, for example, opinions No. 46/2011, No. 27/2012, No. 26/2013, No. 40/2016, No. 35/2018 and 36/2018.

<sup>14</sup> The Working Group has found in a number of cases concerning Viet Nam that blogging and publishing material online falls within the right to freedom of expression. See, for example, opinions No. 20/2003, No. 19/2004, No. 13/2007, No. 1/2009, No. 27/2012, No. 33/2013, No. 27/2017 and No. 36/2018.

<sup>15</sup> The Working Group has found in cases relating to Viet Nam that the arrest and detention of individuals because of their association with pro-democracy groups is arbitrary. See, for example, opinions No. 6/2010 and No. 42/2012.

<sup>16</sup> According to the Human Rights Committee, citizens may take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. See general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 8. See also opinions No. 13/2007, No. 46/2011, No. 42/2012, No. 26/2013 and No. 40/2016.

Working Group to invoke any of the restrictions, nor did it demonstrate why bringing charges against Ms. Hà, Mr. Ton and Mr. Truc was a legitimate, necessary and proportionate response to their activities. In any event, the Human Rights Council in its resolution 12/16 called on States to refrain from imposing restrictions which are not consistent with international human rights law, including restrictions on discussion of government policies and political debate; reporting on human rights; peaceful demonstrations, and expression of opinion and dissent (para. 5 (p)). Moreover, as the Human Rights Committee has stated: “States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.”<sup>17</sup>

59. In addition to the Working Group’s findings, there is widespread concern in the international community about the use of national security legislation in Viet Nam to restrict the exercise of human rights and the rights to freedom of expression and opinion in particular. That concern is reflected in at least 35 of the recommendations contained in the 2014 report of the Working Group on the Universal Periodic Review on Viet Nam, several of which relate to the review and repeal of vague offences in the Penal Code (including article 79), the protection of human rights defenders and the need for Viet Nam to implement the opinions of the Working Group on Arbitrary Detention.<sup>18</sup>

60. Further, 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 fundamental freedoms at the national and international levels”, to communicate with non-governmental organizations, and to have effective access in the conduct of public affairs.<sup>19</sup> Although the Government denies that Ms. Hà, Mr. Ton and Mr. Truc were detained for being human rights defenders, the Working Group considers that the source’s allegations clearly demonstrate that they were detained for the exercise of their rights under the Declaration on Human Rights Defenders. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.<sup>20</sup>

61. The Working Group concludes that the deprivation of liberty of Ms. Hà, Mr. Ton and Mr. Truc resulted from the exercise of their rights to freedom of expression and association and to take part in the conduct of public affairs, and was contrary to article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. Their deprivation of liberty was arbitrary and falls within category II. The Working Group refers the matter to the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, and on the rights to freedom of peaceful assembly and of association.

62. As noted earlier, the Working Group considers that the provision applied to Ms. Hà, Mr. Ton and Mr. Truc, namely article 79 of the Penal Code, is vague and overly broad.<sup>21</sup> Article 79 does not define what behaviour amounts to “activities aimed at overthrowing the people’s administration” and leaves the determination of whether an offence has been

<sup>17</sup> See Human Rights Committee, general comment No. 34, para. 23.

<sup>18</sup> See A/HRC/26/6, paras. 143.4, 143.34, 143.115–118, 143.144–171 and 143.173.

<sup>19</sup> See also General Assembly resolution 70/161, para. 8.

<sup>20</sup> See, for example, opinions No. 26/2017, No. 75/2017, No. 79/2017, No. 35/2018 and No. 36/2018.

<sup>21</sup> The Working Group reached a similar conclusion about article 88 of the Vietnamese Penal Code (see opinions No. 1/2003, No. 1/2009, No. 6/2010, No. 24/2011, No. 27/2012, No. 26/2013 and Nos. 26, 27 and 75/2017). Ms. Hà was originally charged under article 88 when she was arrested on 16 December 2015.

committed entirely to the discretion of the authorities. As the Working Group has stated, the principle of legality requires that criminal laws be formulated with sufficient precision for the individual to be able to access and understand the law, and regulate his or her conduct accordingly.<sup>22</sup> In the present case, the application of a vague and overly broad provision adds weight to the Working Group's conclusion that the deprivation of liberty of Ms. Hà, Mr. Ton and Mr. Truc falls within category II. The Working Group considers that in some circumstances, laws may be so vague and broad that it is impossible to invoke a legal basis justifying the deprivation of liberty.

63. Given its finding that the deprivation of liberty of Ms. Hà, Mr. Ton and Mr. Truc was arbitrary under category II, the Working Group emphasizes that no trial of Ms. Hà and Mr. Ton should have taken place and no trial should take place in future in relation to Mr. Truc, whose trial is pending. However, Ms. Hà and Mr. Ton were tried and sentenced on 5 April 2018, and Mr. Ton's appeal was heard on 4 June 2018.<sup>23</sup> The Working Group considers that their right to a fair trial was violated prior to and during the trial and appeal hearings.

64. The source alleges that Mr. Ton and Mr. Truc were detained *incommunicado* following their arrests and their families were not permitted to visit them or to obtain information about their whereabouts and health. In Mr. Ton's case, this continued for seven months during his pretrial detention and is an ongoing situation for Mr. Truc, who remains in pretrial detention. The Government has stated that the rights to counsel and family visits were ensured in relation to Mr. Ton and that Mr. Truc had not received visits from his family and did not require a lawyer. However, the Government provided no evidence beyond these assertions, such as the letter that Mr. Truc reportedly sent to the People's Procuracy on 7 June 2018 stating that he did not require defence counsel. As a result, the Government has not rebutted the source's allegations. As the Working Group has stated, prolonged *incommunicado* detention creates the conditions that may lead to violations of the Convention against Torture and may itself constitute torture or ill-treatment.<sup>24</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also argued that the use of *incommunicado* detention is prohibited under international law (see A/HRC/13/39/Add.5, para. 156).

65. The Working Group considers that the *incommunicado* detention of Mr. Ton and Mr. Truc violated articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights and article 9 of the Covenant. In addition, being held in prolonged *incommunicado* detention effectively placed Mr. Ton and Mr. Truc outside the protection of the law, in violation of their 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.<sup>25</sup> The denial of contact with their families and the refusal to provide information to their families on the whereabouts and health of both individuals also amount to a violation of the right to have contact with the outside world under rules 43 (3), 58 (1) and 68 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) 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.

66. Furthermore, the source alleges that Mr. Ton and Mr. Truc were denied access to legal counsel following their arrests on 30 July and 4 August 2017 respectively.<sup>26</sup> According to the source, in matters involving national security, the Chairman of the Supreme People's Procuracy has the authority under article 58 of the 2003 Criminal Procedure Code to allow defence lawyers to participate in the procedure once the investigation has been completed. As noted earlier, the Government has not rebutted those *prima facie* credible allegations.

<sup>22</sup> See, for example, opinion No. 41/2017, paras. 98–101.

<sup>23</sup> Ms. Hà did not file an appeal against her conviction and sentence.

<sup>24</sup> See A/54/44, para. 182 (a). See also General Assembly resolution 68/156, para. 27.

<sup>25</sup> See, for example, opinions No. 46/2017, No. 47/2017, No. 69/2017 and No. 75/2017.

<sup>26</sup> Ms. Hà is a lawyer by training and chose to represent herself.

67. The denial of access to legal counsel by Mr. Ton and Mr. Truc violated their right to adequate time and facilities for the preparation of their defence and to communicate with counsel of their choosing under articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) of the Covenant. As the Working Group stated in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, 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 the moment of apprehension, and such access shall be provided without delay (paras. 12 and 67).

68. In addition, the trial of Ms. Hà and Mr. Ton on 5 April 2018 and Mr. Ton's appeal hearing on 4 June 2018 lasted only one day. As the Working Group has stated, a trial of only one day for a serious criminal offence suggests that guilt had been determined prior to the hearings.<sup>27</sup> In the present case, the trial involved multiple defendants charged with a national security offence for which life imprisonment or the death penalty could have been imposed. In such circumstances, the Working Group considers that Ms. Hà and Mr. Ton were denied the presumption of innocence guaranteed by article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

69. Finally, the Working Group notes the information provided by the Government that Mr. Truc made a confession during his investigation. The Working Group takes this opportunity to remind the Government that it bears the burden of proving that the confession was made freely.<sup>28</sup>

70. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give the deprivation of liberty of Ms. Hà, Mr. Ton and Mr. Truc an arbitrary character within category III.

71. Furthermore, the Working Group considers that Ms. Hà, Mr. Ton and Mr. Truc were targeted because of their activities as human rights defenders and pro-democracy activists, particularly their membership and leadership positions within the Brotherhood for Democracy. Their activities included launching an independent human rights news television station, advocacy and blogging on human rights issues, and calling for justice and adequate compensation for the victims of the Formosa environmental disaster.<sup>29</sup>

72. While Mr. Truc has yet to be tried, Ms. Hà and Mr. Ton received heavy sentences. It appears that their sentences were intended to send a message to human rights defenders that they must cease their work or face severe penalties. The arrest and detention of the three individuals took place in a manner which strongly suggests that it was a coordinated targeting of the Brotherhood for Democracy. Moreover, as the source points out, the three individuals are former prisoners of conscience, and their most recent arrest appears to be part of a pattern of using the law to curtail their peaceful advocacy. Notably, as the Government acknowledged in its response to the joint allegation letter, Mr. Ton has spent several years in prison for a conviction under article 88 of the Penal Code.

73. Several special procedures mandate holders recently noted a substantial increase in the number of arrests and detentions of human rights defenders in Viet Nam. In particular, the experts referred to the trial of six members of the Brotherhood for Democracy on 5 April 2018, including Ms. Hà and Mr. Ton, and called upon the Government to release them.<sup>30</sup>

74. For those reasons, the Working Group finds that Ms. Hà, Mr. Ton and Mr. Truc were deprived of their liberty on discriminatory grounds, that is, owing to their status as

<sup>27</sup> See, for example, opinions No. 75/2017, No. 36/2018 and No. 45/2018.

<sup>28</sup> See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 41.

<sup>29</sup> The Working Group has noted a pattern in Viet Nam of detaining activists who have attempted to raise awareness about the Formosa environmental disaster or provided support to victims of that incident. See, for example, opinions No. 27/2017, No. 79/2017, No. 35/2018 and No. 45/2018.

<sup>30</sup> See <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22937&LangID=E>.

human rights defenders. Their deprivation of liberty is arbitrary within category V. The Working Group refers the case to the Special Rapporteur on the situation of human rights defenders for further consideration. Given Mr. Truc's work in calling for justice for people affected by the Formosa disaster, the Working Group also refers this matter to the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

75. The Working Group is troubled by the source's allegations that Mr. Ton is suffering from injuries sustained when he was assaulted in February 2017. The source alleges that Mr. Ton has been denied medical treatment and that the prison guards do not allow his family to provide medication. The source also alleges that there is no electricity or light in his prison cell and it is extremely hot. The Government has not addressed these allegations, other than a statement in its response that Mr. Ton has had access to medical care and is in normal health. The Working Group considers that Mr. Ton's treatment falls short of the standards set out, *inter alia*, in rules 1, 13, 14, 24, 27, 30, 42 and 43 (1) (c) of the Nelson Mandela Rules. While the Government denies that the three individuals were tortured, the denial of medical treatment may amount to torture particularly if, as the source suggests, it has been used to force a confession from Mr. Ton. The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The Working Group urges the Government to immediately and unconditionally release Mr. Ton, to conduct a thorough investigation into his alleged assault and to prosecute the offenders.

76. Similarly, the Working Group is concerned by information provided by the source suggesting that Ms. Hà may have experienced a mental breakdown prior to her release, and calls upon the Government to ensure that she is afforded an enforceable right to compensation and other reparations, including psychological care.

77. The Working Group is aware that the three individuals involved in the present case are not the only members of the Brotherhood for Democracy who have been prosecuted under the national security provisions of the Vietnamese Penal Code. The Working Group wishes to clarify that, while it has addressed the situation of Ms. Hà, Mr. Ton and Mr. Truc in this opinion, its conclusions apply to other detainees targeted solely for the peaceful exercise of their rights, including other members of the Brotherhood for Democracy.

78. The present case is one of several cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty of persons in Viet Nam.<sup>31</sup> The Working Group notes that many of the cases involving Viet Nam follow a familiar pattern of lengthy pretrial detention with no access to judicial review and often without legal counsel; charges and prosecution under vaguely worded criminal offences; a very brief closed trial and appeal, at which basic due process has not been observed; and denial of access to the outside world and to medical treatment. Although the Government repeatedly asserts in its responses to communications from the Working Group and others that its procedures are in accordance with domestic legislation, that does not change the fact that the Government is in grave violation of its international human rights obligations. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty, in violation of the rules of international law, may constitute crimes against humanity.<sup>32</sup>

79. The Working Group would welcome the opportunity to engage constructively with the Government to address the arbitrary deprivation of liberty in Viet Nam. On 11 June 2018, the Working Group reiterated earlier requests to the Government for it to undertake a country visit, and awaits a positive response. Given that the human rights record of Viet Nam will be subject to review during the third cycle of the universal periodic review in

<sup>31</sup> See, for example, opinions No. 1/2009, No. 6/2010, No. 46/2011, No. 27/2012, No. 33/2013, No. 45/2015, No. 40/2016, No. 75/2017 and No. 36/2018.

<sup>32</sup> See, for example, opinion No. 47/2012, para. 22.

January 2019, an opportunity exists for the Government to enhance its cooperation with the special procedures and bring its laws into conformity with international human rights law.

### **Disposition**

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

The deprivation of liberty of Lê Thu Hà, Nguyen Trung Ton and Nguyen Trung Truc, being in contravention of articles 2, 6, 7, 8, 9, 10, 11 (1), 19, 20 and 21 (1) of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14, 16, 19, 22, 25 (a) and 26 of the Covenant, is arbitrary and falls within categories I, II, III and V.

81. The Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation of Ms. Hà, Mr. Ton and Mr. Truc 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 Covenant.

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

83. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Hà, Mr. Ton and Mr. Truc and to take appropriate measures against those responsible for the violation of their rights.

84. The Working Group requests the Government to bring its laws, particularly articles 79 and 88 of the revised Penal Code and articles 58, 119 and 120 of the 2003 Criminal Procedure Code, into conformity with the recommendations made in the present opinion and with the commitments made by Viet Nam under international human rights law.

85. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

86. The Working Group encourages the Government to incorporate the Model Law for the Recognition and Protection of Human Rights Defenders into its domestic legislation and to ensure its implementation.<sup>33</sup>

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

### **Follow-up procedure**

88. 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. Ton and Mr. Truc have been released and, if so, on what date;

<sup>33</sup> The Model Law was developed in consultation with more than 500 human rights defenders from around the world and 27 human rights experts. It is available at: [www.ishr.ch/sites/default/files/documents/model\\_law\\_full\\_digital\\_updated\\_15june2016.pdf](http://www.ishr.ch/sites/default/files/documents/model_law_full_digital_updated_15june2016.pdf).

(b) Whether compensation or other reparations have been made to Ms. Hà, Mr. Ton and Mr. Truc;

(c) Whether an investigation has been conducted into the violation of the rights of Ms. Hà, Mr. Ton and Mr. Truc 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.

89. 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.

90. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

91. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>34</sup>

*[Adopted on 21 August 2018]*

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<sup>34</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.