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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 76th session, 22-26 August 2016

Opinion No. 40/2016 concerning Nguyen Dang Minh Man (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. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.
2. In accordance with its methods of work (A/HRC/30/69), on 20 June 2016 the Working Group transmitted a communication to the Government of Viet Nam concerning Nguyen Dang Minh Man. 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 International Covenant on Civil and Political Rights (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);

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(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 other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Ms. Nguyen Dang Minh Man is a 31-year-old Vietnamese citizen. On 19 April 1989, when she was only 4 years old, Ms. Minh Man left Viet Nam with her family and stayed in a refugee camp in Thailand run by the Office of the United Nations High Commissioner for Refugees. In October 1996, she returned to Viet Nam and started her education. She finished high school in 2006 and continued her education at the School of Pharmacy in Tra Vinh Province.

5. Shortly before her arrest, Ms. Minh Man had worked primarily for a Vietnamese radio station, Radio Chan Troi Moi (Radio New Horizon), as a freelance photojournalist. Ms. Minh Man's photographs had been used by overseas media outlets for reporting news in Viet Nam, and her work had been published on her Facebook page. Through her photojournalism, Ms. Minh Man had reported on events not covered by the State-run media in Viet Nam and, by publishing her photography online, had provided an alternative news source for those inside and outside of Viet Nam.

6. According to the source, Ms. Minh Man had been particularly critical of the annexation by China of the Paracel and Spratly islands, which are claimed by Viet Nam. The Paracel and Spratly islands dispute had been a much-debated subject in Viet Nam and the slogan "HS.TS.VN" (or "Paracel and Spratly islands belong to Viet Nam") had begun to appear on buildings across Viet Nam in protest. Many Vietnamese citizens had resorted to spraying graffiti as a way of spreading awareness of the dispute and promoting open public debate on the annexation. Between April 2010 and July 2011, Ms. Minh Man had photographed such graffiti as a way of fuelling public debate. She had also travelled to places where political protests and civil unrest had occurred, photographed those events and published the photographs online. For example, on 5 June 2011, she had taken photographs of the anti-China protests in Ho Chi Minh City. However, according to the source, Ms. Minh Man had never been a participant in protests or demonstrations, other than as a photographer. The source claims that her photojournalism had been a form of activism in itself and points to the fact that her contribution to journalism has been recognized by the Assembly of Delegates of the association PEN International.

7. On 31 July 2011, Ms. Minh Man was arrested at Tan Son Nhat Airport in Ho Chi Minh City by plain clothes policemen from the Security and Investigation Department of the Ministry of Public Security. The authorities did not present a warrant, but only verbally stated the reason for Ms. Minh Man's temporary arrest as being due to her involvement with Viet Tan, an organization banned in Viet Nam. The source alleges that Ms. Minh Man was kept in an isolated room at the airport for two days and questioned each day for a number of hours by four or five interrogators in the absence of any legal representation. The source also claims that, despite being detained since her arrest on 31 July 2011, the first official document recognizing the arrest of Ms. Minh Man was issued on 2 August 2011, which was then considered the start date of her temporary detention.

8. The source further reports that, on 2 August 2011, Ms. Minh Man's home was searched and a number of items were confiscated by the police, including her camera and other photojournalistic materials. Following the search of her home, she was brought to Tra Vinh Camp for a few hours. She was then moved to the B-34 Centre in Ho Chi Minh City,

a prison in the south of Viet Nam that is reportedly used primarily to detain political prisoners and is reported to be hot and humid and with minimal sanitation. Ms. Minh Man was detained there for a 12-month period. On 12 August 2012, she was moved to the B-14 Centre in Hanoi, located in the far north of Viet Nam. She remained there for a five-month period from 12 August 2012 to 5 January 2013. This transfer made it harder for her family to visit her since they live in Tra Vinh City in the south of Viet Nam.

9. In total, between 4 August 2011 and 5 January 2013, nine detention orders and orders for the extension of temporary detention were issued in relation to Ms. Minh Man by three different authorities: the first three by the Security and Investigation Department of the Ministry of Public Security; the following four by the Supreme People's Procuracy; and the last two by the People's Court of Nghe An Province. Ms. Minh Man had been detained for over 16 months before the "decision to go to trial" was formally issued on 17 December 2012.

10. The offences she had allegedly committed were deemed to be a serious threat to national security and she was not granted bail prior to her trial. The reason given for prolonging the detention was that Ms. Minh Man had allegedly been an "active participant" in criminal activities aimed at "overthrowing the people's administration", pursuant to article 79 (1) of the Penal Code of Viet Nam. That article provides that 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; (2) other accomplices shall be subject to between 5 and 15 years of imprisonment".

11. According to the source, during Ms. Minh Man's temporary detention, the authorities managed to gather sparse pieces of evidence to secure a conviction against her. The authorities mainly relied on her alleged membership of Viet Tan, her participation in three seminars held in Thailand and two in Cambodia on "non-violent methods of struggle", and the writing of the slogan "HS.TS.VN" on a building (a public school).

12. The source states that, on 5 January 2013, Ms. Minh Man and 13 co-defendants were transferred separately to Vinh City. The transfer took place at night, to avoid publicity. Ms. Minh Man's trial was held on 8 and 9 January 2013 in Vinh City, Nghe An Province, almost a year and a half after her arrest. During her trial, she was detained in Nghe An prison camp.

13. Although there were 14 co-defendants, the trial itself reportedly only lasted two days. The source claims that the Government had sent over 1,200 policemen with armoured vehicles to barricade Vinh City for the duration of the trial to prevent foreign observers and journalists from gaining access to the courtroom. This was despite the fact that the "decision to go to trial" had clearly stated that the trial was to be held in public. The police temporarily detained and manhandled a number of bloggers who had attempted to attend the trial. The courtroom itself was filled with police officers, while international journalists and observers were refused access.

14. The source states that Ms. Minh Man's father was dissuaded by a local police inspector from seeking legal support or representation for his daughter. On the morning of the trial, she was appointed a public legal representative. This was the first time since her arrest that she had been offered any legal representation. However, she refused his service owing to a lack of time to prepare a defence and a lack of trust that her interests would be properly represented by the public legal representative.

15. According to the source, Ms. Minh Man was given five minutes to address the judge during her trial. She could only answer questions put to her with "yes" or "no" answers. If she tried to say any more, she was gagged by court officers. She was not allowed to

summon or examine her own witnesses. Ms. Minh Man and her co-defendants experienced technical difficulties with their microphones during the course of the hearing, while the prosecution's microphones worked without disruption.

16. On 9 January 2013, Ms. Minh Man was sentenced to eight years' imprisonment followed by five years of house arrest as an "active participant" in committing "criminal activities aimed at overthrowing the people's administration", pursuant to article 79 (1) of the Penal Code. The judgment made reference to her photojournalism, most notably her photographs of graffiti reading "HS.TS.VN" and the anti-China protest in Ho Chi Minh City. The judgment accused her of being a member of Viet Tan and of distributing her photographs to the organization. It also referred to the non-violent and peaceful methods of Viet Tan.

17. The source states that Ms. Minh Man did not appeal her conviction and sentence as she was warned that, if she filed an appeal, she would risk an additional six months of detention. This has significantly impeded her ability to pursue a domestic remedy and has essentially rendered the pursuit of such domestic remedies ineffective.

18. Since 8 January 2013, Ms. Minh Man has been detained in Camp 5, Yen Dinh, Thanh Hoa rehabilitation camp. The source claims that she is forced to undertake physical labour. Even though political prisoners are detained alongside other prisoners, the prison authorities attempt to maintain an environment that ensures the social isolation of political prisoners. If prisoners are seen to be developing a friendly relationship with Ms. Minh Man, they are called to the prison office and issued with a warning.

19. According to the source, on 16 November 2014, Ms. Minh Man and three other female prisoners were transferred to the "disciplinary zone" of the detention site, a newly constructed building with walls consisting of three layers of concrete and a locked gate. The innermost zone of the building is wired, similar to high-security detention facilities. Ms. Minh Man and the three other detainees were kept in rooms containing two prisoners each for 24 hours a day, seven days a week. On 28 November 2014, Ms. Minh Man started a hunger strike in protest against the unfair treatment she had been experiencing in detention. On 5 December 2014, she was able to alert her family of the situation during a five-minute monitored telephone call.

20. According to updated information received from the source, Ms. Minh Man remains isolated in the high-security detention zone, where conditions of solitude are severe. Ms. Minh Man is effectively cut off from the rest of the prison population. Interaction with non-political prisoners is not possible, and Ms. Minh Man is not entitled to participate in any group activities organized by the other prisoners, such as sports, arts and music programmes.

21. Ms. Minh Man is reported to be the only female currently held in the high-security zone. This leaves her vulnerable to abuse and is a source of great concern to her family. Ms. Minh Man's visitation rights remain limited, compounding the psychological effects of her isolation. Despite the fact that her family travels over 1,500 kilometres every month to see her, they are sometimes denied access to her without reason. When access is permitted, visitors can only communicate with Ms. Minh Man by telephone, with a sheet of glass physically separating them from her. The telephone visits are never allowed to be over an hour in length and are conducted in the presence of four or five guards, one of whom listens in on the call. There is a concern that supplies that her family leaves with the guards are not delivered to her once handed over. The prison authorities do not allow the personal practice of religious belief. As a result, bibles sent by Ms. Minh Man's family have been confiscated on numerous occasions, and Christian priests seeking to give her religious sacraments have been denied access.

22. Ms. Minh Man has been in detention for over five years since her arrest on 31 July 2011.

Submissions regarding arbitrary detention

23. The source submits that the deprivation of liberty of Ms. Minh Man is arbitrary in accordance with categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

24. In relation to category II, the source submits that the deprivation of liberty of Ms. Minh Man resulted from the exercise of her rights to freedom of opinion and expression and her right to association under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the Covenant.

25. The source points to the fact that Ms. Minh Man was arrested while pursuing a career as a freelance photojournalist and that her work was often critical of government policy and gave publicity to contested political issues, such as land seizures and the Paracel and Spratly islands dispute. Furthermore, when Ms. Minh Man was charged, one of the activities listed in her indictment was her photojournalism work, and her photojournalism materials were confiscated following her arrest and not returned. The source notes the ongoing trend in Viet Nam of detaining bloggers and human rights activists and argues that, although the charges related to Ms. Minh Man's alleged involvement in Viet Tan and the spraying of graffiti on a public school, the real purpose of her detention was to punish her for peacefully exercising her rights and to deter others from doing so. Finally, the judgment of the People's Court referred to Ms. Minh Man's photography, including of the "HS.TS.VN" slogan and the anti-China march in Ho Chi Minh City. Her arrest occurred less than two months after her coverage of the protest in Ho Chi Minh City.

26. The source recalls that all forms of opinion are protected by article 19 (1) of the Covenant, including views that are critical of a political regime, and that the right to freedom of opinion is absolute and cannot be derogated from in any circumstance. To criminalize the holding of an opinion or to intimidate, arrest or detain an individual on the basis of the opinions they may hold is incompatible with article 19 (1) of the Covenant. Furthermore, the right to freedom of expression can only be restricted under very limited circumstances but never in order to muzzle advocacy of multi-party democracy and human rights. Restrictions on the right to freedom of expression must be provided by law and strictly necessary. The penalization of a journalist solely for being critical of the Government or the social system espoused by the Government can never be a necessary restriction of the freedom of expression.

27. The source submits that article 79 (1) of the Penal Code is vague and overly broad because it does not delineate with certainty what activities are capable of falling within the provision. It should not have included Ms. Minh Man's photojournalism, as no violence occurred as a direct result of her work. Instead, Ms. Minh Man's work had been intended to raise social awareness and promote public debate on issues that she believed were important to Vietnamese society, as a vitally important alternative to the State-run media in Viet Nam. Furthermore, the source submits that the arrest and detention of Ms. Minh Man did not pursue a legitimate aim and that the Government has failed to demonstrate the necessity and proportionality of the arrest and detention to the stated aim of protecting national security.

28. In addition, the source argues that Ms. Minh Man's arrest and detention were linked to her association with other individuals who opposed government policy and promoted democratic principles in a peaceful manner. She was charged for her alleged involvement with an organization called Viet Tan, an opposition party that seeks to empower the Vietnamese people to seek social justice and defend their rights through non-violent civic

action, but which has been accused by the Government of being a terrorist organization. The source submits that there has been no clear link between the activity of Ms. Minh Man and acts of violence or threats to national security. In fact, the judgment of the People's Court notes the "non-violent" activity of Viet Tan in general.

29. In relation to category III, the source points to several instances of the non-observance of the right to a fair trial under articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. According to the source, these include:

(a) Denial of the right to a public hearing. There are no special circumstances set out in article 14 (1) of the Covenant that allowed for limited public access to the proceedings. The People's Court stated that the hearing would be conducted in public, but access to the courtroom during Ms. Minh Man's hearing was severely limited by the authorities. The Government sent over 1,200 policemen to restrict public access to the trial, filled the courtroom with police officers and detained bloggers who wanted to attend the trial;

(b) Denial of the right to a competent, independent and impartial tribunal. A tribunal cannot be considered independent if executive power is able to control or direct the judiciary. Given the reported lack of independence and impartiality in the Vietnamese court system, Ms. Minh Man's hearing was not held by a competent, independent and impartial tribunal;

(c) Denial of the right to be presumed innocent. Ms. Minh Man and her co-defendants were surrounded by an overwhelming number of police officers. Presenting the defendants in this way indicated that the authorities believed the defendants to be dangerous. Furthermore, the trial of 14 persons lasted only two days, during which time Ms. Minh Man was only able to address the judge for five minutes, suggesting that the outcome of her trial had been pre-determined;

(d) Denial of the right to adequate time and facilities for the preparation of a defence and to communicate with counsel of her choosing. Ms. Minh Man was questioned every day for hours by four or five interrogators while she was in pretrial detention following her arrest. She had no access to legal counsel for the whole year in which the investigation was conducted. A public legal representative was appointed the morning before her trial, but Ms. Minh Man refused these services as she believed that she would not be adequately represented. By having a legal representative appointed so late, and having been denied the opportunity to choose her own counsel, Ms. Minh Man could not have access to the proceedings or participate meaningfully in them;

(e) Denial of the right to equality of arms, including the right to examine witnesses against her and to obtain the attendance and examination of witnesses on her behalf. Ms. Minh Man was not granted the same procedural rights as the prosecution as she was only given five minutes in which she could address the court and could only respond to questions put to her with a "yes" or "no" answer. She was gagged if she tried to elaborate on her defence and experienced technical difficulties with her microphone, while the prosecution presented its case without interruption. She was not permitted to call witnesses, which put her at a substantial disadvantage to the prosecution;

(f) Denial of the right to be tried without undue delay. Ms. Minh Man was detained from 31 July 2011 to 8 January 2013 without trial. She was charged under article 79 of the Penal Code, which is considered a particularly serious offence that threatens national security, and was therefore denied bail.

30. The source submits that the appropriate remedy would be for the Government to release Ms. Minh Man and withdraw the charges against her, or ensure that the charges are

determined by an independent and impartial tribunal in proceedings conducted in strict compliance with the provisions of the Covenant. The source also submits that the Government should provide just compensation to Ms. Minh Man for the arbitrary detention that she has suffered and take the necessary steps to prevent further violations of her rights to freedom of expression and association as recognized and guaranteed by the Covenant and the Universal Declaration of Human Rights.

Response from the Government

31. On 20 June 2016, 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 20 August 2016 about the current situation of Ms. Minh Man, including any comment on the source's allegations. The Working Group also requested the Government to clarify the legal grounds justifying Ms. Minh Man's continued detention and to provide details regarding the conformity of the proceedings against her with international law, particularly international human rights treaties to which Viet Nam is a party.

32. The Working Group regrets that it did not receive a response from the Government to the 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.

Discussion

33. 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.

34. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

35. The present case again raises the issue of the compatibility of article 79 of the Penal Code of Viet Nam with the right to freedom of opinion and expression and the right to association, enshrined in international human rights law, including the Universal Declaration of Human Rights and the Covenant. Article 79 (1) criminalizes activities that are carried out with intent to "overthrow the people's administration".

36. In its previous jurisprudence, the Working Group has considered the application of this provision (see, for example, opinions No. 26/2013, No. 27/2012 and No. 46/2011). In those cases, the Working Group found that article 79 of the Penal Code is so vague and imprecise that it could result in penalties being imposed not only on persons using violence for political ends, but also on persons who have merely exercised their legitimate rights to freedom of opinion or expression. The Working Group also pointed out in those cases that the Government did not allege or provide evidence of any violent action on the part of the petitioners and that, in the absence of such information, their convictions could not be regarded as consistent with the Universal Declaration of Human Rights or the Covenant.²

¹ See, for example, A/HRC/19/57, para. 68, and opinion No. 52/2014.

² The Working Group has, in relation to other provisions of the national security legislation of Viet Nam, made the same point over many years about the need for a clear distinction between armed and violent acts that endanger national security and the peaceful exercise of the rights to freedom of opinion and expression. See, for example, opinions No. 42/2012, No. 20/2003, No. 13/1999, No. 27/1998, No. 21/1997, No. 3/1996, No. 7/1994 and No. 14/1993. The Working Group also made this

Finally, the Working Group recalled that the holding and expressing of opinions, including those that are not in line with government policy, is protected under article 19 of the Covenant.

37. As the source points out, several of Ms. Minh Man's co-defendants filed a petition with the Working Group, resulting in a finding in opinion No. 26/2013 that their deprivation of liberty had been arbitrary according to categories II, III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. Like Ms. Minh Man, the co-defendants had been convicted on the basis of their alleged involvement with Viet Tan. A similar conclusion was reached in another case involving alleged membership of Viet Tan, where some of the allegedly subversive activities had included attending seminars on non-violent struggle in Cambodia and Thailand and producing and disseminating signs bearing the slogan "HS.TS.VN" (see opinion No. 46/2011). Given the similarity between those cases and the present case, the Working Group has a strong basis to conclude that Ms. Minh Man has been arbitrarily deprived of her liberty.

38. In the present case, the Working Group considers that Ms. Minh Man's photojournalism in Viet Nam falls within the boundaries of opinions and expression protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. In the absence of any information indicating that Ms. Minh Man had engaged in violent activity or that her work had directly resulted in violence, the Working Group concludes that her arrest and detention was not because of any threat to national security. Rather, she was detained in order to restrict the dissemination of material that was critical of the Government and that drew attention to issues of current interest. Similarly, Ms. Minh Man's affiliation with Viet Tan falls within the right to freedom of association protected by article 20 of the Universal Declaration of Human Rights and article 22 of the Covenant, and the 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.

39. There was no submission from the Government that any of the permitted restrictions on the freedom of expression and association found in articles 19 (3) and 22 (2) of the Covenant apply in the present case. It follows that Ms. Minh Man was detained solely for the peaceful exercise of her rights and that her case falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

40. The Working Group notes that others have expressed concern about the use of national security legislation in Viet Nam to restrict the exercise of human rights. In the universal periodic review conducted by the Human Rights Council in relation to Viet Nam in February 2014, 30 recommendations were made by delegations to improve the enjoyment of the freedom of opinion and expression and the freedom of association in Viet Nam, with some of those relating specifically to amending the vague provisions regarding national security contained in the Penal Code (including article 79), the release of political prisoners, and the need to implement the opinions of the Working Group on Arbitrary Detention.³ Given the ongoing concern relating to the national security legislation of Viet Nam, the Government may consider it an appropriate time to work with international human rights mechanisms to bring those laws into conformity with the Universal Declaration of Human Rights and the Covenant. The Working Group would welcome an

point during its most recent country visit to Viet Nam in 1994 (see E/CN.4/1995/31/Add.4, paras. 58-60 and 77).

³ See A/HRC/26/6, para. 143.

invitation to conduct a country visit to follow up its initial visit in 1994 and to constructively assist in this process.

41. The Working Group also finds that the facts presented by the source, which have not been contested by the Government, demonstrate serious violations of the right to a fair trial. In particular, the Working Group has taken into account: (a) the large police presence at Ms. Minh Man's trial;⁴ (b) the summary nature of a two-day trial involving 14 defendants; (c) numerous procedural irregularities, particularly in addressing the court and in not being able to call witnesses, that put Ms. Minh Man at a disadvantage compared with the prosecution; (d) the lack of access to legal assistance throughout the entire pretrial detention and trial periods (the trial judgment states that some of the other defendants were represented at trial by lawyers from law firms); (e) the delay of nearly 18 months between Ms. Minh Man's arrest and trial, for which the Government offered no justification; and (f) the denial of bail during the trial period.⁵ The Working Group considers that Ms. Minh Man should have been tried more expeditiously, particularly given that the trial judgment indicated that she had demonstrated an "acceptable level of cooperation during the investigation" and therefore had not contributed to the delay. Furthermore, the numerous extension orders for Ms. Minh Man's pretrial detention referred to her detention as being "necessary for the investigation", without considering whether alternatives such as bail were appropriate. Article 9 (3) of the Covenant requires that pretrial detention be reasonable and necessary taking into account all the circumstances and should not be mandatory for all defendants charged with a particular crime without regard to individual circumstances.⁶

42. The Working Group concludes that Ms. Minh Man was denied the right to a public hearing by a competent, independent and impartial tribunal. The Government did not advance any argument as to why the trial would fall within any of the exceptions in article 14 (1) of the Covenant that would allow it to be closed to the public. She was also denied the right to the presumption of innocence, the right to adequate time and facilities to prepare a defence and to communicate with a counsel of her choosing, the right to equality of arms and the right to be tried without undue delay, in violation of article 9 (3) and article 14 (1)-(3) (b)-(e) of the Covenant. Those violations of the right to a fair trial are of such gravity as to give Ms. Minh Man's deprivation of liberty an arbitrary character according to category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

43. The Working Group wishes to record its grave concern about Ms. Minh Man's physical and mental well-being since her arrest and detention in July 2011. The Working Group refers in particular to the allegations made by the source that Ms. Minh Man is the only female to be subjected to prolonged isolation in harsh conditions within a high-security detention zone where she is not able to participate in any group activities, has limited visitation rights and is not permitted to practise her religion. The Working Group considers that such treatment violates Ms. Minh Man's right under article 10 (1) of the Covenant to be treated with humanity and respect for her inherent dignity, and falls

⁴ In paragraph 30 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee stated that defendants should not be presented to the court in a manner indicating that they may be dangerous criminals as this violates the presumption of innocence.

⁵ The Working Group reaffirmed in two recent cases involving Viet Nam (opinions No. 45/2015 and No. 46/2015) that pretrial detention should be an exception and should be as short as possible. In those two cases, the length of pretrial detention was eight months and six months, respectively.

⁶ See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 38.

significantly short of the requirements of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).⁷ It may also amount to torture or other cruel, inhuman or degrading treatment or punishment, under article 7 of the Covenant.

44. The Working Group notes that the source sought a recommendation that Ms. Minh Man be released and the charges against her withdrawn, or that the charges be determined by an independent and impartial tribunal in proceedings conducted in accordance with the Covenant. However, the Government has not provided any information to indicate a link between Ms. Minh Man's photojournalism and a threat to national security that would warrant another trial. Moreover, Ms. Minh Man has already been detained for five years for spraying graffiti on a public school, which is well beyond the range of a proportionate penalty for minor property damage. The Working Group considers that there is no reason to recommend another trial and recommends the immediate and unconditional release from detention of Ms. Minh Man.

Disposition

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

The deprivation of liberty of Nguyen Dang Minh Man was arbitrary, being in contravention of articles 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 10, 14, 19, 22 and 25 of the Covenant, and falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

46. The Working Group requests the Government to take the necessary steps to remedy the situation of Ms. Minh Man without delay and bring it into conformity with the standards and principles in the Universal Declaration of Human Rights and the Covenant.

47. Taking into account all the circumstances of the case, especially the risk of harm to Ms. Minh Man's physical and mental integrity, the Working Group considers that the adequate remedy would be to release Ms. Minh Man immediately and accord her an enforceable right to compensation in accordance with article 9 (5) of the Covenant.

48. The Working Group urges the Government to bring relevant legislation, particularly laws such as article 79 (1) of the Penal Code, which is vague and overly broad and has been used to restrict the exercise of human rights, into conformity with the recommendations made in the present opinion and with the commitments of Viet Nam under international human rights law.

49. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers Ms. Minh Man's case for appropriate action 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, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Follow-up procedure

50. 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 the action taken in follow-up to the recommendations made in the present opinion, including:

⁷ General Assembly resolution 70/175. See, for example, rules Nos. 1, 3, 23, 43-45, 58, 59, 65, 66, 105, 119 and 120.

- (a) Whether Ms. Minh Man has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Minh Man;
- (c) Whether an investigation has been conducted into the violation of Ms. Minh Man'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 the Government with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

51. The Government is invited to inform the Working Group of any difficulties that 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.

52. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the possibility of undertaking 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 the progress made in implementing its recommendations, as well as any failure to take action.

53. The Working Group recalls that the Human Rights Council has called for all States to cooperate with the Working Group, 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.

[Adopted on 26 August 2016]