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# Advance Unedited Version

Distr.: General  
4 February 2021

Original: English

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-ninth session, 23 to 27 November 2020

#### Opinion No. 81/2020 concerning Mr. Ho Van Hai (Vietnam)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 23 July 2020, the Working Group transmitted to the Government of Vietnam a communication concerning Ho Van Hai. The Government replied to the communication on 22 October 2020. Viet Nam is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights (UDHR) 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 UDHR 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. Mr. Ho Van Hai is a citizen of Socialist Republic of Vietnam, who was granted permanent residence in the United States of America for 10 years. Born in Vietnam in 1964, Mr. Ho Van Hai is a medical doctor who runs a private clinic located in P. Linh Tay Ward, Thu Duc District. He also serves as the president of the Go West Foundation, a non-governmental organization that he founded in 2014 to provide assistance to young Vietnamese people seeking to obtain scholarships from Western Universities and higher learning institutions. Additionally, he is a blogger. He has also written articles promoting education.

5. Mr. Ho Van Hai wrote about Vietnamese Government policy on social media platforms. His online commentary covered a range of political issues, though his primary focus was the handling of environmental issues. Subsequent to the industrial toxic spill at the Formosa Ha Tinh Steel factory in April 2016 that affected multiple provinces in central Vietnam, Mr. Ho Van Hai, using his blog and Facebook page under the names of “BSHoHai” and “DrHoHai,” joined other environmental activists and organisations in criticising and proposing peaceful protests, civil reform and calling for Government’s accountability.

#### a. Arrest and pre-trial detention

6. According to the source Mr. Ho Van Hai had planned to travel to the United States in November 2016. Prior to his scheduled flight, however, he was arrested by the Ho Chi Minh City police on 2 November 2016, whilst he was at Asia Polyclinic.

7. The source further informs that the police searched his computer and found 36 articles which allegedly disseminated “anti-state information.” Local authorities claimed that Mr. Ho Van Hai “caught in the act of distributing information and materials with anti-state content on the internet.”

8. The source also informs that Mr. Ho Van Hai was charged under article 88 of the 1999 Vietnamese Penal Code for “conducting propaganda against the Socialist Republic of Vietnam.” It was alleged by the authorities that Mr. Ho Van Hai had disseminated distorted information that caused the public to lose trust in the Government. Further, police officials stated that they had been monitoring Mr. Ho Van Hai’s online activities prior to his arrest.

9. Immediately following Mr. Ho Van Hai’s arrest, he was detained and held in Phan Dang Luu detention centre whilst he was being investigated. In December 2017, Mr. Ho Van Hai was transferred from Phan Dang Luu detention centre to Chi Hoa prison. The transfer was sudden and Mr. Ho Van Hai was unable to take his personal belongings with him which meant that he had to sleep on a tiled floor without a mat for at least three weeks.

#### b. Trial proceedings and appeal

10. On 1 February 2018, Mr. Ho Van Hai was tried and convicted in the Ho Chi Minh City People’s Court. The trial, which was conducted in secret and closed to the public, lasted just one day. His family was only informed of the trial two days before it began, and only two of his close family members were permitted to attend. Owing to his family’s lack of resources, Mr. Ho Van Hai did not have a lawyer at the trial. At the end of the trial, he was sentenced to four years’ imprisonment to be followed by two years of house arrest.

11. On 3 March 2018, the Senior People’s Court in Ho Chi Minh City accepted the case for Mr. Ho Van Hai, and the appeal was due to be heard on 19 June 2018. Further, this appeal was scheduled to be tried in public. However, on 19 June 2018, Mr. Ho Van Hai’s family was informed that the trial would be delayed for a few days, and then later heard that the trial would be delayed indefinitely. No reasons were provided for this postponement. Mr. Ho Van Hai was not made aware that his trial had been postponed as he did not have a lawyer or access to information in Chi Hoa prison.

12. According to the source, Mr. Ho Van Hai was detained in Chi Hoa Prison in Ho Chi Minh City in harsh conditions. Mr. Ho Van Hai suffers from several chronic health problems, including gingivitis, high blood pressure and diabetes. These health problems have been reportedly exacerbated during his time in the Chi Hoa prison. Further, Mr. Ho Van Hai did not receive sufficient food or the correct medication to monitor and control his health conditions.

13. The source states that although Mr. Ho Van Hai has not been directly tortured, he lived in fear that he would receive such treatment. The source states also that Phan Dang Luu detention centre and Chi Hoa prison are known for very poor conditions of detention and for torture acts of prisoners. This naturally resulted in Mr. Ho Van Hai suffering from psychological pressure.

14. The source further informs that on 17 April 2020, Mr. Ho Van Hai was released from Chi Hoa prison and is currently continuing to serve two years of house arrest as a part of his sentence.

c. Analysis of violations

15. The source submits that Mr. Ho Van Hai's arrest and detention is arbitrary under categories I, II and III as established by the UN Working Group on Arbitrary Detention.

i. Category I

16. The source alleges that Mr. Ho Van Hai's detention is arbitrary because he was held incommunicado; was arrested without judicial authorization for such deprivation of liberty; was prosecuted under vague laws; and was prosecuted under laws used to target or silence Government critics.

17. It is further argued that in violation of articles 9(3) and 9(4) of the Covenant, Mr. Ho Van Hai was not brought promptly before a judge or other judicial officer and was denied a trial within a reasonable time or release following his arrest. Although Mr. Ho Van Hai was arrested on 2 November 2016, his trial did not begin until 15 months later, on 1 February 2018. Furthermore, the source notes that his trial was held in secret and was closed to the public. Mr. Ho Van Hai's family was informed of the trial only two days before it began, and only two of his closest relatives were allowed to attend. Mr. Ho Van Hai's family did not have the resources to hire a lawyer, so he did not have a lawyer at trial.

18. On appealing his conviction, Mr. Ho Van Hai was not brought promptly before a judge or other judicial officer within a reasonable time. On 3 March 2018, the Senior People's Court in Ho Chi Minh City accepted the case for Mr. Ho Van Hai's appeal, but on 19 June 2018, which was the date of his scheduled appeal, Mr. Ho Van Hai's family was told that the date of hearing his appeal would be deferred for a few days. Later, Mr. Ho Van Hai's family learnt that the case had been deferred indefinitely. The court did not provide an explanation for this postponement.

19. The source further submits that in violation of article 9(1) of the Covenant and Vietnamese domestic law, a warrant was not presented at the time the Ho Chi Minh City Police arrested Mr. Ho Van Hai. Rather, Mr. Ho Van Hai's arrest occurred spontaneously after the police searched his computer and found 36 articles that they considered to be "anti-State information." The source argues that this chain of events amounts to a deprivation of liberty without a judicial authorization.

20. The source also posits that in violation of article 15(1) of the Covenant, Mr. Ho Van Hai was sentenced to four years in prison followed by two years of house arrest under article 88 of the 1999 Penal Code. Article 88 criminalizes "conducting propaganda against the State" and has, according to the source, been criticized by human rights organizations for being vague and susceptible to abuse by the authorities. The source also notes that article 88 does not provide individuals with a proper indication of how the law limits their conduct. Rather than providing sufficient precision so that an individual can regulate his or her conduct, article 88 is vague and has been used to prosecute individuals without sufficient justification.

ii. Category II

21. The source submits that Mr. Ho Van Hai's detention is arbitrary because he was arrested, detained and convicted for exercising his freedom of expression. The source notes that while restrictions on this right can apply under certain circumstances; such circumstances are absent in this case.

22. It is submitted that in violation of article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights, the authorities arbitrarily detained and prosecuted Mr. Ho Van Hai as a direct result of his exercising freedom of expression.

23. The source submits that the charge of "conducting propaganda" under article 88 of the 1999 Penal Code is a violation of an individual's freedom of expression because it vaguely criminalizes a broad swath of speech and information-sharing acts. Mr. Ho Van Hai was charged under article 88 of the 1999 Penal Code for conducting propaganda against the State. Thus, no matter whether the underlying factual allegations are true, the authorities has deprived Mr. Ho Van Hai of his liberty under a law which is itself incompatible with right to freedom of expression guaranteed under the Universal Declaration of Human Rights and Covenant.

24. Further, it is argued that in addition to the fact that Mr. Ho Van Hai was convicted under a law that violated his right to freedom of expression, he was specifically targeted for his blogging that was critical of the Government. Therefore, his detention violated his right to freedom of expression both *de jure* and *de facto*. The Ho Chi Minh City Police alleged Mr. Ho Van Hai disseminated "distorted" information that caused the public to lose trust in the Government. It is clear to the source that the Government targeted Mr. Ho Van Hai for detention as retaliation for his online posts criticizing the Government and its response to the Formosa disaster.

25. The source notes that the article 19 of the Covenant provides limited exceptions for national security, public safety and public order. It also argues that the narrow limitations do not apply in this case. Although the Government claimed that his detention was based on his "conducting propaganda against the State", as might be considered appropriately banned under articles 19 and 20 of the Covenant, in actuality none of Mr. Ho Van Hai's online postings called directly or indirectly for any violence or could reasonably be considered to threaten national security, public order, public health or morals or the rights or reputations of others. Instead, the Government was using the term of "conducting propaganda" as a pretext to silence criticism, which is not an acceptable purpose under article 19(3) of the Covenant.

iii. Category III

26. The source claims that Mr. Ho Van Hai's arrest and detention is arbitrary as there was a total or partial non-observance of the international norms relating to the right to a fair trial in this case.

27. The source specifies that in violation of article 14(3)(c) of the Covenant, Ho Van Hai's trial did not commence until 15 months after his arrest. Mr. Ho Van Hai was arrested on 2 November 2016, and his trial did not begin until 1 February 2018. During this time, he was transferred from Phan Dang Luu detention centre to Chi Hoa prison in early December 2017.

28. On 3 March 2018, the Senior People's Court in Ho Chi Minh City accepted the case for Ho Van Hai's appeal. The appeal was scheduled to be heard at the Senior People's Court in Ho Chi Minh City at the Go Vap District on 19 June 2018. However, on 19 June, Mr. Ho Van Hai's family was told that the date would be delayed for a few days. Later, they heard that the case had been delayed indefinitely. The court did not provide an explanation as to why the case was postponed.

29. The source further submits that in violation of articles 14(3)(d) and 14(3)(b) of the Covenant, Principle 18 of the Body of Principles and Rule 119 of the Mandela Rules, Mr. Ho Van Hai was not provided with the assistance of legal counsel. His family did not have the resources to hire a lawyer and so he did not have one at trial.

30. According to the source, in violation of articles 14(1) and 14(3)(e) of the Covenant and articles 7 and 10 of the UDHR, Mr. Ho Van Hai was not given a fair and public hearing. Mr. Ho Van Hai's trial was reportedly held in secret and closed to the public. His family was informed of the trial only two days before it began, and only his two closest relatives were allowed to attend. Mr. Ho Van Hai's appeal was initially accepted and scheduled to be tried in public at the Senior People's Court in Ho Chi Minh City at the Go Vap District on 19 June 2018. However, Mr. Ho Van Hai's family was informed that the case had been delayed indefinitely. The court did not provide an explanation as to why the case was postponed.

31. The source also submits that in violation of articles 7, 10, and 14 of the Covenant; articles 1, 4 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; article 5 of the Universal Declaration of Human Rights; Principles 1, 6, 21 of the Body of Principles; and Rules 1 and 43 of the Mandela Rules, Mr. Ho Van Hai was subjected to inhuman treatment.

32. More specifically, the source notes that despite his chronic health problems, Mr. Ho Van Hai was transferred suddenly from Phan Dang Luu detention center to Chi Hoa prison and was unable to take his belongings with him. He was therefore forced to sleep on the tiled floor without a mat for at least three weeks. At the Chi Hoa prison, Mr. Ho Van Hai is detained with approximately 10 other prisoners, a situation that is stressful for Mr. Ho Van Hai and puts his life in danger. In addition, the psychological pressures at Chi Hoa prison were negatively affecting Mr. Ho Van Hai. At Chi Hoa, Mr. Ho Van Hai had to live with the fear of receiving the death penalty. Mr. Ho Van Hai has not been directly tortured by the police, but prisoners are often intimidated while in prison.

33. The source further claims that in violation of Principle 24 of the Body of Principles and Rules 22.1 and 27.1 of the Mandela Rules, the Government has not provided Mr. Ho Van Hai with the medical care he needed. Mr. Ho Van Hai has had several chronic health problems, which were exacerbated in prison. Mr. Ho Van Hai's health conditions could be easily controlled with the proper medication, but he was unable to receive such medication or the proper care. Due to the conditions at the prison, Mr. Ho Van Hai's health has rapidly deteriorated. He was also unable to receive food or medical supplies from his family.

#### *Response from the Government*

34. On 23 July 2020, the Working Group transmitted the source's allegations to the Government under its regular communication procedure, requesting the Government to provide detailed information by 22 September 2020 about the current situation of Mr. Ho Van Hai.

35. On 11 September 2020, the Government requested an extension of the deadline for response. The extension was granted, with a new deadline of 22 October 2020.

36. In its response of 22 October 2020, the Government denied the source's allegations, in the terms reproduced in the following paragraphs.

37. The Government asserts that on 1 February 2018, the People's Court of Ho Chi Minh City held the trial and sentenced Mr. Ho Van Hai to 4 years in prison and 2 years under house arrest for the offence of "conducting propaganda against the Socialist Republic of Viet Nam" under Article 88 of the Criminal Code of 1999 (as amended in 2009).

38. The arrest and trial of Mr. Ho Van Hai were carried out on sound legal grounds, with full respect for Vietnamese law and consistent with international conventions to which Viet Nam is a party. During legal proceedings against Mr. Ho Van Hai, including prosecution, trial and enforcement of court judgment, the respective competent authorities of Viet Nam had ensured that the legitimate rights of the accused according to Vietnamese law were observed. According to the Government, Mr. Ho Van Hai admitted his offence and refused to use the service of defense lawyers. He also made an application requesting leniency.

39. The Government thus refutes the allegations made in the communication from the Working Group, describing them as ‘inaccurate’ and that they were mostly drawn from unsubstantiated sources and did not reflect the nature of this case. The Government thus maintained that the arrest and trial of Mr. Ho Van Hai cannot be said to amount to arbitrary detention in any sense.

40. According to the Government, nobody in Vietnam is arrested, prosecuted or made to undergo trial for exercising their fundamental freedoms. Consistent policies and guiding legal principles of Viet Nam recognize, respect and promote human rights, including the rights to freedom of expression.

41. The Government submitted that consistent with article 19.3 of the Covenant, article 25 of the Vietnamese Constitution of 2013 proclaims that citizens have the right to freedom of speech and freedom of the press, and have the right of access to information, the right to assembly, the right to association, and the right to demonstration. The exercise of those rights are however subject conditions prescribed by law in case of necessity for reasons of national defense, national security, social order and safety, social morality and community wellbeing (article 14.2).

42. The rights of detainees are totally recognized and protected as prescribed in the Law on Execution of criminal judgments and Law on Enforcement of custody and temporary detention. The Law on Execution of criminal judgments provides for a regime of health care for inmates, including initial health examination upon checking into detention facilities and regular quarterly medical check-ups. Furthermore, Decree No. 117/2011/ND-CP issued on 15 December 2011 elaborates on the management of prisoners and allowances for food, clothing, accommodation, health care and family visits, etc. In addition, Circular No. 07/2018/TT-BCA of the Ministry of Public Security issued on 12 February 2018 provided more concrete guidance on the conditions for and frequencies of family visits, sending care packages, correspondence and external communications.

43. During his detention, the rights of Mr. Ho Van Hai as prescribed by the abovementioned legal documents of Viet Nam were ensured. He was not subjected to torture or discrimination and was ensured of his right health care, as prescribed by the laws of Viet Nam. There was no evidence proving the link of Mr. Ho Van Hai’s health situation and his detention condition. He was released from prison before completion of his sentence.

*Supplementary response from the Government*

44. In augmenting its submissions, the Government maintained that the allegations made in the communication concerning Mr. Ho Van Hai are inaccurate, mostly drawn from unverified sources and were a distortion of the correct position. According to the Government, Mr. Ho Van Hai was prosecuted for violating Vietnamese law, not for “the exercise of the right to freedom of expression”.

45. The Government reiterated that Mr. Ho Van Hai was searched and arrested by the Police of Ho Chi Minh City on 2 November 2016 for possessing and disseminating inaccurate and slanderous articles, which injured the reputation of individuals and organizations of the State of Socialist Republic of Viet Nam. According to State sources, Mr. Ho Van Hai had uploaded 36 articles of the kind prohibited under the law in Viet Nam. The information also compromised national security, social order and safety contrary to Vietnamese law. His trial for the crime of “conducting propaganda against the Socialist Republic of Viet Nam” under article 88 of the Criminal Code of 1999 (as amended in 2009), was publicly and transparently conducted by an independent and competent court. On 1 February 2018, at the first instance trial, Mr. Ho Van Hai admitted his crime, made statements honestly following which he was convicted on 9 March 2020, by the People’s Court of Ha Noi City. The trial was held. He was subsequently sentenced to 4 years in imprisonment and 2 years under probation. These events were reported by the Vietnamese press.

46. The Government maintained that from the time of his arrest through to trial, conviction and sentencing, Mr. Ho Van Hai's right to due process was observed under both Vietnamese law and treaties to which Viet Nam is a party. In particular, the search and arrest warrants were approved by the People's Procurate and were witnessed by representatives of the administration and people at Mr. Ho Van Hai's residence, with those who undertook the arrests and arrest and Mr. Ho Van Hai himself signing for them. He did not submit any complaint about the investigation as well as the exercise his rights during his temporary detention. The Government thus did not agree with the assertion that the arrest of Mr. Ho Van Hai was inconsistent with laws and that he was arbitrarily detained. The Government also pointed out that Mr. Ho Van Hai was released from prison before he completed his sentence and was at the time of the Government's reply to the communication, out of custody.

47. The Government's position was that its competent authorities found that Mr. Ho Van Hai's acts could not be considered to have been done in exercise of the right to freedom of expression. Furthermore, that during the investigation, Mr. Ho Van Hai admitted his crime and applied for leniency and refused to use the service of defense lawyers.

48. The Government also asserted that there was no basis Mr. Ho Van Hai had to live in fear as the death sentence was inapplicable to the kind of offence for which he was convicted. The Government assured that in Viet Nam, no one is arrested, prosecuted or put on trial for exercising fundamental freedoms as the country recognizes, respects, and promotes human rights, including the right to freedom of expression. Article 25 of the Vietnamese Constitution of 2013 expressly guaranteed that "Citizens have the right to freedom of speech and freedom of the press, and have the right of access to information, the right to assembly, the right to association, and the right to demonstration. The exercise of those rights shall be subject to exceptions derogation permissible on the basis of national security, social order and safety, social morality and community wellbeing (article 14.2).

49. The Government informed that after being arrested, Mr. Ho Van Hai was detained at the temporary detention center of the Investigation Agency, the Police of Ho Chi Minh City. In November 2017, because the temporary detention center was disbanded, Mr. Ho Van Hai was transferred to the Chi Hoa Detention Center. During the whole process of detention, he had access to food, clothing and accommodation. The Government dismissed as "inaccurate" information contained in the communication that Mr. Ho Van Hai had to sleep on a tiled floor without a mat for at least three weeks.

50. Likewise, the claim that he did not see family was dismissed, with the Government stating that he had met his relatives 7 times and received gifts from them on 16 occasions. There was neither torture nor intimidation of Mr. Ho Van Hai during his incarceration and no complaint and appeal was received by authorities from either Mr. Ho Van Hai or his relatives in respect of his conditions of detention. The Government further asserted that the Chi Hoa Detention Center conducted health examination on Mr. Ho Van Hai regularly, and provided medicines to treat high blood pressure and gingivitis on six occasions. In addition, the competent authorities did not recognize that his diseases have worsened. The Government thus denied that the conditions of detention at the Phan Dang Luu Detention Center and Chi Hoa Detention Center were deplorable.

51. The Government restated that on 17 April 2020, in a humanitarian spirit, Mr. Ho Van Hai was released from prison before the completion of his sentence. He is now at his residence, under a probation process as a result of the first instance judgment, not under house arrest.

*Additional comments from the source*

52. In its response, the Government did not provide any substantive evidence to rebut the allegations. The Government made unsubstantiated claims in response to the categories I, II and III violations set out in the petition. Because the Government failed to provide factual evidence refuting the violations set out in the petition, it has not met its burden of proof.

## Discussion

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

54. In determining whether the deprivation of liberty of Mr. Ho Van Hai's 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 law 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 (A/HRC/19/57, para. 68).

55. As preliminary issue, the Working Group notes that Mr. Ho Van Hai was in fact released about six months earlier than the full sentence and is said by the source to be currently under house arrest. Although the source has not described the conditions of house arrest which prevents the Working Group from assessing whether Mr. Ho Van Hai is currently detained, the Working Group nevertheless notes that in accordance with its methods of work, para 17 (a), it 'reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned.' In the present case, the Working Group considers that the allegations made by the source are extremely serious and Mr. Ho Van Hai has spent long time in prison. Therefore, it shall proceed to deliver the opinion.

### i. Category I

56. According to the source, Mr. Ho Van Hai endured pre-trial detention for about fifteen months. He was arrested on 2 November 2016 and was only tried on 1 February 2018. There is nothing to suggest that between his arrest and his trial Mr. Ho Van Hai was brought before any judicial authority to review the legality of his detention. For its part, the Government asserts that Mr. Ho Van Hai's arrest warrant was approved by the People's Procurate and was witnessed by representatives of the administration and people at Mr. Ho Van Hai's residence. The Working Group considers that the Government could have provided more information on this issue.

57. Even if it is accepted that Mr. Ho Van Hai's arrest warrant was approved by the Procurate, that fact in itself does not make an otherwise arbitrary pre-trial detention regular. While the Government has argued that the arrest and detention were carried out strictly in accordance with the national law, the Working Group recalls that it 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>1</sup> In the settled jurisprudence and practice of the Working Group, the Procurate has been held not to be an independent judicial authority and does not satisfy the criteria of article 9 of the Covenant.<sup>2</sup> Accordingly, the Working Group finds that Mr. Ho Van Hai's pre-trial detention was undertaken in the absence of judicial review of its legality, in violation of his right to be brought promptly before a judicial authority under article 9(3) of the Covenant.<sup>3</sup>

58. Furthermore, according to article 9(3) of the Covenant, pre-trial detention should be the exception rather than the norm, and should be ordered for the shortest time possible.<sup>4</sup> Put differently, liberty is recognised under article 9(3) of the Covenant as the core consideration with

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<sup>1</sup> See e.g. Opinion Nos. 50/2018, 37/2018, 20/2018,1/2018, 79/2017, 50/2017, 42/2012 and 46/2011.

<sup>2</sup> E/CN.4/1995/31/Add.4, para. 57(c); Opinion Nos. 45/2019, para. 52; 44/2019, para. 53; 46/2018, para. 50; 35/2018, para. 37; 75/2017, para. 48. See also Opinion Nos. 16/2020 and 15/2020; Human Rights Committee, General comment No. 35, para. 32; CCPR/C/VNM/CO/3, para. 26; CAT/C/VNM/CO/1, paras. 24-25.

<sup>3</sup> In reaching this conclusion, the Working Group reiterates that while prolonged pre-trial detention may be permitted under the Vietnamese Criminal Procedure Code 2003 and other legislative provision such as Procurate allowing approval of arrest warrants, these do not substitute the right to judicial review of a detention and are consequently inconsistent with international human rights law.

<sup>4</sup> A/HRC/19/57, paras. 48-58.

detention merely as an exception.<sup>5</sup> Detention pending trial must thus be based on an individualised determination that it is reasonable and necessary for such purposes as to prevent flight, interference with evidence or the recurrence of crime.<sup>6</sup> Information furnished to the Working Group in this case was that Mr. Ho Van Hai had intended to travel to the United States of America where he has permanent residence. There is, however, no suggestion from the Government that by that scheduled travel he had intended to flee from prosecution.

59. Moreover, in the present case, there was clearly no personalised reflection on Mr. Ho Van Hai's circumstances, nor was there any consideration of alternatives to detention while he was held in pre-trial detention. His pre-trial detention having not been judicially reviewed for appropriateness lacked legal justification.

60. While the source made general allegations in relation to *incommunicado* detention, submitting that Mr. Ho Van Hai's was held *incommunicado* during his pre-trial detention from the time of his arrest on 2 November 2016 up until his trial on 1 February 2018 during which time, he was transferred from Phan Dang Luu detention center to Chi Hoa prison in early December 2017, his family appeared not to have had access to him and was informed of the trial only two days before it began. He was also unable to receive food or medical supplies from his family. In denying the allegations, the Government stated that Mr. Ho Van Hai had in fact met his relatives 7 times and received gifts from them on 16 occasions. No specific details of the times or the occasions were however furnished. Consequently, the Working Group is inclined to accept the source's version that Mr. Ho Van Hai was held *incommunicado* during his pre-trial detention.

61. The Working Group has repeatedly asserted that holding persons *incommunicado* violates their right to contest the legality of their detention before a court or tribunal under article 9(4) of the Covenant.<sup>7</sup> Judicial oversight of any detention is a central safeguard for personal liberty<sup>8</sup> and is critical in ensuring that detention has a legitimate basis. In the circumstance attending Mr. Ho Van Hai's pre-trial incarceration, he was unable to challenge his detention before a court. Consequently, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2(3) of the Covenant was violated. He was also placed outside the protection of the law, in violation of his right to be recognised as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

62. Lastly, the source submits that the charge of "conducting propaganda" under article 88 of the 1999 Penal Code which Mr. Ho Van Hai faced violates an individual's freedom of expression in that it vaguely criminalizes speech and information-sharing acts. The source argued that the charge under article 88 of the 1999 Penal Code for conducting propaganda against the State deprived Mr. Ho Van Hai of his liberty under a law which is itself incompatible with right to freedom of expression guaranteed under the Universal Declaration of Human Rights and the Covenant. The Government admits the existence of the offence of "conducting propaganda against the Socialist Republic of Viet Nam" under article 88 of the Criminal Code of 1999 (as amended in 2009).

63. The Working Group views the provision under which Mr. Ho Van Hai was convicted as being vague and overly broad. 'Conducting propaganda' while one is exercising the fundamental freedom of expression requires that at the very least there is clarity in the parameter of conduct constituting the offence taking into account the freedom of expression. The Working Group has previously made it clear that prosecution under vague and overly broad laws offend the principle of legality, including specific findings that article 88 of the Penal Law does not satisfy this

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<sup>5</sup> Ibid, para. 54.

<sup>6</sup> Human Rights Committee, General Comment No. 35, para. 38.

<sup>7</sup> Opinion Nos. 16/2020, 15/2020, 45/2019, 44/2019, 9/2019, 35/2018, 46/2017, 45/2017.

<sup>8</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, A/HRC/30/37, para. 3; CAT/C/VNM/CO/1, para. 24.

principle.<sup>9</sup> This principle entails that laws be framed with sufficient precision so that the individual can access and understand them so as to enable him or her to regulate his or her conduct accordingly.<sup>10</sup> Mr. Ho Van Hai could not reasonably foresee that the exercise of his freedom of expression to communicate ideas through his peaceful activities of using social media to criticise Government policy in relation to the industrial toxic spill at the Formosa Ha Tinh Steel factory using his blog and Facebook page, proposing peaceful protests, civil reform and Government accountability would amount to criminal conduct under this provision.

64. For those reasons, the Working Group finds that the Government failed to establish a legal basis for Mr. Ho Van Hai's detention. His detention is therefore arbitrary under category I.

ii. Category II

65. The source submits that Mr. Ho Van Hai's detention is arbitrary because he was arrested, detained and convicted for exercising his freedom of expression in circumstances which did not fall within permissible derogations of fundamental liberties. The arrest and detention was, according to the source, in violation of article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. It is also contended by the source that in addition to the fact that Mr. Ho Van Hai was convicted under a law that violated his right to freedom of expression, he was specifically targeted for his blogging activities critical of the Government. The Government targeted Mr. Ho Van Hai for detention as retaliation for his online posts criticizing the Government and its response to the Formosa disaster.

66. While noting the limitation placed on fundamental rights and freedoms under article 19 of the Covenant based on national security, public safety and public order, the source argues that those narrow limitations do not apply in this case. Although the Government seemingly justified the detention on grounds of securing national interest and security, in reality none of Mr. Ho Van Hai's activities could reasonably be considered to threaten national security, public order, public health or morals or the rights or reputations of others. The Government bears the burden of establishing that Mr. Ho Van Hai's activities could reasonably be considered to have been a threat to national security, public order, public morality or such other ground. On the information submitted the Working Group believes that that burden has not been discharged.

67. The Working Group considers that charges and convictions under the provision of article 88 of the Penal Code of the Soviet Republic of Vietnam for the peaceful exercise of rights cannot be regarded as consistent with the Universal Declaration of Human Rights or the Covenant.<sup>11</sup> The Working Group regrettably notes that as regards the vague and imprecise national security offences that do not distinguish between violent acts capable of threatening national security and the peaceful exercise of the right to freedom of opinion and expression, the position has remained unchanged since its visit to Vietnam undertaken in October 1994.<sup>12</sup>

68. In this regard, the Working Group shares and reiterates the concern of the Human Rights Committee regarding the excessive restrictions imposed by the Government of Vietnam on the freedom of peaceful assembly and public meetings, including on human rights. The Group is equally concerned at allegations of the disproportionate use of force and arbitrary arrests by law enforcement officials to disrupt demonstrations, including those related to labour rights, land dispossession and the Formosa steel plant ecological disaster (art. 21).<sup>13</sup>

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<sup>9</sup> Opinions Nos. 15/2020, para. 58; 45/2019, para. 54; 9/2019, para. 39; 46/2018, para. 62; 36/2018, para. 51; 35/2018, para. 36; 40/2016, para. 36; 26/2013, para. 68; 27/2012, para. 41; 46/2011, para. 22. See also CCPR/C/VNM/CO/3, paras. 45-46.

<sup>10</sup> Opinion No. 41/2017, paras. 98-101. See also Opinion No. 62/2018, paras. 57-59; Human Rights Committee, General comment No. 35, para. 22.

<sup>11</sup> See Opinion Nos. 45/2019; 9/2019; 46/2018; 36/2018; 35/2018; 40/2016; 26/2013; 27/2012, 46/2011. See also A/HRC/41/7, paras. 38.73, 38.171.

<sup>12</sup> E/CN.4/1995/31/Add.4, paras. 58-60. See also CCPR/C/VNM/CO/3, para. 45(d).

<sup>13</sup> CCPR/CO/75/VNM, para. 21)

69. The Working Group notes that article 19(2) of the Covenant provides that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” This right includes political discourse, commentary on public affairs, discussion of human rights, and journalism.<sup>14</sup> It protects the holding and expression of opinions, including those which are critical of, or not in line with, Government policy.<sup>15</sup> The Working Group considers that Mr. Ho Van Hai’s conduct fell within the right to freedom of opinion and expression protected under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant and that he was detained for exercising these rights. In reaching this conclusion, the Working Group takes note that the Government’s admission that Mr. Ho Van Hai’s publication amounted to causing propaganda against the Government of Vietnam.

70. Besides, Mr. Ho Van Hai’s criticism of Government policy through his commentary on social media concerned matters of public interest. The Working Group considers that he was detained for exercising his right to take part in the conduct of public affairs under article 21(1) of the Universal Declaration on Human Rights and article 25(a) of the Covenant.<sup>16</sup>

71. There is nothing to suggest that the permissible restrictions on the above rights set out in article 19(3) and 25 of the Covenant would apply in the present case. The Working Group was not convinced that prosecuting Mr. Ho Van Hai’s was necessary to protect a legitimate interest under these provisions, nor that Mr. Ho Van Hai’s conviction and sentence was a proportionate response to his activities. Importantly, there is no evidence to suggest that Mr. Ho Van Hai’s criticism of the Government called directly or indirectly for violence or could reasonably be considered to threaten national security, public order, public health or morals, or the rights or reputations of others. The Human Rights Council has called on States to refrain from imposing restrictions under article 19(3) that are not consistent with international human rights law.<sup>17</sup> The Working Group refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

72. 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, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and to draw public attention to the observance of human rights.<sup>18</sup> The source has demonstrated that Mr. Ho Van Hai’s was detained for the exercise of his rights under this Declaration. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration on Human Rights and article 26 of the Covenant.<sup>19</sup>

73. The Working Group concludes that Mr. Ho Van Hai’s detention resulted from the peaceful exercise of his right to freedom of opinion and expression, as well as the right to take part in the conduct of public affairs, and was contrary to article 7 of the Universal Declaration on Human Rights and article 26 of the Covenant. His detention was arbitrary under category II.

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<sup>14</sup> Human Rights Committee, General comment No. 34, para. 11.

<sup>15</sup> Opinion Nos. 8/2019, para. 55; 79/2017, para. 55.

<sup>16</sup> Human Rights Committee, General comment No. 25, para. 8 (noting that citizens may take part in the conduct of public affairs by exerting influence through public debate). Opinion Nos. 16/2020, 15/2020, 45/2019, 44/2019, 9/2019, 46/2018, 45/2018, 36/2018, 35/2018, 40/2016, 26/2013, 42/2012, 46/2011.

<sup>17</sup> A/HRC/RES/12/16, para. 5(p).

<sup>18</sup> GA RES 53/144 annex, articles 1 and 6(c). See also GA RES 74/146, para. 12.

<sup>19</sup> Opinion Nos. 16/2020, 15/2020, 45/2019, 44/2019, 9/2019, 46/2018, 45/2018, 36/2018, 35/2018, 79/2017, 75/2017.

iii. Category III

74. Given its finding that Mr. Ho Van Hai's incarceration was arbitrary under category II, the Working Group underscores that no trial of Mr. Ho Van Hai should have taken place. However, he was tried on 1 February 2018, convicted and sentenced. The information submitted by the source reveals violations of Mr. Ho Van Hai's right to a fair trial.

75. The source alleges that Mr. Ho Van Hai's arrest and detention is arbitrary for failure to observe the international norms relating to the right to a fair trial. The violation alleged relates to article 14(3)(c) of the Covenant. Mr. Ho Van Hai's trial did not commence until 15 months after his arrest. The source further submits that in violation of articles 14(3)(d) and 14(3)(b) of the Covenant, Principle 18 of the Body of Principles and Rule 119 of the Mandela Rules, Mr. Ho Van Hai was not provided with the assistance of legal counsel. His family did not have the resources to hire a lawyer and so he did not have one at trial.

76. According to the source, there was also a violation of articles 14(1) and 14(3)(e) of the Covenant and articles 7 and 10 of the Universal Declaration on Human Rights as he was not given a fair and public hearing. The trial was reportedly held in secret and closed to the public. His family was informed of the trial only two days before it began, and only his two closest relatives were allowed to attend. Additionally, that in violation of articles 7, 10 and 14 of the Covenant; articles 1, 4 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; article 5 of the Universal Declaration on Human Rights; Principles 1, 6, 21 of the Body of Principles; and Rules 1 and 43 of the Mandela Rules, Mr. Ho Van Hai was subjected to inhuman treatment.

77. The source also spoke of the chronic health problems of Mr. Ho Van Hai, his sudden transfer from a detention centre to a prison and the reportedly deplorable condition in which he was kept thus inducing psychological stress and endangering his life. Furthermore, it noted that in violation of Principle 24 of the Body of Principles and Rules 22.1 and 27.1 of the Mandela Rules, the Government did not provide Mr. Ho Van Hai with the medical care he needed.

78. The Working Group concludes that Mr. Ho Van Hai was not accorded his right to be tried without undue delay given that more than fifteen months had elapsed after his arrest on 2 November 2016 and his trial on 1 February 2018. The information provided by the Government confirms the dates of arrest and trial. Although indeed the reasonableness of any delay in bringing a case to trial will depend on the peculiar circumstances of each case, taking into account the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the authorities<sup>20</sup> there is nothing in the information furnished by either the source or the Government to suggest that there were any factors that could have justified the delayed commencement of Mr. Ho Van Hai's trial. That delay was thus in violation of articles 9(3) and 14(3)(c) of the Covenant. As already noted, Mr. Ho Van Hai should never in the first place have been detained for the peaceful exercise of his rights under international human rights law. The delay in trying him was unacceptable<sup>21</sup> and only compounded the transgression of the provisions of the Covenant referred to above.

79. Mr. Ho Van Hai was facing a serious charge of conducting propaganda against the State which carries a lengthy imprisonment. The Government alleges that the conduct of Mr. Ho Van Hai was capable of adversely affecting the national security. It is common ground that the trial of Mr. Ho Van Hai lasted only one day. The Government states that Mr. Ho Van Hai had confessed his guilt and sought leniency and was convicted on that basis.

80. The source, however, avers that following his conviction, Mr. Ho Van Hai had in fact appealed the conviction and that on 3 March 2018, the Senior People's Court in Ho Chi Minh City accepted the case and the appeal was due to be heard on 19 June 2018. Further, this appeal

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<sup>20</sup> Human Rights Committee, General comment No. 35, para. 37 and General comment No. 32, para. 35.

<sup>21</sup> Opinion No. 46/2019, para. 63 (the Working Group was not convinced that there was a category II violation and was unable to find that a 16-month delay before the trial was unreasonable). See also Opinion Nos. 16/2020 and 15/2020.

was scheduled to be tried in public. However, on 19 June 2018, Mr. Ho Van Hai's family was informed that the trial would be delayed for a few days, and then later heard that the trial would be delayed indefinitely. No reasons were provided for this postponement. The Government states in its response that the appeal trial was suspended because Mr. Ho Van Hai withdrew the appeal application. The Working Group finds the statements of the Government on the issue of the appeal contradictory. In these circumstances, the Working Group is inclined to believe the narrative of the source that an appeal had been launched against the conviction. This in turn negates the claim that there was an admission of guilt on the part of Mr. Ho Van Hai during the first trial.

81. The very short first trial of Mr. Ho Van Mail was conducted in a day, notwithstanding the serious national security charge brought against him under article 88 of the Penal Code. As the Working Group has observed,<sup>22</sup> a short trial for a serious criminal offence would seem to suggest predetermination of the guilt of the subject prior to the hearing, in violation of his right to the presumption of innocence under article 11(1) of the Universal Declaration on Human Rights and article 14(2) of the Covenant.

82. In regard to the right to counsel, the source submits that in violation of articles 14(3)(d) and 14(3)(b) of the Covenant, Principle 18 of the Body of Principles, and Rule 119 of the Mandela Rules, Mr. Ho Van Hai was not provided with the assistance of legal counsel. His family did not have the resources to hire a lawyer and so he did not have one at trial. The Government, however, maintains that during the investigation, Mr. Ho Van Hai admitted his crime and applied for leniency and refused to use the service of defense lawyers. What the Government did not say was whether it had notified Mr. Ho Van Hai or his family of the procedure for appointing legal counsel, and how to file the required paperwork.

83. The Working Group remains unconvinced by the Government's submissions on the absence of counsel to represent Mr. Ho Van Hai given the seriousness of the charged he was facing. The right to legal assistance applies from the moment of deprivation of liberty and across all settings of detention, including criminal justice, immigration detention, administrative detention, detention in health-care settings (including in the context of public health emergencies), and detention in the context of migration. This is essential to preserve the right of all those deprived of their liberty to challenge the legality of detention, which is a peremptory norm of international law. Therefore, the right to legal assistance must be ensured from the moment of deprivation of liberty and, in the context of the criminal justice setting, prior to questioning by the authorities. All persons deprived of their liberty must be made aware of their right to legal assistance from the moment of detention and should have access to legal aid services if they cannot afford such assistance themselves.<sup>23</sup>

84. The failure to provide Mr. Ho Van Hai with immediate access to a lawyer following his arrest, and to ensure that he had adequate time to meet with his lawyer, violated his right to adequate time and facilities to prepare his defence under article 14(3)(b) and (d) of the Covenant. Any legislation or procedure that purports to remove the right to counsel or to delay it until after the investigation phase is inherently contrary to international human rights standards.<sup>24</sup>

85. Additionally, the source alleges that in violation of article 14(1) of the Covenant and article 10 of the Universal Declaration of Human Rights, Mr. Ho Van Hai was not given a fair and public hearing, his trial having delayed and reportedly taken place in secret and closed to the public. The Government on the other hand claims that the trial was publicly and transparently conducted by an independent and competent court and the proceeding were reported by the press.

86. The Working Group is satisfied that the source has established that Mr. Ho Van Hai's trial did not meet the standards of a fair and public hearing by a competent, independent and impartial

<sup>22</sup> Opinion Nos. 15/2020, 45/2019, 44/2019, 46/2018, 45/2018, 36/2018, 75/2017.

<sup>23</sup> See A/HRC/45/16 which at para 51; A/HRC/30/37, principle 9 and guideline 8; Human Rights Committee General Comment No. 35, para. 35. See also Opinion No. 16/2020, paras. 75-76.

<sup>24</sup> CCPR/C/VNM/CO/3, paras. 25-26, 35-36.

tribunal, in violation of article 10 of the Universal Declaration of Human Rights and article 14(1) of the Covenant. There was no information to suggest that any of the exceptions to the right to a public hearing in article 14(1) of the Covenant applied in the present case. Furthermore, the delayed appeals trial was in violation of article 14(5) of the Covenant.

87. In conclusion, the Working Group has taken note of the source's allegations that despite his chronic health problems, Mr. Ho Van Hai was transferred to a prison where he was forced to sleep on the tiled floor without a mat for at least three weeks; that he was detained with approximately 10 other prisoners, a situation that was not only stressful for him but also put his life in danger and occasioned psychological pressures. The source confirms that Mr. Ho Van Hai has not been directly tortured but prisoners are often intimidated while in prison. The Working Group is therefore unable to reach a conclusion on these allegations, all of which were denied by the Government.

88. The Working Group concludes that the violations of the right to a fair trial were of such gravity as to give Mr. Ho Van Hai's detention an arbitrary character under category III. The Working Group registers its concern about allegations of violations of fair trial guarantees for detainees, especially in cases involving human rights defenders, political activists and individuals accused of crimes related to national security, including the denial of the right to legal assistance, access to a lawyer of their choice and a trial within a reasonable time; insufficient time and facilities to prepare their defence<sup>25</sup>.

iv. Category V

89. The Working Group considers that Mr. Ho Van Hai was targeted because of his peaceful activities, including joining with other environmental activists and organisations in criticizing the State's response to the Formosa chemical spill in 2016. As the Working Group has previously observed, there appears to be a pattern in Viet Nam of detaining activists who have attempted to raise awareness about the Formosa environmental disaster.<sup>26</sup> Moreover, in the discussion above concerning category II, the Working Group established Mr. Ho Van Hai's detention resulted from the peaceful exercise of his rights under international law. When a detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>27</sup>

90. The Working Group finds that Mr. Ho Van Mai was deprived of his liberty on discriminatory grounds, that is, owing to his status as a human rights defender, and on the basis of his political or other opinion in seeking to hold the authorities to account. His deprivation of liberty violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2(1) and 26 of the Covenant, and was arbitrary according to category V. The Working Group refers this case to the Special Rapporteur on the situation of human rights defenders.

v. Concluding remarks

91. The Working Group observes that the present case is one of the several cases referred to the Working Group in recent years regarding arbitrary detention in Viet Nam.<sup>28</sup> These cases follow a similar pattern of extended detention pending trial with no access to judicial review; incommunicado detention; prosecution under vaguely worded criminal offences for the peaceful exercise of human rights; denial of access to legal counsel, a brief closed trial at which due process is not observed, disproportionate sentencing, and denial of access to the outside world.

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<sup>25</sup> CCPR/C/VNM/CO/3, para. 35.

<sup>26</sup> Opinion Nos. 45/2019, 44/2019, 9/2019, 46/2018, 45/2018, 35/2018, 79/2017, 27/2017.

<sup>27</sup> Opinion Nos. 59/2019, para. 79; 13/2018, para. 34; 88/2017, para. 43.

<sup>28</sup> Opinion Nos. 16/2020, 15/2020, 45/2019, 44/2019, 9/2019, 8/2019, 46/2018, 45/2018, 36/2018, 35/2018, 79/2017, 75/2017, 27/2017, 26/2017, 40/2016, 46/2015, 45/2015.

This pattern indicates a systemic problem with arbitrary detention in Vietnam which, if it continues, may amount to a serious violation of international law.<sup>29</sup>

92. The Working Group welcomes any opportunity to work constructively with the Government to address arbitrary detention. A significant period has passed since the Working Group's last visit to Viet Nam in October 1994. The Working Group considers that it is now an appropriate time to conduct another visit. On 11 June 2018, the Working Group reiterated earlier requests to the Government to undertake a country visit, and will continue to seek a positive response.

### **Disposition**

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

The deprivation of liberty of Ho Van Hai, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11, 19 and 21(1) of the Universal Declaration of Human Rights and articles 2(1), 2(3), 9, 14, 16, 19, 25(a) and 26 of the International Covenant on Civil and Political Rights, was arbitrary and falls within categories I, II, III and V.

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

95. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Ho Van Hai an enforceable right to compensation and other reparations, in accordance with international law.

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

97. The Working Group requests the Government to bring its laws, particularly article 88 of the Penal Code, into conformity with the recommendations made in the present opinion and with the commitments made by Viet Nam under international human rights law.

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

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

### **Follow-up procedure**

100. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether compensation or other reparations have been made to Mr. Ho Van Hai;
- (b) Whether an investigation has been conducted into the violation of Mr. Ho Van Hai's rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonise the laws and practices of Viet Nam with its international obligations in line with the present opinion;

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<sup>29</sup> Opinion No. 47/2012, para. 22.

(d) Whether any other action has been taken to implement the present opinion.

101. 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.

102. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

103. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>30</sup>

*[Adopted on 26 November 2020]*

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<sup>30</sup> Human Rights Council resolution 42/22, paras. 3 and 7.