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The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office, the World Trade Organization and Other International Organizations in Geneva presents its compliments to the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights and has the honour to hereby transmit the reply of Viet Nam to the joint communication Ref. AL VNM 5/2019 dated 22 January 2020 from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office, the World Trade Organization and Other International Organizations in Geneva avails itself of this opportunity to renew to the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 18 March 2020



Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights
GENEVA

Reply of Viet Nam to the Joint Communication sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

Ref. AL VNM 5/2019 (dated 22 January 2020)

Allegations made in the above-mentioned communication are inaccurate, mostly drawn from unsubstantiated information and did not reflect the nature of the case. In Viet Nam, nobody is prosecuted, put on trial, detained or harassed for working as “human rights defenders”, for exercising the right to freedom of expression or for cooperating with United Nations human rights mechanisms.

1. Legal framework and enforcement of the right to freedom of opinion and expression in Viet Nam

Viet Nam always respects and ensures the right to freedom of opinion and expression and freedom of the press. 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 demonstrate. The exercise of those rights shall be prescribed by law. (Article 25)*” and that “*Citizens have the right to participate in the management of the State and management of society, and to discuss and propose to state agencies issues about their base units, localities and the whole country. The State shall create the conditions for citizens to participate in the management of the State and society; and shall publicly and transparently receive and respond to the opinions and petitions of citizens. (Article 28)*”.

Besides, the legal framework of Viet Nam further reinforces these principles with various laws relating to freedom of expression and freedom of the press. Chapter II of the Law on the Press of 2016 provides concrete stipulations on freedom of the press and on the right of citizens to freely express opinion on mass media. Chapter XV of the Penal Code of 2015 provides rules on dealing with the infringement on fundamental freedoms and democratic freedoms of citizens, including Article 167, which elaborates on offences to the rights of citizens to freedom of expression, freedom of the press, access to information and peaceful protest. Furthermore, the Law on Complaints of 2011 and the Law on Denunciations of 2018 and many other relevant laws protect the

rights of citizens when their rights are infringed upon, including by acts of harassment or menace.

In practice, the full enjoyment by the Vietnamese of the rights to freedom of expression, freedom of the press and access to information can be attested by the rapid growth and diversity of the mass media in the country. Vietnamese people have access to popular television channels such as CNN, BBC, NHK, EU Network... All major international news agencies and newspapers such as Reuters, AP, AFP, Kyodo... have resident reporters in Viet Nam. Many foreign magazines and newspapers are widely distributed in the country and the people can freely access them on the internet.

The press has become a forum for social and people's organizations and an important avenue to protecting their legitimate interests and fundamental freedoms. The press also plays an active role in checking and monitoring the implementation of Government policies and laws, especially those relating to human rights. Many press and media agencies proactively expose corruptions, violations of human rights or citizens' rights and illegitimate deeds. Through the media, people can petition, express political opinion, and contribute to public discourse on all cultural, socio-economic and political issues.

On cyberspace, people can access all kinds of information and regularly express opinions and views on a wide range of social issues. As of 2019, Viet Nam is home to 64 million internet users (66% of the population), 62 million social network users (64% of the population). Against the backdrop of the rapid growth of the internet, social networks and applications, so far state regulators have neither blocked nor interfered into the flow of information while ensuring the rights of the people to freedom of information.

Debates and deliberations at the National Assembly on national policies; seminar, discussions and multi-dimensional reporting on socio-economic and political issues with broad participation by social, political organizations and the people... happen on a daily basis. As in any rule-of-law state, the exercise of the right to freedom of expression carries with it the responsibility and respect for the law of the country and the rights and legitimate interests of individuals, organizations and society. These are consistent with international conventions in the field of human rights to which Viet Nam is a party, including ICCPR. Viet Nam only prosecutes and puts on trial those breaking the law, not those exercising their legitimate rights to freedom of expression and assembly. The

detention and trial of violators of the law follow due process of Vietnamese laws.

2. Case of Dinh Thi Phuong Thao

- In 2015, Dinh Thi Phuong Thao received an administrative citation for joining with others to incite people to disrupt public order.

- On November 15, 2019, when entering Viet Nam, Dinh Thi Phuong Thao was asked by the police to provide details on her activities relating to the terrorist group Viet Tan. The police suspected that Dinh Thi Phuong Thao had attended training courses organized by this terrorist group in the Philippines. It is normal for the police and security forces in any country to clarify suspected activities in order to protect national security and counter terrorism. *This is not arbitrary detention as alleged in the joint communication from Special Procedures.*

- Viet Tan is not a group with a peaceful intention but a terrorist organization founded in 1982 in Thailand. This group has for many times sent agents and weapons to Viet Nam aimed at causing riots and social instability. Recently, Viet Tan continues to smuggle people into Viet Nam to carry out activities that disrupt public order, resist law enforcement personnel and destroy properties in many localities in Viet Nam.

- *Vietnamese authorities neither withdraw nor confiscate the passport of Dinh Thi Phuong Thao nor limit her right to freedom of expression or other fundamental freedoms. Allegations that Dinh Thi Phuong Thao and her family are frequently subjected to harassment are not true and lack merit.*

3. Case of Pham Chi Dung

a) Basic information on Pham Chi Dung

Pham Chi Dung was born on October 12, 1966 in Hanoi; registered his residence in [REDACTED]. He is held in temporary detention facing the charge of "Creating, storing, distributing or propagating information, documents and materials against the State of Viet Nam" according to Article 117 of the Penal Code. His health is in normal conditions.

b) Legal basis of arrest

- In August 2019, initial investigations by the police suggested that Pham Chi Dung posted 63 articles that distort the truth, incite individuals to rise up and overthrow the people's government, incite hatred and extremism, mislead people on the socio-economic situation with a view to causing public anxiety and social instability.

- On November 18, 2019, the investigative agency of Ho Chi Minh City Police filed criminal charges, issued a temporary detention warrant and a search warrant against Pham Chi Dung for creating, storing, distributing or propagating information, documents and materials against the State of Viet Nam according to Article 117 of the Penal Code.

- On November 20, 2019, the People's Procuracy of Ho Chi Minh City approved these criminal charges and warrants. The relevant authorities of Viet Nam executed these warrants. The arrest and detention of Pham Chi Dung and the search of his home observed due process of criminal proceedings set forth in the law of Viet Nam; the minutes of proceedings were signed by all parties concerned such as the police, witnesses and Pham Chi Dung himself. This case is an ongoing investigation.

- These criminal proceedings are regular and necessary to investigate the case and collect additional evidence to establish the nature and severity of offences and hold perpetrators to account.

- *On Article 117 of the Penal Code:* Article 117 unambiguously spells out offences punishable by law and establishes clear boundaries between these offences and the exercise of the right to freedom of expression. This Article only deals with intentional distortion of the truth aimed at opposing the state and does not in any way restrict the right to freedom of expression or other fundamental freedoms. So, Article 117 is compatible with Article 19 of ICCPR. Specifically, the exercise of the right to freedom of expression carries with it special duties and responsibilities, including respecting the rights or reputations of others and protecting national security, public order, public health and morals.

- *On the right to legal counsel:* According to Article 74 of the Criminal Procedure Code of 2015, for national security offences, the head of the People's Procuracy has the authority to allow defense lawyers to take part in legal proceedings after the investigative phase is over. This rule was put in place to ensure the confidentiality necessary for investigations of an ongoing case.

Besides, Pham Chi Dung expressed his wish to self-defense himself rather than seek the service of defense lawyers.

- *On the right to family visits:* As the investigation phase of this case is still going on, the law only allows for family sending supplies and gifts to the accused; requests for family visits during this phase could not be met to ensure the confidentiality of ongoing investigations.

- During investigations, Ho Chi Minh Police strictly observed Article 183 of the Criminal Procedure Code of 2015 that stipulates that questioning in detention facilities or premises of investigative agencies must be audio or video recorded. In addition, Pham Chi Dung is entitled to file grievance in case there are lapses in criminal proceedings. *On this basis, the Government of Viet Nam confirms that Pham Chi Dung is not subjected to arbitrary detention, torture, beating or harsh treatment.*

- Currently, Pham Chi Dung's health is in normal conditions. He is provided with adequate food, accommodation, and health care as prescribed by the Law on Custody and Temporary Detention, consistent with international human rights standards to which Viet Nam is a party./.