



**PERMANENT MISSION OF THE
SOCIALIST REPUBLIC OF VIET NAM
TO THE UNITED NATIONS OFFICE,
WORLD TRADE ORGANIZATION AND
OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA**

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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 latter's Joint Communication AL VNM 5/2020 (dated 10 November 2020) concerning Trinh Ba Phuong, Trinh Ba Tu, Can Thi Theu, Nguyen Thi Tam and Pham Thi Doan Trang.

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.



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

Reply of Viet Nam to the Joint Communication
sent by Special Procedures concerning Trinh Ba Phuong, Trinh Ba Tu,
Can Thi Theu, Nguyen Thi Tam and Pham Thi Doan Trang

Ref. AL VNM 5/2020 (dated 10 November 2020)

The allegations made in the Joint Communication were not accurate, mostly drawn from unverified sources and did not reflect the nature of these cases. In Viet Nam, every violation of the law by any person will be dealt with appropriately by competent authorities in order to ensure the strictness of the law. Vietnamese competent authorities arrested Trinh Ba Phuong, Trinh Ba Tu, Can Thi Theu, Nguyen Thi Tam and Pham Thi Doan Trang in order to investigate their activities having signs of violating Vietnamese laws; the arrests were not conducted because they are human rights defenders or they exercised their rights to freedom of expression. The arrest and investigation were carried out in compliance with the procedures and formalities as defined by Vietnamese laws and with full respect for the rights of the accused persons. These are regular legal proceedings in a rule-of-law state which were conducted to clarify the nature of these cases and collect the evidences in order to assess the nature and seriousness of the offences and relevant individuals...and ensure that the arrest and investigation were applied to the exact entities precisely for what they committed according to the law.

1. Information regarding Dong Tam Case

- During the construction and social-economic development in any country, complicated matters often arise from planning and using the land. Viet Nam always tries to build, amend and update the relevant policies in order to ensure effectively planning and using the land for the purpose of constructing and protecting the nation and ensure the livelihood of the people. At the same time, Vietnamese laws also have clear provisions to address violations in this field.

- In Dong Tam Commune, after inspection and investigation upon the request of the people, competent authorities determined clearly the mistakes and violations in managing the land; prosecuted relevant individuals, including many officials who made mistakes and violated according to Vietnamese laws. Moreover, *the inspection agencies conducted their investigations and made their conclusions on the land in compliance with the provisions of Vietnamese laws; and held many dialogues with peoples to obtain their ideas, provide them with the necessary information and explanation, made compensation in*

accordance with the provisions of Vietnamese laws.

- The incident happening on 9 January 2020 in Dong Tam Commune originated from a group of persons abusing the complaints on the land to incite and damage the security and order, resist on-duty officers. In particular, this group of persons incited some people to prepare illegal weapons (buying grenades, making petrol bombs...); planned to resist on-duty officers, even threatened to kill policemen and damage public works such as transformer stations, petrol stations and headquarters of governmental offices; posted video clips and livestreaming on social networks on the preparations for their resistance; assembled at Le Dinh Kinh's house since the night of 8 January 2020 to prepare their resistance against on-duty officers. On 9 January 2020, these persons used grenades, petrol bombs and many weapons, caused three policemen and one of the persons to be killed; the three killed policemen (including [REDACTED], [REDACTED], [REDACTED]) were fallen into a 4 meters deep pit between two walls and poured gasoline into and set on fire. In fact, about 2, 3 years before the incident, this group of persons used to resist on-duty officers, arrest other persons illegally, and infringed the reputations of many locals who did not follow this group and even attacked them.

- Dong Tam incident is a normal criminal case, the perpetrators incited violence, damaged the security and order, prepared weapons and means in order to resist on-duty officers and murder. The first instance trial was held publicly and transparently; the proceedings were carried out in compliance with procedures and formalities as defined by Vietnamese laws; the rights of the accused were ensured in accordance with Vietnamese laws (including oral arguments at the trial, 33 defense lawyers participating in defending for the accused persons, the ideas presented by the accused persons and their defense lawyers); many of the accused persons recognized their offences and apologized the families of the victims.

- After reviewing the documents and oral arguments made at the trial, the court gave the death penalty to the two accused persons, who were the leaders and planned for their offences with aggravating factors (murdering more than two peoples and resisting on-duty officers, committing gangster-like crimes). The judgment shows the strictness of the law. In addition, based on mitigating factors and the humanitarian spirit of the State of Viet Nam, the court decided to change the charges for 19 accused persons from “murder” to “resisting on-duty

officers”, and gave 14 accused persons suspended sentences and released them at the trial. The trial was attended by family members of the accused persons, journalists and foreign representative missions in Viet Nam. *The allegations that the trial violated the right to fair trial and the accused persons had difficulties in meeting their defense lawyers are groundless.*

2. Cases of Trinh Ba Phuong, Trinh Ba Tu, Can Thi Theu and Nguyen Thi Tam

2.1. Information concerning Trinh Ba Phuong, Trinh Ba Tu, Can Thi Theu and Nguyen Thi Tam

- On 23 June 2020, Ha Noi City Police in collaboration with the Police of Hoa Binh Province prosecuted, executed a temporary detention warrant and a search warrant against Trinh Ba Phuong (was born in 1985) and Nguyen Thi Tam (was born in 1972), both of them resided in [REDACTED] in order to investigate the acts of “Creating, storing, distributing or propagating information, documents and materials against the State of the Socialist Republic of Viet Nam” under Article 117 of the Criminal Code of 2015. On the same day, the police of Hoa Binh Province coordinated with Ha Noi City Police to prosecute, execute a temporary detention warrant and a search warrant against Can Thi Theu (was born in 1962) and Trinh Ba Tu (was born in 1989), both of them resided in [REDACTED] in order to investigate the offence of “Creating, storing, distributing or propagating information, documents and materials against the State of the Socialist Republic of Viet Nam” under Article 117 of the Criminal Code of 2015.

- *The above-mentioned decisions and warrants were executed in consistence with the provisions of the Criminal Procedure Code of the Socialist Republic of Viet Nam*; the minutes of proceedings were signed by all parties concerned; the arrests were publicly reported by mass media. These criminal charges and warrants were approved by the People’s Procuracy at the same level.

- Initial investigations by the police suggested that Trinh Ba Phuong, Trinh Ba Tu, Can Thi Theu and Nguyen Thi Tam abused Dong Tam incident in January 2020 to post many articles and videos in social networks that distort the truth, incite individuals to rise up and overthrow the State of Viet Nam. These acts violated Article 117 of the Criminal Code of 2015, and infringed the rights

and reputations of other people as well as national security, public safety and order, and social health and morality.

- These cases are being investigated.

The prosecution and temporary detention of the above-mentioned accused persons is necessary to prevent their criminal offences or avoid the difficulties of the investigation, as well as clarify their offences and other relevant individuals in order to ensure the strictness of the law. This is a popular practice in all rule-of-law states.

2.2. Ensuring the rights of the accused persons during their temporary detention

- Temporary detention which is one of the preventive measures provided in detail in Viet Nam's Criminal Procedure Code of 2015 is applied in order to preclude crime, to prevent accused persons from evidently obstructing investigations, prosecution, adjudication or from committing other crimes. The preventive measures were applied to Trinh Ba Phuong, Trinh Ba Tu, Can Thi Theu and Nguyen Thi Tam because they had been prosecuted for the offence of "Creating, storing, distributing or propagating information, documents and materials against the State of the Socialist Republic of Viet Nam" according to Article 117 of the Criminal Code of 2015.

- During the investigation process, the police need to collect sufficient information in order to clarify the facts of the case and determine acts violating the law. Therefore, inviting relevant individuals (including relatives of the accused) to obtain their statements is necessary. This is a normal legal proceeding conducted in every criminal case.

- 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 is put into place to ensure the necessary confidentiality for investigations of an ongoing case. After the investigative phase is over, the accused person and defense lawyers will be allowed to make the preparations for their defence at the trial such as accessing, copying documents in the record of the case and there will be no limitation with respect to the number of times and the period of time of the meeting between the accused and defense lawyers...Pursuant to Article 74 of the Criminal Procedure Code, the People's Procuracy of Ha Noi City and Hoa Binh Province made the decision about the

time when the defense lawyers will be allowed to participate in the legal proceedings. The lawyers who registered to defend were informed in written form about these provisions. After the investigative phase is over, the requests of the accused and defense lawyers will be resolved according to the normal legal proceedings.

- With regard to the right to family visits, as the investigation phase of these cases is still going on, the law only allows the family to send supplies and gifts to the accused persons; requests for family visits during this phase could not be met to ensure the confidentiality of ongoing investigations. Currently, their health is in normal condition. They have been provided with adequate food, accommodation, and health care as prescribed by Vietnamese law.

3. Case of Pham Thi Doan Trang

- Pham Thi Doan Trang was born in 1978, registered her residence [REDACTED]

- *The allegations that Pham Thi Doan Trang has been subjected to harassment and intimidation, and has been forced into hiding due to fearing that she may be arbitrarily detained for a long period are groundless. There is no fact that Ha Noi City Police forced Pham Thi Doan Trang's mother to sign a document confirming that Pham Thi Doan Trang has created, stored and distributed anti-state materials as alleged in the Joint Communication.* On 3 June 2020, the competent authorities met [REDACTED], the mother of Pham Thi Doan Trang, to check the residence of Pham Thi Doan Trang for the purpose of population management. At the meeting, [REDACTED] said that since 2018, Pham Thi Doan Trang has not lived with her family and [REDACTED] only signed the meeting record.

- On 07 October 2020, Ha Noi City Police in collaboration with some units of the Ministry of Public Security and Ho Chi Minh City Police executed a temporary detention warrant and a search warrant against Pham Thi Doan Trang at [REDACTED] to investigate her violations of Article 88 of the Criminal Code of 1999 and Article 117 of the Criminal Code of 2015. Prosecution and temporary detention of Pham Thi Doan Trang were approved by competent authorities and were carried out in compliance with procedures and formalities as defined by Vietnamese laws and publicly reported by mass media.

- The arrest of Pham Thi Doan Trang is to investigate violations of the law, abuse of social networks and internet to post fake news and information that distorts the truth with a view to causing public anxiety, slandering and harming the reputation of individuals and organizations. These acts were conducted for the purpose of overthrowing the State of Viet Nam. When she was arrested, Pham Thi Doan Trang was not a journalist, but a normal Vietnamese citizen whose acts had signs of violating Vietnamese laws.

The arrest of Pham Thi Doan Trang in order to prevent her criminal offences or avoid the difficulties of the investigation, as well as clarify her offences is necessary and totally consistent with conventions on human rights to which Viet Nam is a party, including Article 19.3 of the ICCPR. Since Pham Thi Doan Trang was arrested, her fundamental rights (including hiring lawyers, access to necessary information...) have been ensured, and she has not been subject to ill-treatment or torture./.