



**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 4/2020 (dated 11 December 2020) concerning Siam Theerawut and Truong Duy Nhat.

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 Truong Duy Nhat and Siam Theerawut

Ref. AL VNM 4/2020 (dated 11 December 2020)

The allegations in the Joint Communication were not accurate, did not reflect the nature of this case, many arguments were made on the basis of unverified information and preconceived ideas about Viet Nam while the information provided by the Government of Viet Nam was not considered appropriately. Viet Nam rejects the allegations regarding delayed notification of arrest and incommunicado detention in Viet Nam. Investigation, prosecution, adjudication and execution of judgment with regard to Truong Duy Nhat were carried out on sound legal grounds, with full respect for the rights of Truong Duy Nhat in accordance with Vietnamese laws. Through this case, Viet Nam once again requests the Special Procedures to base on reliable and verified information to issue the objective communications which reflect accurately the nature of the relevant cases.

1. Information regarding Truong Duy Nhat

- Truong Duy Nhat, born 1964, has registered his residence at [REDACTED]

[REDACTED] On 9 March 2020, the People's Court of Ha Noi City held the trial of first instance and sentenced Truong Duy Nhat to 10 years in prison for the offence of "abusing power and/or authority in performance of official duties" under Paragraph 3, Article 356 of the Criminal Code of 2015. On 14 August 2020, High People's Court in Ha Noi held the appeal trial and made a judgment which is the same to that one made during the trial of first instance. Truong Duy Nhat is being detained in Detention Centre No. 3 (Nghe An Province) and his health is in normal condition.

- Regarding the criminal proceedings and legal grounds for the arrest of Truong Duy Nhat, Viet Nam provided sufficient and concrete information in its replies to the previous communications, therefore, Viet Nam kindly requests the Special Procedures to refer to these replies. Viet Nam once again emphasizes that Truong Duy Nhat was prosecuted and adjudicated for the act of abusing power and/or authority in performance of official duties, not for the exercise of fundamental freedoms; the execution of arrest and temporary detention warrants with regard to Truong Duy Nhat was witnessed by local authorities and relevant parties, the minute of arrest was signed by all of the parties and Truong Duy Nhat; conducting the proceedings of the investigation agencies was supervised strictly by competent authorities.

2. Regarding criminal proceedings in accordance with Vietnamese laws

The allegations that some provisions of Vietnamese laws in practice regularize the enforced disappearances and “incommunicado detention” for a long time are subjective and based on preconceived ideas about Viet Nam, Viet Nam rejects these allegations. The legal provisions should be considered adequately and put in specific circumstances; quoting a small paragraph to cause misunderstanding should be avoided.

- According to the Constitution of 2013, Law on Organization of People’s Procuracies of 2014, People’s Procuracies are agencies “exercising the power to prosecute and supervise judicial activities”, “have the duty to safeguard the Constitution and law, human rights, citizens’ rights”, thus “contributing to ensuring the strict and unified observance of law”. Accordingly, every arrest and temporary detention by investigation agencies must be approved and supervised by People’s Procuracies in order to ensure the compliance with the procedures provided by the laws.

- Article 116 of the Criminal Procedure Code of 2015 (Notice of emergency custody and arrest) provides that the arrest should be informed as soon as possible: “The individual issuing the detainment order or arrest warrant, after apprehending a person, shall inform his family, workplace, educational facility or local authorities in the commune, ward or town where he resides. Investigation authorities, in 24 hours after taking in detainees and arrestees, must inform their family members, workplace, educational facility, local authorities in the commune, ward or town where he resides. If detainees and arrestees are foreigners, Vietnamese diplomatic authorities must be informed to deliver notices to diplomatic missions of countries whose citizens are detained or arrested”.

Article 116 of the Criminal Procedure Code of 2015 only permits the delay in releasing the notice of arrest if such notice obstructs the pursuit of suspects or investigative activities, investigation authorities taking in detainees and arrestees shall release notices after such obstructions suspend to exist. This provision is necessary to ensure that the investigation was conducted correctly, objectively and timely, and to prevent omission of crimes and unjust conviction against guiltless people.

- Article 74 of the Criminal Procedure Code of 2015 (Time of defense counsels' participation in legal proceedings) provides that defense counsels engage in legal proceedings upon the prosecution of suspects. In case of arrest

and temporary detention, defense counsels for arrestees and temporary detainees engage in legal proceedings upon the arrestees' appearance in an office of investigation authorities or units assigned to carry out certain activities of investigation or upon the release of a decision on temporary detainment.

In addition, with regard to national security breach, due to serious and complicated nature of this kind of breach, the Criminal Procedure Code of 2015 stipulates that "if no grounds for termination of detention exist in a special case of extremely severe felony of national security breach, the head of the Supreme People's Procuracy shall decide to maintain detention until the investigation closes" (Paragraph 5 Article 173). Paragraph 7 Article 173 also provide that if detention in force is deemed unnecessary, the investigation authority must request the People's Procuracy to terminate the detention to discharge the detainee in timely manner or implement other measures, and the detainee must be discharged when the detention expires.

- Article 22 of the Law on Temporary Detention and Custody of 2015 provides that meeting relatives does not affect the criminal proceedings of the competent body or person. Paragraph 4 Article 22 of the Law on Temporary Detention and Custody of 2015 provides the cases in which the head of custody facility shall not agree upon the meeting to the arrestees and temporary detainees with stated reasons including reasons coming from arrestees and temporary detainees and their relatives; the necessity to safely protect the custody facility and arrestees and temporary detainees and their relatives; or ongoing proceedings which do not permit meeting between arrestees and temporary detainees and their relatives.

In addition, arrestees and temporary detainees are entitled to complain if they view that the decision of the head of custody facility violates the law and their legitimate rights and interests.

- Regarding measures to inform accurately the relatives of the accused persons of their place of detention and detention condition, the Criminal Procedure Code of 2015 is included in the following provisions: (i) Article 116 on notice of emergency custody and arrest; (ii) Paragraph 6 Article 119 on temporary detention; (iii) Paragraph 1 Article 142 on responsibilities for issuing, delivering, posting and announcing procedural documents. In addition, the Law on Temporary Detention and Custody of 2015 provides that the accused persons are provided with information during the temporary detention and custody in the following cases: (i) Paragraph 1 Article 26 on informing their family where arrestees and temporary detainees die; (ii) Article 30 on informing their family if arrestees and temporary detainees are sick and injured...

The above-mentioned provisions of Vietnamese laws show clearly the limits, specific cases applying legal provisions and clear and specific conditions to apply with regard to each case.

3. Ensuring the rights of Truong Duy Nhat

- Truong Duy Nhat is being detained in Detention Centre No. 3, his health is in normal condition. During his previous detention in T16 Detention Centre of Ministry of Public Security, Truong Duy Nhat had met his relatives for ten times and met his defense counsel for eight times. His detention room is well-aired and the scale of his detention room meets the criteria provided under Paragraph 4 Article 27 of the Law on Temporary Detention and Custody of 2015.

- During his temporary detention, Truong Duy Nhat had received the gifts from his relatives when he met them according to the criteria provided under Paragraph 2 Article 27 the Law on Temporary Detention and Custody of 2015 and Paragraph 1 Article 9 Circular No. 34/2017/TT-BCA of the Minister of Public Security on the detainees meeting their relatives, receiving gifts, sending and receiving letters, books, newspapers and documents.

- *Regarding selling goods at the prison stores:* The goods sold at the prison stores are essential commodities such as toothpaste, soap, shampoo..., the price of the goods is approved by prison warders based on their price at local market and expenses arising from transportation, storage and preservation but does not exceed 10% of the price of the goods when they are bought by the prison stores; the price of the goods are posted publicly at the prison stores.

4. Case of Siam Theerawut

Through searching the system of managing people who made entry into Viet Nam, Vietnamese competent authorities found no information concerning a Thai national whose name is Siam Theerawut making entry into Viet Nam. Because the information regarding this case is not sufficient to check, verify and search, Viet Nam kindly requests the Special Procedures provide the information which is more accurate and specific (especially picture, features, relationship or exchange between Siam Theerawut and individuals and organizations in Viet Nam before his disappearance) so that Vietnamese competent authorities can investigate. In case the above-mentioned information is not available, Viet Nam requests the Special Procedures to close this case or stop requesting Viet Nam to provide information on this case./.