

**PETITION TO:**

**UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Ms. Elina Steinerte (Latvia)  
Vice-Chair: Dr. Miriam Estrada-Castillo (Ecuador)  
Ms. Leigh Toomey (Australia)  
Mr. Mumba Malila (Zambia)  
Ms. Priya Gopalan (Malaysia)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

**Đinh Thị Thu Thủy**  
Citizen of the Socialist Republic of Vietnam  
v.  
**Government of the Socialist Republic of Vietnam**

---

Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4, 15/18, 24/7 and 42/22.<sup>1</sup>

*Submitted by:*

Nguyen Dinh Thang, PhD  
BPSOS  
6066 Leesburg Pike, Suite 100  
Falls Church, VA 22041  
United States of America  
+1 (703) 538-2190  
Thang.Nguyen@bpsos.org

Vy Pham  
Dania Nguyen  
Joyce Hua  
NextGen  
vytheresapham@gmail.com  
dann2782@gmail.com  
jhua21@heritagehall.com

Thomas M. Kellenberg  
Jensen Enterman  
U.N. Special Procedures Clinic  
University of Notre Dame  
Washington Program  
1608 Rhode Island Avenue, NW  
Suite 346  
Washington, D.C. 20036  
United States of America  
+1 (202) 974-6213  
tkellenb@nd.edu

Tuyet Dinh  
Vietnamese Women for Human Rights  
tuyetdinh@yahoo.com

November 8, 2021

---

<sup>1</sup> Resolutions 1991/42, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, March 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, 24/7 and 42/22.

## I. Introduction

Đinh Thị Thu Thủy, a single mother with a young child, was sentenced by the Government of the Socialist Republic of Vietnam (the “Government”) to seven years in prison for posting five comments on Facebook critical of the Government’s economic, environmental, cyber-security and COVID-19 policies.<sup>2</sup> In its reply, the Government does not dispute these allegations but rather claims that its actions were justified on the grounds of national security. Because the arrest and detention of Đinh Thị Thu Thủy violate Categories I, II, and III of its Methods of Work, the UN Working Group on Arbitrary Detention (the “Working Group”) should render an opinion that her detention is arbitrary, that she should be released immediately, and that she should be provided an enforceable right to compensation and other reparations in accordance with international law.

## II. Argument

### A. Đinh Thị Thu Thủy’s detention violates Category I

A detention violates Category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.<sup>3</sup> The Working Group has found detentions arbitrary under Category I when any of the following conditions are present: (1) when the government has held an individual *incommunicado* for a period of time; and (2) when vague laws are used to prosecute an individual.<sup>4</sup> In the present case, Đinh Thị Thu Thủy was held *incommunicado* for many months after her arrest,<sup>5</sup> and she was convicted under Article 117 of the 2015 Vietnamese Penal Code,<sup>6</sup> legislation which is too vague to provide a legal basis for detention.

In its reply, the Government does not dispute that Đinh Thị Thu Thủy was held *incommunicado* for many months after her arrest. Consequently, the Government has forfeited that point.

With respect to the 2015 Vietnamese Penal Code, the Government argues that “Article 117 of the Criminal Code of 2015 has clear provisions in determining offences and will only deal with acts propagandizing information and documents that distort the truth and be against the State of the Socialist Republic of Viet Nam.” However, the Working Group has held in previous opinions that “Article 117 of the Criminal Code of 2015 is incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant and cannot be considered to be ‘prescribed by law’ and as ‘defined with sufficient precision’ due to its vague and overly broad language.”<sup>7</sup> Consequently, Đinh Thị Thu Thủy’s detention is a Category

---

<sup>2</sup> *Vietnamese Facebook User Gets Seven-Year Term For Ridiculing Leaders*, RADIO FREE ASIA (Jan. 21, 2021), <https://www.rfa.org/english/news/vietnam/leaders-01212021184919.html>.

<sup>3</sup> HUMAN RIGHTS COUNCIL, *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/36/38, para. 8(a) (July 13, 2017) (*hereinafter* “Methods”).

<sup>4</sup> *See, e.g., Bettar v. Morocco*, Working Grp. on Arbitrary Detention, Commc’n No. 3/2013, paras. 30-314 (2013); *61 Individuals v. United Arab Emirates*, Working Grp. on Arbitrary Detention, Commc’n No. 60/2013, para. 22 (2013).

<sup>5</sup> *Woman Human Rights Defender Đinh Thị Thu Thủy Charged and Sentenced*, FRONTLINE DEFENDERS (Jan. 20, 2021), <https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-%C4%91inh-th%E1%BB%8B-thu-th%E1%BB%A7y-charged-and-sentenced>.

<sup>6</sup> *Id.*

<sup>7</sup> *Nguyễn Năng Tĩnh v. Viet Nam*, United Nations Working Group on Arbitrary Detention, Opinion No. 36/2021, UN Doc. A/HRC/WGAD/2021/36, para. 73 (2021). *See also Pham Doan Trang v. Viet Nam*, United Nations Working

I violation.

## **B. Đinh Thị Thu Thủy’s detention violates Category II**

A deprivation of liberty is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20, and 21 of the UDHR and Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR.<sup>8</sup> This case meets the requirements of Category II because Đinh Thị Thu Thủy’s detention is a direct result of the exercise of her fundamental freedoms of opinion, expression and association guaranteed by the UDHR and the ICCPR.

In its reply, the Government contends that Đinh Thị Thu Thủy “was arrested for intentionally posting and sharing articles in social networks with untrue contents misrepresenting the directions and policies of the State of the Socialist Republic of Viet Nam.” Such conduct, however, is expressly protected by the ICCPR:

Article 19 (2) of the Covenant applies to everyone, including the general public, and includes political discourse, commentary on public affairs, discussion of human rights, and journalism. It protects the holding and expression of opinions, including those which are not in line with government policy.<sup>9</sup>

The Government further alleges that Đinh Thị Thu Thủy was involved in “inciting the hate and division between the communities and the people and State; obstructing the cooperation between the people and the State; distorting the history of struggling to gain the independence and unity of Viet Nam; [and] defaming and offending the leader Ho Chi Minh.” Nowhere, however, does the Government provide any evidence of such conduct. Đinh Thị Thu Thủy’s Facebook posts relate to the Government’s economic, environmental, cyber-security and COVID-19 policies, types of expression that the Human Rights Council has found to be protected under article 19 (2) of the Covenant:

As stipulated by the Human Rights Council, the following types of expression should never be subject to restrictions: discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and the expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.<sup>10</sup>

Consequently, Đinh Thị Thu Thủy’s detention is a Category II violation.

---

Group on Arbitrary Detention, Opinion No. 40/2021, UN Doc. A/HRC/WGAD/2021/40, para. 69 (2021).

<sup>8</sup> Methods, *supra* note 2, at para. 8(b).

<sup>9</sup> *Pham Doan Trang v. Viet Nam*, United Nations Working Group on Arbitrary Detention, Opinion No. 40/2021, UN Doc. A/HRC/WGAD/2021/40, para. 76 (2021).

<sup>10</sup> *Nguyễn Năng Tĩnh v. Viet Nam*, United Nations Working Group on Arbitrary Detention, Opinion No. 36/2021, UN Doc. A/HRC/WGAD/2021/36, para. 79 (2021).

### C. Đinh Thị Thu Thủy’s detention violates Category III

Đinh Thị Thu Thủy’s arrest and detention is also arbitrary under Category III. A deprivation of liberty is arbitrary under Category III where “the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out 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.”<sup>11</sup> In the present case, the Government violated Đinh Thị Thu Thủy’s right to *habeas corpus*; her right to release pending trial; her right to family visits; her right to be tried without undue delay; her right to communicate with counsel; and her right to a fair hearing.

In its reply, the Government does not deny that it infringed Đinh Thị Thu Thủy’s due process rights. Instead, the Government argues that such measures were taken “in order to ensure the confidentiality of the investigative process of cases infringing the national security.” However, because Đinh Thị Thu Thủy’s detention is arbitrary under Category II, no trial should ever have taken place. For that reason alone, Đinh Thị Thu Thủy’s detention violates Category III.

Moreover, Đinh Thị Thu Thủy’s Facebook posts did not jeopardize any legitimate national security interests that would warrant the deprivation of her due process rights.<sup>12</sup> As the Working Group has made abundantly clear, “posting material about State policy on social media” does not amount to acts of incitement to violence or public disorder.<sup>13</sup> Consequently, Đinh Thị Thu Thủy’s detention is a Category III violation on that basis as well.

### III. Conclusion

For the foregoing reasons, the Working Group should render an opinion that the arrest and detention of Đinh Thị Thu Thủy violates Categories I, II, and III of its Methods of Work.

Nguyen Dinh Thang, PhD  
BPSOS  
6066 Leesburg Pike, Suite 100  
Falls Church, VA 22041  
United States of America  
+1 (703) 538-2190  
Thang.Nguyen@bpsos.org

Vy Pham  
Dania Nguyen  
Joyce Hua  
NextGen  
vytheresapham@gmail.com  
dann2782@gmail.com  
jhua21@heritagehall.com

Thomas M. Kellenberg  
Jensen Enterman  
U.N. Special Procedures Clinic  
University of Notre Dame  
Washington Program  
1608 Rhode Island Avenue, NW  
Suite 346  
Washington, D.C. 20036  
United States of America  
+1 (202) 974-6213  
tkellenb@nd.edu

Tuyet Dinh  
Vietnamese Women for Human Rights  
tuyetdinh@yahoo.com

<sup>11</sup> Methods, *supra* note 7, at para. 8(c).

<sup>12</sup> See, e.g., *Le Huu Minh Tuan v. Viet Nam*, United Nations Working Group on Arbitrary Detention, Opinion No. 11/2021, UN Doc. A/HRC/WGAD/2021/11, paras. 72-74 (2021).

<sup>13</sup> *Nguyễn Năng Tĩnh v. Viet Nam*, United Nations Working Group on Arbitrary Detention, Opinion No. 36/2021, UN Doc. A/HRC/WGAD/2021/36, para. 37 (2021).