

Reply of Viet Nam to the Communication from the Working Group on Arbitrary Detention concerning Dinh Thi Thu Thuy

Ref. 2021/VTM/CASE (dated 04 August 2021)

I. General Information

1. The right to freedom of expression

- The right to freedom of expression is not an absolute right and the exercise of this right is subject to the limits provided by the laws. This is affirmed in Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) and Article 29 of the Universal Declaration of Human Rights. Accordingly, the right to freedom of expression is not composed of acts propagandizing the information that distorts the truth with a view to infringing the lawful rights and interests of individuals and organizations in the society. The exercise of the right to freedom of expression needs to come with the responsibility of each individual with respect of the information which these individuals spread in order to ensure a democratic and civilized society. Any individual abusing the right to freedom of expression as well as other rights to freedom and democracy to conduct the activities violating the laws must be dealt with.

- Viet Nam encourages its citizens to exercise the right to freedom of expression to express the opinions and criticisms on the policies of the State. However, the exercise of this right needs to comply with the legal provisions and base on the constructive spirit, good faith in order to point out the shortcomings, thus contributing to the construction and development of the country. The acts of abusing the rights to freedom and democracy, criticism and human rights defending to propagandize the information which distorts the truth, incites the hate and causes the division in the society with the purpose of overthrowing the people's government by the use of force is rigidly prohibited.

- Dinh Thi Thu Thuy was arrested not because of exercising the right to freedom of expression and freedoms of peaceful assembly and of association. She 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; 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; defaming and offending the leader Ho Chi Minh; using the hate speech in order to incite the division between the regions

of Viet Nam. The act of Dinh Thi Thu Thuy can not be considered as the exercise of the rights to freedom and democracy, freedom of expression legitimately and must be dealt with strictly by the laws. Viet Nam believes that the protection of national security and social order does not stop at preventing violent acts or direct threats. The existing risks threatening Viet Nam and other countries' national security comes from in violent acts such as spreading fake news, untrue news. Acts of preading fake news with a view to defaming and hurting the honour and reputation of other persons must be dealt with to ensure a clean, civilized and responsible information environment.

2. Article 117 of the Criminal Code of 2015

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. The fact that the Working Group on Arbitrary Detention only takes into account forms of acts exercising the right of freedom of expression (spreading information) and ignores the nature and purpose of acts (posting and spreading information which distorts the truth with a view to overthrowing the people's government) leads to incorrect assessments on the legal system and judicial activities of Viet Nam. Article 117 is totally compatible with Paragraph 3, Article 19 of the ICCPR.

II. The Arrest and Adjudication of Dinh Thi Thu Thuy

1. Legal grounds for the arrest of Dinh Thi Thu Thuy

- The warrants for arrest and temporary detention of Dinh Thi Thu Thuy were approved by the People's Procuracy. The People's Procuracy is the judicial agency empowered to examine the legality of criminal procedural activities carried out by investigative agencies. Every criminal procedural decision must be approved by the People's Procuracy to be legally effective and implemented. This is totally consistent with the provisions of international law. In particular, Article 9.3 of the ICCPR stipulates that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release".

- Article 117 of the Criminal Code of 2015 belongs to the group of offences infringing the national security. Based on the Criminal Procedure Code (Article 74) and Law on Temporary Detention and Custody (Article 22), the competent authorities issued the decision on the time when defense

lawyers were allowed to take part in legal proceedings and meeting relatives was permitted after the investigative phase had been over in order to ensure the confidentiality of the investigative process of cases infringing the national security. After the investigative phase had been over, the accused person and defense lawyers had been allowed to make the preparations for their defence at the trial such as accessing, copying documents in the record of the case and there was no limitation with respect to the number of times and the period of time of the meeting between the accused and defense lawyers. This is fully consistent with Paragraph 3, Article 14 of the ICCPR.

2. The Arrest and Adjudication of Dinh Thi Thu Thuy

- The arrest and adjudication of Dinh Thi Thu Thuy fully comply with Viet Nam's criminal procedural provisions. **The execution of the arrest warrant against Dinh Thi Thu Thuy was published and witnessed by the local authority and the relatives of the accused person (the sister of Dinh Thi Thu Thuy). The execution of the arrest warrant against Dinh Thi Thu Thuy was recorded in the written document signed by all relevant parties. Therefore, the allegation that the arrest warrant against Dinh Thi Thu Thuy was not shown at the time of the arrest is untrue information.**

- The trial of Dinh Thi Thu Thuy was held publicly, fairly and complied with Viet Nam's legal provisions on criminal procedures, and was composed of all phases provided by Vietnamese laws; the right to defend of Dinh Thi Thu Thuy and her defense lawyers was ensured during the trial. **The timing of the trial depends on clarifying evidences and acts of the accused persons in accordance with legal provisions. No treaty specifies the timing of a trial. Thus, only basing on the timing of the trial to make the allegation that the offence of Dinh Thi Thu Thuy had been determined before the trial was held is groundless./.**