

Working Group on Arbitrary Detention

1 July 2022

Dear Mr. Dinh Thang,

I wish to draw your attention to the case of deprivation of liberty of Tran Duc Thach, which you submitted to the Working Group on Arbitrary Detention for consideration under its regular communication procedure.

The Working Group sent a communication on this case to the Government of Viet Nam. By letter dated 30 June 2022, the Government of Viet Nam conveyed its response, which is attached.

We would appreciate receiving your comments on this response as soon as possible and no later than 18 July 2022, in order for the Working Group to consider the case during its 94th session, which will take place in Geneva from 29 August to 2 September 2022. We would be grateful if you could send your observations by email to the following address: hrc-wg-ad@un.org.

Please note that all information you will provide to the Working Group on this matter will remain confidential at this stage of the procedure.

Yours sincerely,



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Secretary
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Reply of Viet Nam to the Communication from the Working Group on Arbitrary Detention concerning Tran Duc Thach

Ref. WGAD/VNM/2022/CASE/2 (dated 04 April 2022)

1. General information about Tran Duc Thach's violations of the law

- Tran Duc Thach along with a number of other subjects established the organization “the Brotherhood for Democracy”, determined the operation lines, and attracted many individuals to participate in this organization in many localities throughout the country, associated with many anti-Vietnamese terrorists to operate with the aim of overthrowing the people's government and changing the political regime in Viet Nam.

- During the operation, Tran Duc Thach and his accomplices took advantage of their democratic freedoms to intentionally publish many articles with false and slanderous content to distort the activities of state agencies, distorting the history of the struggle for independence and reunification of Viet Nam, mutilating and distorting information to create a false image of the operation of the State of Viet Nam, and inciting anti-government sentiments. These acts are designed at weakening the core pillars of the society which are the foundation of stability and peace, by creating instability, threatening the strength of the people’s government, infringing on national security. Despite warnings and reminders, Tran Duc Thach continued to commit his illegal acts. Therefore, the arrest and trial of Tran Duc Thach are necessary to ensure the strictness of Vietnamese laws.

- Tran Duc Thach's criminal acts were comprehensively, fully, objectively and independently reviewed by judicial authorities in two first-instance and appellate trials with sufficient evidences. Viet Nam believes that the consideration of an individual's actions should be based on the nature of the actions, not on general statements about “promoting democracy, protecting human rights”.

- Each country has different requirements for national security protection and social order and safety. Respect for each country's sovereignty is one of the most important principles in international relations. For Viet Nam, ensuring national security and social order is not just about stopping and preventing violent acts or threats of violence. Existing threats to national security stemming from non-violent activities such as reporting fake news, misinformation, misrepresentation, and distortion of information is a reality that is taking place in Viet Nam and many other countries. Handling acts of reporting false information,

distorting information in many different forms, for the purpose of defaming and lowering the honor and reputation of organizations or individuals is necessary to ensure a clean, civilized and responsible information environment.

2. Tran Duc Thach's arrest and proceedings

- In the process of arresting Tran Duc Thach, the authorities have fully implemented the procedures as prescribed by the criminal procedure law, and notified the prosecution decision, arrest warrant, search warrant with the participation of local authorities and witnesses, fully expressed in minutes with certified signatures of the parties involved. The above-mentioned procedural decisions have been approved by the People's Procuracy - the judicial body authorized by the State of Viet Nam to supervise the legality of criminal proceedings before being implemented. This is fully consistent with Article 9.3 of International Covenant on Civil and Political Rights (ICCPR).

- During the detention period, Tran Duc Thach have been fully guaranteed by the detention center of the rights and regimes as prescribed in the Law on enforcement of custody and temporary detention; met relatives for 4 times, received gifts, food and cash for 15 times, had regular medical check-ups and been given medicines for treatment (colitis, gout and high blood pressure caused by his old age). In addition, Tran Duc Thach's relatives have sent medicine to him twice according to the prescription of the General Hospital of Nghe An province. Currently, Tran Duc Thach's health is stable, eligible to serve the sentence, and has received all 3 doses of Covid-19 vaccine.

- Pursuant to Article 74 of the Criminal Procedure Code, in cases where it is necessary to keep the investigation secret for cases infringing upon national security, the competent People's Procuracy has issued a decision to allow defense counsels to participate in proceedings since the end of the investigation period. After finishing the investigation, on 05 November 2020 and 23 March 2021, the Detention Center allowed the defense counsel for Tran Duc Thach to visit him in accordance with the law. During the proceedings, the court staffs created all favourable conditions for the defense counsel for Tran Duc Thach to access and study the case file. The permission to copy documents in national security cases belonging to the group of top secret documents should fall under the jurisdiction of the Chief Justice of the High People's Court and the Chief Justice of the Provincial People's Court.

- The trial for Tran Duc Thach was held in accordance with the order and procedures specified in the Criminal Procedure Code of Viet Nam with a full process of litigation, deliberation and sentencing; Tran Duc Thach and his

defense counsel were guaranteed to fully exercise their defense rights. The time of the trial depends on the process of clarifying the evidences and the defendant's behaviors in accordance with the law. There is no provision of international law that prescribes the required length of a trial. Therefore, the allegation that Tran Duc Thach's crimes were determined before the trial took place solely based on trial time is unfounded.

3. About allegations of violation of the right to freedom of expression

- The right to freedom of expression as enshrined in the Universal Declaration of Human Rights and the ICCPR is not an absolute right, and is subject to certain limitations set forth by law (Article 19.3 of ICCPR). There is no provision of international human rights law that allows an individual to use his or her right to freedom of expression to provide false and misleading information with the aim of infringing upon the reputation, legitimate rights and interests of organizations and individuals in the society. It is reassuring that each individual must be self-aware of his responsibilities and obligations when exercising democratic freedoms, including freedom of expression.

- Viet Nam does not restrict citizens from exercising their right to freedom of expression. The State of Viet Nam encourages citizens to give opinions on development undertakings and policies, and formulating laws; participate in criticizing and pointing out errors in state management; denounce corruption, complain about human rights violations by civil servants in many direct and indirect forms through the press, media, and social networks. In fact, over the past time, Viet Nam has handled many civil servants who committed violations through complaints from the people in the above forms. However, the exercise of the above-mentioned democratic freedoms needs to comply with the provisions of the law, based on constructive spirit, factual and verifiable information./.